Contract of Indemnity

Objectives of study are:

Meaning of Indemnity.
Nature and Scope of Indemnity.
Distinction between Indemnity and other Specific contracts.
Indemnity under English and US Law.

Introduction:

Literal Meaning: Indemnity means Insurance or Security or Protection.

Principle: Indemnity is an obligation by a person (**indemnitor/indemnifier**) to provide compensation for a particular loss suffered by another person (**indemnitee/indemnity holder**).

Indemnities form the basis of many insurance contracts; for example, a car owner may purchase different kinds of insurance as an indemnity for various kinds of loss arising from operation of the car, such as damage to the car itself, or medical expenses following an accident.

In an agency context, a principal may be obligated to indemnify their agent for liabilities incurred while carrying out responsibilities under the relationship. While the events giving rise to an indemnity may be specified by contract, the actions that must be taken to compensate the injured party are largely unpredictable, and the maximum compensation is often expressly limited.

In the old English law, Indemnity was defined as "a promise to save a person harmless from the consequences of an act. Such a promise can be express or implied from the circumstances of the case".

This view was illustrated in the case of **Adamson vs Jarvis 1872.** In this case, the plaintiff, an auctioneer, sold certain goods upon the instructions of a person. It turned out that the goods did not belong to the person and the true owner held the auctioneer liable for the goods. The auctioneer, in turn, sued the defendant for indemnity for the loss suffered by him by acting on his instructions. It was held that since the auctioneer acted on the instructions of the defendant, he was entitled to assume that if, what he did was wrongful, he would be indemnified by the defendant.

This gave a very broad scope to the meaning of Indemnity and it included promise of indemnity due to loss caused by any cause whatsoever. Thus, any type of insurance except life insurance was a contract of Indemnity. However, Indian contract Act 1872 makes the scope narrower by defining the contract of indemnity as follows:

Section 124 - A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself or by the conduct of any other person is a "contract of Indemnity".

Illustration - A contracts to indemnify B against the consequences of any proceedings which C may take against B in respect of a certain sum of Rs 200. This is a contract of indemnity.

This definition provides the following **essential elements** –

1. There must be a loss.
2. The loss must be caused either by the promisor or by any other person (in Indian context loss is to be caused by only by a human agency.)
3. Indemnifier is liable only for the loss.

Thus, it is clear that this contract is contingent in nature and is enforceable only when the loss occurs.

Rights of Indemnifier:

After compensating the indemnity holder, indemnifier is entitled to all the ways and means by which the indemnifier might have protected himself from the loss.
Relevant Case Laws

Rights of the indemnity holder:

Section 125, defines the rights of an indemnity holder. These are as follows - The promisee (Indemnity holder) in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor (Indemnifier). These are:

1. Right of recovering Damages - all damages that he is compelled to pay in a suit in respect of any matter to which the promise of indemnity applies.

2. Right of recovering Costs -all costs that he is compelled to pay in any such suit if, in bringing or defending it, he did not contravene the orders of the promisor and has acted as it would have been prudent for him to act in the absence of the contract of indemnity, or if the promisor authorized him in bringing or defending the suit.

3. Right of recovering Sums -all sums which he may have paid under the terms of a compromise in any such suite, if the compromise was not contrary to the orders of the promisor and was one which would have been prudent for the promisee to make in the absence of the contract of indemnity, or if the promisor authorized him to compromise the suit.

Some of the important conditions which he ought to follow here are viz; that as per this section, the rights of the indemnity holder are not absolute or unfettered. He must act within the authority given to him by the promisor and must not contravene the orders of the

promisor. Further, he must act with normal intelligence, caution, and care with which he would act if there were no contract of indemnity.
Therefore, at the same time, if he has followed all the conditions of the contract, he is entitled to the benefits.
This was held in the case of **United Commercial Bank vs Bank of India AIR 1981**. In this case, Supreme Court held that the courts should not grant injunctions restraining the performance of contractual obligations arising out of a letter of credit or bank guarantee if the terms of the conditions have been fulfilled. It held that such LoCs or bank guarantees impose on the banker an absolute obligation to pay.

In the case of **Mohit Kumar Saha vs New India Assurance Co AIR 1997, Calcutta HC** held that the indemnifier must pay the full amount of the value of the vehicle lost to theft as given by the surveyor. Any settlement at lesser value is arbitrary and unfair and violates art 14 of the constitution.

When does the Commencement of liability arises:

In general, as per the definition given in section 124, it looks like an indemnity holder cannot hold the indemnifier liable until he has suffered an actual loss. This is a great disadvantage to the indemnity holder in cases where the loss is imminent and he is not in the position to bear the loss.
In the celebrated case of **Gajanan Moreshwar vs Moreshwar Madan, AIR 1942**, Bombay high court observed that the contract of indemnity held very little value if the indemnity holder could not enforce his indemnity until he actually paid the loss. If a suit was filed against him, he had to wait till the judgement and pay the damages upfront before suing the indemnifier. He may not be able to pay the judgement fees and could not sue the indemnifier. Thus, it was held that if his liability has become absolute, he was entitled to get the indemnifier to pay the amount.

Distinction between a contract of Indemnity and a contract of Guarantee.

Contract of Indemnity (Section 124)	**Contract of Guarantee (Section 126)**
It is a bipartite agreement between the indemnifier and indemnity-holder.	It is a tripartite agreement between the Creditor, Principal Debtor, and Surety.
Liability of the indemnifier is contingent upon the loss.	Liability of the surety is not contingent upon any loss.
Liability of the indemnifier is primary to the contract.	Liability of the surety is co-extensive with that of the principal debtor although it remains in suspended animation until the principal debtor defaults. Thus, it is secondary to the contract and consequently if the principal debtor is not liable, the surety will also not be liable.
The undertaking in indemnity is original.	The undertaking in a guarantee is collateral to the original contract between the creditor and the principal debtor.
There is only one contract in a contract of indemnity -	There are three contracts in a contract of guarantee -

between the indemnifier and the indemnity holder.	an original contract between Creditor and Principal Debtor, a contract of guarantee between creditor and surety, and an implied contract of indemnity between the surety and the principal debtor.
The reason for a contract of indemnity is to make good on a loss if there is any.	The reason for a contract of guarantee is to enable a third person get credit.
Once the indemnifier fulfills his liability, he does not get any right over any third party. He can only sue the indemnity-holder in his own name.	Once the guarantor fulfills his liabilty by paying any debt to the creditor, he steps into the shoes of the creditor and gets all the rights that the creditor had over the principal debtor.

Some Illustrations on contract of Indemnity under English Law are as follows:

Under section 4 of the Statute of Frauds (1677), a "guarantee" which means “an undertaking of secondary liability; to answer for another's default must be evidenced in writing. No such formal requirement exists in respect of indemnities which involves the assumption of primary liability; to pay irrespective of another's default ,which are enforceable even if made orally. (Ref: Peel E: Treitel, The Law of Contract")

Under current English law, indemnities must be clearly and precisely worded in the contract in order to be enforceable. Under the Unfair Contract Terms Act 1977 , Section 4, says that a consumer cannot be made to unreasonably indemnify another for their breach of contract or negligence.

Contract award.

In England and Wales an "indemnity" monetary award may form part of rescission (the revocation, cancellation, or repeal of a law, order, or agreement) during an action of ***restitutio in integrum*** (restoration of an injured party to the situation which would have prevailed had no injury been sustained; restoration to the original or pre-contractual position). The property and funds are exchanged, but indemnity may be granted for costs necessarily incurred to the innocent party pursuant to the contract. The leading case on this point is ***Whittington v Seale-Hayne***, in which a contaminated farm was sold. The contract made the buyers renovate the real estate and, the contamination incurred medical expenses for their manager, who had fallen ill. Once the contract was rescinded, the buyer could be indemnified for the cost of renovation as this was necessary to the contract, but not the medical expenses as the contract did not require them to hire a manager. Were the sellers at fault, damages would clearly be available.

The distinction between indemnity and damages is subtle which may be differentiated by considering the roots of the law of obligations.

Question arises how can money be paid where the defendant is not at fault? The contract before rescission (the revocation, cancellation, or repeal of a law, order, or agreement) is voidable but not void, so, for a period of time, there is a legal contract. During

that time, both parties have legal obligation. If the contract is to be void *ab initio* the obligations performed must also be compensated. Therefore, the costs of indemnity arise from the (transient and performed) obligations of the claimant rather than a breach of obligation by the defendant.

This distinction between indemnity and guarantee was discussed as early as the eighteenth century in *Birkmya v Darnell*. In that case, concerned with a guarantee of payment for goods rather than payment of rent, the presiding judge explained that a guarantee effectively says "Let him have the goods; if he does not pay you, I will."

Distinction from warranties:

An indemnity is distinct from a warranty in that:

a) An indemnity guarantees compensation equal to the amount of loss subject to the indemnity, while a warranty only guarantees compensation for the reduction in value of the acquired asset due to the warranted fact being untrue (and the beneficiary must prove such diminution in value).
b) Warranties require the beneficiary to mitigate their losses, while indemnities do not.
c) Warranties do not cover problems known to the beneficiary at the time the warranty is given, while indemnities do.

Thus in nutshell we have understood that

i) **Contracts of Indemnity** has been defined as: "A Contract whereby one party promises to save the other from loss caused to him by the conduct of the promisor himself or by the conduct of any other person, is called a **contract of indemnity**."
ii) The term is often used in business contracts and in insurance.
iii) Indemnity, in simple words, is protection against future loss.
iv) The term 'Indemnity Agreement' is often used in the US.
v) Contract of Indemnties should all satisfy the conditions of a valid contract.
vi) All Contracts of Insurance are Contracts of Indemnity except life insurance.
vii) The indemnity holder can call upon the indemnifier to save him from loss even before the actual loss is incurred.

