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INTER C.A. – LAW

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CHAPTER 1

THE INDIAN CONTRACT ACT, 1872

UNIT 1 : CONTRACT OF INDEMNITY AND GUARANTEE

INDEMNITY

- 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 called a contract of indemnity (**Section 124**).
- The person who promises to make good the loss is called 'indemnifier' and the person whose loss is to be made good is called the 'indemnified' or 'indemnity-holder'.
- A contract of indemnity is like any other contract and must, therefore, fulfill all the essentials of a valid contract, e.g., consideration, free consent, competency of parties, lawful object, etc.
- A contract of Fire Insurance or Marine Insurance is always a contract of indemnity. But there is no contract of indemnity in case of contract of Life Insurance.
- It is a contingent contract.
- Indemnifier cannot sue third party on his own unless
- **Rights of indemnity holder (Section 125) :**
An indemnity holder acting within the scope of his authority is entitled to the following rights:
 - (a) Right to recover damages
 - (b) Right to recover cost of litigation
 - (c) Right to recover sums paid under compromise

GUARANTEE

- **MEANING (Sec. 126):**
 - 'A contract of guarantee' is a contract to perform the promise, or discharge the liability, of a third person in case of his default.
 - The person who gives the guarantee is called the 'surety', 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 'the creditor'.
 - A guarantee may be either oral or written.
 - According to **Sec 127** no consideration is required for contract of guarantee. In other words anything done or any promise made for the benefit of the principal Debtor may be sufficient consideration for the surety for giving guarantee to the Creditor.
- **ESSENTIALS OF A VALID GUARANTEE**
 1. Existence of a principal debt.
 2. Benefit to principal debtor is sufficient consideration, but past consideration is

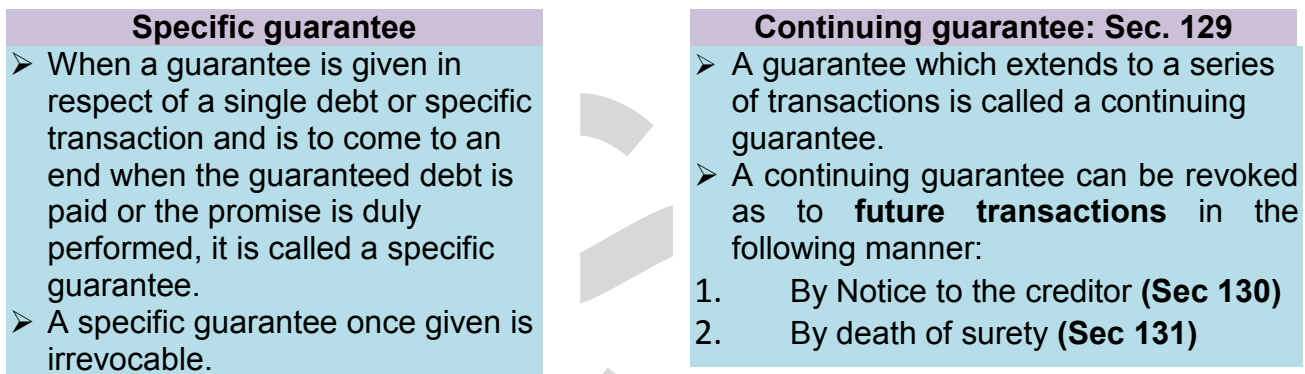
no consideration for a contract of guarantee.

3. Consent of surety should not be obtained by misrepresentation or concealment of a material fact.
4. Can be oral or written.
5. Surety can be proceeded against without proceeding against the principal debtor first if the contract specifies.
6. If the co-surety does not join, the contract of guarantee is not valid.

• **NATURE OF SURETY'S LIABILITY**

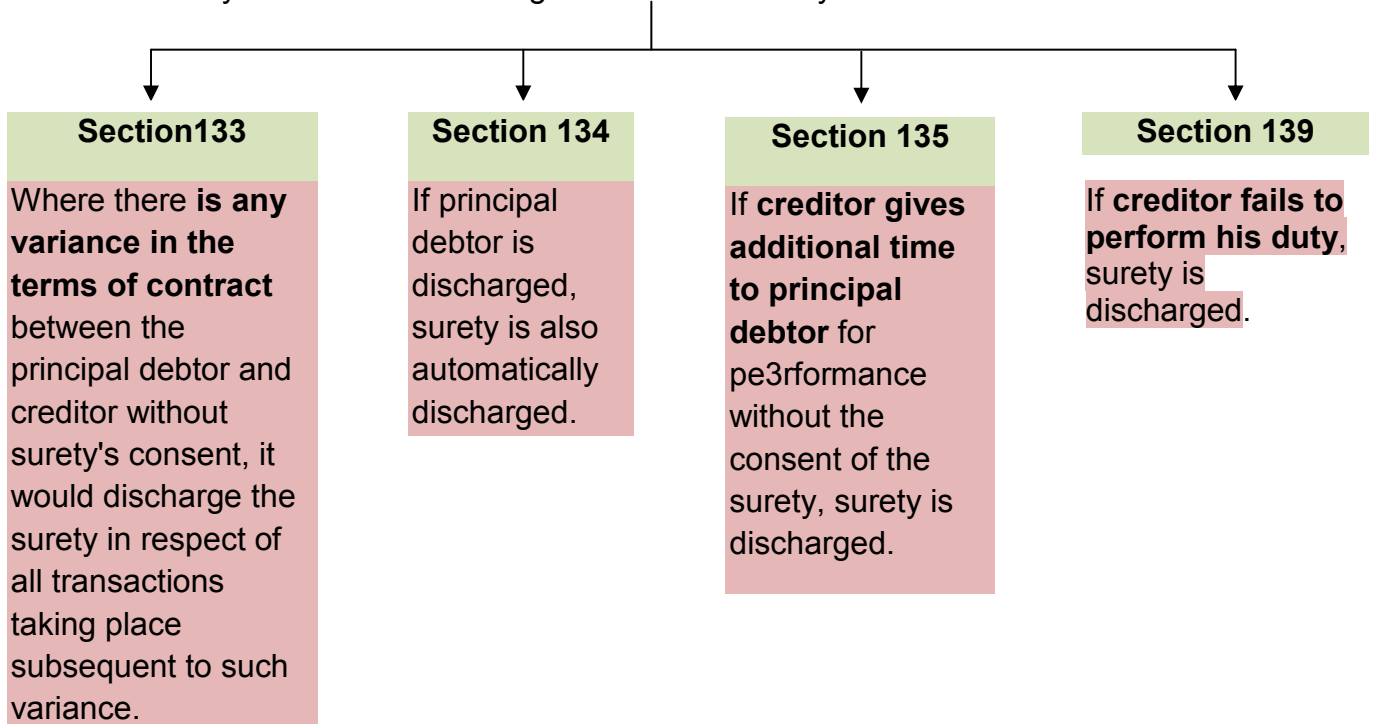
As per Section 128 of the Act, the liability of the surety is co-extensive with that of the principal debtor unless it is otherwise provided by the contract.

• **KINDS OF GUARANTEE**



• **DISCHARGE OF SURETY**

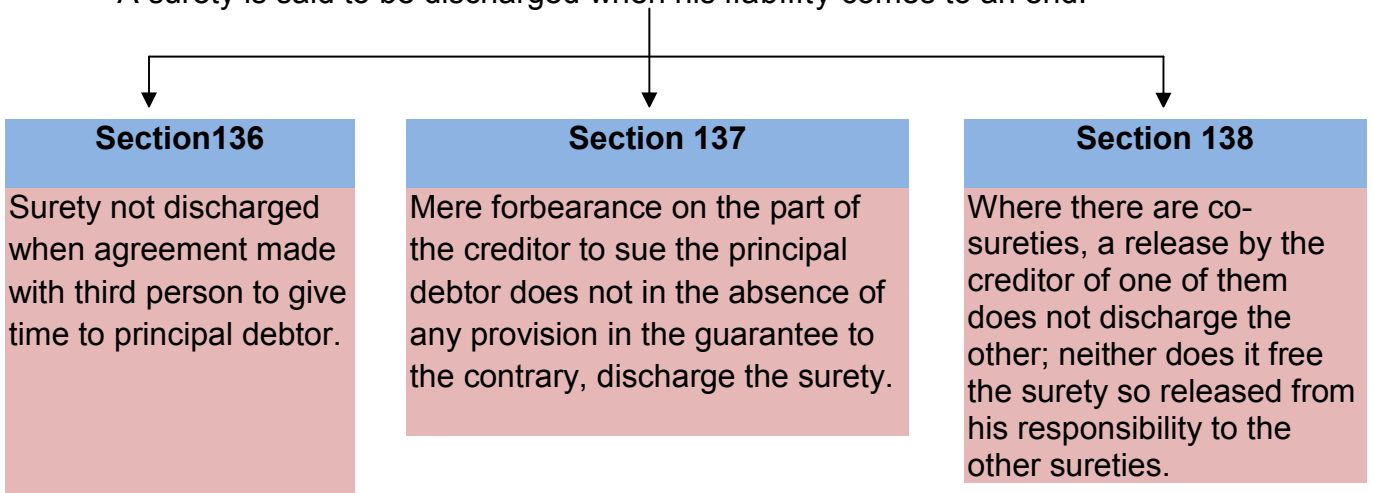
A surety is said to be discharged when his liability comes to an end.



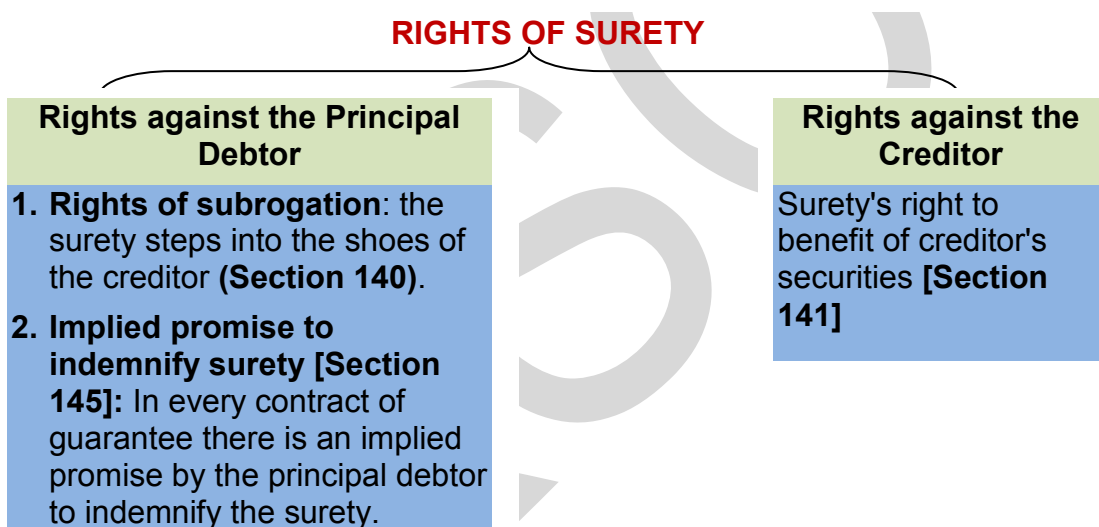
• **NON-DISCHARGE OF SURETY**

The surety is not discharged in the following cases:

A surety is said to be discharged when his liability comes to an end.



• **RIGHTS OF SURETY**



• **INVALID GUARANTEE [SEC 142 to 144]**

- (a) Guarantee obtained by misrepresentation invalid **[Section 142]**
- (b) Guarantee obtained by concealment invalid **[Section 143]**
- (c) Where more than 1 surety is required, guarantee given by only 1 surety is invalid until others join **[Section 144]**.

• **CONTRIBUTION OF CO-SURETIES**

When a debt is guaranteed by two or more sureties they are called as co-sureties. They are liable to contribute as agreed towards the payment of the guaranteed debt.

The following are the rules:-

- (1) **Co-sureties liable to contribute equally. [Sec 146]**
Liability of co-sureties, bound in different sums: [Sec 147]: Where the co-sureties have agreed to guarantee different sums , they have to contribute in the agreed ratio.
- (2) **Sureties' liability towards other co-sureties [Sec 138]:** Creditor may sue any one of the co-sureties or he may release any of the co-sureties from the liability. However this does not free the surety so released from his liability

towards the other co-sureties.

- (3) **Mutual agreement between co-sureties [Section 132]:** Any understanding/mutual agreement between debtors interse that one of them only shall be liable as a surety will not affected the rights of the creditor in any way even if the creditor knew the arrangement between the debtors.

DISTINCTION BETWEEN INDEMNITY AND GUARANTEE

Point of distinction	Contract of Indemnity	Contract of Guarantee
Number of parties/ Parties to the contract	There are only two parties namely the indemnifier [promisor] and the indemnified [promisee]	There are three parties creditor, principal debtor and surety.
Nature of liability	The liability of the indemnifier is primary and independent	The liability of the surety is secondary as the primary liability is that of the principal debtor.
Time of liability	The liability of the indemnifier arises only on the happening of a contingency.	Liability is already in existence but specifically crystallizes when principal debtor fails.
Time to Act	The indemnifier need not necessarily act at the request of indemnified	Surety must act by extending guarantee at the request of debtor
Right to sue third party	Indemnifier cannot sue a third party for loss in his own name as there is no privity of contract Such a right would arise only if there is an assignment in his favour.	Surety can proceed against principal debtor in his own right because he gets all the right of a creditor after discharging the debts.
Purpose	Reimbursement of loss	For the security of the creditor
Competency to contract	All parties must be competent to contract	In the case of a contract of guarantee, where a minor is a principal debtor, the contract is still valid.
Number of Contracts	Only one original and independent contract between indemnifier and indemnified.	There are 3 contracts made between- <ul style="list-style-type: none"> • Creditor and principal debtor • Creditor and Surety • Surety and Principal debtor

UNIT 2 : BAILMENT AND PLEDGE**BAILMENT**

- **Meaning and Characteristics of Bailment**
 - **Meaning:** Bailment is defined under **Section 148** as "A contract whereby goods are delivered by one person to another for some purpose, that the goods shall, when the purpose is over be returned or disposed off according to directions of the person delivering the goods."
 - The person delivering the goods is called the "**bailor**". The person to whom they are delivered is called the "**bailee**".
 - **Essential elements of bailment:**
 - (1) **Contract:** Bailment is based upon a contract and therefore absolutely enforceable, in the court of law. The Contract may be expressed or implied. No consideration is necessary to create valid contract of bailment.
 - (2) **Movable property:** Contract of bailment pertains to goods only.
 - (3) **Ownership:** In a contract of bailment, ownership of the goods always remains with the bailor and is never transferred to the bailee.
 - (4) **Possession:** In bailment both custody and possession must change but not the ownership. But where a person is in custody without possession he does not become a bailee. Deposit of money in a bank is not bailment since the money returned by the bank would not be identical currency notes. Similarly depositing ornaments in a bank locker is not bailment, because ornaments are kept in a locker whose key are still with the owner and not with the bank. The ornaments are in possession of the owner though kept in a locker at the bank.
 - (5) **Same goods:** The goods under bailment must be returned in specie i.e. the same goods must be delivered and not similar goods.
- **FORMS OF BAILMENT**
 - (1) Delivery of goods by one person to another to be held for the bailor's purpose.
 - (2) Gratuitous bailment: Where neither the bailor nor the bailee gets any remuneration. For example A lends his book to his friend.
 - (3) Hiring of goods.
 - (4) Delivering goods to a creditor to serve as security for a loan.
 - (5) Delivering goods for repair with or without remuneration.
 - (6) Delivering goods for carriage.
 - (7) Finder of Goods.

