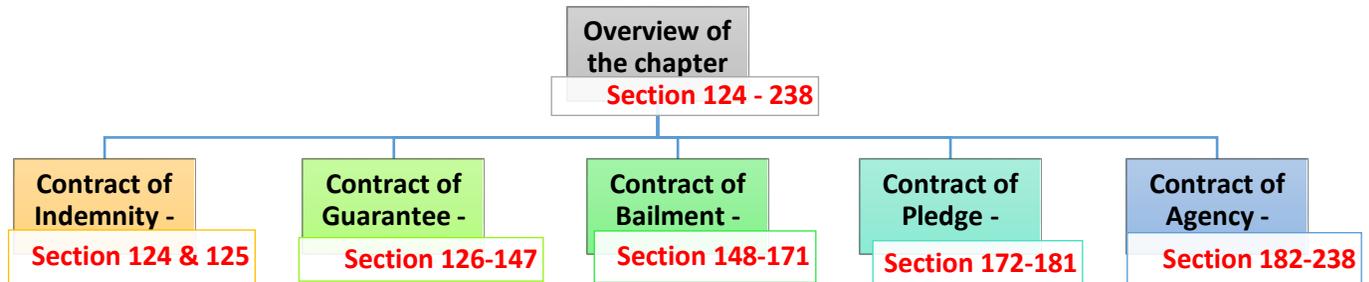


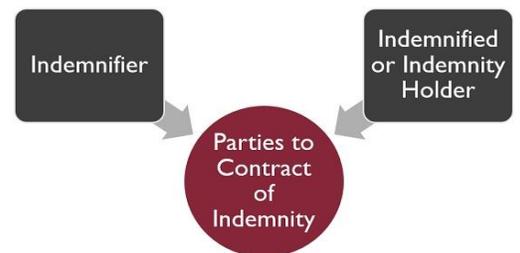
# Indian Contract Act, 1872



## Contract of Indemnity – Section 124 and 125

### A) Meaning of Contract of Indemnity – Section 124

- Contract of indemnity can be defined as a legal [contract](#) between two persons whereby one party commits to indemnify, i.e. to compensate or reimburse, the loss incurred to the other party, by the conduct of the party, who is making the promise or by the conduct of the third party.
- Person who promises to save the other party from loss is called as **indemnifier**
- Person who is promised to be saved against loss is called as **indemnity holder**.
- The contract of indemnity is a form of **contingent contract**
- The object of contract of Indemnity should not be unlawful.**



#### Examples –

- Beta Insurance Company entered into a contract with Alpha Ltd., to compensate for loss caused by accidental fire to the company's stock of goods up to Rs. 50,00,000 for a premium of Rs. 1,00,000. This is an express form of a contract of indemnity.
- Baburao asks Shyam to beat Raju promising to indemnify Shyam against the consequences. Shyam beats Raju and is fined rupees 1 lakh. Now, Shyam cannot claim this amount from Baburao because the object of the agreement is illegal

**Note – Contract of Fire insurance and Contract of Marine Insurance are examples of contract of Indemnity but Contract of Life Insurance is not a contract of indemnity**

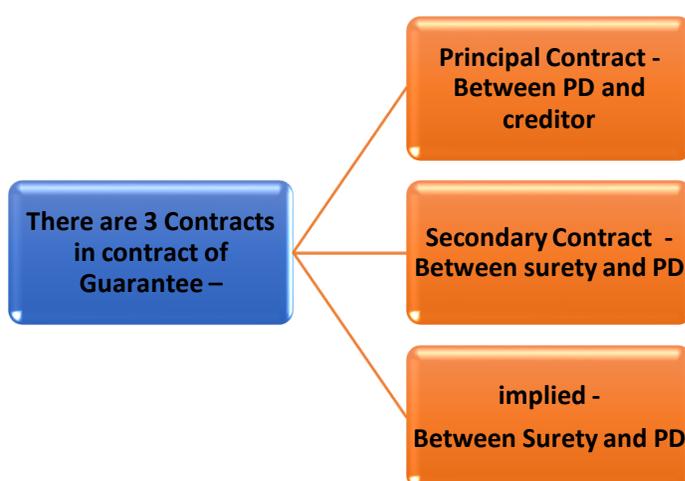
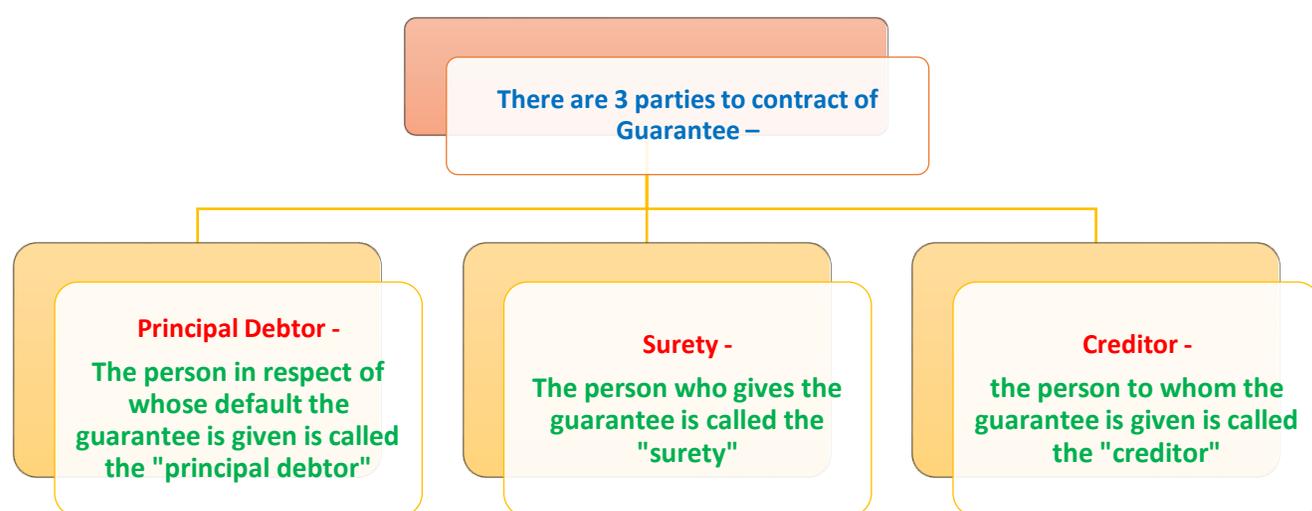
### B) Rights of Indemnity Holder – Section 125

- Any kind of **damages** which the indemnity holder is bound to pay in any suit concerned with any issue to which the contract of indemnity applies.
- Any **expenses which the indemnity holder is bound to pay**, so as to bring or defend the suit.
- All the amount which the indemnity holder has paid, in **connection to the settlement** of the suit.