Contract of Guarantee.

Objectives:
Meaning and scope of contract of Guarantee.
Essential elements of a contract of Guarantee?
Kinds of Guarantee and what are its modes of revocation.
Rights of Surety and Surety's discharged and Extent of Surety's liability.

Introduction:

A Contract to perform the promise, or discharge the liability, of a third person in case of his default is called **Contract of Guarantee**. A guarantee may be either oral or written.

- The person who gives the guarantee is called the **Surety**
- The person on whose default the guarantee is given is called the **Principal Debtor**
- The person to whom the guarantee is given is called the **Creditor.**

MEANING AND DEFINITION OF CONTRACT OF GUARANTEE

A guarantee can be many a things. It can be assurance of a particular outcome or that something will be performed in a specified manner. A guarantee is a way of assuming responsibility for paying another's debts or fulfilling another's responsibilities. It can be a promise for the execution, completion, or existence of something. A guarantee can also be a promise or an assurance attesting to the quality or durability of a product or service.
The English law defines a 'guarantee' as a 'promise to answer for the debt, default or miscarriage of another'.

Section 126 of the Indian Contract Act, 1872[1] says that a Contract of Guarantee is a contract to perform the promise or discharge the liability or a third person in case of his default.

Illustration:
If A gives an undertaking stating that if ` 200 are lent to C by B and C does not pay, A will pay back the money, it will be a contract of guarantee. Here, A is the surety, B is the principal debtor and C is the creditor.
Surety is the person gives the guarantee, the Principal Debtor is one for whom the guarantee is given and the creditor is the person to whom the guarantee is given. Contract Act uses the word 'surety' which is same as 'guarantor' Prima facie, the surety is not undertaking to perform should the principal debtor fail; the surety is undertaking to see that the principal debtor does perform his part of the bargain. A contract of guarantee pre-supposes a principal debt or an obligation that the principal debtor has to discharge in favour of the creditor.
Anything done, or any promise made, for the benefit of the principal debtor, is deemed sufficient consideration to the surety for giving the guarantee. It is sufficient inducement that the person for whom the surety has given guarantee has received a benefit or the creditor has suffered an inconvenience. While Section 2 (d) of the ICA, 1872 says that past consideration

is good consideration, illustration (c) of Section 127 of the ICA, 1872 seems to negate this point. Those who favor the validity of past consideration state that law is not supposed to be guided by illustrations. But there have been conflicting judgments about whether past consideration is good consideration.

Illustration:

B requests A to sell and deliver to him goods on credit. A agrees to do so, provided C will guarantee the payment of the price of the goods. C promises to guarantee the payment in consideration of A's promise to deliver the goods. This deemed sufficient consideration for C's promise.

Illustration: A sells and delivers goods to B. C afterwards requests A to forbear to sue B for the debt for a year, and promises that, if he does so, C will pay for them in default of payment by B. A agrees to forbear as requested. This is a sufficient consideration for C's promise.

Illustration: A sells and delivers goods to B. C afterwards, without consideration, agrees to pay for them in default of B. The agreement is void.

The most basic function of a contract of guarantee is to enable a person to get a job, a loan or some goods as the case may be. In case, a person is desirous of buying a car on a hire-purchase agreement by making monthly payments over a period of time but the car dealer asks for guarantee. Then someone would have to assure him that he will make the monthly payments in case of default by the person who is buying the care. Such an undertaking results in a contract of surety ship or guarantee. Guarantee is security in form of a right of action against a third party called the surety or the guarantor.

ESSENTIALS OF CONTRACT OF GUARANTEE

1. Essentials of a valid contract: Since Contract of Guarantee if a species of a contract, the general principles governing contracts are applicable here. There must be free consent, a legal objective to the contract, etc. Though all the parties must be capable of entering into a contract, the principal debtor may be a party incompetent to contract, ie., a minor. This scenario is discussed later in this chapter.
2. A principal debt must pre-exist: A contact of gurantee seeks to secure payment of a debt, thus it is necessary there is a recoverable debt. There can not be a contract to guarantee a time barred debt.
3. Consideration received by the principal debtor is sufficient for the surety. Anything done, or any promise made for the benefit of the principal debtor can be taken as sufficient consideration to the surety for giving guarantee.

NATURE OF CONTRACT OF GUARANTEE

The contract of guarantee has to be clear. A letter clearly stating the intention to guarantee a transaction will go on smoothly or one will behave appropriately conduct himself at work place will suffice. But a promise to pay extra attention or to take care of it does not constitute a guarantee.

In India, a contract of guarantee may be oral or written. It may even be inferred from the course of conduct of the parties concerned. Under English Law, a guarantee is defined as a promise made by one person to another to be collaterally answerable for the debt, default or miscarriage of the third persons and has to be in writing.

There are three parties in a contract of guarantee; the creditor, the principal debtor and the surety. In a contract of guarantee, there are two contracts; the Principal Contract between the principal debtor and the creditor as well as the Secondary Contract between the creditor and the surety. The contract of the surety is not contract collateral to the contract of the principal debtor but is an independent contract. Liability of surety is secondary and arises when principal debtor fails to fulfill his commitments. Even an acknowledgement of debt by the principal debtor will bind the surety.

It is not essential that the Principal Contract must be in place/existence at the time of the Contract of Guarantee being made. The original contract between the debtor and the creditor may be about to come into existence. Similarly, in certain situations, a surety may be called upon to pay though the principal debtor is not liable at all. For example, in cases where the principal debtor is a minor, the surety will be liable though the minor will not be personally liable.

A contract of guarantee is to be enforced according to the terms of the contract.

A guarantee is a contract of s*trictissima juris* that means liability of surety is limited by law; a surety is offered protection by law and is treated as a favored debtor in the eyes of the law. A contract of guarantee is not a contract 'uberrimae fidei' (requiring of utmost good faith). Still the suretyship relationship is one of trust and confidence and the validity of the contract depends upon the good faith of the creditor. However, it is not a part of the creditor's duty to inform the surety about all his previous dealings with the principal debtor.

In *WYTHES vs. LABON CHARE 1858*, Lord Chelmsford held that the creditor is not bound to inform the matters affecting the credit of the debtor or any circumstances unconnected with the transaction in which he is about to engage which will render his position more hazardous.

Since it is based on good faith, a contract of guarantee becomes invalid if the guarantee is obtained from the surety by misrepresentation or concealment as given in *Sections 142 and 143* of the ICA, 1872.

Illustration:

If a clerk in an office occasionally fails to account for some of the receipts for money collected, he may be asked for surety. In case the person who steps up to be a surety for the clerk in the office is not informed of the occasional lapses on part of the clerk which lead to the requirement of a surety, any guarantee given by him is invalid as something of importance and directly affecting his decision to act as a surety was concealed from him.

Illustration:

A guarantees to C payment for iron to be supplied by him to B to the amount of 2,000 tons. B and C have privately agreed that B should pay ` five per ton beyond the market price, such excess to be applied in liquidation of an old debt. This agreement is concealed from A. A is not liable as a surety.

But where the surety ship is with regard to an advance to be made by a bank, the bank need not disclose past indebtedness to the surety unless it relates to the particular transaction.

Under Indian Contract Act 1872 it is defines as:

Section 126:

"A contract of guarantee is a contract to perform the promise, or to discharge the liabilities of a third person in case of his default. The person who gives the guarantee is called Surety, the person in respect of whose default the guarantee is given is called Principal Debtor, and the person to whom the guarantee is given is called Creditor. A Guarantee may be either oral or written."

Illustration:

When A promises to a shopkeeper C that A will pay for the items being bought by B if B does not pay, this is a contract of guarantee. In this case, if B fails to pay, C can sue A to recover the balance.

In the case of **Birkmyr vs Darnell 1704**, where the court held that when two persons come to a shop, one person buys, and to give him credit, the other person promises, "If he does not pay, I will", this type of a collateral undertaking to be liable for the default of another is called a contract of guarantee".

Case laws:

In the case of **Swan vs Bank of Scotland 1836**, it was held that a contract of guarantee is a tripartite agreement between the creditor, the principal debtor, and the surety

1. **Distinct promise of surety** - There must be a distinct promise by the surety to be answerable for the liability of the Principal Debtor.
2. **Liability must be legally enforceable** - Only if the liability of the principal debtor is legally enforceable, the surety can be made liable. For example, a surety cannot be made liable for a debt barred by statute of limitation.
3. **Consideration** - As with any valid contract, the contract of guarantee also must have a consideration. The consideration in such contract is nothing but anything done or the promise to do something for the benefit of the principal debtor.

Section 127 clarifies this as follows:

"Anything done or any promise made for the benefit of the principal debtor may be sufficient consideration to the surety for giving the guarantee."

Illustrations:

1. A agrees to sell to B certain goods if C guarantees the payment of the price of the goods. C promises to guarantee the payment in consideration of A's promise to deliver goods to B. This is a sufficient consideration for C's promise.

2. A sells and delivers goods to B. C, afterwards, requests A to forbear to sue B for an year and promises that if A does so, he will guarantee the payment if B does not pay. A forbears to sue B for one year. This is sufficient consideration for C's guarantee.

3. A sells and delivers goods to B. Later on, C, without any consideration, promises to pay A if B fails to pay. The agreement is void for lack of consideration.

It is pertinent to note that there is no uniformity on the issue of past consideration. In the case of **Allahabad Bank vs S M Engineering Industries 1992 Cal HC**, the bank was not allowed to sue the surety in absence of any advance payment made after the date of guarantee. But in the case of **Union Bank of India vs A P Bhonsle 1991 Mah HC**, past debts were also held to be recoverable under the wide language of this section. In general, if the principal debtor is benefitted as a result of the guarantee, it is sufficient consideration for the sustenance of the guarantee.