• DUTIES AND RIGHTS OF BAILOR**Duties of Bailor:**

- 1) To disclose the faults [**Section 150**]
- 2) To bear extra-ordinary expenses [**Section 158**]
- 3) The bailor is responsible to the bailee for any loss which the bailee may sustain [**Section 164**]
- 4) Where the bailment is gratuitous, the bailor must reimburse the bailee for any expenditure incurred in keeping the goods.
- 5) The bailor should reimburse any expense which the bailee may incur by way of loss in the process of returning the goods or complying with other directions for returning the goods.
- 6) The bailor must compensate the bailee for the loss or damage suffered by the bailee that is in excess of the benefit received, where he had lent the goods gratuitously and decides to terminate the bailment before the expiry of the period of bailment.
- 7) The bailor is bound to accept the goods after the purpose is accomplished.

Rights of Bailor:

- 1) **Liability of bailee making unauthorised use of goods bailed** [**Section 154**].
- 2) If the bailee, with the consent of the bailor, mixes the goods of the bailor with his own goods, the bailor and the bailee shall share the mixture produced, in proportion to their respective shares [**Section 155**]
- 3) **Effect of mixture, without bailor's consent, when the goods can be separated** [**Section 156**]: The property in the goods remains in the parties respectively; but the bailee is bound to bear the expenses of separation or
- 4) **Effect of mixture, without bailor's consent, when the goods cannot be separated** [**Section 157**]: Bailee has to compensate the bailor.
- 5) 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 [**Section 153**]
- 6) In the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, or according to his directions, any accretions to the goods bailed [**Section 163**]
- 7) **Gratuitous bailment:** Bailor in the case of gratuitous bailment has a right to demand the goods back even before the expiry of the period of bailment. If in the process, loss is caused to the bailee, bailor is bound to compensate.

• DUTIES AND RIGHTS OF BAILEE**Duties of Bailee:**

- 1) Care to be taken by bailee [**Section 151**]
- 2) The bailee, in the absence of any special contract, is not responsible for the loss, destruction or deterioration of the thing bailed, if he has taken the amount of care of it described in section 151 [**Section 152**]
- 3) Duty to not make unauthorized use of goods.
- 4) Duty to make sure goods do not mix with the goods bailed :
- 5) Return of goods bailed on expiration of time or accomplishment of purpose [**Section 160**]
- 6) Bailee's responsibility when goods are not duly returned [**Section 161**]
- 7) If several joint owners of goods bail them, the bailee may deliver them back to, or according to the directions of, one joint owner without the consent

Rights of a Bailee

- 1) To claim compensation for any loss arising from non-disclosure of known defects in the goods.
- 2) To claim indemnification for any loss or damage as a result of defective title.
- 3) To deliver back the goods to joint bailors according to the agreement or directions.
- 4) If the bailor has no title to the goods, and the bailee, in good faith, delivers them back to, or according to the directions of, the bailor, the bailee is not responsible to the owner in respect of such delivery. (**Section 166**)
- 5) **To exercise his 'right of lien'**. Where charges due in respect of goods retained have not been paid. The right of lien is a particular lien for the reason that the bailee can retain only these goods for which the bailee has to receive his fees/remuneration.
- 6) To take action against third parties if that party wrongfully denies the bailee of his right to use the goods.
- 7) If a third person wrongfully deprives the bailee of the use or possession of the goods bailed, or does them any injury, the bailee is entitled to use such remedies as the owner might have used [**Section 180**]
Whatever is obtained by way of relief or compensation in any such suit shall, as between the bailor and the bailee, be dealt with according to their respective interests [**Section 181**].
- 8) If a person, other than the bailor, claims goods bailed, he may apply to the Court to stop the delivery of the goods to the bailor, and to decide the title to the goods [**Section 167**].

• **FINDER OF GOODS**

- The term 'finder of goods' means a person who has found some goods belonging to another. When a person comes across some article he is under no duty to pick them up, but if he picks them up, he becomes a finder of goods and is subject to the same responsibility as a bailee.
- **The obligations of a finder of goods:**
 - 1) He must take reasonable care of the goods:
 - 2) He must not use the goods for his own purpose.
 - 3) He must not mix them with his own goods.
 - 4) He must make appropriate efforts to find the true owner of the goods.
- **Rights of finder of goods**
 - 1) **Right to retain goods:** The finder can retain the goods against the true owner until he receives compensation for trouble and expenses incurred by him in preserving the goods and finding out the owner. This right is known as the finder's lien on the goods
 - 2) **Right to sue for reward (Section 168)**
 - 3) **Right to claim expenses incurred**
 - 4) **Right of sale: Section 169** permits the finder to sell the goods in the following cases:
 - a. If the owner cannot be found after reasonable search; or
 - b) If found, the owner refuses to pay the lawful charges to the finder; or
 - c) If the thing is in danger of perishing or losing the greater part of their value; or
 - d) If the lawful charges of the finder amount to two - thirds of their value.

A finder of goods has a right to keep the goods with him against the whole world except the true owner.

• **TYPES OF LIEN**

General lien (Section 171)		Particular lien(Section 170)	
1.	It is a right to detain/retain any goods of the bailor for general balance of account outstanding	1.	It is a right exercisable only on such goods in respect of which charges are due
2.	A general lien is not automatic but recognized through on agreement or law exercised by the bailee only by name	2.	It is automatic
3.	It can be exercised against goods even without involvement of labour or skill.	3.	It comes into play only when some labour or skill is involved
4.	Bankers, factors, wharfingers, policy brokers etc. are entitled to general lien	4.	Bailee, finder of goods, pledgee, unpaid seller, agent, partner etc are entitled to particular lien.

PLEDGE

• **MEANING AND CHARACTERISTICS OF PLEDGE**

- **Meaning:** Pledge is defined under **Section 172** as the bailment of goods as security for a payment of a debt or performance of a promise is called **pledge/pawn**.
- The person who makes such a bailment is called a pledger or **pawnor** and the bailee is known as **pawnee**
- **Essentials of a valid pledge:**
 - 1) Delivery of goods: Delivery of the goods may be actual or constructive or symbolic.
 - 2) Goods must be the subject matter of the contract of pledge. The goods pledged must be in existence
 - 3) Purpose of pledge is security for payment of debt.
 - 4) Pledge is specie of bailment.

• **RIGHTS OF PAWNEE AND PAWNOR**

Rights of pawnee

- 1) Right of retain the goods pledged **[Section 173]**
- 2) Right to retention of pledged goods for subsequent debts **[Section 174]**
- 3) Pawnee's right as to extraordinary expenses Incurred **[Section 175]**
- 4) Pawnee's right where pawnor makes default **[Section 176]**: If the pawnor makes default in payment of the debt, or performance, pawnee may retain the goods or sell the goods.If the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance. If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor.

Rights of pawnor:

- 1) Right to redeem **[Section 177]**
- 2) Pledge where pawnor has only a limited interest **[Section 179]** : Where a person pledges goods in which he has only a limited interest, the pledge is valid to the extent of that interest.

Pledge by person in possession under voidable contract [Section 178A]: When the pawnor has obtained possession of the goods pledged by him under a contract voidable under section 19 or section 19A, but the contract has not been rescinded at the time of the pledge, the pawnee acquires a good title to the goods, provided he acts in good faith and without notice of the pawnor's defect of title.

- **PLEDGE BY MERCANTILE AGENTS [SECTION 178]**

- Where a mercantile agent is, with the consent of the owner, in possession of goods or the documents of title to goods, any pledge made by him, when acting in the ordinary course of business of a mercantile agent, shall be as valid as if he were expressly authorised by the owner of the goods to make the same; provided that the pawnee acts in good faith and has not at the time of the pledge notice that the Pawnor has no authority to pledge.
- In this section, the expressions 'mercantile agent and documents of title' shall have the meanings assigned to them in the Sale of Goods Act, 1930.
- Pledge in this case can be effected through pledge of documents like a bill of lading or a railway receipt etc.

DISTINCTION BETWEEN BAILMENT AND PLEDGE

Aspects	Pledge	Bailment
Purpose	A pledge is made for a specific purpose as security for payment of debt or performance of a promise.	A bailment can be for any purpose.
Use of Goods	A pawnee does not have the right to use the goods.	The bailee may use the goods bailed as per the terms of the contract.
Lien	Lien can be exercised even for non- payment of interest.	A bailee can exercise lien on the goods bailed only for his labour and skill employed
Sale of Goods	The pawnee can sell the goods after due notice to the pawnor.	The bailee has no right of sale.
Nature of Interest in Property	The pledgee gets a special property in the goods. The general property remains with the pawnor.	The bailee has no right of possession of the goods bailed.

UNIT 3 : AGENCY

• **MEANING AND FEATURES OF AGENCY**

Meaning: The Indian Contract Act does not define 'Agency' but it defines an agent as 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 (Section 182).

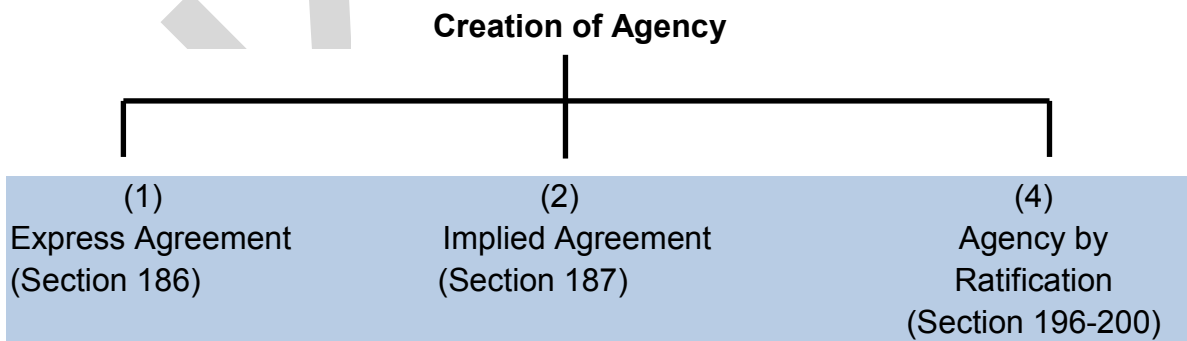
The Rule of Agency is based on the maxim "*Quit facitper alium, facitper se*" i.e., he who acts through an agent is himself acting.

• **Essentials of Agency:** Agency is a specific contract. The essentials of such contract may be enumerated as follows:

- (i) Basis of the agreement:
- (ii) Consideration not necessary: A contract of agency constitutes an exception to the general rule contained in Section 25 that no contract can be valid unless it is entered into for consideration
- (iii) Principal has to be a competent person (Section 183).
- (iv) Agent has to be a competent person so as to be responsible to his (Section 184).

• **MODES OF AGENCY**

An agency may be created in any one of the following ways:



The authority may be express or implied : According to Section 186, the authority of an agent may be express or implied.

Definitions of express and implied authority [Section 186 &187]

- (1) **Express Authority:** An authority is said to be express when it is given by words, spoken or written.
- (2) **Implied Authority:** 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.

(3) Ratification:

Rights of person as to acts done for him without his authority, Effect of ratification [Section 196]: 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 such acts. If he ratifies them, the same effects will follow as if they had been performed by his authority.

Essentials of a valid Ratification

1. Ratification may be expressed or Implied **[Section 197]**
2. Knowledge requisite for valid ratification **[Section 198]**
3. The principal cannot ratify a part of the transaction which is beneficial to him and reject the rest. **[Section 199]**
4. Ratification of unauthorized act cannot injure third person **[Section 200]**
5. Ratification should be done within reasonable time.
6. Ratification must be communicated to the other party.
7. Act to be ratified should not be void or illegal, for e.g. payment of dividend out of capital is void and cannot be ratified.

• EXTENT OF AGENT'S AUTHORITY

Extent of Agents Authority can be understood, in the following circumstances

- 1) **Normal circumstances:** An agent having an authority to do an act, has all the authority to do every lawful thing which is necessary in order to do such act. Thus an agent having an authority to carry on a business has authority to do every lawful thing necessary and which is usually done in the course of conducting such business.
- 2) **In case of emergency :** He has an authority in an emergency to do all such acts for the purpose of protecting his principal from loss as would be done by a prudent person, in his own case under similar circumstances.
To constitute a valid agency in an emergency, following conditions must be satisfied.
 - (a) Agent should not be in a position or have any opportunity to communicate with his principal within the time available.
 - (b) There should have been actual and definite commercial necessity for the agent to act promptly.
 - (c) The agent should have acted bonafide and for the benefit of the principal.
 - (d) The agent should have adopted the most reasonable and practicable course under the circumstances, and
 - (e) The agent must have been in possession of the goods belonging to his principal and which are the subject of contract.

• **DUTIES AND RIGHTS OF AGENT**

- Duties of Agent**
- 1) Duty in conducting principal's business **(Section 211)**
 - 2) The agent is liable to the principal for any loss if he deviates from the above duty/ obligation where he did not act according to instruction of the principal.
 - 3) Agent must act always as a person with diligence and skill normally exercised in the trade. He would otherwise be responsible to compensate the principal for any loss suffered by the principal for want of his skill **(Section 212)**.
 - 4) To render proper accounts **(Section 213)**
 - 5) Agent' duty to communicate with principal **[Section 214]**
 - 6) If an agent deals on his own account in the business of the agency, without first obtaining the consent of his principal and informing him with all material circumstances, the principal may repudiate the transaction **[Section 215]**
 - 7) Not to deal on his own account **[Section 216]**
 - 8) Agent's duty to pay sums received for principal **[Section 218]**

- Rights of Agent:**
- 1) Right of retain out of sums received on principal's account **[Section 217]:** The agent can retain, out of any sums received on account of the principal in the business of the agency for the following payments:
 - (i) All moneys due to him in respect of advances made
 - (ii) In respect of expenses properly incurred by him in conducting such business
 - (iii) Such remuneration as may be payable to him for acting as agent.
 - 2) Right to remuneration **[Section 219]**
 - 3) Agent's lien on principal's property **[Section 221]**
 - 4) Right of indemnification for lawful acts **[Section 222]**
 - 5) Right of indemnification against acts done in good faith **[Section 223]**

• **NON-LIABILITY OF EMPLOYER OF AGENT TO DO A CRIMINAL ACT**

According to **Section 224**, where one person employs another to do an act which is criminal, the employer is not liable to the agent, either upon an express or an implied promise, to indemnify him against the consequences of that act.