## Contract of Guarantee – Section 126 - 147

### Meaning of Contract of Guarantee – Section 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.
- A guarantee may be either oral or written.



**Example –**  
Bahubali advances a loan of rupees 10,000 to Bhallal Dev. Kattappa who is the boss of Bhallal Dev promises that in case Bhallal Dev fails to repay the loan, then he will repay the same. In this case of a contract of guarantee, Bahubali is the Creditor, Bhallal Dev the principal debtor and Kattappa is the Surety.

**Consideration under contract of guarantee – Section 127**

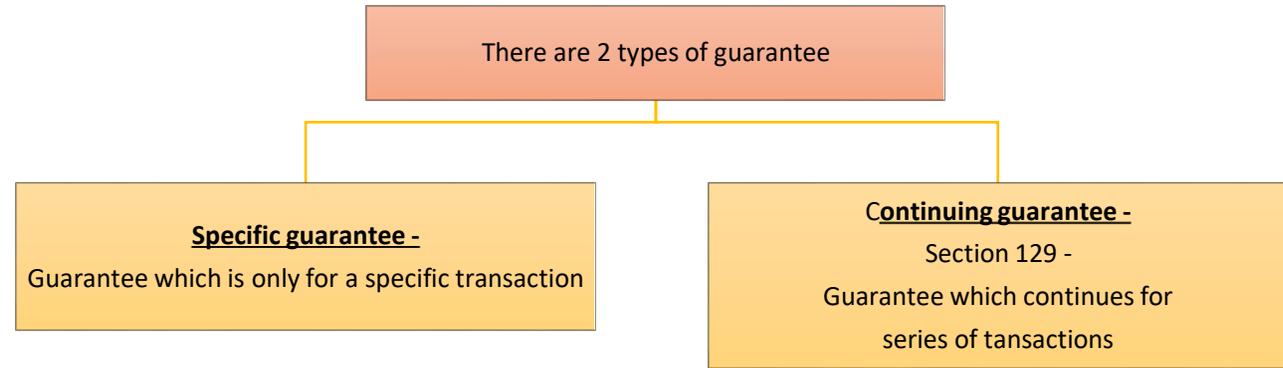
Anything done, or any promise made, for the benefit of the principal debtor, may be a sufficient consideration to the surety for giving the guarantee.

**Example –**  
Mari requests Salman to sell and deliver to him goods on credit. Salman agrees to do so, provided Sunil will guarantee the payment of the price of the goods. Sunil promises to guarantee the payment in consideration of Salman 's promise to deliver the goods to Mari. This is a sufficient consideration for Sunil 's promise.

**Surety's liability – Section 128**

- The liability of the surety is **co- extensive** with that of the principal debtor, unless it is otherwise provided by the contract.
- In simple words, the surety is liable for what the PD is liable.
- **Liability of surety is secondary**