It should be without misrepresentation or concealment –

Section 142 specifies that a guarantee obtained by misrepresenting facts that are material to the agreement is invalid, and **section 143** specifies that a guarantee obtained by concealing a material fact is invalid as well.

Illustrations: -

1. A appoints B for collecting bills. B fails to account for some of the bills. A asks B to get a guarantor for further employment. C guarantees B's conduct but C is not made aware of B previous mis-accounting by A. B, afterwards, defaults. C cannot be held liable.
2. A promises to sell Iron to B if C guarantees payment. C guarantees payment however, C is not made aware of the fact that A and B had contracted that B will pay 5 Rs higher that the market prices. B defaults. C cannot be held liable.

In the case of **London General Omnibus vs Holloway 1912**, a person was invited to guarantee an employee, who was previously dismissed for dishonesty by the same employer. This fact was not told to the surety. Later on, the employee embezzled funds but the surety was not held liable.

Continuing Guarantee:

As per **section 129**, a guarantee which extends to a series of transactions is called a continuing guarantee.

Illustrations –

1. A, in consideration that B will employ C for the collection of rents of B's zamindari, promises B to be responsible to the amount of 5000/- for due collection and payment by C of those rents. This is a continuing guarantee.

2. A guarantees payment to B, a tea-dealer, for any tea that C may buy from him from time to time to the amount of Rs 100. Afterwards, B supplies C tea for the amount of 200/- and C fails to pay. A's guarantee is a continuing guarantee and so A is liable for Rs 100.

3. A guarantees payment to B for 5 sacks of rice to be delivered by B to C over the period of one month. B delivers 5 sacks to C and C pays for it. Later on B delivers 4 more sacks but C fails to pay. A's guarantee is not a continuing guarantee and so he is not liable to pay for the 4 sacks.

Thus, it can be seen that a continuing guarantee is given to allow multiple transactions without having to create a new guarantee for each transaction.

In the case of **Nottingham Hide Co vs Bottrill 1873**, it was held that the facts, circumstances, and intention of each case has to be looked into for determining if it is a case of continuing guarantee or not.

Revocation of Continuing Guarantee:

1. As per **section 130**, a continuing guarantee can be revoked at any time by the surety by notice to the creditor.

Once the guarantee is revoked, the surety is not liable for any future transaction however he is liable for all the transactions that happened before the notice was given.

Illustrations –

1. A promises to pay B for all groceries bought by C for a period of 12 months if C fails to pay. In the next three months, C buys 2000/- worth of groceries. After 3 months, A revokes the guarantee by giving a notice to B. C further purchases 1000 Rs of groceries. C fails to pay. A is not liable for 1000/- rs of purchase that was made after the notice but he is liable for 2000/- of purchase made before the notice.

This illustration is based on the old English case of **Oxford vs Davies**.

In the case of **Lloyd's vs Harper 1880**, it was held that employment of a servant is one transaction. The guarantee for a servant is thus not a continuing guarantee and cannot be revoked as long as the servant is in the same employment. However, in the case of **Wingfield vs De St Cron 1919**, it was held that a person who guarateed the rent payment for his servant but revoked it after the servant left his employment was not liable for the rents after revocation.

2. A guarantees to B, to the amount of 10000 Rs, that C shall pay for the bills that B may draw upon him. B draws upon C and C accepts the bill. Now, A revokes the guarantee. C fails to pay the bill upon its maturity. A is liable for the amount upto 10000Rs.

2. As per **section 131**, the death of the surety acts as a revocation of a continuing guarantee with regards to future transactions, if there is no contract to the contrary.

It is important to note that there must not be any contract that keeps the guarantee alive even after the death. In the case of **Durga Priya vs Durga Pada AIR 1928**, Cal HC held that in each case the contract of guarantee between the parties must be looked into to determine whether the contract has been revoked due to the death of the surety or not. If there is a provision that says death does not cause the revocation then the constract of guarantee must be held to continue even after the death of the surety.

What are the Rights of the Surety?

A contract of guarantee being a contract, all rights that are available to the parties of a contract are available to a surety as well. The following are the rights specific to a contract of guarantee that are available to the surety.

Rights against principal debtor

1. **Right of Subrogation:**

As per **section 140**, where a guaranteed debt has become due or default of the principal debtor to perform a duty has taken place, the surety, upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor. This means that the surety steps into the shoes of the creditor. Whatever rights the creditor had, are now available to the surety after paying the debt.

In the case of **Lampleigh Iron Ore Co Ltd, Re 1927**, the court has laid down that the surety will be entitled, to every remedy which the creditor has against the principal debtor; to enforce every security and all means of payment; to stand in place of the creditor to have the securities transferred in his name, though there was no stipulation for that; and to avail himself of all those securities against the debtor. This right of surety stands not merely upon contract but also upon natural justice.

In the case of **Kadamba Sugar Industries Pvt Ltd vs Devru Ganapathi AIR 1993, Kar HC** held that surety is entitled to the benefits of the securities even if he is not aware of their existence.

In the case of **Mamata Ghose vs United Industrial Bank AIR 1987**, Cal HC held that under the right of subrogation, the surety may get certain rights even before payment. In this case, the principal debtor was disposing off his personal properties one after another lest the surety, after paying the debt, seize them. The surety sought for temporary injunction, which was granted.

2. Right to Indemnity:

As per section 145, in every contract of guarantee there is an implied promise by the principal debtor to indemnify the surety; and the surety is entitled to recover from the the principal debtor whatever sum he has rightfully paid under the guarantee but no sums which he has paid wrong fully.

Illustrations –

B is indebted to C and A is surety for the debt. Upon default, C sues A. A defends the suit on reasonable grounds but is compelled to pay the amount. A is entitled to recover from B the cost as well as the principal debt.

In the same case above, if A did not have reasonable grounds for defence, A would still be entitled to recover principal debt from B but not any other costs.

A guarantees to C, to the extent of 2000 Rs, payment of rice to be supplied by C to B. C supplies rice to a less amount than 2000/- but obtains from A, a payment of 2000/- for the rice. A cannot recover from B more than the price of the rice actually supplied. This right enables the surety to recover from the principal debtor any amount that he has paid rightfully. The concept of rightfully is illustrated in the case of **Chekkara Ponnamma vs A S Thammayya AIR 1983**. In this case, the principal debtor died after hire-purchasing four motor vehicles. The surety was sued and he paid over. The surety then sued the legal representatives of the principal debtor. The court required the surety to show how much amount was realized by selling the vehicles, which he could not show. Thus, it was held that the payment made by the surety was not proper.

Rights against creditor:

1. **Right to securities:**

As per **section 141**, a surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into whether the surety knows about the existence of such security or not; and if the creditor loses or without the consent of the surety parts with such security, the surety is discharged to the extent of the value of the security.

Illustrations –

C advances to B, his tenant, 2000/- on the guarantee of A. C also has a further security for 2000/- by a mortgage of B's furniture. C cancels the mortgage. B becomes insolvent and C sues A on his guarantee. A is discharged of his liability to the amount of the value of the furniture.

C, a creditor, whose advance to B is secured by a decree, also receives a guarantee from A. C afterwards takes B's goods in execution under the decree and then without the knowledge of A, withdraws the execution. A is discharged.

A as surety for B makes a bond jointly with B to C to secure a loan from C to B. Afterwards, C obtains from B a further security for the same debt. Subsequently, C gives up the further security. A is not discharged.

This section recognizes and incorporates the general rule of equity as expounded in the case of **Craythorne vs Swinburne 1807** that the surety is entitled to every remedy which the creditor has against the principal debtor including enforcement of every security. The expression "security" in section 141 means all rights which the creditor had against property at the date of the contract. This was held by the SC in the case of **State of MP vs Kaluram AIR 1967**. In this case, the state had sold a lot of felled trees for a fixed price in four equal instalments, the payment of which was guaranteed by the defendant. The contract further provided that if a default was made in the payment of an instalment, the State would get the right to prevent further removal of timber and the sell the timber for the realization of the price. The buyer defaulted but the State still did not stop him from removing further timber. The surety was then sued for the loss but he was not held liable.
It is important to note that the right to securities arises only after the creditor is paid in full. If the surety has guaranteed only part of the debt, he cannot claim a proportional part of the securities after paying part of the debt. This was held in the case of **Goverdhan Das vs Bank of Bengal 1891**.

2. Right of set off.

If the creditor sues the surety, the surety may have the benefit of the set off, if any, that the principal debtor had against the creditor. He is entitled to use the defences that the principal debtor has against the creditor. For example, if the creditor owes the principal debtor something, for which the principal debtor could have counter claimed, then the surety can also put up that counter claim.

Rights against co-sureties.

1. **Effect of releasing a surety**

   As per **section 138**, Where there are co-sureties, a release by the creditor of one of them does not discharge the others; neither does it free the surety so released from his responsibility to the other sureties.

   A creditor can release a co-surety at his will. However, as held in the case of **Sri Chand vs Jagdish Prashad 1966**, the released co-surety is still liable to the others for contribution upon default.

2. **Right to contribution:**

As per **section 146**, where two or more persons are co-sureties for the same debt jointly or severally, with or without the knowledge of each other, under same or different contracts, in the absence of any contract to the contrary, they are liable to pay an equal share of the debt or any part of it that is unpaid by the principal debtor.

Illustrations –

a. A, B, and C are sureties to D for a sum of 3000Rs lent to E. E fails to pay. A, B, and C are liable to pay 1000Rs each.

b. A, B, and C are sureties to D for a sum of 1000Rs lent to E and there is a contract among A B and C that A and B will be liable for a quarter and C will be liable for half the amount upon E's default. E fails to pay. A and B are liable for 250Rs each and C is liable for 500Rs.