• **COMPENSATION TO AGENT FOR INJURY CAUSED BY PRINCIPAL'S NEGLIGENCE**

Section 225 provides that 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.

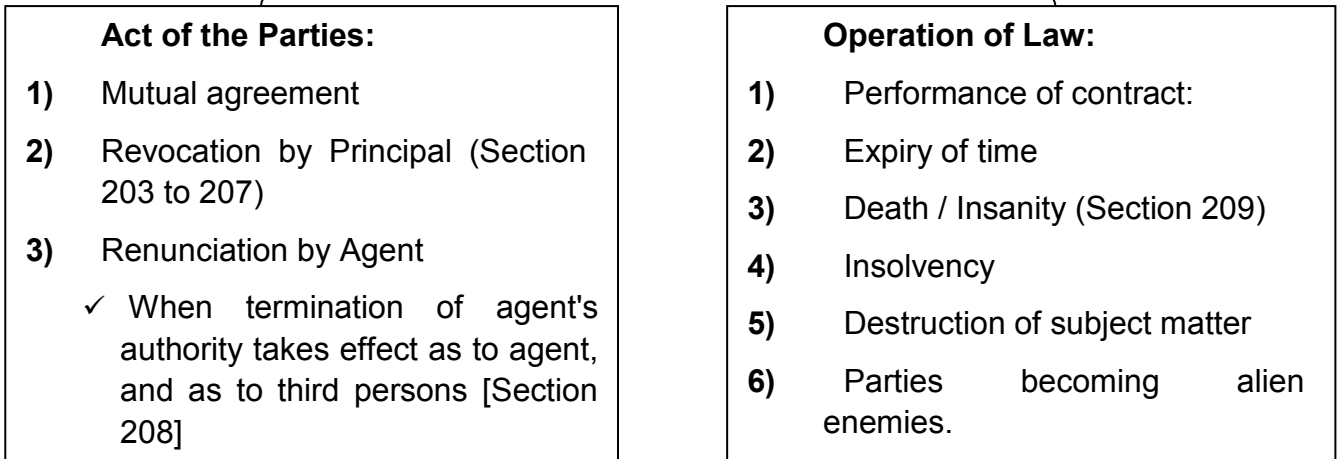
• LIABILITY TO THIRD PARTIES**In following cases principal liable for agent's act:**

- 1) When the agent acts within the scope of his authority (**Section 230**):
- 2) When agent exceeds his authority and principal ratifies it (**Section 227**)
- 3) Principal is bound by the notice given to agent (**Section 229**)
- 4) Liability of pretended agent (**Section 235**): A pretended agent is a person who represents himself to be an agent of another, when in fact he has no authority from him, whatsoever if the principal ratifies his acts as agent, he has no liability. But if the principal refuses to ratify his acts, he becomes personally liable to third party.
- 5) Liability for Misrepresentation or fraud by an agent when agent is acting within his authority (**Section 238**).
- 6) **Where the Principal is unnamed:** When the agent discloses the existence of principal but does not disclose, the name of principal, in such a case the principal is liable for the acts of the agent.
- 7) When agent acts in emergency and good faith.
- 8) **Liability of principal inducing belief that agent's unauthorized acts were authorized [Section 237]** : 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 third persons to believe that such acts and obligations were within the scope of the agent's authority.
- 9) When agent is incompetent to contract.

In following cases agent is personally liable:

- 1) When he so agrees with the concerned parties (**Section 230**)
- 2) When he represents that he has authority to act on behalf of a principal, but who does not actually possess such authority or who has exceeded the authority and the alleged employer does not ratify his acts (**Section 235**).
- 3) Where a contract is entered into by a person apparently in the character of agent, but in reality in his own account. (**Section 236**) (Undisclosed agent)
- 4) When he signs a negotiable instrument in his own name without making it clear that he is signing as an agent.
- 5) When he is working for a foreign principal.
- 6) Where he is acting for a principal who cannot be sued on account of his being a foreign sovereign, ambassador etc.
- 7) Where trade, usage or custom holds him liable in certain kinds of business.
- 8) Where the agency is coupled with interest in the subject matter of the agency.
- 9) **Principal not bound when excess of agent's authority is not separable [Section 228]** : Where an agent does more than he is authorised to do, and what he does beyond the scope of his authority cannot be separated from what is within it, the principal is not bound to recognise the transaction.

• **TERMINATION OF AGENCY**



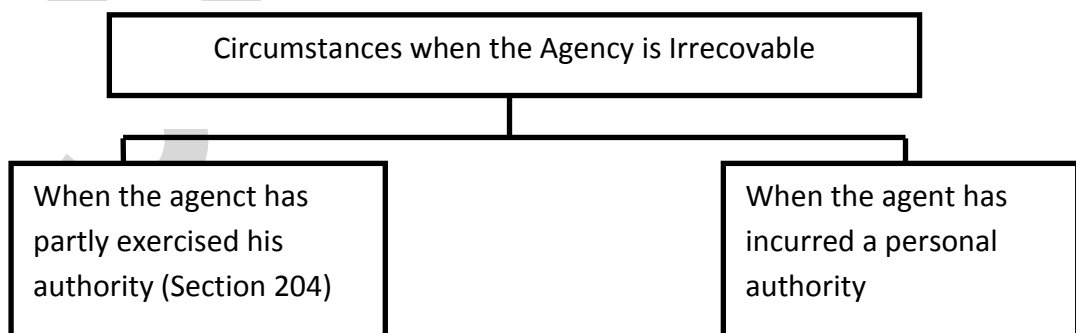
• **UNDISCLOSED PRINCIPLE (Section 231 to 235)**

In such cases neither the existence nor the name of the principal is disclosed and the agent gives an impression to the third-party as if he himself is the contracting party although the agent has authority in fact and is contracting on behalf of another.

In such a case, the mutual rights and liabilities of the principal, agent and the third party are:

- 1) Since the agent has contracted in his own name, he is personally liable to the third party.
- 2) If the third party comes to know the existence of the principal before obtaining judgment against the agent, he may sue either the principal or the agent or both.

• **IRREVOCABLE AGENCY**



• **SUB-AGENT**

The term sub-agent is defined in **Section 191** as, "a sub-agent is a person employed by and acting under the control of the original agent in the business of agency." Thus a sub-agent is an agent appointed by the agent. The relation of the sub-agent to the original agent is that of the agent and the principal.

The general rule of law is that an agent cannot delegate his powers to another without the consent of the principal. This general principle is based upon the Latin

Maxim "delegatus non Protest delegate" which means a delegatee cannot further delegate. In the following cases, however, the agent may appoint a sub-agent:

- a. Where the principal has expressly allowed the appointment of a sub-agent.
- b. Where the principal knows that the agent intends to appoint a sub-agent but he does not object to it.
- c. Where the custom of trade permits the appointment of a sub-agent.
- d. Where the act to be done is purely ministerial and does not involve exercise of discretion or any skill.
- e. Where unforeseen emergencies arise which makes the appointment of sub-agent necessary.

Where a sub-agent is properly appointed (as mentioned in above cases), the principal is bound and is liable to third parties for his act, as if he were an agent originally appointed by the principal. The agent is responsible to the principal for the acts of the sub-agents. The sub-agent is responsible for his acts to the agent and not the principal.

• **SUBSTITUTED AGENT**

Substituted agents are not sub agents. They are agents of the principal. Where the principal appoints an agent and if that agent identifies another person to carry out the acts ordered by principal, than the second person is not to be treated as a sub agent but only as an agent of the original principal.

For example, 'A' directs 'B' his solicitor to sell his property by auction and 'B' appoints 'C' an auctioneer. In this regard, 'C' is an agent of 'A' and not a sub agent. While selecting a "substituted agent" the agent is bound to exercise same amount of diligence as a man of ordinary prudence and if he does so he will not be responsible for acts or negligence of the substituted agent.

DIFFERENCE BETWEEN SUB-AGENT AND SUBSTITUTED AGENT

A sub-agent works under, the control and directions of the agent.	A substituted agent works under the control and directions of the principal.
The agent delegates to the sub-agent a part of his own duties.	The agent does not delegate any part of his duties to the substituted agent.
There is no privity of contract between the principal and the sub-agent.	There is privity of contract between principal and substituted agent.
The sub-agent is responsible to the agent alone.	The substituted agent is responsible to the principal
The agent is responsible to the principal for the acts of the sub-agent.	The agent is not responsible to the principal for the acts of the substituted agent.
The sub-agent has no right of action against the principal for remuneration due to him.	The substituted agent can sue the principal for remuneration due to him.
Sub-agents may be improperly appointed	Substituted agents can never be improperly appointed.
The agent remains liable for the acts of the sub-agent as long as the sub-agency continues.	The agent's duty ends once he has named the substituted agent

CHAPTER 2

THE NEGOTIABLE INSTRUMENTS ACT, 1881

PART I : THEORY

• BACKGROUND AND AIM OF THE ACT

- The Act was introduced on 1st March, 1881.
- The Law in India relating to negotiable instruments is contained in the Negotiable Instruments Act, 1881. It deals with
 - (i) Promissory Notes
 - (ii) Bills of Exchange
 - (iii) Cheque.
- The Act applies to the whole of India and to all persons resident in India, whether foreigners or Indians.
- The Act was amended several times. Recent two amendments made in the N.I. Act were the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 and the Negotiable Instruments (Amendment) Act, 2015 and shall be deemed to have come into force on the **15th day of June, 2015**.

• MEANING AND CHARACTERISTICS OF NEGOTIABLE INSTRUMENT

Meaning: A Negotiable Instrument is a transferrable written piece of paper creating a right of a person to receive money and a corresponding liability of a person to pay money.

Characteristics:

1. It should be in writing
2. Freely transferable.
3. It should create a right of a person to receive money and a corresponding liability of a person to pay money.
4. Holder's title free from defects. A holder in due course acquires a good title irrespective of any defect in a previous holder's title. A holder in due course is one who receives the instrument: (i) for consideration (ii) without notice as to the defect in the title of the transferor; i.e in good faith and (iii) before maturity
5. A negotiable instrument can be transferred infinitum, i.e., can be transferred any number of times, till its payment.
6. A negotiable instrument is subject to certain presumptions (**Section 118**).
 - 1) **Consideration.** It shall be presumed that every negotiable instrument was made or drawn for consideration, and that every such instrument when it was accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration.
 - 2) **Date.** It shall be presumed that every negotiable instrument bearing a date was made or drawn on such date.
 - 3) **Time of acceptance.** It shall be presumed that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity.

- 4) **Transfer.** It shall be presumed that every transfer of the negotiable instrument was made before its maturity.
 - 5) **Order of Indorsement.** It shall be presumed that the indorsements were made in the order in which they appear thereon.
 - 6) **Stamp.** It shall be presumed that an instrument is duly signed and stamped.
- The above presumptions are rebuttable by evidence to the contrary.**

• **PROMISSORY NOTE**

Meaning:	As per Section 4 , An instrument in writing (not being bank note or a currency note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money to a certain person or to the order of a certain person.
Parties to Promissory Note:	<ol style="list-style-type: none"> 1. Maker: The person who makes the promissory Note. He is Debtor who is liable to pay. 2. Payee: The person to whom amount is payable. He is creditor who has a right to receive money.
Essential requirements of a valid promissory note.	<ol style="list-style-type: none"> 1. Written. 2. Promise to pay. However, notice that the use of the word promise is not essential to constitute an instrument as promissory note. 3. Definite and unconditional promise. The promise to pay must not be conditional. Therefore, instruments payable on performance or non performance of a particular act or on the happening or non-happening of an event, are not promissory notes. However, the promise to pay may be subject to a condition, which according to the ordinary experience of mankind, is bound to happen. 4. Certain sum of money. 5. The maker and payee must be certain person. The maker and payee of the instrument must be certain, definite and different persons. A promissory note cannot be made payable to the bearer (Sec. 31 of RBI Act). Only the Reserve Bank or the Central Government can make or issue a promissory note 'payable to bearer'. 6. Signature. The promissory note must be signed by the maker, otherwise it is incomplete and ineffective. 7. Promise in money only. 8. Stamping. A promissory note must be properly stamped in accordance with the provisions of the Indian Stamp Act and such stamp must be duly cancelled by maker's signatures or initials or otherwise.

• **BILL OF EXCHANGE**

<p>Meaning:</p>	<p>As per Section 5, An instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money to a certain person or to the order of a certain person or to the bearer of the instrument.</p>
<p>Parties to Bill of Exchange:</p>	<ol style="list-style-type: none"> 1. Drawer: The maker of a bill of exchange is called the drawer. 2. Drawee; The person directed by the drawer to pay is called the 'drawee' 3. Acceptor: The person who accepts the bill of Exchange. Normally acceptor and drawee are same. 4. Payee: The person named in the instrument, to whom or to whose order the money is, by the instrument, directed to be paid, is called the payee.
<p>Essential requirements of a valid Bill of Exchange.</p>	<ol style="list-style-type: none"> 1. The bill of exchange must be in writing. 2. This order must be unconditional, as the bill is payable at all events. A conditional bill of exchange is invalid. However, the bill may be subject to a condition, which according to the ordinary experience of mankind, is bound to happen. 3. The drawer must sign the instrument.. 4. The drawer, the drawee (acceptor) and the payee are the necessary parties to a bill and are to be specified in the instrument with reasonable certainty. All these three parties may not necessarily be three different persons. One can play the role of two. But there must be two distinct persons in any case. 5. The sum must be certain 6. The medium of payment must be money and money only.

• **CHEQUE**

<p>Meaning: Section 6 defines a cheque as a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand. Further, the expression includes the electronic image of a truncated cheque and a cheque in the electronic form.</p>
<p>Parties to Cheque:</p> <ol style="list-style-type: none"> 1. Drawer: The person who draws a cheque i.e. makes the cheque. (Debtor) 2. Drawee: The specific bank on whom cheque is drawn. 3. Payee: The person named in the instrument, to whom or to whose order the money is, by the instrument, directed to be paid, is called the payee.