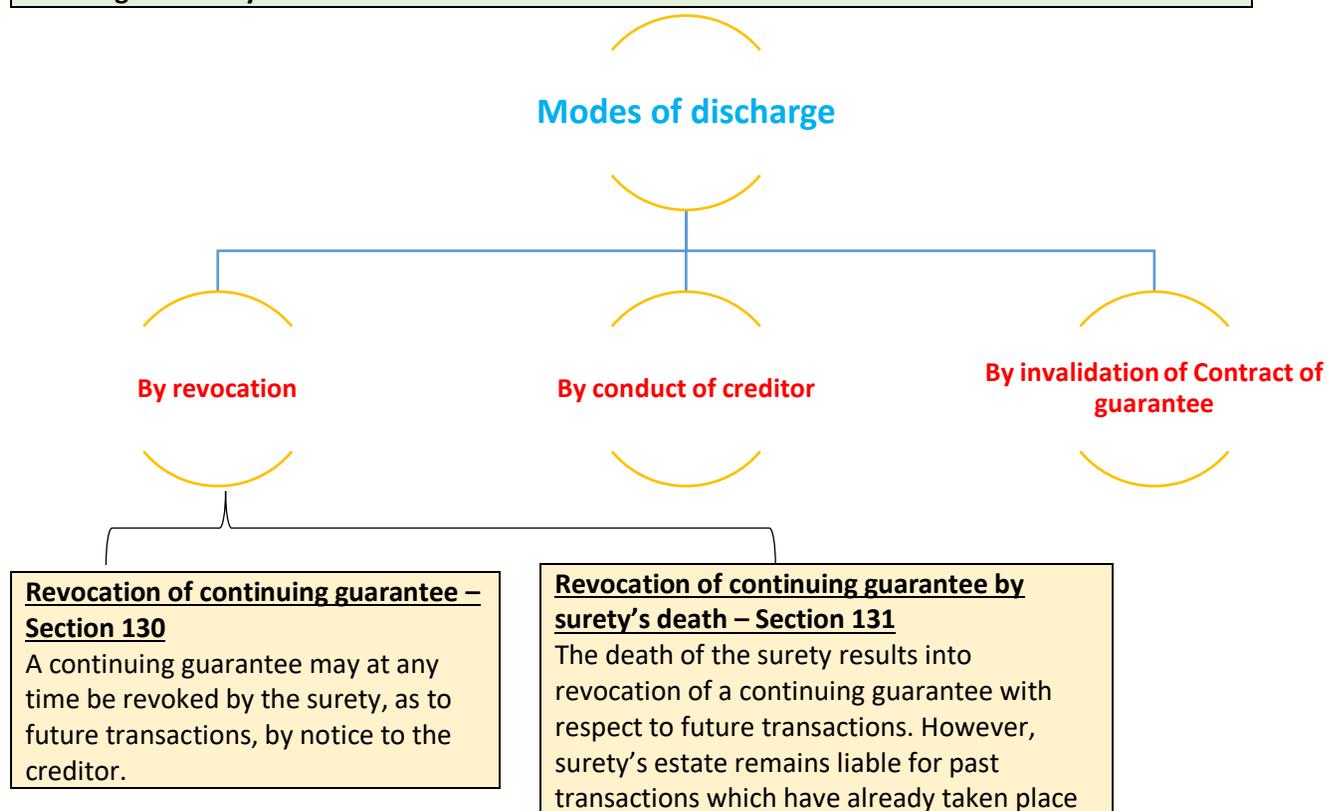
**Types of guarantee –**



**Liability of surety –**

- 1) In case of specific guarantee – limited only up to the particular transaction
- 2) In case of continuing guarantee – liability continues till the discharge of all the transactions or withdrawal of all the transactions

**Discharge of surety –**



**Liability of two persons, primarily liable, not affected by arrangement between them that one shall be surety on others default – Section 132**

Where two persons contract with a third person to undertake a certain liability, and also contract with each other that one of them shall be liable only on the default of the other, the third person not being a party to such contract, the liability of each of such two persons to the third person under the first contract is not affected by the existence of the second contract, although such third person may have been aware of its existence.

**Example –**

- a) Salman and Shahrukh make a joint and several promissory note to Amir.
- b) Salman makes it, in fact, as surety for Shahrukh, and Amir knows this at the time when the note is made.
- c) The fact that Salman, to the knowledge of Amir, made the note as surety for Shahrukh, is no answer to a suit by Amir against Salman upon the note. In simple words, Amir can recover amount from Salman as well as Shahrukh.

**1) Discharge of surety by the conduct of the creditor –**

- **Discharge of surety by variance in terms of contract. – Section 133**

Any changes made in the terms of the contract between the principal debtor and the creditor without the surety's consent, discharges the surety as to transactions **subsequent to the change.**

**Examples –**

- 1) Akshay becomes surety to Chunkey for Bilal conduct as a manager in Chunkey's bank. Afterwards, Bilal and Chunkey contract, without Akshay's consent, that Bilal's salary shall be raised, and that he shall become liable for one-fourth of the losses on overdrafts. Bilal allows a customer to overdraw, and the bank loses a sum of money. Akshay is discharged from his suretyship by the variance made without his consent and is not liable to make good this loss.
- 2) Chunkey agrees to appoint Bilal as his clerk to sell goods at a yearly salary, upon Akshay's becoming surety to Chunkey for Bilal's duly accounting for moneys received by him as such clerk. Afterwards, without Akshay's knowledge or consent, Chunkey and Bilal agree that Bilal should be paid by a commission on the goods sold by him and not by a fixed salary. Akshay is not liable for subsequent misconduct of Bilal.

3) Chunkey contracts to lend Bilal 5,000 rupees on the 1st March. Akshay guarantees repayment. Chunkey pays the 5,000 rupees to Bilal on the 1st January. Akshay is discharged from his liability, as the contract has been varied.

- **Discharge of surety by release or discharge of principal debtor – Section 134**

The surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released, or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor.

- **Discharge of surety when creditor compounds with, gives time to, or agrees not to sue, principal debtor – Section 135**

A contract between the creditor and the principal debtor, by which the creditor **makes a composition (settlement)** with principal debtor, **or promises to give time** to principal debtor for repayment, **or promises not to sue** the principal debtor, then the surety will be discharged. However, surety will not be discharged if he assents to such terms.

**Cases where surety is not discharged – 136 to 138**

- ✓ **Case 1 = Surety not discharged when agreement made with third person to give time to principal debtor – Section 136**

Where a contract to give time to the principal debtor is made by the creditor with a third person, and not with the principal debtor, the surety is not discharged.

- ✓ **Case 2 = Creditor's forbearance (delay) to sue does not discharge surety – Section 137**

Mere forbearance on the part of the creditor to sue the principal debtor or to enforce any other remedy against him does not, in the absence of any provision in the guarantee to the contrary, discharge the surety.

- ✓ **Case 3 = Release of one co-surety does not discharge others – Section 138**

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

- **Discharge of surety of creditor's act or omission impairing surety's eventual remedy – Section 139 –**

If the creditor does any act which is inconsistent with the rights of the surety, or omits to do any act which his duty to the surety requires him to do, and the eventual remedy of the surety himself against the principal debtor is thereby impaired, the surety is discharged.

- **Loss of security – Section 141**

If the creditor parts with or loses any security given to him at the time of the guarantee, without the consent of the surety, the surety is discharged from liability to the extent of the value of the security.