As per **section 147**, co-sureties who are bound in different sums are liable to pay equally as far as the limits of their respective obligations permit.

Illustrations –

1. A, B and C as sureties to D, enter into three several bonds, each in different penalty, namely A for 10000Rs, B for 20000 Rs, and C for 30000Rs with E. D makes a default on 30000Rs. All of them are liable for 10000Rs each.
2. A, B and C as sureties to D, enter into three several bonds, each in different penalty, namely A for 10000Rs, B for 20000 Rs, and C for 40000Rs with E. D makes a default on 40000Rs. A is liable for 10000Rs while B and C are liable for 15000Rs each..
3. A, B and C as sureties to D, enter into three several bonds, each in different penalty, namely A for 10000Rs, B for 20000 Rs, and C for 40000Rs with E. D makes a default on 70000Rs. A, B and C are liable for the full amount of their bonds.

Discharge of Surety from Liability:

A surety is said to be discharged from liability when his liability comes to an end. Indian Contract Act 1872 specifies the following conditions in which a surety is discharged of his liability -

1. Section 130 - By a notice of revocation - discussed above.

2. Section 131 - By death of surety - discussed above.

3. Section 133 - By variance in terms of contract - A variance made without the consent of the surety in terms of the contract between the principal debtor and the creditor, discharges the surety as to the transactions after the variance.

Illustrations :

a) A becomes a surety to C for B's conduct as manager in C's bank. Afterwards, B and C contract without A's consent that B's salary shall be raised and that B shall be liable for 1/4th of the losses on overdrafts. B allows a customer to overdraft and the bank loses money. A is not liable for the loss.

b) A guarantees C against the misconduct of B in an office to which B is appointed by C. The conditions of employment are defined in an act of legislature. In a subsequent act, the nature of the office is materially altered. B misconducts. A discharged by the change from the future liability of his guarantee even though B's misconduct is on duty that is not affected by the act.

c) B appoints C as a salesperson on a fixed yearly salary upon A's guarantee on due account of sales by C. Later on, without A's consent, B and C contract that C will be paid on commission basis. A is not liable for C's misconduct after the change.

d) C promises to lends 5000Rs to B on 1st March. A guarantee the repayment. C gives the money to B on 1st January. A is discharged of his liability because of the variance in as much as C may decide to sue B before 1st march.

4. Section 134 - By discharge of principal debtor - The surety is discharged by any contract between the creditor and the principal debtor by which the principal debtor is discharged; or by any action of the creditor the legal consequence of which is the discharge of the principal debtor.

Illustrations:

x) A gives a guarantee to C for goods to be delivered to B. Later on, B contracts with C

to assign his property to C in lieu of the debt. B is discharged of his liability and A is discharged of his liability.

y) A contracts with B to grow indigo on A's land and deliver it to B at a fixed price. C guarantees A's performance. B diverts a stream of water that is necessary for A to grow indigo. This action of B causes A to be discharged of the liability. Consequently C is discharged of his suretyship as well.

z) A contracts with B to build a house for B. B is to supply timber. C guarantees A's performance. B fails to supply timber. C is discharged of his liability.

If the principal debtor is released by a compromise with the creditor, the surety is discharged but if the principal debtor is discharged by the operation of insolvency laws, the surety is not discharged. This was held in the case of **Maharashtra SEB vs Official Liquidator 1982**.

Section 135 - By composition, extension of time, or promise not to sue - A contract between the principal debtor and the creditor by which the creditor makes a composition with, or promises to give time to, or promises to not sue the principal debtor, discharges the surety unless the surety assents to such a contract.

It should be noted that as per **section 136**, if a contract is made by the creditor with a third person to give more time to the principal debtor, the surety is not discharged. However, in the case of **Wandoor Jupitor Chits vs K P Mathew AIR 1980**, it was held that the surety was not discharged when the period of limitation got extended due to acknowledgement of debt by the principal debtor.

Further, as per **section 137**, mere forbearance to sue or to not make use of any remedy that is available to the creditor against the principal debtor, does not automatically discharge the surety.
Illustration;

I) B owes C a debt guaranteed by A. The debt becomes payable. However, C does not sue B for an year. This does not discharge A from his suretyship.

It must be noted that forbearing to sue until the expiry of the period of limitation has the legal consequence of discharge of the principal debtor and thus as per section 134, will cause the surety to be discharged as well. If section 134 stood alone, this inference was correct. However, section 137 explicitly says that mere forbearance to sue does not discharge the surety. This contradiction was removed in the case of **Mahanth Singh vs U B Yi** by Privy Council. It held that failure to sue the principal debtor until recovery is banned by period of limitation does not discharge the surety.

4. **Section 139** - By imparing surety's remedy - If the creditor does any act that is inconsistent with the rights of the surety or omits to do an act which his duty to surety requires him to do, and the eventual remedy of the surety himself against the principal debtor is thereby impaired, the surety is dischared.

Illustrations:
p) C contracts with B to build a ship the payment of which is to be made in installments at various stages of completion. A guarantee's C's performance. B prepays last two installments. A is discharged of his liability.

q) A appoints M as an apprentice upon getting a guarantee of M's fidelity by B. A also promises that he will at least once a month see M make up the cash. A fails to do this. M embezzles. B is discharged of his suretyship.

r) A lends money to B with C as surety. A also gets as a security the mortgage to B's furniture. B defaults and A sells his furniture. However, due to A's carelessness very small amount is received by sale of the furniture. C is discharged of the liability. **State of MP vs Kaluram** - Discussed above.

In the case of **State Bank of Saurashtra vs Chitranjan Ranganath Raja 1980**, the bank failed to properly take care of the contents of a go-down pledged to it against a loan and the contents were lost. The court held that the surety was not liable for the amount of the goods lost.

Creditor's duty is not only to take care of the security well but also to realize it proper value. Also, before disposing of the security, the surety must be informed on the account of natural justice so that he can have the option to take over the security by paying off the debt. In the case of **Hiranyaprava vs Orissa State Financial Corp AIR 1995**, it was held that if such a notice of disposing off of the security is not given, the surety cannot be held liable for the shortfall.

However, when the goods are merely hypothecated and are in the custody of the debtor, and if their loss is not because of the creditor, the surety is not discharged of his liability.

Extent of Surety's Liability:

As per **section 128**, the liability of a surety is co-extensive with that of the principal debtor, unless it is otherwise provided in the contract.

Illustration –

A guarantees the payment of a bill by B to C. The bill becomes due and B fails to pay. A is liable to C not only for the amount of the bill but also for the interest. This basically means that although the liability of the surety is co-extensive with that of the principal debtor, he may place a limit on it in the contract. Co-extensive implies the maximum extent possible. He is liable for the whole of the amount of the debt or the promises. However, when part of a debt was recovered by disposing off certain goods, the liability of the surety is also reduced by the same amount. This was held in the case of **Harigopal Agarwal vs State Bank of India AIR 1956**.

The surety can also place conditions on his guarantee. Section 144 says that where a person gives guarantee upon a contract that the creditor shall not act upon it until another person has joined it as co-surety, the guarantee is not valid if the co-surety does not join. In the case of **National Provincial Bank of England vs Brakenbury 1906**, the defendant signed a guarantee which was supposed to be signed by three other co-sureties. One of them did not sign and so the defendant was not held liable. Similarly, a surety may specify in the contract that his liability cannot exceed a certain amount.
However, where the liability is unconditional, the court cannot introduce any conditions. Thus, in the case of **Bank of Bihar Ltd. vs Damodar Prasad AIR 1969**, SC overruled

trial court's and high court's order that the creditor must first exhaust all remedies against the principal debtor before suing the surety.

Points to Note

- There are three parties in every Contract of Guarantee
- The liability arises right from the beginning. The surety becomes liable when the principle debtor commits default in meeting the liability.
- Surety has the right to sue the third party (Principle Debtor) directly. The Law puts him in the position of Creditor. Where as in Contracts of Indemnity, the Indemnifier cannot sue the third party in his name. He has to sue in the name of the Indemnity-holder or after obtaining the rights from him.
- Anything done, or any promise made, for the benefit of the principal debtor, may be a sufficient consideration to the surety for giving the guarantee. The guarantor need not personally derive any benefit from the guarantee.
- The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract.
- The creditor can straightway proceed against the guarantor without first proceeding against the principal debtor.
- The liability of the surety can never be greater than that of the principal debtor. The surety can however may restrict his liability to part of the Principal debtor's liability by contract.
- Surety's liability is distinct and separate.

Contract of Bailment

Objective:

Meaning and definition.
Essential ingredients of contract of bailment.
Kind of Bailment
Rights of bailor and bailee.

Introduction:-

Definition:

In Contact, a **bailment** is the delivery of goods from one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them.

The person delivering the goods is called the **Bailor**, and the person to whom the goods are delivered is the **Bailee**.

Principle: It is to be noted that if a person is already in possession of goods of another contracts to hold them as bailee, he thereby becomes the bailee and the owner of the goods as bailor, though the goods are not delivered by way of bailment.