ACCEPTANCE

Meaning: The acceptance of a bill is the indication by the drawee of his assent to the order of the drawer. **Section 7** states that an acceptance is the signature of the drawee of a bill who has signed his assent upon the bill and delivered it. Thus, an acceptor is the drawee who has signed his assent upon the bill and delivered it to the holder

Essentials of valid Acceptance:	<ol style="list-style-type: none"> 1. In writing, 2. Signed by the drawee or his agent, 3. On bill of exchange, 4. Completed by delivery to the holder <ul style="list-style-type: none"> ▪ Writing the word 'Accepted' is immaterial. ▪ An oral acceptance or writing of the word 'Accepted' without the drawee's signature is not an acceptance.
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Bill can be accepted by following people:

- (a) **Drawee**, i.e., the person directed to pay.
- (b) **Where more than 1 drawees** are specified, then any or all can accept it. Only those who accept are liable to pay.
- (c) **Drawee in case of need:** When in the bill, the name of any person is given in addition to the drawee to be resorted to in case of need, such person is called a 'drawee in case of need'.
- (d) **An acceptor for honour:** When a bill of exchange has been dishonoured by non-acceptance and any person accepts it for honour of the drawer or of any indorsers, such person is called "an Acceptor for honour". The payment which he makes is known as "payment for honour"
- (e) **Agent** of any of the persons mentioned above.
- (f) **Acceptor by estoppels:** When no drawee has been named in a bill but a person accepts it, he may be estopped from denying his liability as an acceptor.

HOLDER, HOLDER IN DUE COURSE, PAYMENT IN DUE COURSE (Section 8 to 10)

Holder (Section 8)	<p>Holder is not a person who holds the instrument but he is a person who has a right to hold and who is entitled to receive or recover the amount due thereon from the parties thereto.</p> <p>His rights and title are dependent on the transferor</p> <p>He has a right to demand and receive but does not have a right to sue.</p>
Holder in due course (Section 9)	<p>A holder in due course is one who receives the instrument:</p> <ul style="list-style-type: none"> (i) for consideration (ii) without notice as to the defect in the title of the transferor; i.e in good faith and (iii) before maturity. <p>His rights and title are independent on the transferor</p> <p>He has a right to demand and receive and also have a right to sue.</p>
Payment in due course (Section 10)	<p>Payment in due course means payment in accordance with the apparent tenor of the instrument, in good faith and without negligence to any person in possession thereof under circumstances, which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned.</p>

• **CLASSIFICATION OF INSTRUMENTS**

<p>1. Bearer and Order Instruments:</p>	<p>Bearer Instrument: It is an instrument where the name of the payee is blank or Where the name of payee is specified with the words “or bearer” or Where the last indorsement is blank. Such instrument can be negotiated by mere delivery.</p> <p>Order Instrument: It is an instrument which is payable to a person or Payable to a person or his order or Payable to order of a person or Where the last indorsement is fill Such instrument can be negotiated by indorsement and delivery.</p>
<p>2. Inland and Foreign Instruments : (Section 11 & 12)</p>	<p>Inland Instrument: Any instrument drawn or made in India and Either payable in, or drawn upon any person resident in India shall be deemed to be an inland instrument. Example (i) A promissory note made in Chennai and payable in Delhi. (ii) A bill drawn in Pune on a person resident in Jaipur (although it is stated to be payable in London) The Negotiable Instruments Act is applicable.</p> <p>Foreign Instruments: Instrument which is not an inland instrument.</p>
<p>3. Inchoate and Ambiguous Instruments :</p>	<p>Inchoate Instrument: It means an Instrument that is incomplete in certain respects. (i) The person gives a blank instrument with authority to the holder to complete it with appropriate amount up to the stamp value of the instrument. (ii) Delivery of such a paper is essential. The words "when one person signs and delivers to another in Section 20 are important. (iii) The person signing and delivering the inchoate instrument is liable both to a holder and holder in due course. However, there is a difference in their respective rights. The holder of such an instrument cannot recover the amount in excess of the amount intended to be paid by the signor. The holder in due course can, however, recover any amount on such instrument provided it is covered by the stamp affixed on the instrument.</p> <p>Ambiguous Instrument: An instrument which is vague and cannot be clearly identified either as a bill of exchange, or as a promissory note, is an Ambiguous instrument. In other words, such an instrument may be construed either as promissory note, or as a bill of exchange. Regarding such instruments, Section 17 provides that the holder may, at his discretion, treat it as either and the instrument shall thereafter be treated accordingly. Thus, after exercising his option, the holder cannot change that it is the other kind of instrument.</p> <p>Where amount is stated differently in figures and words [Section 18] If the amount undertaken or ordered to be paid is stated differently in figures and in words, the amount stated in words shall be the amount undertaken or ordered to be paid</p>

<p>4. Demand and Time Instruments:</p>	<p>Demand Instruments (Section 19): A promissory note or bill of exchange in which no time for payment is mentioned is payable on demand. Bills and notes are payable either on demand or at a fixed future time. Cheques are always payable on demand. A bill or promissory note is also payable on demand when it is expressed to be payable on demand, or "at sight" or "presentment" (Section 21). The expression "after sight" means, in a promissory note, after presentment for sight, and, in a bill of exchange after acceptance, or noting for non-acceptance, or protest for non-acceptance.</p> <hr/> <p>Time instrument:</p> <ol style="list-style-type: none"> 1) Instrument payable after a certain period either in 'x' days or 'x' months (Section 22). 2) Calculation of maturity [Section 23] : In calculating the date at which a promissory note or bill of exchange, made payable at stated number of months after date or after sight, or after a certain event, is at maturity, the period stated shall be held to terminate on the day of the month, which corresponds with the day on which the instrument is dated. 3) If the month in which the period would terminate has no corresponding day, the period shall be held to terminate on the last day of such month. 4) Calculating maturity of bill or note payable so many days after date or sight [Section 24] In calculating the date at which a promissory note or bill of exchange made payable at certain number of days, the day of the date, or of presentment for acceptance or sight, or of protest for non-acceptance, or on which the event happens, shall be excluded. 5) When day of maturity is a holiday [Section 25] When the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument shall be deemed to be due on the next preceding business day. The expression "Public Holiday" includes Sundays and any other day declared by the Central Government, by notification in the Official Gazette, to be a public holiday.
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• **TRANSFER OF INSTRUMENT**

- According to section 14, when a negotiable instrument is transferred to any person with a view to constitute the person holder thereof, the instrument is deemed to have been negotiated.
 Negotiable instruments may be negotiated either by delivery when these are payable to bearer or by indorsement and delivery when these are payable to order.
- **Delivery [Section 46]** The making, acceptance or indorsement of a promissory note, bill of exchange or cheque is completed by delivery, actual or constructive.
- **Modes of negotiation of instrument?**
 - (i) A promissory note, bill of exchange or cheque payable to bearer is negotiable by the delivery thereof **(Section 47).**
 - (ii) A promissory note, bill of exchange or cheque payable to order is negotiable by the holder by indorsement and delivery thereof **(Section 48).**

- **INDORSEMENT OF INSTRUMENT (Section 15)**
 - **Meaning:** When the **maker or holder** of a negotiable instrument signs the same otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto known as allonge-
he is said to indorse the same and as called the indorser.
The person to whom the instrument is indorsed is called the indorsee.
 - **Various Classes / Kinds of Indorsements:**
 1. **Indorsement in Blank:** Where the indorser just puts his signature without specifying the indorsee, the indorsement is said to be in blank (Section 16). The effect of such an indorsement is to render the instrument payable to bearer even though originally payable to order (Section 54).
 2. **Indorsement in Full:** Where along with indorser's signature, the name of the indorsee is specified, the indorsement is called 'indorsement in full' (Section 16). Thus, where the instrument states, 'Pay X or order' and is signed by A, the payee, it constitutes 'indorsement in full'.
 - **Effect of indorsement [Section 50]** The indorsement of a negotiable instrument followed by delivery transfers to the indorsee the property therein with the right of further negotiation.
 - **Who may negotiate? [Section 51]** Every sole maker, drawer, payee or indorsee, or all of several joint makers, drawers, payees or indorsees, of a negotiable instrument may, indorse and negotiate the same.
 - **Indorser who excludes his own liability or makes it conditional [Section 52]**

The indorser of a negotiable instrument may,

 - ✓ by express words in the indorsement,
 - ✓ exclude his own liability thereon, or
 - ✓ make such liability or the right of the indorsee to receive the amount due thereon depend upon the happening of a specified event, although such event may never happen.
 - ✓ Where an indorser so excludes his liability and afterwards becomes the holder of the instrument all intermediates indorsers are liable to him.
- **LIABILITIES OF PARTIES**
 - **Capacity to incur liabilities (Section 26):** Regarding liability of a minor, it may be noted that a minor, being incompetent to contract, cannot bind himself by becoming a party to a negotiable instrument. Whether he is the drawer, maker, acceptor or indorser, he is not liable on the instrument. Section 26 categorically excludes minor's liability by stating that a minor binds all parties except himself.
 - **Liability of an agent (Section 27 & 28):**
 - Every person capable of legally entering into a contract, may make, draw, accept indorse, deliver and negotiate a promissory note, bill of exchange or cheque, himself or through a duly authorised agent.

- A general authority to transact business and to discharge debt does not confer upon an agent the power to indorse bills of exchange so as to bind his principal.
 - An agent cannot escape personal liability unless he indicates that he signs as an agent and does not intend to incur personal liability
- **Liability of Legal Representative (Section 29):**
A legal representative' of a deceased person, who signs his own name on an instrument, is personally liable for the entire amount; but he may expressly limit his liability to the extent of the assets received by him as legal representative.
- **Liability of Drawer (Section 30):**
- Usually, the liability of the drawer of a bill or cheque is secondary and conditional (the liability of the acceptor and maker of the bill and drawee of the cheque being primary and unconditional).
 - The drawer's liability is conditional, i.e., it arises only in the event of a dishonour by the drawee or acceptor. Once there has been dishonour and the notice of dishonour has been served on the drawer, he is bound to compensate the holder whatever be the state of the account between himself and the drawee or acceptor.
- **Liability of drawee Bank of cheque (Section 31):** Wrongful dishonour of customer's cheque entails exemplary damages against banker and the amount of damages is inversely related to the amount of the cheque dishonoured. Smaller amount of the cheque, higher shall be the damages awarded.
- **Liability of drawee of Bill of Exchange/ Maker of Promissory Note (Section 32):**
The maker of a promissory note is bound to pay the amount at maturity.
The liability of the drawee only arises when he accepts the bills. Drawee's liability is primary and unconditional. He is liable for Principal amount along with interest and noting/ protesting charges if any.
- **Liability of maker, drawer and acceptor as principals (Sections 37 & 38):**
The maker of a promissory note is liable as the principal debtor. In a bill of exchange, the acceptor acts as a principal debtor and the drawer acts a surety as drawer is liable to pay only if acceptor defaults.
- **Nature of surety ship (Section 39):** The holder of an accepted bill may waive his claim against the acceptor, but at the same time, he may expressly reserve his right to charge the other parties. Under Section 134 of the Indian Contract Act, 1872 the release of the principal debtor has the effect of discharging the surety, but in the case of a bill it is not so. But if the holder does not reserve his right expressly against the other parties, they too will be discharged if he releases the acceptor.

- **Discharge of indorser's liability (Section 40):** Where the holder of a negotiable instrument, without the consent of the indorser, destroys or impairs the indorser's remedy against a prior party, the indorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity. Any party liable on the instrument may be discharged by the intentional cancellation of his signature by the holder.
- **Effect of forged indorsement on acceptor's liability (Section 41):** A bill may be accepted before or after indorsement by the payee. An acceptor of a bill of exchange already indorsed is not relieved from liability by reason that such indorsement is forged.
- **Liability of acceptor of a bill drawn in a fictitious name (Section 42):** The acceptor is not relieved from liability by proving that the drawer is fictitious.
- **Liability on an instrument made drawn etc. without consideration (Section 43):** An instrument made, drawn, accepted, indorsed, or transferred without consideration creates no obligation of payment between the parties to the instrument.
- **RIGHTS AND OBLIGATIONS OF PARTIES TO AN INSTRUMENT OBTAINED ILLEGALLY.**
 - **Holder's right to duplicate of lost bill [Section 45A]** Where a bill of exchange has been lost before it is overdue, the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer, if required, to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again. If the drawer on request as aforesaid refuses to give such duplicate bill, he may be compelled to do so.
 - **Instrument obtained by unlawful means or for unlawful consideration [Section 58]**
 - ✓ When a negotiable instrument has been lost, or
 - ✓ has been obtained from any maker, acceptor or holder thereof by means of an offence or fraud, or for an unlawful consideration,
 - ✓ no possessor or indorsee who claims through the person who found or so obtained the instrument is entitled to receive the amount due thereon from such maker, acceptor or holder, or from any party prior to such holder, unless such possessor or indorsee is a holder thereof in due course.
 - **Instrument acquired after dishonour or when overdue [Section 59]** The negotiable instrument, can be transferred even after dishonour or maturity but the person obtaining it can never become holder in due course.
 - **Instrument negotiable till payment or satisfaction [Section 60]** A negotiable instrument may be negotiated (except by the maker, drawee or acceptor after maturity) until payment or satisfaction thereof by the maker, drawee or acceptor at or after maturity, but not after such payment or satisfaction.

• PRESENTMENT**➤ Presentment for acceptance [Section 61]**

Bill of Exchange, be presented to the drawee thereof for acceptance, within a reasonable time after it is drawn, and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.

➤ Presentment of promissory note for sight [Section 62]

A promissory note, payable at a certain period after sight, must be presented to the maker thereof for sight (if he can after reasonable search be found) by a person entitled to demand payment, within a reasonable time after it is made and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default

➤ Presentment for payment [Section 64]

Promissory notes, bill of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided. In default of such presentment, the other parties thereto are not liable thereon to such holder.

Hours for presentment: Presentment for payment must be made during the usual hours of business and, if at a banker's, within banking hours.

Presentment of cheque to charge drawer: Subject to the provisions of section 84, a cheque must, in order to charge the drawer, be presented at the bank on which it is drawn before the relation between the drawer and his banker has been altered to the prejudice of the drawer.

Presentment of instrument payable at demand: Subject to the provisions of section 31, a negotiable instrument payable on demand must be presented for payment within a reasonable time after it is received by the holder.