**2) Discharge of surety by invalidation of Contract of guarantee**

- **Guarantee obtained by misrepresentation – Section 142**

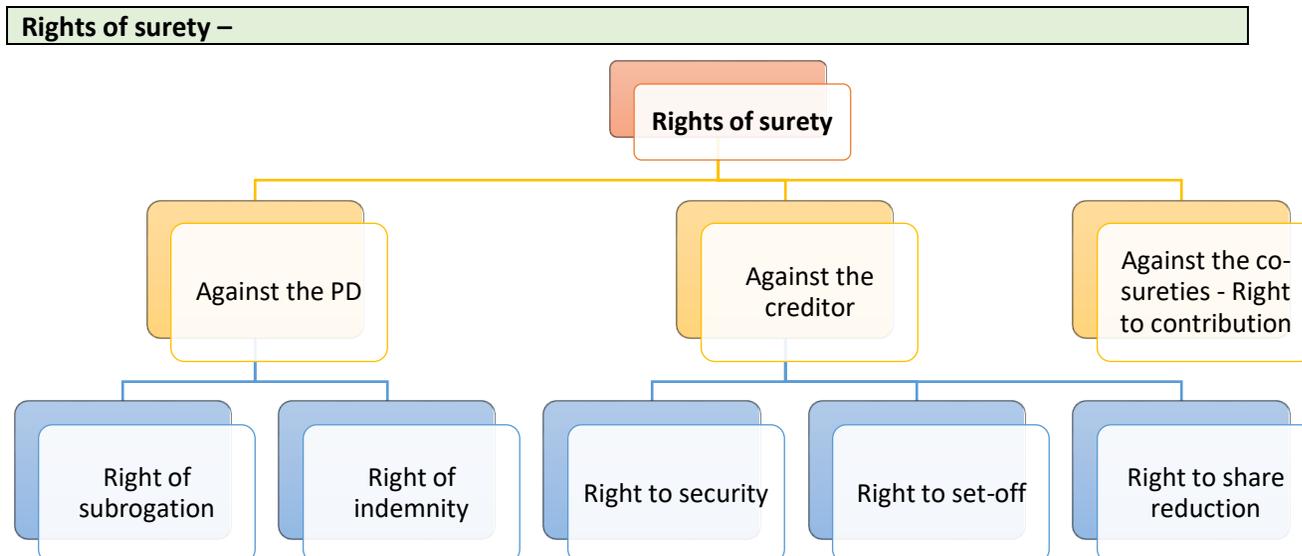
When a misrepresentation is made by the creditor or with his knowledge or consent, relating to a material fact in the contract of guarantee, the contract is invalid

- **Guarantee obtained by concealment – Section 143**

When a guarantee is obtained by the creditor by means of keeping silence regarding some material part of circumstances relating to the contracts, the contract is invalid

- **Failure of co-surety to join as a surety – Section 144**

When a contract of guarantee provides that a creditor shall not act on it until another person has joined in it as a co-surety, the guarantee is not valid if that other person does not join.



**A) Rights against Principal Debtor –**

**1) Rights of subrogation – Section 140**

If surety has made the payment to creditor on behalf of PD then surety will have all the rights that creditor had against the PD

**2) Right of indemnity – Section 145**

In every contract of guarantee there is an implied promise by the principal debtor to indemnify the surety, and the surety is entitled to recover from the principal debtor whatever sum he has rightfully paid under the guarantee, **but no sums which he has paid wrongfully.**

**B) Rights Against the creditor –**

**1) Surety's right to benefit of creditor's securities – Section 141**

- A surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not;
- And if the creditor loses, or, without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security.

**2) Right to set off –**

if the creditor sues the surety, for the payment of principal debtor's liability then the surety may have the benefit of the set off, if any, that the PD had against the creditor.

**3) Right to share reduction –**

The surety has to claim the proportionate reduction in his liability if the PD becomes insolvent

**C) Rights Against Co-sureties –**

**1) Co-sureties liable to contribute equally – Section 146**

Where two or more persons are co-sureties for the same debt or duty, either jointly or severally, and whether under the same or different contracts, and whether with or without the knowledge of each other, the co-sureties, in the absence of any contract to the contrary, are liable, as between themselves, to pay each an equal share of the whole debt, or of that part of it which remains unpaid by the principal debtor

**Examples –**

- Anil, Bilal and Chunkey are sureties to Dinesh for the sum of 3,000 rupees lent to Mukesh. Mukesh makes default in payment. Anil, Bilal and Chunkey are liable, as between themselves, to pay 1,000 rupees each.
- Anil, Bilal and Chunkey are sureties to Dinesh for the sum of 1,000 rupees lent to Mukesh, and there is a contract between Anil, Bilal and Chunkey that Anil is to be responsible to the extent of one-quarter, Bilal to the extent of one-quarter, and Chunkey to the extent of one-half. Mukesh

makes default in payment. As between the sureties, Anil is liable to pay 250 rupees, Bilal 250 rupees, and Chunkey 500 rupees.

#### D) Liability of co-sureties bound in different sums – Section 147

Co-sureties who are bound in different sums are liable to pay equally as far as the limits of their respective obligations permit.

Examples –

- ✓ A, B and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of each 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 30,000 rupees. A, B and C are each liable to pay 10,000 rupees.
- ✓ A, B and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 40,000 rupees. A is liable to pay 10,000 rupees, and B and C 15,000 rupees each.
- ✓ A, B and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 70,000 rupees. A, B and C have to pay each the full penalty of his bond.