There are many instances of bailment in our daily lives – when we give our clothes for laundry, when we use valet parking for our cars. We deliver our goods to another person or leave them in the power of another person for a purpose and expect to receive our goods back when the purpose has been achieved.
For example, a man visits a repair shop for getting his television set fixed. The television set is left at the shop where the repair man examines it and fixes the problem. Once fixed, the television set has to be returned to its owner. There is a contract of bailment between the man and the repair-man.
Bailment is thus a process where the owner of certain goods places them in the temporary possession of another person. In its simple terms, bailment means that a person delivers his goods to another person or put them in another's possession for a specific purpose and there is an express or implied understanding between the two people that once the purpose has been achieved, the goods will be returned to the owner – the person who bailed them.
Chapter IX (Section 148 – 181) of the Indian Contract Act, 1872 deals with the general rules relating to bailment. The Chapter is not exhaustive on the topic of bailment – there are various other Acts which deal with other types of bailment like the Carriers Act, 1865, the Railways Act, 1890, the Carriage of Goods by Sea Act, 1925.

Nature and Scope of Contract of Bailment:

The word 'bailment' is derived from the French word '*bailer'* which means 'to deliver'. Etymologically, it means any kind of 'handing over'. In legal sense, it involves change of possession of goods from one person to another for some specific purpose.

Section 148 of Indian Contract Act 1872 defines '*Bailment*' as the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the direction of the person delivering them.

The person who owns and delivers the goods is called the '*bailor*'. The person to whom the goods are delivered is called the '*bailee*'.

Example: A man drops off his clothes for dry cleaning. He is the bailor and the purpose of bailment is to have the particular set of clothes cleaned. The dry cleaner is the bailee – he is the temporary custodian of the clothes and is responsible for keeping them safe and to return them to the bailor once they have been cleaned.

Explanation to *Section 148* states that if a person already in possession of the goods of another person contracts to holds the goods as a bailee, he becomes the bailee even though the goods may not have been delivered to him by way of bailment in the first place. *For example, a seller of goods becomes a bailee if the goods continue to be in his possession after sale is complete. Here the original possession of goods was with the seller as the owner of the said goods and after the sale, his possession is converted into a contract of bailment.*

Example: A has a motorcycle that he sells to B who leaves the motorcycle in the possession of A while he is out of town. Here, A becomes the bailee even though he was the owner originally.

Halsbury defines Bailment as 'delivery of personal chattels in trust on a contract, express or implied, that the trust shall be duly executed and chattels redelivered in either their original or altered form, as soon as the time of use, or condition on which they had been bailed has elapsed or been performed respectively'.

Justice Blackstone defines Bailment as 'a delivery of goods in trust, upon contract, either expressed or implied, that the trust shall be faithfully executed on the part of the bailee'.

Bailment can also be described as 'the delivery of goods to another person for a particular use'.

NATURE OF BAILMENT

Bailment is a type of special contract and thus, all basic requirements of contract like consent of parties, competency, etc are applicable to any contract of Bailment. A bailment is usually created by an agreement between the bailor and bailee. ***Section 148*** **specifically talks of bailment via a contract. But a valid bailment can also arise in absence of express contracts or from invalid or voidable contracts.**

In bailment, neither the property nor the ownership of the goods involved is transferred at any point. Only the temporary possession of the bailed goods is transferred and the ownership of such goods remains with the bailor. The bailor can demand to have the property returned to him at any time.

WHAT MAY BE BAILED

Only 'goods' can be bailed and thus, only movable goods can be the subject matter of bailment. Current money or legal tender cannot be bailed. **Deposition of money in a bank is not bailment as money is not 'goods' and the same money is not returned to the client. But the coins and notes that are no longer legal tender and** are more or less just objects of curiosity, then they can be bailed.

Essentail Characteristics of bailment:

Section 148 of the Indian Contract Act, 1872 makes it very clear that there are three essential features of Bailment, namely:

1) Delivery of Possession
2) Delivery upon Contract
3) Delivery for a purpose and Return of Goods

1) ***Delivery of Possession:*** The delivery of possession of goods is essential for bailment. There must be transfer of possession of the bailed goods from bailor to bailee and the goods must be handed over to the bailee for whatever is the purpose of bailment. Here, possession means control over goods and an intention to exclude others from exercising similar control over the same goods. Thus, the bailee must have actual physical control of the property with the intent to possess it for a valid bailment.

As per *Section 149*, the delivery can also be made to the bailee by doing anything which has the effect of putting the bailed goods in the possession of the intended bailee or any person authorized by him for this purpose.

Thus, the delivery of possession can be actual or constructive. The delivery may either put the bailee in the actual physical possession of the goods or put the bailee in a position of power over such goods that may be possessed later. The essential of a bailment is the delivery of goods for a temporary purpose.

Mere custody of goods is not the same as delivery of possession. A guest who uses the goods of the host during a party is not a bailee. Similarly, it was held in *Reaves vs. Capper* [1838 5 Bing NC 136] that a servant in custody of certain goods by the nature of his job is not a bailee. Similarly, a servant holding his master's umbrella is not a bailee but is a custodian.

Similarly, hiring and storing goods in a *bank locker* by itself is not bailment thought there is delivery of goods to the bank premises. The goods are in no way entrusted to the bank. A bank cannot be presumed to know what goods are stored in any given locker at all the times. If a bank is given actual and exclusive possession of the property inside a locker by the person who hired the locker, only then can bailment under *Section 148* can be presumed.

In *Atul Mehra vs. Bank of Maharashtra* [AIR 2003 P&H 11], it was held that mere hiring of a bank's locker and storing things in it would not constitute a bailment. But the position changes completely if the locker in the safe deposit vault of the bank can be operated even without the key of the customer**.**

Example: A hired a locker in a bank and kept some of his valuables in it. He was given one key to open the locker. But the bank manager of the particular branch had fraudulently filed the levers of the locks of the lockers. Thus, the lockers could be opened even without the key of the customers. A's valuables went missing. A's control over the valuables in that locker had gone because the locker could be operated even without A's key. The bank was liable for the loss of A's belongings from the locker as it became a bailee. This example is similar to the case of *National Bank of Lahore vs. Sohan Lal* [AIR 1962 Punj. 534]

Thus, it is clear that the nature of possession is very important to determine whether a delivery is for bailment or not. If the owner continues to have control over the goods, there can be no bailment.

To create a bailment, the bailee must *intend* to possess and in some way *physically* possess or control the bailed goods or property. In a situation where a person keeps the goods in

possession of another person but in fact, continues to have control over such goods, there is no delivery for the purpose of bailment.

The delivery of possession does not mean that the bailee now represents the bailor with respected to the bailed goods. The bailee only has certain power over the property of the bailor with his permission. The bailee has no power to make contracts on behalf of the bailor or make the bailor liable for his own acts with the goods bailed.

Example: If a person delivers his damaged car to a garage for repair under his insurance policy, the insurance company becomes a bailee and the garage a sub-bailee. If the car is stolen from the garage or destroyed by fire in the garage, both – the insurance company and the garage will be liable to the owner of the car, the bailor.

Delivery of possession, as required for bailment, can be made in two ways – Actual or Constructive.

1. a) ***Actual Delivery:*** Here, the bailor hands over the physical possession of the goods to the bailee.

Example: A's watch is broken. When he leaves his watch at the showroom for repair, he has given actual delivery of possession of goods to the showroom.

1. b) ***Constructive Delivery:*** Constructive delivery is an action that the law treats as the equivalent of actual delivery. It can be difficult to deliver intangible

In constructive delivery, the physical possession of the goods may not be handed over. The possession of the goods may remain with the bailor with the consent or authorization of the bailee. In constructive delivery, an action on part of the bailor merely puts the bailee in position of power with respect to the bailed goods. The bailor gives the bailee the means of access to taking custody of it, without its actual delivery.

Example: A has rare coins in a locked safe-deposit box. Delivery of a safe deposit box is not possible. When he hands over the keys to the box to B, it is taken as constructive delivery for purpose of bailment.

Section 149 specifically deals with constructive delivery of goods. It states that anything done which has the effect of putting the goods in the possession of the intended bailee or any other person authorized to hold them on his behalf is to be treated as constructive delivery of the goods.

Constructive delivery is legal fiction – thus, a legal delivery is presumed even where the delivery of the actual goods has not taken place. Even the delivery of a railway receipt is taken as the equivalent of delivery of the goods.

In *Bank of Chittor vs. Narsimbulu* [AIR 1966 AP 163], a person pledged cinema projector with the bank but the bank allowed him to keep the projector so as to keep the cinema hall functional. It was held that there was constructive delivery because action on part of the bailor had changed the legal character of the possession of the projector. Even though the actual and physical possession was with the person, the legal possession was with the bank, the bailee.

2) ***Delivery upon Contract:*** It is necessary that the goods are delivered to the bailee and returned to the bailor when the purpose is accomplished upon a contract. This means there should a contract between the two parties for such transaction of delivery and subsequent

return. If there is no contract, there is no bailment. The contract giving rise to bailment can be *express or implied*.
Property deposited in a court under orders is not property delivered under a contract. Such delivery or transfer does not constitute bailment.
Exception to the delivery upon contract: A finder of goods is treated as a bailee even if there is no contract of Bailment or delivery of goods under a contract. A *finder of the goods* is a person who finds the goods belonging to some other person and keeps them under his protection till the actual owner of the goods is found. An involuntary contract of bailment arises and the finder automatically becomes bailee even in absence of bailment by the bailor – the owner of the lost goods. Since the person is in the position of the bailee, he has all the rights and duties of a bailee.
Under English Law: There can be bailment without a contract. If a person deposits or delivers the goods under stressful circumstance like fire flood, riots or if the person who is depositing the goods is incapable of appreciating the value of the action, it is still regarded as bailment despite the absence of a contract. Delivery of goods to another under a mistake of identity of the person is also treated as bailment without a contract as long as the bailor took reasonable care to ascertain the identity.
Present Position in India: The Law Commission of India in its 13th report suggested that bailment without contract should also be included in the Indian Contract Act, 1872 but no concrete steps have been taken as yet. Presently, the Indian Courts have taken the position that bailment can exist without a contract. In some of these cases, even the government has been held liable as a bailor despite the absence of a contract.