➤ Excuse for delay in presentment for acceptance or payment [Section 75A] Delay in presentment for acceptance or payment is excused if the delay is caused by circumstances beyond the control of holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, presentment must be made within reasonable time.**➤ When presentment unnecessary:**

No presentment for payment is necessary, and the instrument is dishonoured at the due date for presentment, in any of the following cases:

(a) if the maker, drawee or acceptor intentionally prevents the presentment of the instrument, or

✓ If the instrument being payable at his place of business, he closes such place on a business day during the usual business hours, or

✓ If the instrument being payable at some other specified place, neither he nor any person authorized to pay it attends at such place during the usual business hours, or

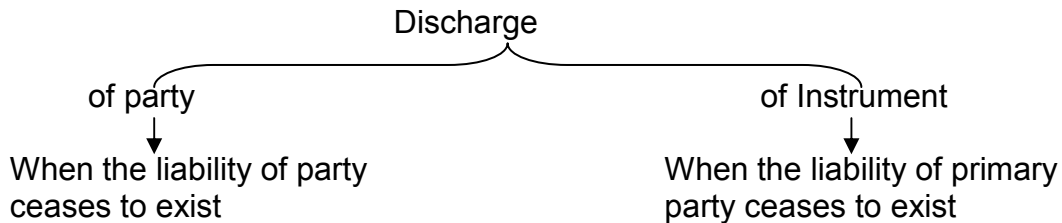
✓ If the instrument not being payable at any specified place, he cannot after due search be found;

(b) if the maker has agreed to pay even without presentment.

(c) if the maker has done the part-payment even without presentment.

- **Liability of banker for negligently dealing with bill presented for payment [Section 77]** When a bill of exchange, accepted payable at a specified bank, has been duly presented there for payment and dishonored, if the banker so negligently or improperly keeps, he must compensate the holder for such loss

- **DISCHARGE FROM LIABILITY**



- **Modes of discharge:**

One or more parties to a negotiable instrument may be discharged from liability in either of the following ways :

1. **Sec. 82 - By cancellation, Release or Payment :**
 - By cancellation:** Cancellation of acceptor's name will discharge the instrument and cancellation of any other party will discharge the party.
 - By release:** Release of acceptor will discharge the instrument and release of any other party will discharge the party.
 - By payment:** When the amount due on the instrument is paid by the party primarily liable on the instrument, the instrument is discharged.
2. **Sec. 83 By allowing drawee more than 48 hours:** If the holder of a bill of exchange allows the drawee more than 48 hours, exclusive of public holiday(s) to consider whether he will accept the same, all previous parties not consenting to such allowance are discharged from liability to such holder.
3. **Sec. 84 By delay in presenting cheques:** If a cheque is not presented within a reasonable time of its issue, and the bank fails and drawer suffers actual damages through such delay, he is discharged from the liability to the holder to the extent of such damage.
4. **Sec. 85. Forgery of Indorser's signature in case of Cheque :** The Bank is discharged by PIDC even if the signature of indorser is forged.
5. **By qualified acceptance:** If the holder of a bill of exchange agrees to accept qualified acceptance, all the previous parties whose consent is not obtained to such acceptance are discharged from liability, unless the holder gives notice thereof and the parties give their assent to such qualified acceptance.
6. **By material alteration:** Any material alteration of a negotiable instrument renders the same void as against any one who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties.
7. **Discharge of Bank:** As per Section 89, bank is discharged by payment in due course in case of alteration not apparent from records.
8. **As per Section 90, when the acceptor of bill of exchange or maker of promissory note becomes holder on or after maturity, the instrument is discharged.**

• DISHONOUR OF BILL OF EXCHANGE/ PROMISSORY NOTE

- **Dishonour of bill of exchange by non-acceptance (Section 91):**

In the following circumstances bill shall be considered as dishonoured by non-acceptance:

 - 1) When the drawee does not accept it within 48 hours from the time of presentment for acceptance.
 - 2) When presentment for acceptance is excused and it remains unaccepted. Presentment for acceptance is excused under the following circumstances:
 - (i) Where the drawee cannot, after reasonable search, be found (Section 61).
 - (ii) Where the drawee is a fictitious person.
 - (iii) Where though presentment is regular, the acceptance is refused on some other ground.
 - 3) Where drawee is incompetent to contract, e.g., minor or lunatic.
 - 4) Where the acceptance is qualified.
 - 5) Where one or more of the several drawees (not being partners) refuse to accept the bill.

- **Dishonour of bill of exchange/ promissory note by non-payment (Section 92):** An instrument is dishonoured by non-payment when the party primarily liable, makes default in payment.

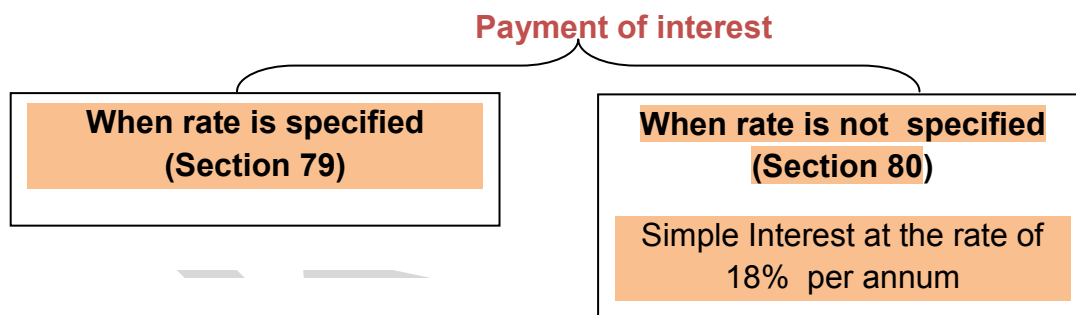
- **Notice of dishonour (Section 93 & 94):**
 - (i) **By whom notice to be given:** When an instrument is dishonoured either by non-acceptance or by non-payment, the holder thereof or some party thereto who remains liable thereon must give notice of dishonour.
 - (ii) **To whom notice is to be given:** Notice must be given to such parties whom the holder proposes to charge with liability severally or jointly, e.g., the drawer and the indorsers. Notice may be given either to the party himself or to his agent, or to his legal representative on his death, or to the official assignee on his insolvency. It is not necessary to give notice to the maker of a note or the drawee or acceptor of a bill or cheque.
 - (iii) **Effect of non-service of notice:** If a notice of dishonour is not sent to any prior party who is entitled to such notice within a reasonable time, he is discharged from liability.
 - (iv) **Requirements of valid notice:** The holder must inform the party to whom the notice has been given that the instrument has been dishonoured, and that he will be held liable thereon. It must give an exact description of the instrument dishonoured.
 - (v) **Mode of service of notice :** The notice, if written, may be given by post at the place of business or at the residence of party for whom it is intended.
 - (vi) **Transmission of notice of dishonour by party receiving it (Section 95):** Any party receiving notice of dishonour should communicate the same within a reasonable time to any prior party whom he intends to hold liable in respect of the instrument; but if the prior party receives otherwise, no such communication is necessary.

➤ **Notice of dishonour is not required in the following cases (Section 98):**

1. When there is no intention to make prior party liable.
2. When prior party is discharged.
3. When drawer and drawee are same
4. When drawer is fictitious.
5. When the prior party has signed the indorsement 'without recourse'.
6. When the party entitled to notice cannot, after reasonable search, be found.
7. Where the party liable to give notice is unable, without any fault of its own to give it, e.g., death or serious illness of the holder or his agent or any other accident.
8. When the prior party is incompetent.

PAYMENT AND INTEREST

To whom payment should be made (Section 78): Payment of the amount due on a promissory note, bill of exchange or cheque must, in order to discharge the maker or acceptor, be made to the holder of the instrument. If payment is made to any person other than the holder, the holder can claim payment over again from the maker or acceptor.



NOTING AND PROTESTING

➤ **Noting:** It is a convenient mode of authenticating the fact that a bill or note has been dishonoured. When a note or a bill has been dishonoured by non-acceptance or nonpayment, the holder causes such dishonour to be noted by a Notary Public. Noting is a minute recorded by a notary public on the dishonoured instrument. When an instrument, say a bill of exchange, is to be noted for dishonour, is taken to Notary Public who presents it once again for acceptance or payment, as the case may be; and if the drawee or acceptor still refuses to accept or pay the bill, it is noted, i.e., a minute is prepared containing the date of dishonour, reason for such dishonour, etc. which is attached to the instrument; and the facts are noted on the instrument.

➤ **Protest:** When an instrument is dishonoured, the holder may cause the fact not only to be noted, but also to be certified by a Notary Public that the bill has been dishonoured. Such a certificate is referred to as a protest. The Court is bound to recognise a protest. But it may or may not recognise noting. Therefore, any bill or document which has been noted can be protested any time thereafter for taking legal action against the parties.

• DISHONOUR OF CHEQUE

- Sections 138 to 142 provides for criminal penalties in the event of dishonour of cheques for insufficiency of funds.
The drawer, under Sec. 138, may be punished with imprisonment upto 2 years or with a fine up to twice the amount of the cheque or with both. However, in order to attract the aforesaid penalties, following conditions must be satisfied:
 1. The cheque should have been dishonoured due to insufficiency of funds in the account maintained by him with a banker for payment of any amount of money to another person from out of that account.
As per the Case laws:
 - (i) ET & TD Corp. Ltd. V. Ind Technologies & Engrs. P Ltd, in case of stop-payment, it shall be deemed to have been so dishonoured for insufficiency of funds unless stop-payment can be justified.
 - (ii) N.E.P.C. Micon Ltd. V Maguna Leasing Ltd, dishonour due to closure of account has also been held to be dishonoured for insufficiency of funds
 - (iii) Modi Cements Ltd. V Kuchil Kumar Nandi, directing the payee not to present will be deemed to have the same effect
 2. The payment for which the cheque was issued should have been in discharge of a legally enforceable debt or liability in whole or part of it.
 3. The cheque should have been presented within 3 months from the date on which it is drawn.
- **Presumption in favour of holder [Section 139]** It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, or any debt or other liability.
- **Defense which may not be allowed in any prosecution under section 138 [Section 140]** It shall not be a defence in a prosecution of an offence under section 138 that the drawer had no reason to believe when he issued the cheque that the cheque may be dishonoured on presentment for the reasons stated in that section.
- **Offences by Companies(Section 141)**
If the person committing an offence is a company, every person, who at the time the offence was committed and the company shall be jointly liable for the offence.
- **Procedure:**
 1. Cheque is issued by drawer
 2. The payee/holder presents it for payment.
 3. The collecting bank informs payee/holder about dishonour of cheque.
 4. The payee or the holder in due course of the cheque should have given notice demanding payment **within 30 days** from the drawer in receipt of information of dishonour of cheque from the bank. Notice can be served by ordinary post or even telegram.
 5. The drawer is liable only if he fails to make the payment within **15 days** of such notice period.
 6. The payee or holder in due course of the cheque dishonoured should have made a complaint within **one month** of cause of action arising out of Sec. 138.

➤ **Additional points in dishonour of cheque:**

1. Whether the payee or the holder of a cheque can initiate prosecution for an offence under the N. I. Act, for its dishonour for the second time if he had not initiated any prosecution on the first occasion?

No, as by not initiating prosecution for the first time, he has waived his right to sue.

2. Whether 'giving of notice of dishonour itself constitute 'receipt of notice' for constituting offence under Section 138 of the Negotiable Instruments Act, 1881 ?

No, as payee/holder's responsibility is just to give the notice and it is not his responsibility to make sure drawer receives the notice. Hence, even if drawer fails to make payment as a consequence of non-receipt of notice still gives a right to payee/holder to initiate prosecution under Section 138.

3. What is the starting point for 30 days notice?

The 30 days are to be counted from the receipt of information regarding the return of the cheque as unpaid.

4. Where an owner of company, who is neither a director nor a person-in-charge, sent a cheque from the companies account to discharge its legal liability. Subsequently the cheque was dishonoured and the complaint was lodged against him. Is he liable for an offence under section 138?

The amount can be recovered but since he is not the drawer of the cheque, which was dishonoured, and the cheque was also not drawn on an account maintained by him but was drawn on an account maintained by the company. Hence, it was held that the owner couldn't be said to have committed the offence under Section 138 of the Act.

➤ **Cognizance of offences [Section 142]**

- (1) Court shall take cognizance of any offence punishable under section 138 only if it is in writing.

Time limit for filing the complaint is 1 month.

No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.

- (2) **Place of Jurisdiction of court for the trial of offence** : The offence under section 138, which deals with the dishonour of cheque, shall be inquired into and tried only by a court within whose local jurisdiction,—

(a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(b) if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

➤ **Validation for transfer of pending cases [Section 142A]**

- ✓ All cases of cheque bouncing which were pending in any court, before the Act came into force, will be transferred to a court with the appropriate jurisdiction.
- ✓ The payee has filed a complaint against the drawer in a court with the appropriate jurisdiction, all subsequent complaints against that person regarding cheque bouncing will be filed in the same court. This will be irrespective of the mode of presentation of cheque.
- ✓ If more than one case is filed by the same payee against the same drawer before different courts, the case will be transferred to the court with the appropriate jurisdiction before which the first case was filed.

➤ **Power of Court to try cases summarily [Section 143]**

Provided that in the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year and an amount of fine exceeding five thousand rupees.

➤ **Offences to be compoundable [Section 147]**

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 every offence punishable under this Act shall be compoundable.

CHAPTER 3

THE GENERAL CLAUSES ACT, 1897

- **BACKGROUND AND AIM OF THE ACT**
 - The General Clauses Act, 1897 was enacted on **11th March, 1897**
 - **Application of the General Clauses Act**
 1. The Act does not define any “territorial extent” clause.
 2. It shall apply to every territory where a Central Act is applicable and would apply in the construction of that Central Act.
 - **Object, purpose and importance of the General Clauses Act:**
 1. The object of the act are several, namely:
 - a. To shorten the language of Central Acts.
 - b. To provide, as far as possible, for uniformity of expression in Central Acts, by giving definitions of a series of terms in common use.
 2. The General Clauses Act thus makes provisions as to the construction of General Acts and other laws applicable to whole of India. The Act has also been called as the **"Law of all Laws"**. Thus, we can see that the purpose of this Act itself enshrines the importance of the Act.
- **SOME BASIC UNDERSTANDINGS OF LEGISLATION**
 - **Definitions :**

Every Act contains definition part for the purpose of that particular Act and that definition part are usually mentioned in the Section 2 of that Act but in some other Acts, it is also mentioned in Section 3 or in other initial sections. Hence, definitions are defined in the Act itself. However, if there may be words which are not defined in the definitions of the Act, the meaning of such words may be taken from General Clauses Act, 1897.
 - **“Means” and/or “include” :**
 - a. Some definitions use the word "means". Such definitions are exhaustive definitions and exactly define the term:

Example: Definition of 'Company' as given in section 2(20) of the Companies Act, 2013. It states, "Company" means a company incorporated under this Act or under any previous company law.
 - b. Some definitions use the word "include". Such definitions do not define the word but are inclusive in nature. The word defined is not restricted to the meaning assigned to it but has extensive meaning which also includes the meaning assigned to it in the definition section.