### Contract of Bailment – Section 148-171

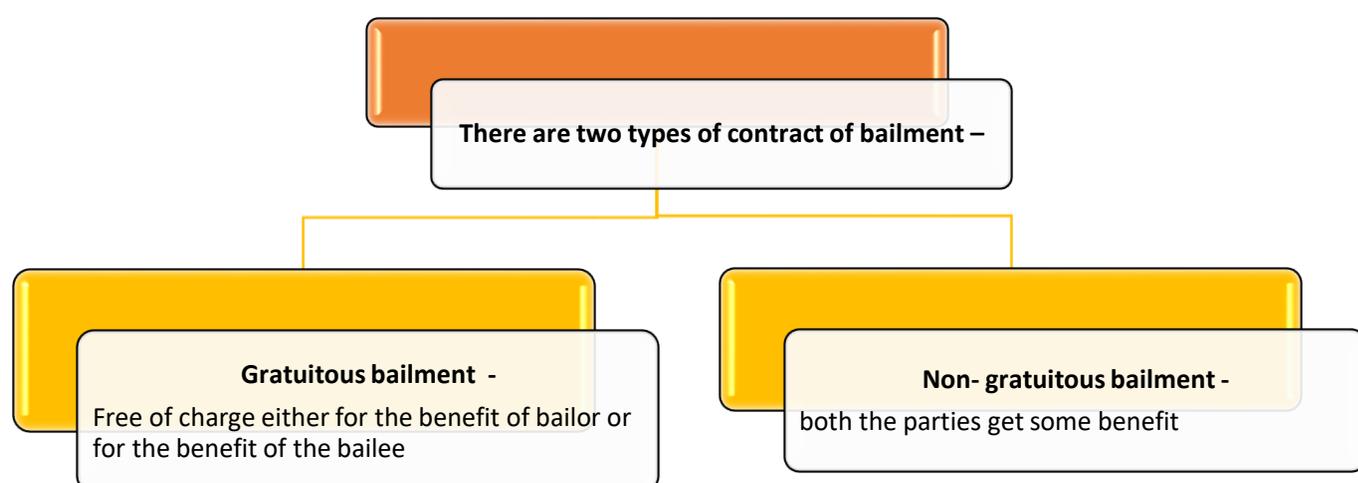
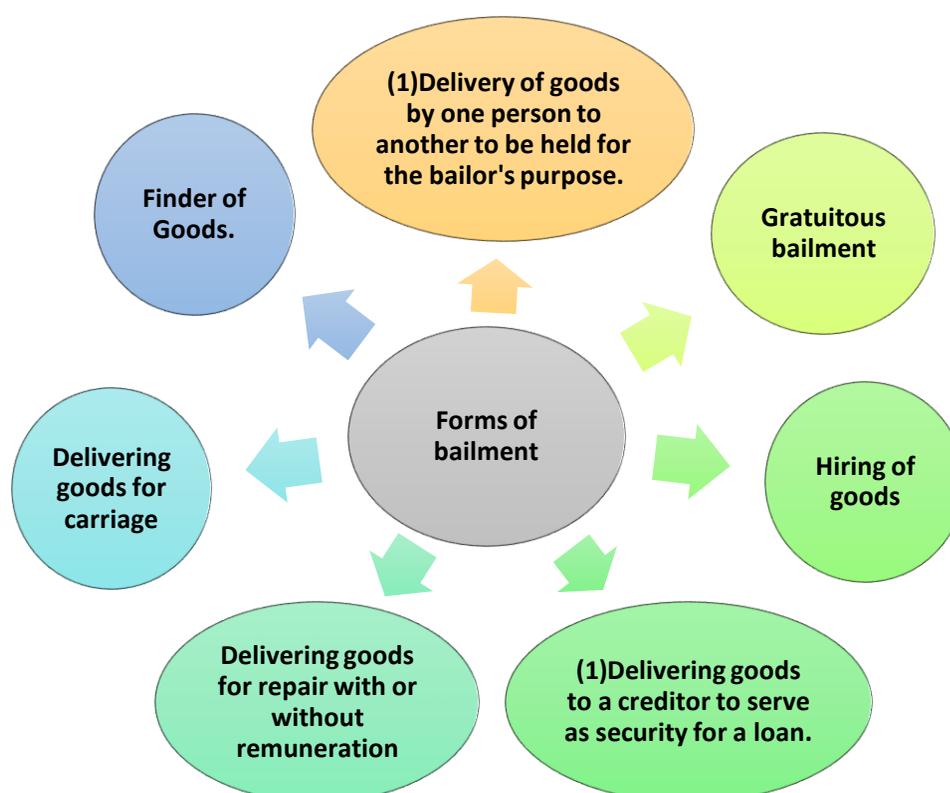
#### Meaning of Bailment – Section 148

- 1) A bailment is a transaction whereby one person delivers goods to another person for some purpose, upon a contract that they are, when the purpose is accomplished to be returned or otherwise disposed of according to the directions of the person delivering them
- 2) Bailment is an act of delivering goods to a bailee for a particular purpose, without transfer of ownership.
- 3) Bailment is derived **from French word 'ballier' which means 'to deliver'**
- 4) The person who delivers the goods is called the bailor and the person to whom they are delivered is called the bailee.
- 5) The ownership of the goods remains with the bailor, the bailee getting only the possession

#### Essential elements of contract of bailment –

1. Contract
2. Delivery of goods and delivery can be –
  - a) Actual delivery
  - b) Symbolic delivery
  - c) Constructive delivery
3. There should be purpose
4. Possession
5. Return of goods

#### Forms of bailment –



**Duties of bailor –**

**A) To disclose faults in the goods – Section 150**

- It is the duty of the bailor to disclose to the bailee faults in the goods bailed, of which the bailor is aware
- The bailor is bound to disclose to the bailee faults which materially interfere with the use of them, or expose the bailee to extraordinary risks
- And if he does not make such disclosure, he is responsible for damage arising to the bailee directly from such faults
- If such goods are bailed for hire, the bailor is responsible for such damage, whether he was or was not aware of the existence of such faults in the goods bailed

**B) To bear extra-ordinary expenses – Section 158**

- It is the duty of the bailor to pay extra ordinary expenses to bailee if the bailment is non-gratuitous
- It is the duty of the bailor to pay all the expenses to the bailee in case of gratuitous bailment

**C) Duty to indemnify bailee for premature termination – Section 159**

The bailor should compensate the bailee for the loss or damage suffered by the bailee that is in excess of the benefit received in case where bailor has lent the goods gratuitously and decides to terminate the bailment before the expiry of period of bailment.

**D) The bailor is responsible to the bailee for any loss which the bailee may sustain - Section 164**

**E) Duty to take the goods back –**

- It is the duty of the bailor to receive the goods back.
- If he does not receive the goods back, bailor is liable to compensate bailee for all the necessary expenses incurred.

**Duties of bailee –**

**A) To take proper care of goods – Section 151**

- According to **section 151**, it is the duty of a bailee to take care of goods bailed to him
- Bailee should take care of these goods as an ordinary man will take care of his goods of the same value, quality, and quantity
- Thus, if the bailee takes due care of goods then he will not be liable for any loss, deterioration of such goods.
- Also, the bailee needs to take the same degree of care of goods whether the bailment is for reward or gratuitous.
- However, the bailee is not liable for any loss due to the happening of any act by God or public enemies though he agrees to take special care of the goods.

**B) Not to make unauthorized use of goods bailed –**

- As per **section 153**, the Bailee shall not make any unauthorized use of goods bailed.
- In case he makes any unauthorized use, then bailor can terminate the bailment.
- Bailor can also claim for damages caused to goods bailed due to unauthorized use as per **Section 154**.