The case of *Lasalgoan Merchants Bank vs. Prabhudas Hathibhai* is one the first where the Courts started imposing the obligations of a bailee even without a contract. In *State of Gujarat vs. Memom Mahomed,* the Supreme Court of India accepted this view and stated that "…Bailment is dealt with by the Contract Act only in cases where it arises from a contract, but it is not correct to say that there cannot be bailment without an enforceable contract."
3) ***Delivery for a purpose and Return of Goods****:* There has to be a purpose for the bailment of goods and it is mandatory that once such purpose is accomplishes, the goods have to be returned to the bailor or be disposed off per his instructions. Bailment cannot arise if the goods are not to be*specially accounted* for after completion of such task or purpose. This is a feature of bailment that distinguishes it from other relations like agency, etc.
The third essential of bailment is twofold –

1. a) The delivery of goods must be for some *specific task or performance*. Delivery of goods in bailment is not permanent. There has to be a purpose for the bailment of goods and it is mandatory that once such purpose is accomplishes, the goods have to be returned to the bailor or be disposed off per his instructions. A tailor is given a cloth for stitching a shirt, a watch repair shop is given a watch to mend it.

1. b) That the *goods* must be *returned* to the bailor or be taken care of as per the instructions of the bailor. If a person is not bound to return the goods to another, then the relationship between them is not of bailment. If there is an agreement to return the

equivalent and not the same goods, it is not bailment. An agent who collects money on behalf of his principal is not a bailee because he is not liable to return the same money and coins.

Example: A tailor who receives a cloth for stitching is the bailee in this case. The tailor is supposed to return the finished garment to the customer, the bailor, once the garment has been stitched.

1. c) *Return of goods in specie* is also essential. The same goods that were bailed must be returned to the bailor in the same condition after the accomplishment of purpose as they were handed over to the bailee in the beginning. Any accruals to the goods must also be handed over. If an animal gives birth during the period of bailment, the bailee must return the animal with the offspring at the conclusion of the bailment.

The bailor can give other directions as to the disposal or return of the bailed goods. In case of such agreement or instructions, the bailee must immediately dispose the goods after completion of purpose as per the directions.

If the goods are not returned or dealt as per the directions of the bailor there is no bailment. For example, depositing money into bank by a customer does not give rise to a contract of bailment because the bank is not bound to return the same notes and coins to the customer. This same point was also made in the case of *Ichcha Dhanji vs.Natha* [1888 13 Bom 338]

In *Secy of State vs. Sheo Singh Rai* [1880 ILR 2 All 756], a man delivered nine government promissory notes to the Treasury Officer at Meerut for cancellation and consolidation into a single note of Rupees 48,000 only. The notes were misappropriated by the servants of the Treasury Officer. The man sued the State to hold it responsible as a bailee. But the action failed as there can be no bailment without delivery of goods and a promise to the return the same. The government was in no way bound to return the same notes or dispose the surrendered notes in accordance with the instructions of the man.

FINDER OF LOST GOODS

• Finding is not keeping. A finder of lost goods is treated as the bailee of the goods found as such and is charged with the responsibilities of a bailee, besides the responsibility of exercising reasonable efforts in finding the real owner.

• However, he enjoys certain rights also. His rights are summed up hereunder:-

1. Right to retain the goods

2. Right to Sell -the finder may sell it:

(1) when the thing is in danger of perishing or of losing the greater part of its value;

(2) when the lawful charges of the finder in respect of the thing found, amount to 2/3rd of its value.

Rights of Bailor

The Rights of Bailor under a contract of bailment are started as follows:

1. Rights of taking back the goods bailed:

   The bailor has right to take back the goods bailed as soon as the purpose of bailment is completed. If the bailee defaults in so returning, the bailor has right to receive compensation.

2. Right in case of unauthorized use of goods:

   The bailor is entitled to terminate the contract of bailment if the bailee makes the unauthorized use of the goods bailed.

3. Right to goods bailed before stated period:

   The bailor may get back his goods before the time stated in the contract of bailment with the consent of the bailee.

4. Right to Dissolution of contract:

   The bailor may dissolve the contract if the conditions of bailment are disobeyed by the bailee.

5. Right to Gratuitous goods:

   The bailor has right it terminate the contract of gratuitous bailment at any time even before the specified time, subject to the limitation that where such a termination of bailment causes loss in excess of benefit, the bailor must compensate the bailee.

6. Right in share of Profit:

   The bailor has share in the increase or profit gained from the goods bailed if there is provision in the contract.

Right of Bailee

1. Right to recover damages:

   A bailee has right to recover damages from the bailor if he suffers any loss due to defects of the goods bailed.

2. Right to receive compensation:

   A bailee is entitled to receive compensation from the bailor for any loss resulting from the defect in the bailor's title.

3. Right of Legal Action:

   A bailee may take necessary legal action against the person who wrongfully deprives him of the use of goods bailed or does them any injury (Sect. 180)

4. Right to recover Bailment Expenses:

   Bailee is entitled to be reimbursed for all legitimate expenses incurred for any purpose of bailment.

5. Right of Lien:

   Where the bailee has rendered any service for the purpose of bailment, he has right to retain such goods bailed until he receives due remuneration for his services in absence of contract to the contrary. (Sect. 170)

6. Right of Indemnity:

The bailee has right to receive the amount of indemnity from bailor for any loss which he may sustain by reason that the bailor was not entitled to make the bailment or to receive back the goods, or to give directions respecting them. (Sect. 164)

Duties and Liabilities of Bailor

1. To disclose Facts:

The important duty of the bailor is to disclose the faults in the goods bailed in so for as they are known to him; and if he fails to do that he will be liable to pay such damages to the bailee as may have resulted directly from the faults. (Sect. 150)

Illustration

X hires a carriage of Y. The carriage is unsafe, though Y is not aware of it, and X is injured. Y is responsible to X for the injury.

2. Payment of Extraordinary Expenses:

Section 158 provides that all the necessary expenses incurred by the bailee in connection with the bailment, must be paid by the bailor.

3. To Indemnity Bailee:

The bailor is bound to pay the bailee for any loss which the bailee may sustain by reason that the bailor was not entitled to make the bailment. (Sect. 164)

4. Warning to the Bailee:

When the things are is danger i.e explosive goods, the bailor must give extraordinary warning to the bailee.

Duties and Responsibilities of Bailee

1. To take care of goods bailed:

The bailee is bound to take as much care of the goods entrusted to him as a man of ordinary prudence. (Sect. 151)

2. To avoid the inconsistent act:

A contract of bailment is voidable at the option of the bailor, if the bailee does any act with regard to the goods bailed, inconsistent with the conditions of the bailment (Sect. 153)

3. The authorize use of goods:

If the bailee makes any unauthorized use of the goods bailed, he is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them. (Sect. 154)

4. Not to mix bailor's goods:

The bailee is bound to keep the goods of the bailor separate from his own where the mixture without the consent of the bailor is inseparable, the bailor is entitled to be compensated by the bailee for the loss of the goods. (Sect. 155, 156, 157)

5. To return the goods:

It is the duty of the bailee to return, or deliver the goods bailed according to the bailor's directions. (Sect. 160)

6. Responsibility in case of default:

If the goods are not returned, delivered or tendered due to default of the bailee, he is responsible to the bailor for any loss of the goods from that time. (Sect. 161)

7. To return any profit from the goods:

The bailee is bound to deliver to the bailor, or according to his directions, any increase or profit which may have accrued from the goods bailed. (Sect. 163)

8. Not to set up adverse title:

The bailee has no right to deny the bailor's title or set up against the bailor his own title or the right of a third party.

Law of Agency

Objectives:
Meaning and definition.
Nature, extent and scope of Law of Agency.
Right and duties of Agents and Principle.
Creation and Termination of Agency.

Introduction:

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

In other words, agency is the relationship which subsists between the principal and the agent, who has been authorized to act for him or represent him in dealings with others.

e.g. Zia appoints Salman to sign the agreement on his behalf, here Zia is called the principal and Salman is his agent.

Thus in agency there are in effect two contracts:-

i. the first made between the principal and the agent from which the agent derives his authority to act for and on behalf of the principal; and
ii. the second, made between the principal and the third party through the work of the agent.

A. Who can be come an agent/principal?

Any person who is eighteen years old and above and who is of sound mind may be a principal. As between the principal and third persons, any person may become an agent, but persons of unsound mind and who are below 18 years of age are not liable towards their principal for acts done by them as agents.

eg. if A employs B (a minor) to buy some goods from C on his behalf and C supplies the goods, A cannot allege that he is not liable to pay for the goods just because B is not at the age of majority. A is still liable to pay C for the goods.

B. CREATION OF AGENCY

Like any other contracts, a contract of agency can be expressed or implied for the

circumstances and the conduct of the parties. In other words, the authority of an agent may be expressed (given by words spoken or written) or implied (inferred from things spoken or written or from the ordinary course of dealings).
No consideration is necessary to create an agency.

it is thus created :
By express appointment by the principal.
By implied appointment by the principal.
By ratification by the principal.
By necessity i.e. operation of law.
By the doctrine of estoppel.

1. BY EXPRESS APPOINTMENT

Express appointment may be in written or oral form. An example of an express appointment made in writing is a Power of Attorney. Even a letter written or words spoken may be effective in appointing an agent.

2. BY IMPLIED AGREEMENT

The Law can infer the creation of an agency by implication when a person by his words or conduct holds out another person as having authority to act for him.

e.g. If he allows another person to order goods on his behalf and habitually pays for them, an agency may be implied. In such terms he will be bound by the contracts as if he has expressly authorised them.