Example: Word 'debenture' defined in section 2(30) of the Companies Act, 2013 states that "debenture" includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not". This is a definition of inclusive nature.

➤ **"Shall" and "May"**

The word 'shall' is used to raise a presumption of something which is mandatory or imperative while the word 'may' is used to connote something which is not mandatory but is only directory or enabling

Example: Section 3 of the Companies Act, 2013 states that "A company may be formed for any lawful purpose by•"

Here, the word used "may" shall be read as "shall". Usage of word 'may' here makes it mandatory' for a company for the compliance of section 3 for its formation.

• **PRELIMINARY [SECTION 1]**

This Act may be called the TheGeneral Clauses Act, 1897.

Preliminary is the introductory part of any law which generally contains Short Title, extent, commencement, application etc. The General Clauses Act contains only short title in the Preliminary part of the Act.

• **DEFINITIONS [SECTION 3]**

Sec 3(2)	<p>Act 'Act', used with reference to an offence or a civil wrong, shall include a series of acts, and words which refer to acts done extend also to illegal omissions</p>
Sec 3(3)	<p>Affidavit 'Affidavit' shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing. This definition does not define affidavit. However, we can understand this term in general parlance. Affidavit is a written statement confirmed by oath or affirmation for use as evidence in Court or before any authority.</p>
Sec 3(7)	<p>Central Act 'Central Act' shall mean an Act of Parliament, and shall include-</p> <p>(a) An Act of the Dominion Legislature or of the Indian Legislature passed before the commencement of the Constitution and</p> <p>(b) An Act made before such commencement by the Governor General in Council or the Governor General, acting in a legislative capacity;</p>
Sec 3(8)	<p>Central Government 'Central Government' shall-</p> <p>(a) In relation to anything done before the commencement of the Constitution, mean the Governor General in Council, as the case may be; and shall include,-</p> <p>(i) In relation to functions entrusted to the Government of a Province,</p> <p>(ii) In relation to the administration of a Chief Commissioner's Province, and</p> <p>(b) In relation to anything done or to be done after the commencement of the constitution of the Constitution, mean the President; and shall include ;-</p> <p>(i) In relation to function entrusted under the Constitution, to the Government of a state, the State Government acting within the scope of the authority given to it under that clause;</p> <p>(ii) In relation to the administration before the commencement of the Constitution, the Chief Commissioner or the Lieutenant Governor or the Government of a neighbouring State or other authority acting within the scope of the authority given to him and In relation to the administration of a Union territory, the administrator thereof acting within the scope of the authority given to him.</p>

Sec 3(13)	Commencement 'Commencement' used with reference to an Act or Regulation, shall mean the day on which the Act or Regulation comes into force.
Sec 3(18)	Document 'Document' shall include any matter written, expressed or described upon any substance by means of letters, figures or marks or by more than one of those means which is intended to be used or which may be used, for the purpose or recording that matter. For example, book, file, painting, inscription and even computer files are all documents.
Sec 3(19)	Enactment 'Enactment' shall include a Regulation or any Act (or a provision contained therein) made by the Union Parliament or the State Legislature.
Sec 3(21)	Financial year Financial year shall mean the year commencing on the first day of April. Difference between Financial Year and Calendar Year: Financial year starts from first day of April but Calendar Year starts from first day of January.
Sec 3(22)	Good Faith A thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not. This definition of the good faith does not apply to that enactment which contains a special definition of the term "good faith" and there the definition given in that particular enactment has to be followed.
Sec 3(23)	Government 'Government' or 'the Government' shall include both the Central Government and State Government.
Sec 3(24)	Government securities 'Government securities' shall mean securities of the Central Government or of any State Government, but in any Act or Regulation made before the commencement of the Constitution.
Sec 3(26)	Immovable Property Immovable Property' shall include: i) Land, ii) Benefits to arise out of land, and iii) Things attached to the earth, or iv) Permanently fastened to anything attached to the earth.
Sec 3(27)	Imprisonment Imprisonment shall mean imprisonment of either description as defined in the Indian Penal Code (45 of 1860)
Sec 3(29)	Indian law 'Indian law' shall mean any Act, Ordinance, Regulation, rule, order, bye law or other instrument which before the commencement of the Constitution, had the force of law in any Province of India or part thereof.
Sec 3(35)	Month 'Month' shall mean a month reckoned according to the British calendar;
Sec 3(36)	Movable Property 'Movable Property' shall mean property of every description, except immovable property.
Sec	Oath

3(37)	'Oath' shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing.
Sec 3(38)	Offence 'Offence' shall mean any act or omission made punishable by any law for the time being in force. Any act or omission which is if done, is punishable under any law for the time being in force, is called as offence.
Sec 3(39)	Official Gazette 'Official Gazette' or 'Gazette' shall mean: (i) The Gazette of India, or (ii) The Official Gazette of a state.
Sec 3(42)	Person 'Person' shall include: (i) any company, or (ii) association, or (iii) body of individuals, whether incorporated or not
Sec 3(49)	Registered 'Registered' used with reference to a document, shall mean registered in India under the law for the time being force for the registration of documents.
Sec 3(51)	Rule 'Rule' shall mean a rule made in exercise of a power conferred by any enactment, and shall include a Regulation made as a rule under any enactment.
Sec 3(52)	Schedule 'Schedule' shall mean a schedule to the Act or Regulation in which the word occurs.
Sec 3(54)	Section 'Section' shall mean a section of the Act or Regulation in which the word occurs.
Sec 3(61)	Sub-section 'Sub-section' shall mean a sub-section of the section in which the word occurs;
Sec 3(62)	Swear 'Swear', with its grammatical variations and cognate expressions, shall include affirming and declaring in the case of persons by law allowed to affirm or declare instead of swearing. Note: The terms "Affidavit", "Oath" and "Swear" have the same definitions in the Act.
Sec 3(65)	Writing Expressions referring to 'writing' shall be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible forms;
Sec 3(66)	Year 'Year' shall mean a year reckoned according to the British calendar.

➤ **Application to foregoing definitions to previous enactments [Section 4]-**

There are certain definitions in section 3 of the General Clauses Act, 1897 which would also apply to the Acts and Regulations made prior to 1897 i.e., on the previous enactments of 1868 and 1887. This provision is divided into two parts-

- (1) **Application of terms/expressions to all [Central Acts] made after the third day of January, 1868, and to all Regulations made on or after the 14th January, 1887-**

Here the given relevant definitions in section 3 of the following words and expressions,

that is to say, 'affidavit', 'immovable property', 'imprisonment', 'month', 'movable property', 'oath', 'person', 'section', 'and 'year' apply also, unless there is anything repugnant in the subject or context, to all [Central Acts] made after the third day of January, 1868, and to all Regulations made on or after the 14th January, 1887.

- (2) **Application of terms/expressions to all Central Acts and Regulations made on or after the fourteenth day of January, 1887-** The relevant given definitions in the section 3 of the following words and expressions, that is to say, 'commencement', 'financial year', 'offence', 'registered', 'schedule', 'sub-section' and 'writing' apply also, unless there is anything repugnant in the subject or context, to all Central Acts and Regulations made on or after the fourteenth day of January, 1887.

➤ **Application of certain definitions to Indian Laws [Section 4A]~**

The definitions in section 3 of the expressions 'Central Act', 'Central Government', 'Gazette', 'Government', 'Government Securities', 'Indian Law', and 'Official Gazette', 'shall apply, unless there is anything repugnant in the subject or context, to all Indian laws.

• **GENERAL RULES OF CONSTRUCTION**

1. **Section 5 – Coming into operation of enactment.**

If no date of commencement is specified for any Central Act, then it shall be implemented from date on which it received assent from:

- a. Governor General – for Central Acts and /or
- b. President – for Act of Parliament

2. **Section 6 – Effect of Repeal.**

Where any Central legislation or any regulation made after the commencement of this Act repeals any Act made or yet to be made, unless another purpose exists, **the repeal shall not:**

- a. Revive anything not enforced or prevailed during the period at which repeal is effected or;
- b. Affect the prior management of any legislation that is repealed or anything performed or undergone or;
- c. Affect any claim, privilege, responsibility or debt obtained, ensued or sustained under any legislation so repealed or;
- d. Affect any punishment, forfeiture or penalty sustained with regard to any offence committed as opposed to any legislation or
- e. Affect any inquiry, litigation or remedy with regard to such claim, privilege, debt or responsibility or any inquiry, litigation or remedy may be initiated, continued or insisted.

State of Uttar Pradesh v. Hirendra Pal Singh, (2011), SC held that whenever an Act is repealed, it must be considered as if it had never existed. Object of repeal is to obliterate the Act from statutory books, except for certain purposes as provided under Section 6 of the Act.

Navrangpura Gam Dharmada Milkat Trust v. Ramtuji Ramaji, 'Repeal' of provision is in distinction from 'deletion' of provision. 'Repeal' ordinarily brings about complete obliteration of the provision as if it never existed, thereby affecting all incoherent rights and all causes of action related to the 'repealed' provision while 'deletion' ordinarily takes effect from the date of legislature affecting the said deletion, never to effect total effecting or wiping out of the provision as if it never existed. For the purpose of this section, the above distinction between the two is essential.

3. Section 6 (A) – Repeal of Act making textual amendment in Act or Regulation

Where any Act or repeals any enactment by which the text of any Central Act or Regulation was amended by the express omission, insertion or substitution of any matter, the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal.

4. Section 7 – Revival of repealed enactments

If any enactment has been repealed either wholly or partially then it is necessary to expressly state the purpose for which the enactment has to be revived

5. Section 8 – Construction of references to repealed enactments

(a) Where this Act or Central Act or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.

Gauri Shankar Gaur v. State of U.P. it was held that every Act has its own distinction. If a later Act merely makes a reference to a former Act or existing law, it is only by reference and all amendments, repeals new law subsequently made will have effect unless its operation is saved by the relevant provision of the section of the Act.

6. Section 9 – Commencement and termination of time

In any legislation or regulation the word “from” shall be used to exclude the first day and use the word “to” to include the last day.

Example: If a company declares dividend for its shareholder in its Annual General Meeting held on 30/09/2016. Under the provisions of the Companies Act, 2013, company is required to pay declared dividend within 30 days from the date of declaration i.e. from 01/10/2016 to 30/10/2016. In this series of 30 days, 30/09/2016 will be excluded and last 30th day i.e. 30/10/2016 will be included.

7. Section 10 – Computation of time

If any proceeding is to take place on a particular day or within a prescribed period and if the court or office is closed on that day or last day of the prescribed period then the proceeding shall be conducted on the next day afterwards when the court or office is open.

8. Section 11 – Measurement of Distances

For the purposes of any Central Act or Regulation made after the commencement of this Act, any distance shall be measured in a straight line on a horizontal plane unless otherwise mentioned.

9. Section 12 – Duty to be taken pro rata in enactments

Where, by any enactment now in force or hereafter to be in force, any duty of customs or excise or in the nature thereof, is leviable on any given quantity, by weight, measure or value of any goods or merchandise, then a like duty is leviable according to the same rate on any greater or less quantity.

10. Section 13 – Gender and number

In all legislations and Regulations, all words having masculine gender shall include feminine gender and all singular words shall include plural and vice versa.

- **POWERS AND FUNCTIONARIES**

1. **Section 14 – Power conferred to be exercisable from time to time**

- a. Any power is conferred (given) by the Central Act or Regulation after commencement of this Act then the power shall be exercised from time to time as the occasion requires unless there is a different intention.

2. **Section 15 – Power to appoint to include power to appoint ex-officio**

- a. If Legislation or Regulation gives any power to appoint a person to fill any office or execute any function then any such appointment may be made either by name or by virtue of (as a result of) office.
- b. Ex-officio is a Latin word which means by virtue of one's position or office. Provision under this section states that where there is a power to appoint, the appointment may be made by appointing ex-officio as well.

3. **Section 16 – Power to appoint to include power to suspend or dismiss**

If the Legislation or Regulation gives any power to make appointments then it implies that Authority shall also have the power to suspend or dismiss any person appointed whether by itself or any other authority in exercise of that power.

4. **Section 17 – Substitution of functionaries**

The act requires mentioning the official title of the officer at present executing the functions, or that of the officer by whom the functions are commonly executed.

5. **Section 18 – Successors**

In any functionaries or of corporations having perpetual succession, the law of successors should be specified.

3. **Section 19 – Official Chiefs and subordinates**

Any law that shall be applicable to the chief or superior shall apply to the deputies and subordinates who are performing the duties of that office in place of the superior.

- **PROVISION AS TO ORDERS, RULES ETC. MADE UNDER ENACTMENTS**

1. **Section 20 – Construction of orders, etc., issued under enactments**

Any expression used in the notification, order, scheme, rule, form, or by-law shall have the same meaning as in the Act or regulation unless otherwise mentioned.

2. **Section 21– Power to issue, to include power to add, to amend, vary or rescind notifications, orders, rules or bye-laws**

Any power given by the legislation or regulation to issue any notification, order, scheme, rule, form, or by-law shall include the power to add, to amend, vary or rescind notifications, orders, rules or bye-laws so issued.

3. **Section 22– Making of rules or bye-laws and issuing of orders between passing and commencement of enactment**

Anything is to be done under the Act or Regulation is given as soon as the act is passed, though not immediately into force but shall not take effect till the commencement of the Act or Regulation.

4. Section 23 – Provisions applicable to making of rules or bye-laws after previous publications

Where, by any Central Act or Regulation, a power to make rules or bye-laws is expressed to be given subject to the condition of the rules or bye-laws being made after previous publication, then the following provisions shall apply, namely:-

- a. The authority having power to make the rules or bye-laws shall publish a draft of the proposed rules or bye-laws for the information of persons likely to be affected thereby.
- b. The publication shall be made in such manner as that authority deems to be sufficient, or, if the condition with respect to previous publication so requires, in such manner as the Government concerned prescribes.
- c. A notice shall be published with the draft specifying a date on or after which the draft will be taken into consideration.
- d. The authority having power to make the rules or bye-laws shall consider the objections and suggestions of the authority whose sanction, approval or concurrence is required with respect to the draft before the date so specified.
- e. The publication in the Official Gazette of a rule or bye-law shall be conclusive proof that the rule or bye-laws has been duly made.

5. Section 24 – Continuation of orders etc, issued under enactments repealed and re-enacted**MISCELLANEOUS****1. Section 25 – Recovery of Fines**

Section 63 to 70 of the Indian Penal Code and the provisions of the Code of Criminal Procedure for the time being in force in relation to the issue and the execution of warrants for the levy of fines shall apply to all fines imposed under any Act, Regulation, rule or bye-laws, unless the Act, Regulation, rule or bye-law contains an express provision to the contrary.