**C) Keeps goods separate from his own goods –**

- 1) The bailee needs to keep the goods separately from his own goods.
- 2) He should not mix the goods under bailment with his own goods.
- 3) In case bailee mixes the goods with his own goods without the consent of the bailor, then:
  - a) Bailor also has an interest in the mixture
  - b) If the goods can be separated or divided, the property in the goods remains with both the parties.
  - c) But, the bailee bears the expenses of separation or any damages arising from the mixture.
  - d) If it is not possible to separate the goods, the bailee shall compensate the bailor for the loss of goods.

**D) Not to set adverse title –**

A bailee must not set an adverse title to the goods bailed.

**E) Return Goods – Section 160 and 161**

- a) The duty of the bailee is to return the goods without demand on the accomplishment of the purpose or the expiration of the time period.
- b) In case of his failure to do so, he shall be liable for the loss, destruction, deterioration, damages or destruction of goods even without negligence

**F) Return increase or profits – Section 163**

A bailee shall return the goods along with any increase or profit accruing to the goods to the bailor, in the absence of any contract to the contrary. For example, A leaves a hen in the custody of B. The hen gets a chick. B shall deliver the hen along with the chick to A.

**Rights of bailor –**

**1) Right to terminate bailment – Section 153**

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

**2) Return of goods – Section 159**

When the goods are bailed for consideration, the bailor has the right to demand their returns as and when he wants even if he lent them for a specific period of time or purpose.

**3) Right to sue bailee –**

The bailor has three right to sue bailee for enforcing all the liabilities and duties of him and it includes –

- a) Right to claim compensation for loss caused to the goods because of negligence of bailee.

- b) Right to claim damages for unauthorized use of goods.
- c) Right to demand back the goods.
- d) Right to any accretion to the goods bailed.
- e) Right to claim compensation for unauthorized mixing of goods.

**4) Right to file suit against wrong doer – Section 180 & 181**

**Suit by a bailor and bailee against wrong doers – Section 180**

- a) If a third person wrongfully deprives the bailee of the use or possession of the goods bailed, or does them any injury then the bailee is entitled to use such remedies as the owner might have used in the situation if no bailment was made.
- b) Bailee or bailor can file suit against a third person for any damages suffered or injury caused.

**Apportionment of relief or compensation obtained by such suits – Section 181**  
 Whatever is obtained by way of relief or compensation in any such suit shall be distributed between bailor and bailee as per their respective interest.

**Rights of bailee –**

**1) Right to deliver the goods to any one of the joint bailors – Section 165**

If several joint owners bailed the goods, the bailee has a right to deliver them to any one of the joint owners unless there was a contract to the contrary.

**Example: A, B and C are the joint owners of a harvesting combine. They delivered it on hire to D for one month. After the expiry of one month, D may return the “combine” to any one of the joint owners namely, A, B or C.**

**2) Right to deliver the goods to bailor without title –**

If the bailor has no title to the goods, and the bailee in good faith delivers them back to or according to directions of the bailor, the bailee is not responsible to the owner in respect of such delivery.

**3) Right to apply to court to decide the title to the goods – section 167**

If the goods bailed are claimed by the person other than the bailor, the bailee may apply to the court to stop its delivery and to decide the title to the goods.

**Example: Deepika, a dealer in T.V. delivered a T.V. to Rhea for using in summer vacation. Subsequently, Shradha claimed that the T.V. belonged to her as it was delivered only for repairs, to Deepika and thus, Rhea should deliver it to her. In this case, Rhea may apply to the Court to decide the question of ownership of the T.V. so that she may deliver it to the right owner.**

**4) Right of Lien –**

The bailee has a right to exercise lien i.e., to refuse to return the goods to the bailor until his lawful charges are paid to him.

- a) **Particular lien** - Where the bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill in respect of the goods bailed, he has, in the absence of a contract to the contrary, a right to retain such goods until he receives due remuneration for the services he has rendered in respect of them.
- b) **General lien** - A general lien is a type of lien used by the lien-holder to retain any of the debtor’s goods in the possession of the lien-holder until any debt due from the debtor has been paid. Insurance brokers, packers, stockbrokers and bankers have a general lien over the property of their clients or customers

**5) Right to indemnity – Section 166**

- a) Bailee should be indemnified by the bailor for any loss incurred to him by reasons that the bailor was not entitled to make the bailment or to receive back the goods or to give directions in respect to them.
- b) 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

**6) Right to claim compensation in case of faulty goods – Section 150**

Bailee is entitled to claim compensation from the bailor or any loss caused to him due to failure of the bailor to disclose any faults in the goods known to him

**Note –**

If the bailment is for hire, the bailor will be liable to compensate even if he had not knowledge of faults in the goods.

**7) Right to Claim extraordinary damages –**

If bailee is required to incur any extraordinary expenses then he can hold the bailor liable for such expenses.

BASIS FOR COMPARISON	GENERAL LIEN	PARTICULAR LIEN
<b>Meaning</b>	General lien alludes to the right to keep possession of goods belonging to other against general balance of account.	Particular lien implies a right of the bailee to retain specific goods bailed for non-payment of amount.
<b>Availability</b>	Any goods, in respect of which the amount is due to another person.	Only against the goods, in which skill and labor is exercised.
<b>Automatic</b>	No	Yes
<b>Right to sale goods</b>	No right to sale the goods.	In general, there is no right to sell goods, however, the right can be conferred to bailee in special circumstances.
<b>Exercised by</b>	Bankers, Wharfingers, factors, policy brokers, attorneys etc.	Bailee, pledgee, finder of goods, agent, partner, unpaid seller etc.

**Termination of bailment –**

**1. When the period or purpose is over:**

In case the bailment is for a specific period or purpose, it is terminated on the expiry of that period or on the completion of the purpose.

**2. When the bailee makes unauthorized use of the goods:**

In case the bailee makes unauthorized use of the goods bailed, the bailment is voidable at the option of the bailor.

**3. When the subject-matter is destroyed or becomes illegal:**

In case the subject-matter is destroyed or becomes illegal, the bailment is terminated.

**4. At the will of the bailor:**

Where the bailment is gratuitous, it can be terminated merely at the sweet will of the bailor. However, the termination should not cause loss to the bailee in excess of the benefit derived by him. In case the loss exceeds the benefit derived by the bailee, the bailor must compensate the bailee for such a loss.