2. BY RATIFICATION:

Agency by ratification can arise in any one of the following situations:-

i. An agent who was duly appointed has exceeded his authority or
ii. A person who has no authority to act for the principal has acted as if he has the authority.

it means where acts are done by one person on behalf of another but without his knowledge or authority, he may elect to ratify or to disown the acts. If he ratifies them, the same effect will follow as if they had been performed by his authority. When the principal accepts and confirms such a contract, the acceptance is called ratification. Ratification may be expressed or implied.

Ratification is retrospective i.e. it dates back to the time when the original contract was made by the agent and not from the date of the principal's ratification.

e.g. On 2 January 1996, A appointed B as his agent to buy a car not exceeding RM100,000/-.

On 5 January B went to GRG Motors and ordered a car costing RM135,000/-, telling GRG Motor's salesman that he was buying the car on A's behalf. On 12 January, GRG Motors deliver the car to A. If A confirms and adopts the contract on 12 January, then B is said to be an agent through ratification. A can also rejects the contract since B had exceeded his authority.

Contract can be ratified under the following circumstances:-
The act must be authorised.The agent must, at the time of the contract, expressly act as an agent for the principal.
i.e. he must not allow the third party to think that he is the principal.

The doctrine is thus stated by Tindal C.J in Wilson v Tumman [1843] 6 M&C 242 at page 242

The act done for another, by a person, not assuming to act for himself, but for such other person, tough without any precedent authority whatever, becomes the act of the principal, if subsequently ratified by him, is the known and well established rule of law. In that case the principal is bound by the act, whether it be for his detriment or his advantage, and whether it to be founded on a tort or on a contract, to the same effects as by, and with all the consequences which follow from the same act done by his previous authority.

The agent must have a principal, who is in actual existence or capable of being ascertained, when a contract is made. No one can ratify a contract if he is not a party competent to a contract at the date of the contract.

Kelner v Baxter [1866] LRE 2 CP 174

A contract to buy a hotel made by an agent on behalf of the company which is about to be formed, could not be ratified by the company since it did not exist at the time. The agent therefore held for the contract unless the third party agreed to release him.

The principal must have contractual capacity at the time when the contract is being made and at the time of ratification.
The principal must at the time of ratification, have full knowledge of all material facts, unless it can be shown that he intended to ratify the contract whatever the facts may be and assume responsibility from them.
The principal must ratify the whole act or contract.
The ratification must not injure the third party, i.e. it must not subject the third party to damages or terminated his right or interest.

C. BY NECESSITY

An agency by necessity may be created if the following three conditions are met:-

1. It is impossible for the agent to get the principal's instruction.
2. The agent's action is necessary, in the circumstances, in order to prevent loss to the principal with respect to the interest committed to his charge e.g. when an agent sells perishable goods belonging to his principal to prevent from rotting.
3. The agent of necessity must have acted in good faith.

In an emergency an agent has authority to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, his own case, under similar circumstances.

D. BY ESTOPPEL:

A person cannot be bound by a contract made on his behalf without his authority. However, if he by his words and conduct allows a third party to believe that the particular person is his agent even when he is not, and the third party relies on it to the detriment of the third party, he will be estopped or precluded from denying the existence of that person's authority to act on his behalf.

Agency in Relation to Banking:

The law of agency is relevant to bankers because the relation between a banker and a customer is based on agency. Furthermore, bank employees are agents of the bank.

Bank as Agent of Customers:

The relationship between a banker and his customers are generally that of a debtor and a creditor or vice versa.

Foley v Hill [1848] 9 ER 1002

When a banker receives money from his customers as deposit, the banker is a debtor and his customers are creditors. On the other hand, where a banker advances money as a loan or other credit, or extends banking facilities to his customer, the bank is the creditor and the customer is the debtor.

When a customer hires a safe deposit box in which he keeps his valuables, the bank is the customers agent.

Bank Employees as Agent for the Bank:

Within a bank, employees of the bank are agents for the bank. Thus employees who are so authorised may act on behalf of the bank. The bank, as employer, is vicariously liable for the torts committed by its employees in the course of business.

Section 182 in The Indian Contract Act, 1872

182. 'Agent' and 'principal' defined.—An 'agent' is a person employed to do any act for another, or to represent another in dealings with third person. The person for whom such act is done, or who is so represented, is called the 'principal'. —An 'agent' is a person employed to do any act for another, or to represent another in dealings with third person. The person for whom such act is done, or who is so represented, is called the 'principal'."

AGENT'S AUTHORITY- JUDICIAL INTERPRETATION:

Who Is An Agent?

An agent is one who is:

- Employed by another (the principal);
- To do any act for that principal; or
- To represent him in dealing with third persons.

An agent is a person employed to do any act for another or to represent another in dealings with third persons.

The person for whom such act is done, or who is so represented, is called the 'principal'. The Indian Contract Act of 1872 does not make any distinction between different classes of agents.

On one hand an agent may be appointed by the principal, it also includes an employment by any authority authorised by law to make the employment.

Agents are distinguished in respect of authority as general or special agents. The former expression includes brokers, factors, partners, and all persons employed in a business of filling a position of a generally recognised character, the extent of authority being apparent from the nature of employment or position; the latter denotes an agent appointed for a particular occasion or purpose, limited by the employment.

A special agent has only authority to do some particular act for some special occasion or purpose which is not within the ordinary course of his business or profession. This distinction is made to determine the authority of that agent. It has been stated: "A general agent has the full apparent authority due to his employment or position and the principal will be bound by his acts within that authority though he may have imposed special restrictive limits which are not known to the other contracting party.

A special agent has no apparent authority beyond the limits of his appointment and the principal is not bound by his acts in excess of those limits whether the other contracting party knows of them or not."

DUTIES & RIGHTS OF AN AGENT Under the Indian Law, the Agent has certain duties. An agent is bound to conduct the business of his principal according to the directions given by the principal, or, in absence of any such directions, according to the custom which prevails. It is the duty of every agent to carry out the mandate of his principal.

An agent is bound to conduct the business of the agency with as much skill as is reasonable. An agent is bound to render proper accounts to his principal on demand. It is the duty of an agent, in cases of difficulty, to use all reasonable diligence in communicating with his principal, and in seeking to obtain his instructions. If an agent deals on his own account in the business of the agency, the principal may repudiate the transaction.

The important rights of an agent can be seen as well. In the absence of any special contract, payment for the performance of any act is not due to the agent until the completion of such act. An agent who is guilty of misconduct in the business of the agency is not entitled to any remuneration in respect of that part of the business that he has misconducted. An agent may retain all moneys due to himself in respect of advances made or expenses properly incurred by him in conducting such business.

The employer of an agent is bound to indemnify him against the consequences of all lawful acts done within the authority. Where one person employs another to do an act, and the agent does the act in good faith, the employer is liable to indemnify the agent against the consequences of that act. Where one person employs another to do an act which is criminal, the employer is not liable to the agent. The principal must make compensation to his agent in respect of injury caused to such agent by the principal's neglect or want of skill.

AGENT'S AUTHORITY :

It has been seen in the case of Palestar Electronics Private Limited v. Additional Commissioner (1978) 1 SCC 636 22, that the acts of the agent within the scope of his authority bind the principal. Contracts entered into through an agent, and obligations arising from acts done by the agent, may be enforced in the same manner, and will have the same legal consequences, as if the contracts had been entered into and the acts done by the principal in person as per Section 226 of the Indian Contract Act, 1872. It is necessary for this effect to follow that the agent must have done the act within the scope of his authority. The authority of an agent and more particularly its scope are subjects to some controversy.(See Municipal Corporation, Delhi v. Jagdish Lal (1969) 3 SCC 389. Sardar Gurucharan Singh v. Mahendra Singh (2004) 1 MPLJ 252 (MP) 3. The uncertainty is largely due to the fact that the authority of an agent does not depend upon one source. It has been rightly held in the case of Ramlesh v. Jasbir Singh, AIR 2004 P&H 216, that agency came into being to promote and not to hinder commerce. The authority of an agent means his capacity to bind the principal. It refers to "the sum total of the acts it has been agreed between principal and agent that the agent should do on behalf of the principal."(See Montrose, J.L. Actual and Apparent Authority, (1938).. When the agent does any such acts, it is said he has

acted within his authority as was seen in the case of Nand Lal Thanvi v. LR of Goswami Brij Bhushan. AIR 1973 All 302.