2. Section 26 – Provision as to offence punishable under two or more enactments

Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be punished twice for the same offence.

3. Section 27 – Meaning of Service by post

Where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by:

- a. Properly addressing
- b. Pre paying
- c. Posting by registered post

A letter containing the document to have been effected at the time at which the letter would be delivered in the ordinary course of post.

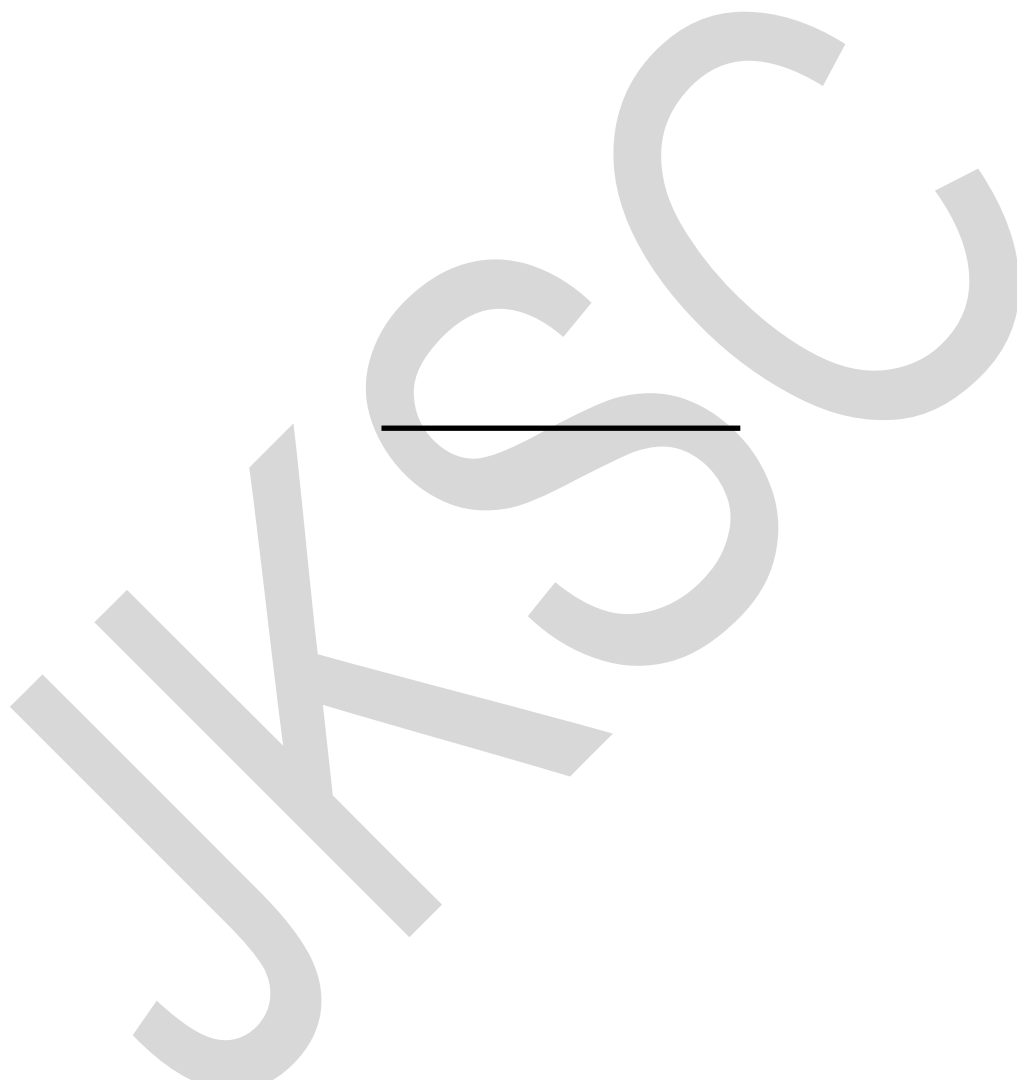
4. Section 3 (28) – Citation of enactments

- a. In any Central Act or Regulation, and in any rule, bye law, instrument or document, made under, or with reference to any such Act or Regulation, any enactment may be cited by reference to the title or short title (if any) conferred thereon or by reference to the number and years thereof, and any provision in an enactment may be cited by reference to the section or sub-section of the enactment in which the provision is contained.

5. Section 29– Saving for previous enactments, rules and bye laws

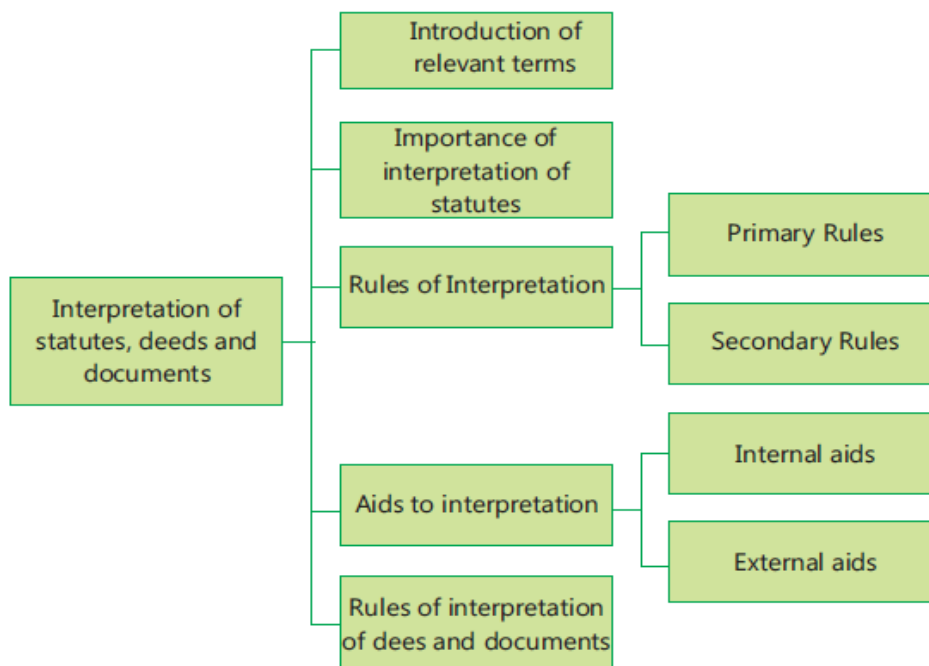
The provisions of this Act respecting the construction of Acts, Regulations, rules or bye-laws made after commencement of this Act shall not affect the construction of any Act, Regulation, rule or bye-law is continued or amended by an Act, Regulation, rule or bye-law made after the commencement of this Act.

6. Section 30 – Application of Act to Ordinances



CHAPTER 4

INTERPRETATION OF STATUTES



- **MEANING OF 'STATUTE':**
 - ✓ **A statute has been defined as 'the written will of the legislature'**. A Statute is a law established by the act of legislative power, i.e., an Act of legislature.
 - ✓ The Constitution of India does not use the term 'Statute' but it uses the term 'law', 'Law' includes any ordinance, order, bye-law, rule, regulations, notification, custom or usage having the force of law.
 - ✓ Thus, Statute or law generally means the laws and regulations of every sort without considering the source from which they emanate.
- **MEANING OF 'INTERPRETATION':**
 - ✓ **Interpretation is the process of ascertaining the true meaning of the words used in a Statute.**
 - ✓ When the language of a Statute is clear, there is no need for the rules of interpretation.
But, in certain cases more than one meaning may be derived from the same word or sentence. It is therefore necessary to interpret the Statute to find out the real meaning of the statute.
- **DOCUMENT**
 - ✓ Generally understood, a document is a paper or other material thing giving information, proof or evidence of anything. The Law defines 'document' in a more technical form. Section 3 of the Indian Evidence Act, 1872 states that 'document' means any matter expressed or described upon any substance by means of letters, figures or marks or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.
 - ✓ **Generally, documents comprise of following four elements :**
 - a) **Matter**—This is the first element. Its usage with the word “any” shows that the definition of document is comprehensive.

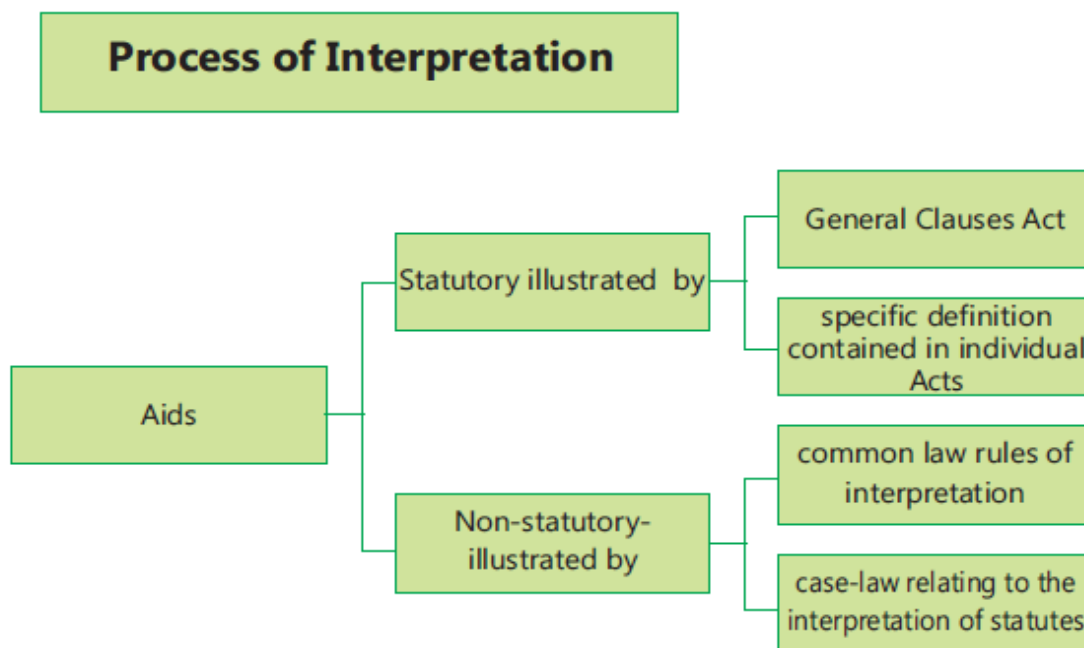
- b) **Record**—This second element must be certain mutual or mechanical device employed on the substance. It must be by writing, expression or description.
- c) **Substance**—This is the third element on which a mental or intellectual elements comes to find a permanent form.
- d) **Means**—This represents forth element by which such permanent form is acquired and those can be letters, any figures, marks, symbols which can be used to communicate between two persons.

• **DIFFERENCE BETWEEN INTERPRETATION AND CONSTRUCTION.**

Interpretation differs from construction. Interpretation is of finding out the true sense of any form and the construction is the drawing of conclusion respecting subjects that lie beyond the direct expression of the text.

Where the Court adheres to the plain meaning of the language used by the legislature, it would be 'interpretation' of the words, but where the meaning is not plain, the court has to decide whether the wording was meant to cover the situation before the court. Here the court would be resorting to what is called 'construction'.

• **PROCESS OF INTERPRETATION**



• **RULE OF INTERPRETATION:**

(A) Primary rules:

1. Rule of Literal Construction,
2. Rule of Reasonable Construction,
3. Rule of Beneficial Construction,
4. Rule of Harmonious Construction,
5. Rule of Exceptional Construction,
6. Rule of Ejusdem Generis

(B) Secondary rules:

1. Noncitur a Sociis,
2. Expressio Unis Est Exclusio Alterius,
3. Contemporanea Expositio

(A) Primary rules:**1. Rule of Literal Construction / Grammatical Construction//,**

1. **Meaning of the word is clear:** Where the words are clear, the language is plain, and only one meaning can be derived, then the words should be followed literally.
The rule is called as 'litera legis', i.e., literal construction of law.
The Court should adopt literal interpretation, unless the language is ambiguous, or literal sense would give rise to an anomaly or defeat the purpose of the Act.
2. **Grammatical meaning:** The language used in a Statute must be construed according to the rules of grammar unless the language is ambiguous or its literal sense gives rise to any anomaly.
3. **Ordinary meaning:** A Statute must be interpreted according to the clear words used. The words and sentences of a Statute must be given their ordinary and natural meaning.
4. **Technical meaning:** It is presumed that words and phrases in a technical legislation have a technical meaning and hence to be interpreted accordingly. However, if a word has no technical meaning, it is given the ordinary meaning.
5. **Trade meaning:** If a provision relates to a particular trade, the words used therein must be given that meaning which everybody conversant with that trade understands. Such meaning may differ from the ordinary or popular meaning.
6. **Implications of the rule**
 - (a) Every word to be given a meaning:
 - (b) Courts cannot legislate: If a matter has not been provided for in a Statute, it cannot be supplied by the Courts even if the Court finds that it should have been so provided.
 - (c) No reference to legal decisions: Literal construction involves arriving at the meaning of the words without reference to legal decision.

2. Rule of Reasonable construction /Logical Construction /HBCSHC

1. **Narrow interpretation fails to achieve the purpose:** Where the words of a Statute appear to be prima facie clear and unambiguous, but on close scrutiny they may turn out to be deficient in carrying out the intention of the legislature, reasonable construction should be resorted. If the ordinary meaning contradicts with the apparent purpose of the enactment, the Court may modify the meaning of the words and even the structure of the sentence
2. **Giving effect to the intention of the legislature:** While interpreting a Statute, it is the duty of the Court to find out the intention of the Statute. It has to look into the circumstances, which prevailed at the time when the Statute was passed and which necessitated the passing of the Statute.
3. **Sensible meaning:** The words of a statute must be constructed so as to lead to a rational, fair and sensible meaning. Ordinarily, the words of a Statute are given their ordinary and natural meaning. However, if the words are ambiguous, an attempt must be made to discover the intent of the legislature.

3. Haydon's Rule of Interpretation or "The Mischief Rule" or Rule of Beneficial Construction of this rule

1. **Ambiguous words:** Haydon's Rule may be applied if the words used in a Statute are ambiguous and are capable of more than one meaning. -
2. **Literal interpretation defeats the object of the Act:** If giving literal meaning to the words would defeat the object of the legislature, the Court may depart from the dictionary meaning and instead give it a meaning which will advance the remedy and suppress the mischief.
3. **Extended meaning is required:** If the object of a Statute is public safety, words can be given a more extended meaning as compared to their ordinary meaning to give effect to that object. Similarly, the words in a penal Statute can be given a more extended meaning in order to suppress the mischief.