**5. When the bailor or bailee dies:**

A gratuitous bailment is terminated by the death of the bailor or bailee.

**Finder of goods –**

A) 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.

**B) 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.

**C) 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.
- 5) **A finder of goods has a right to keep the goods with him against the whole world except the true owner.**

### Contract of Pledge – Section 172-182

#### Meaning of pledge – Section 172

- 1) 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**.
- 2) The person who makes such a bailment is called a pledger or **pawnor** and the bailee is known as **pawnee**

#### Essentials elements of 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**

#### Pawnee's rights –

##### A) **Right of retain the goods pledged - Section 173 -**

pawnee has the right to retain the goods pledged till the debt is repaid along with the interest.

##### **Example –**

**Sunny pledges his gold jewelry for some loan from a bank. In such a case bank has all the rights to retain the gold jewelry not only for adjustment of loan amount but also for payment of interest accrued on such loan amount.**

##### B) **Right to retention of pledged goods for subsequent debts - Section 174 –**

The pawnee shall not, in the absence of a contract to that effect, retain the goods pledged for any debt or promise other than the debt or promise for which they are pledged; but such contract, in the absence of anything to the contrary, shall be presumed in regard to subsequent advances made by the pawnee.

##### **Analysis –**

**in simple words, pawnee will have the right to retain only those goods for which debt is outstanding and not to retain the goods which are not subject matter of pledge**

##### C) **Pawnee's right as to extraordinary expenses Incurred - Section 175 –**

Pawnee has the right to claim any extraordinary expenses incurred for the preservation of the goods pledged.

However, pledgee has no right to retain the goods for such expenses.

##### D) **Pawnee's right where pawnor makes default - Section 176 –**

- a) If the pawnor makes default in payment of the debt, or performance, pawnee may retain the goods or sell the goods.
- b) 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.
- c) If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor.

#### Pawnor's Rights –

##### 1. **Right to redeem - Section 177**

- a) If the pawnor makes the repayment of principal as well as interest without any default then in that case, pawnor has the right to redeem the goods which he has pledged.
- b) Even if the pawnor makes default in repayment of principal or interest then also pawnor has the right to redeem the goods pledged before actual sale but in this case pawnor will have to pay additional expenses, if any.

##### 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 non-owner of goods –

##### A) **Pledge by mercantile agents - Section 178**

- a) Where a mercantile agent is in possession of goods or the documents of title to goods with the consent of the owner then any pledge made by him, when acting in the ordinary course of business of a mercantile agent, shall be as valid 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.
- b) Pledge in this case can be effected through pledge of documents like a bill of lading or a railway receipt etc.

**B) 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 (Cancelled) 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.

**C) Pledge by a co-owner in possession –**

Where the goods are owned by many persons then any of the co-owner can pledge the goods with the consent of others.

**D) Pledge by seller or buyer in possession –**

A seller who has the possession of goods after goods have been sold or a buyer who has the possession of goods with the consent of seller before sale can make a valid pledge. Provided, pawnee acts in a good faith and have no knowledge of defect in the title of pawnor.

BASIS FOR COMPARISON	BAILMENT	PLEDGE
<b>Meaning</b>	When the goods are temporarily handed over from one person to another person for a specific purpose, it is known as bailment.	When the goods are delivered to act as security against the debt owed by one person to another person, it is known as the pledge.
<b>Defined in</b>	Section 148 of the Indian Contract Act, 1872.	Section 172 of the Indian Contract Act, 1872.
<b>Parties</b>	The person who delivers the goods is known as the Bailor while the person to whom the goods are delivered is known as Bailee.	The person who delivers the goods is known as Pawnor while the person to whom the goods are delivered is known as Pawnee.
<b>Consideration</b>	May or may not be present.	Always present.
<b>Right to sell the goods</b>	The party whom goods are being delivered has no right to sell the goods.	The party whom goods are being delivered as security has the right to sell the goods if the party who delivers the goods fails to pay the debt.
<b>Use of Goods</b>	The party whom goods are being delivered can use the goods only, for the specified purpose.	The party whom goods are being delivered has no right to use the goods.
<b>Purpose</b>	Safe keeping or repairs, etc.	As security against payment of debt.

**Contract of Agency – Section 182-238**

**Meaning of Principal and agent – Section 182**

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

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

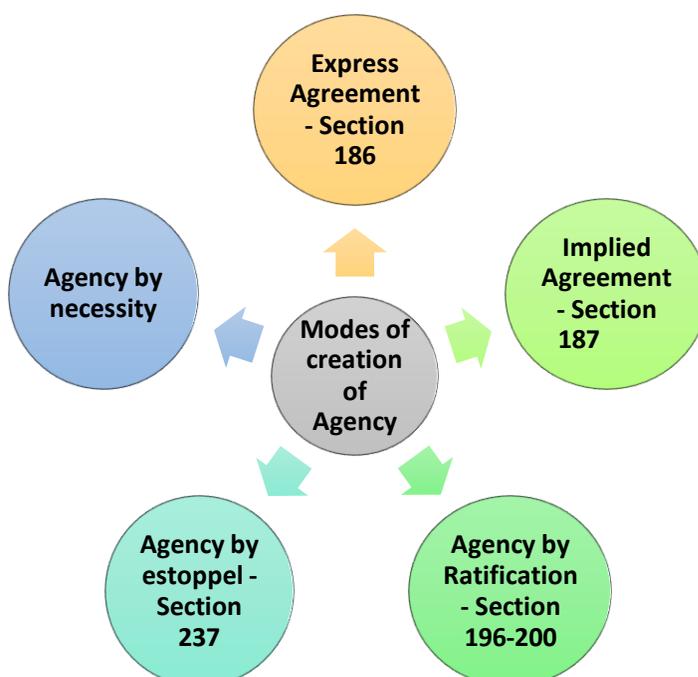
**Who can employ agent? – Section 183**

Any person who is of the **age of majority** according to the law, and who is of **sound mind**, may employ an agent. **In simple words, a person who is capable to contract can appoint agent.**

**Who may be an agent? – Section 184**

Agent may be of sound mind and may be major.