With regards to contracts and acts which are not actually authorised, the principal may be bound by them, on the principle of estoppels, if they are within the scope of the agent's ostensible authority, but in no case is he bound by any unauthorised act or transaction with respect to persons having notice that the actual authority is being exceeded.27

TYPES OF THE AUTHORITY OF AGENTS

1. ACTUAL AUTHORITY :

The authority conferred on an agent by the principal is termed as the actual authority. 27 Mulla, Dinshah Fardunji Mulla The Indian Contract Act Page 344 (13th Edition 2011)... It can be classified into two categories, namely express and implied.2828 Section 186 of the Indian Contract Act, 1872. An authority is said to be express when it is given by words spoken or written.2929 Section 187 of the Indian Contract Act, 1872. A power of attorney can be taken as an example of express authority as was seen in the case of Syed Abdul Khader v. Rami Reddy.AIR 1979 SC 553.The scope of express authority is worked out by the construction of words used in the documents.31Singh, Avtar Law of Contract and Specific Relief Page 775 (Tenth Edition). A case on this point can be that of Attwood v. Munnings (1827) 7 B&C 278. Where a principal, while going abroad, authorised his agent and partner to carry on his business, and his wife to accept bills on his behalf for his personal business, he was not held bound when his wife accepted bills on his behalf for the business, which the agent was conducting and which was different from his personal business. In the case of Reid v. Rigby (894) 2 QB 40. where the agent obtained a loan outside his authority by signing a cheque on behalf of his principal to pay the principal's workmen, the principal was held bound. But where the third party has knowledge of the limitation of the agent's authority or could have discovered it by reasonable examination, he would be bound by it as held in the case of Ferguson v. Um Chand Boid(34 (1905) 33 Cal 343). An agent cannot borrow on behalf of his 5 principal unless he has clear authority to do so. Where the agent has the power to borrow, the fact that he borrowed beyond the authorised limit, does not prevent the third party from holding the principal liable as was held in the case of Withington v. Herring. Put (1829) 5 Bing 442. The fact that the agent has acted from improper motive does not take the case beyond the scope of authority as seen in the case of Hambro v. Burnard (1904) 2 KB 10 (CA). An authority is said to be implied when it is to be inferred from the circumstances of the case; and things spoken or written or the ordinary course of dealing, may be accounted circumstances of the case. (See Section 187 of the Indian Contract Act, 1872) The distinction between express and implied authority depends merely on whether the authority is delimited by words or by conduct. In the case of Ramanathan v. Kumarappa AIR 1938 Cal 423. An estate agent was appointed to find a purchaser for a certain property. He accepted a deposit

from a prospective customer and misappropriated it. The principal was held liable because an estate agent has an implied authority to take a deposit. However, he cannot receive payment or give any warranty unless actually authorised as held in the case of Foujdar Kameshwar Dutt Singh v. Ghanshyamdas 39 1987 Supp SCC 689.

2. APPARENT AUTHORITY "Ostensible or apparent authority is the authority of an agent as it appears to others. It often coincides with actual authority. Thus, when the board (of directors) appoint one of their members to be a managing director they invest him not only with implied authority, but also with ostensible authority to do all such things as fall within the usual scope of that office."40 Willis J held that once it is established that the defendant was the real principal, the ordinary doctrine as to principal and agent applied, that the principal is liable for all the acts of the agent which are within the authority usually confined to an agent of that character, notwithstanding limitations, as between the principal and the agent, 40 Denning LJ 6 upon that authority. In the case of Valapad Co-operative Stores Limited v. Srinivasa Iyer,41 it was held: "The term 'ostensible authority' denotes no authority at all. It is a phrase conveniently used to describe the position which arises when one person has clothed another, or allowed him to assume an appearance of authority to act on his behalf, without actually giving him any authority either express or implied, by which appearance of authority a third party is misled into believing that a real authority exists." • Apparent Authority is Real Authority. This statement portrays the truth in Lord Ellenborough's observation in the case of Pickering v. Busk.42 It depends upon the facts of the case. • Representation. The doctrine of apparent authority is really an application of the principle of estoppel, for estoppel means only that a person is not permitted to resist an inference which can reasonably be drawn from the principal's words or conduct. A case on this point is that of Egyptian International Foreign Trade Company v. Soplex Wholesale Supplies Limited (The Raffaella)43 . The person making the representation is estopped from denying the ostensible authority which was thus created.44 Three things should be noted here. The representation must be made by or with the authority of the principal. Ostensible authority cannot be created by simply a representation of the agent.45 The third party must rely on a representation of the agent's authority to act as agent.46 The agent's want of authority must be unknown to the third party.47 Statutory Provision about Apparent Authority.

{ dear reader please see: 41 AIR 1964 Ker 176. 42 1812 KB 15. 43 [1985] 2 Lloyd's Report 36. 44 Anson Law of Contract Page 671 (28th Edition) 45 Attorney General for Ceylon v. Silva [1953] A.C. 461. 46 Farquharson Brothers v. King and Company [1902] A.C. 325. 47 Armagas Limited v. MundogasSA [1986] 1 A.C. 717.}

When an agent has, without authority, done acts or incurred obligations to third persons on behalf of his principal, the principal is bound by such acts or obligations if he has by his words or conduct induced such persons to believe that such acts and obligations were within the scope of the agent's authority.48 A case on this point is that of Bissessardas Kasturchand v. Kabulchand49 where the court said: "Their Lordships of the Judicial Committee of the Privy Council ruled that the right of a third party against the principal

on the contract of his agent though made in excess of agent's actual authority was nevertheless to be enforced when the evidence showed that the contracting party had been led into an honest belief in the existence of the authority to the extent apparent to him.'50 Where, however, a person contracting with the agent has actual or constructive notice of any restriction on the agent's ostensible authority, he is bound by the authority.51 The ultimate question is whether the circumstances under which a servant has made a fraudulent misrepresentation which has caused loss to an innocent party conducting with him are such as to make it just for the employer to bear the loss.52.

(.see for note 48 Section 237 of the Indian Contract Act, 1872. 49 AIR 1945 Nag 121. 50 Ram Pertab v. Marshall ILR (1898) 26 Cal 701. 51 Sarshar Ali v. Roberts Cotton Association (1963) 1 SC 244 (Pak). 52 Singh, Avtar Law of Contract and Specific Relief Page 789 (Tenth Edition)}

3. USUAL OR INCIDENTAL AUTHORITY:

In certain circumstances, a principal may be liable for the unauthorized acts of an agent. In these cases, the existence of the principal was unknown to the third party, so that it could not be said that the principal held out the agent to have authority to act as agent and was estopped. In the case of Watteau v. Fenwick53 it was said that an undisclosed principal who employs an agent to conduct business is liable for any act of the agent which is incidental to or usual in that business. Willis J. said-53 [1893] 1 Q.B. 346. 8 "The principal is liable for all the acts of the agent which are within the authority usually confided to an agent of that character, notwithstanding limitations as between the principal and the agent, put upon that authority."

4. AGENT'S AUTHORITY IN AN EMERGENCY An agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances.54 Under the English Law, an agency of necessity can arise in the case of a carrier of goods or a master of ship who, under certain circumstances of necessity, is empowered on behalf of the ship-owner or the owner of the goods carried to dispose of the goods or to enter into such other contract as may be necessary, and will be considered to have their authority to do so. The agency of necessity is frequently used to describe cases where one person, in an emergency, performs services or incurs expenditure to preserve the property or rights of another and seeks reimbursement,55 or when a person claims to be protected against an action for wrongful interference with the property of another by pleading necessity.56

{See:- 54 Section 189 of the Indian Contract Act, 1872. 55 Exall v. Partridge (1799) 8 T.R. 308. 56 Sachs v. Miklos [1948] 2 K.B. 23. 9 of business. This was seen in the case of Naseem Bano v. Life Insurance Corporation of India.}

CONCLUSION Over the years, it has been seen that an agent plays several roles in a contract. He has to step into the shoes of the principal, yet is excluded from liability for

his actions in general. Hence, the limits of his authority have been a question of debate and pondering for several decades since the emergence of the Agent-Principal relationship idea. Several judges over a span of time, in various cases that have been covered in the research paper have expressed varying opinions and views regarding the authority of an agent. In lieu of simplifying the task of deciding this authority, several classes of agents were also identified. The responsibilities and underlying powers of these agents differ, depending on the work they carry out.

Overall, after this extensive study of the elaborate and complex nature of the Agent's contract we can see that courts, especially in judicial interpretation do not seek to indemnify the agent against the losses caused due to his mistakes, but rather seek to indemnify the third party from the same. At the same time, the principal maintains the right to sue the agent and demand compensation in case the agent has exceeded his authority without a very reasonable and essential reason for the same.

WHO CAN EMPLOY AN AGENT

• Any person, who is capable to contract may appoint as agent. Thus, a minor or lunatic cannot contract through an agent since they cannot contract themselves personally either.

WHO MAY BE AN AGENT

• In considering the contract of agency itself (i.e., the relation between principal and agent), the contractual capacity of the agent becomes important.

HOW AGENCY IS CREATED

• A contract of agency may be created by in any of the following three ways: - (1) Express Agency (2) Implied Agency (3) Agency by Estoppel (4) Agency by Holding Out (5) Agency of Necessity (6) Agency By Ratification: (discussed above).

DUTIES OF AGENT

1. To conduct the business of agency according to the principal's directions.
2. The agent should conduct the business with the skill and diligence that is generally possessed by persons engaged in similar business, except where the principal knows that the agent is wanting in skill.
3. To render proper accounts.
4. To use all reasonable diligence, in communicating with his principal, and in seeking to obtain his instructions.
5. Not to make any secret profits.
6. Not to deal on his own account.
7. Agent not entitled to remuneration for business misconducted.

8. An agent should not disclose confidential information supplied to him by the principal [Weld Blundell v. Stephens (1920) AC. 1956].
9. When an agency is terminated by the principal dying or becoming of unsound mind, the agent is bound to take on behalf of the representatives of his late principal, all reasonable steps for the protection and preservation of the interests entrusted to him.

RIGHTS OF AN AGENT

a. Right to remuneration
b. Right Of Retainer.
c. Right of Lien.
d. Right of Indemnification.
e. Right to compensation for injury caused by principal's neglect.

PRINCIPAL'S DUTIES TO AGENT

- A principal is:
  (i) bound to indemnify the agent against the consequences of all lawful acts done by such agent in exercise of the authority conferred upon him;
  (ii) liable to indemnify an agent against the consequences of an act done in good faith. (iii) The principal must make compensation to his agent in respect of injury caused to such agent by the principal's neglect or want of skill.

TERMINATION OF AGENCY

i. By revocation by the Principal.
ii. On the expiry of fixed period of time.
iii. On the performance of the specific purpose.
iv. Insanity or Death of the principal or Agent.
v. An agency shall also terminate in case subject matter is either destroyed or rendered unlawful.
vi. Insolvency of the Principal. Insolvency of the principal, not of the agent, terminates the agency.