Essence of the rule/Methodology

1. **Consideration of background of the statute:** The Court shall consider the historical background of the Statute, common law before the Statute was enacted and the mischief, which the Statute intended to remedy. In particular, the Court shall consider the following four matters:
 - (a) What was the law before making of the Act?
 - (b) What was the mischief or defect, which the law did not provide?
 - (c) What is the remedy that the Act has provided?
 - (d) What is the reason for the remedy?
2. **Suppress the mischief and advance the remedy:** After the Court has considered the above four matters, the rule requires the Court to adopt that construction which will suppress the mischief and advance the remedy.

4. Rule of Harmonious Construction

Basis of the Rule:

When there is a conflict between two or more provisions, harmonious construction is to be adopted.

Essence of Harmonious Construction:

1. **Provisions to be reconciled:** Where two provisions relate to the same subject matter, these should be reconciled and effect must be given to both of them. Any inconsistency either within a section or between two different sections of a Statute must be avoided.
2. **Act to be read as a whole**

Harmonious construction - Methodology:

1. Harmonize the provisions:

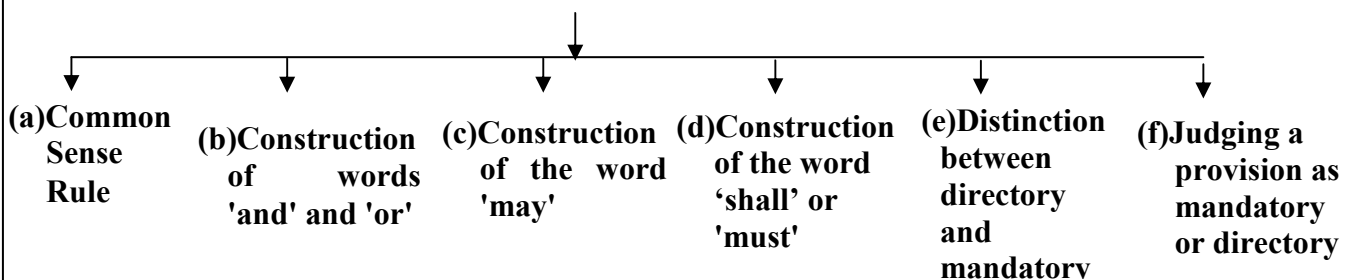
- (a) Any head-on clash between them should be avoided.
- (b) If it is not possible to harmonize the two conflicting provisions, they should be so interpreted that effect is given to all of them.
- (c) One section shall not be allowed to defeat the other provisions of the Act unless it is impossible to harmonize them or to give effect to all the provisions.

2. Course of action if it is impossible to harmonize: If it is impossible to harmonize the two conflicting provisions, the recourse shall be as follows:

- (a) The provision enacted or amended latter in point of time shall prevail.
- (b) The Court shall find out which provision is more general and which is more specific. The more specific provision shall be so construed as to exclude the more general provision.

5. Rule of Exceptional Construction

The rule of exceptional construction may be studied under the following heads:



(a) Common Sense Rule:

Full effect must be given to every word contained in a Statute. However, words in a Statute may be eliminated if no sensible meaning can be drawn.

(b) Construction of words 'and' and 'or':

The word 'and' is normally conjunctive, i.e., if two provisions are separated by the conjunction 'and', requirements of both the provisions should be satisfied. If two clauses are separated by the word 'or', satisfying the requirements of any of the two clauses would be sufficient.

(c) Construction of the word 'may'

Directory force: The word 'may' is generally construed to have a directory force only.

Mandatory force: The word 'may' has a mandatory force in the following cases:

- (a) Where the subject involves a discretion coupled with an obligation, i.e., when a power is given, there is duty to discharge the obligation.
- (b) Where a remedy will be advanced and mischief will be suppressed.
- (c) Where giving a directory significance to the word 'may' will defeat the very object of the Act or cause material danger to the public or result in denial of benefit to the public.

(d) Construction of the word 'shall' or 'must'

Mandatory force: The word 'shall' is ordinarily construed to have a mandatory force. Where a provision in the Statute provides for a specific penalty, the Court has no discretion to determine whether such provision is directory or mandatory. It is to be taken as mandatory provision.

Directory force: The word 'shall' has a directory force (a) where it has been used against the Government, unless a contrary intention is manifest in the Statute; or (b) where the intention of the legislature so demands; or (c) where giving it a mandatory interpretation would result in absurd results.

e) Judging a provision as mandatory or directory

Whether a provision is a mere direction or a mandatory command depends upon the purpose of the Act, the intention of the legislature and general inconvenience to the public. Following generalizations may be drawn:

- (a) Prohibitory provisions (i.e., use of negative, words in a provision) imply that the provision is mandatory.
- (b) If the non-compliance of a provision results in penalty, it implies mandatory intention of the Statute.
- (c) If a provision gives a power coupled with a duty, it is mandatory in nature.
- (d) If no public policy is involved, the procedure is treated only as directory.
- (e) Provisions enacted to prevent fraud and mischief is held as mandatory.

6. Rule of Eiusdem Generis

Applicability of the Rule:

For application of the rule, all the following conditions need to be satisfied:

- (a) There must be an enumeration of certain specific words.
- (b) The specific words contained in the enumeration must constitute a class or category.
- (c) The specific words must be of the same kind or nature.
- (d) The specific words must not exhaust the whole category.

Meaning of the rule

1. The term '*Eiusdem Generis*' means of the same class or species'.
2. The rule states that general words following specific words are to be construed with reference to the words preceding them.
3. Where a Statute uses the words 'such as oxen, bulls, goat, cows, buffaloes, sheep, horses, etc.', the word 'etc' cannot include wild animals like lion and tiger. Also, all domestic animals would not be covered. The illustrations given relate to all four legged animals and hence other domestic animals like dogs, cats etc. can be included but not cock or hen has no similarity with the illustrations of other domestic animals given

(B) Secondary Rules:

1. Expression Unius Est Exclusio Alterius

- a) The maxim means that express mention of one thing implies the exclusion of another.
- b) As per this maxim, if two or more things belonging to a particular class are mentioned, other members of that class are silently excluded.

Examples:

- i. Where a Statute refers to 'lands, house and coal mines, other mines except coal mine are excluded and 'other mines' cannot be made to fall within the general term 'lands'.

2. Noscitur A Sociis (Construction of associated words)

- a) The meaning of a word is derived from its associate words, i.e., the meaning of a word is to be judged by the company it keeps. The words in a Statute are construed with reference to the words found in immediate connection with them.
- b) If two or more words which are capable of analogous (similar or parallel) meaning are grouped together, they should be understood in cognate sense, i.e., they take their colour from each other and are given a similar or related meaning.

3. Contemporanea Expositio

Usage in the past: The maxim '*Contemporanea Expositio*' means interpreting a Statute by reference to the exposition it has received from contemporary authority. Where the language is ambiguous, the Court shall pay due regard to the interpretation that the language of the Act has received over a long period of time. Expose the old laws to new circumstances and technology.

• **AIDS OF INTERPRETATION**

(A) Internal Aids:

1. Title,
2. Preamble,
3. Headings & title of chapter
4. Marginal notes
5. Definitional Clauses
6. Illustrations
7. Proviso
8. Explanation
9. Schedules
10. Read the Statute as a Whole

(B) External Aids:

1. Historical setting
2. Consolidating Statutes and previous law.
3. Usage
4. Earlier & Later Acts and Analogous Acts
5. Dictionary Definitions
6. Use of Foreign Decisions

Internal Aids of Interpretation

(1) Title

1. The purpose of short title is to identify the enactment and not to describe it. Short title is not used for interpreting the Statute.
2. The long title is a part of the Act and describes it..

(2) Preamble

1. The preamble expresses the (scope) and (object) of the Act. It is a part of the Act. It state the reasons for creation of the Act and the evil which it wants to suppress.
2. If the wording of a Statute is ambiguous, the preamble can and ought to be referred to ascertain the object and scope of the Act, in order to arrive at the proper construction. It can explain and elucidate the enactment.

(3) Headings and title of a chapter

1. A number of sections covering a particular subject are grouped together in the form of a chapter. Each chapter is given a heading, which represents the subject matter dealt with the chapter.
2. The headings may be referred to for the purpose of construction of the enactment or its parts. However, headings cannot restrict the clear meaning of an enactment. Further, heading to one group of sections cannot be used to interpret another group of sections.
3. There is a controversy regarding the weight age to be given to headings while interpreting a Statute.

The position is as under:

- (a) According to one view, a heading is a preamble to the provisions following it and therefore the heading is treated as a key to interpretation of sections covered by it.
- (b) The other view considers that heading may be referred to only when the enacting words are ambiguous.

(4) Marginal notes

1. Generally, marginal notes are printed at the left hand margin of the sections in an enactment. But, Acts published by private publishers show the marginal notes at the top of the section. Marginal notes are essentially a heading/title to the section. Marginal notes summarize the effect of a section.
2. In India, the Courts have given different views regarding the use of marginal notes in construction of a Statute. Many Courts have held that marginal notes cannot be referred to for the purpose of constructing a Statute. However, certain Courts have held that marginal notes may be used to understand the legislative intent, if the words of a Statute are ambiguous. But marginal notes cannot limit or restrict the meaning of clear words used in the section.

(5) Definitional Clauses**Statutory definition**

1. A definition clause performs the following two functions: (a) It acts as a key to proper interpretation and thus avoids ambiguities, (b) It shortens the language and avoids repetition.
2. Where the meaning of a word or expression is defined in a Statute, it is that meaning alone which must be given to it. The Court cannot ignore the statutory definition and speculate as to what should be the true meaning of the expression, unless there is anything repugnant in the context.
3. A word defined in the Act bears the same meaning throughout the Act, unless by doing so any repugnancy is created in the subject or context.
4. Where a definition includes the words 'unless the context otherwise'
5. Where the language used in the definition itself is ambiguous, the definition should be construed in the light of the purpose of the Act and having regard to the ordinary connotation of the word defined.

Exhaustive definition

1. When a word is defined to 'mean' something, the definition is prima facie restrictive and exhaustive & the meaning of such word must be restricted to the meaning given in the definitional clause.
2. Where a definition is in the form of 'mean and include' something, the definition is exhaustive and restrictive.

Inclusive definition

1. Where an expression is defined to 'include' something, the definition is prima facie extensive and its meaning can also include something else in addition to the meaning assigned to it in the definitional clause.
2. A definition in the form of 'is deemed to include' is an inclusive definition. As such, a legal fiction is created and the expression is deemed to include something, which it actually does not mean, when construed in a literal sense.
3. A definition in the form of 'to apply and to include' is an inclusive definition.

(6) Illustrations

1. Illustrations are examples appended to a section. Illustrations are inserted to clarify the scope and object of the section.
2. Illustrations are considered in constructing a neither curtail nor expand the ambit of the section. If there is a conflict between the section and illustration, the section will prevail.

(7) Proviso

1. The normal function of a proviso is to except something out of the enactment or to qualify something stated in the enactment which would be within its purview if the proviso were not there. The effect of the proviso is to qualify the preceding enactment which is expressed in terms which are too general. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment.
2. Distinction between Proviso, exception and saving Clause
There is said to exist difference between provisions worded as 'proviso', 'Exception', or 'Saving Clause'.
 - ✓ **'Exception'** is intended to restrain the enacting clause to particular cases.
 - ✓ **'Proviso'** is used to remove special cases from general enactment and provide for them specially.
 - ✓ **'Saving clause'** is used to preserve from destruction certain rights, remedies or privileges already existing

(8) Explanation

1. An explanation is generally a clarification of the legislative mind. It explains the meaning of the words contained in the section.
2. Object of an explanation: The purpose of explanation is to
 - (a) include something within a section or to exclude something from it; or
 - (b) clarify any ambiguity in the main section; or
 - (c) explain the meaning the section; or
 - (d) make the main section more meaningful and purposeful.

(9) Schedules

The Schedules form part of an Act. Therefore, they must be read together with the Act for all purposes of construction. However, the expressions in the Schedule cannot control or prevail over the expression in the enactment. If there appears to be any inconsistency between the schedule and the enactment, the enactment shall always prevail.

(10) Read the Statute as a Whole

It is the elementary principle that construction of a statute is to be made of all its parts taken together and not of one part only.

External Aids of Interpretation

(1) Historical setting:

The history of the external circumstances which led to the enactment in question is of much significance in construing any enactment. We have, for this purpose, to take help from all those external or historical facts which are necessary in the understanding and comprehension of the subject matter and the scope and object of the enactment.

(2) Consolidating Statutes & Previous Law :

The Preambles to many statutes contain expressions such as “An Act to consolidate” the previous law, etc. In such a case, the Courts may stick to the presumption that it is not intended to alter the law. They may solve doubtful points in the statute with the aid of such presumption in intention, rejecting the literal construction.

(3) Usage :

Usage is also sometimes taken into consideration in construing an Act. The acts done under a statute provide quite often the key to the statute itself. It is well known that where the meaning of the language in a statute is doubtful, usage – how that language has been interpreted and acted upon over a long period – may determine its true meaning.

(4) Earlier & Later Acts and Analogous Acts:

Exposition of One Act by Language of Another :

The general principle is that where there are different statutes in ‘parimateria’ (i.e. in an analogous case), though made at different times, or even expired and not referring to each other, they shall be taken and construed together as one system and as explanatory of each other.

(5) Dictionary Definitions :

- ✓ First we have to refer to the Act in question to find out if any particular word or expression is defined in it. Where we find that a word is not defined in the Act itself, we may refer to dictionaries to find out the general sense in which that word is commonly understood.
- ✓ However, in selecting one out of the several meanings of a word, we must always take into consideration the context in which it is used in the Act.

(6) Use of Foreign Decisions:

Foreign decisions of countries following the same system of jurisprudence as ours and given on laws similar to ours can be legitimately used for construing our own Acts. However, prime importance is always to be given to the language of the Indian statute. Further, where guidance can be obtained from Indian decisions, reference to foreign decisions may become unnecessary.

RULES OF INTERPRETATION/CONSTRUCTION OF DEEDS AND DOCUMENTS

1. Find out what a reasonable man, who has taken care to inform himself of the surrounding circumstances of a deed or a document, and of its scope and intendments, would understand by the words used in that deed or document.
2. The same word cannot have two different meanings in the same document, unless the context compels the adoption of such a rule.
3. Ascertain the intention of the parties to the instrument after considering all the words in the document/deed concerned in their ordinary, natural sense. For this purpose, the relevant portions of the document have to be considered as a whole.
4. It may also happen that there is a **conflict between two or more clauses** of the same document. An effort must be made to resolve the conflict by interpreting the clauses so that all the clauses are given effect to. If, however, it is not possible to give effect to all of them, then it is the earlier clause that will over-ride the latter one. Similarly, if **one part of the document is in conflict with another part**, an attempt should always be made to read the two parts of the document harmoniously, if possible. If that is not possible, then the earlier part will prevail over the latter one which should, therefore, be disregarded.