**Note – A minor or a person who is of unsound mind may be appointed as an agent but he will not be liable to any parties in the contract of agency because agent is never a party to the contract.**



**1) Express Authority – Section 186**

An authority is said to be express when it is given by words, spoken or written.

**2) Implied Authority – Section 187**

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) Agency by estoppel – Section 237**

- a) Agency by estoppel arises when say Mr. A makes a representation to a third party, whether by words or conduct, that B is his agent, and subsequently that third party deals with B as A's agent in reliance on such representation. A will not be permitted (is estopped) to deny the existence of the agency if to do so would cause damage (usually financial loss) to that third party.
- b) 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.

**4) Agency by Ratification – Section 196-200**

Agency by ratification arises when the principal ratifies (that is, approves and adopts) an act which has already been done in his name and on his behalf by the agent who in fact, had no actual authority (whether express or implied) to act on the principal's behalf when the act was done.

**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 –**

- ✓ Ratification may be expressed or Implied [Section 197]
- ✓ Knowledge requisite for valid ratification [Section 198]

- ✓ The principal cannot ratify a part of the transaction which is beneficial to him and reject the rest. **[Section 199]**
- ✓ Ratification of unauthorized act cannot injure third person **[Section 200]** –  
**E.g. - A holds a lease from B, terminable on three months' notice. C, an unauthorized person, gives notice of termination to A. The notice cannot be ratified by B, so as to be binding on A.**
- ✓ Ratification should be done within reasonable time.
- ✓ Ratification must be communicated to the other party.
- ✓ 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
- ✓ Ratification should be done of those act for which principal has authority.

#### 5) Agency by necessity –

In certain circumstances, a person who has been entrusted with another's property may have to incur unauthorized expenses to protect or preserve it. This is called an agency of necessity.

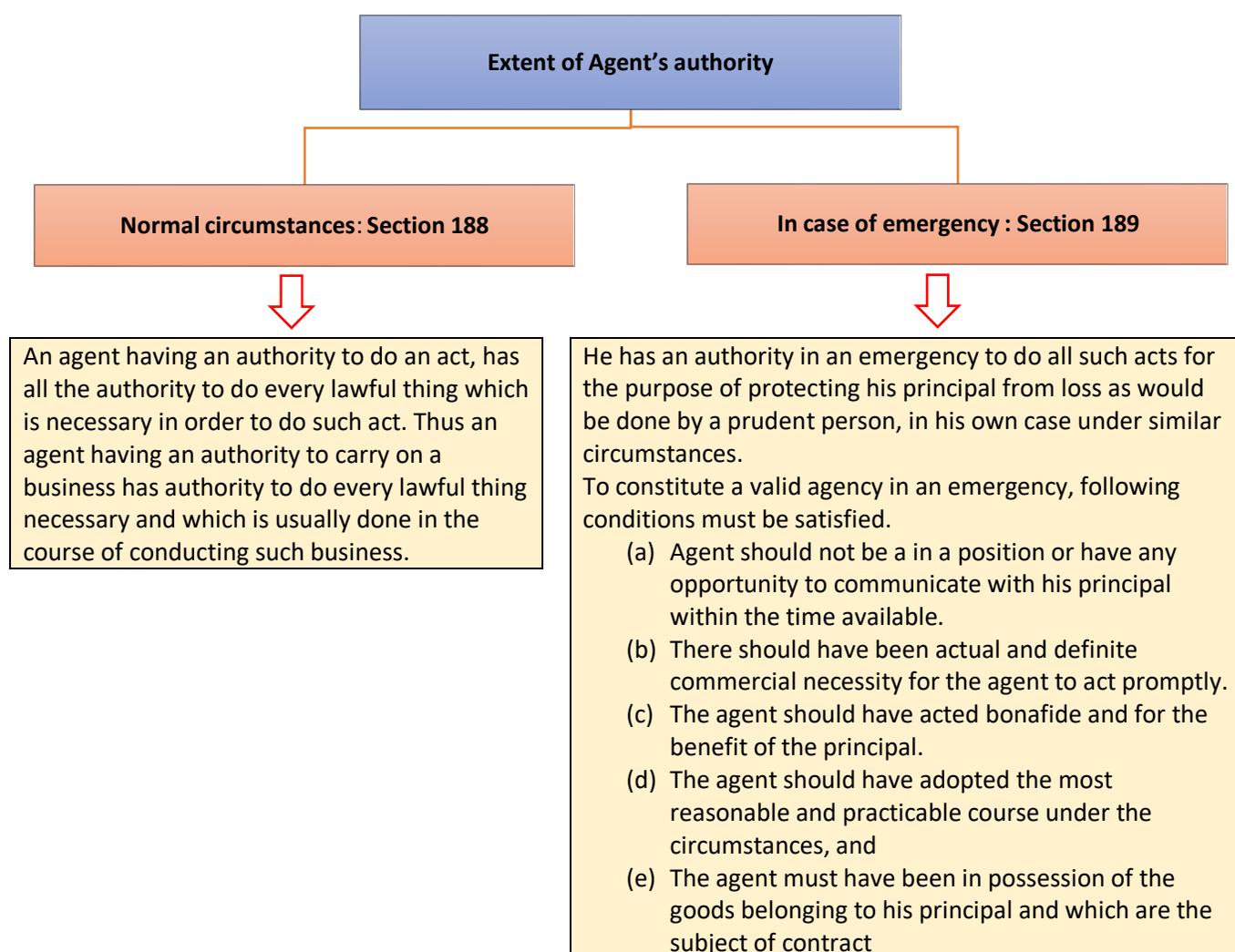
**Example – A sent a horse by railway. On its arrival at the destination, there was no one to receive it. The railway company, is bound to take reasonable steps to keep the horse alive, was an agent of the necessity of A.**

#### Wife as Agent –

Where a husband and wife are living together, we presume that the wife has her husband's authority to pledge his credit for the purchase of **necessaries of life suitable to their standard of living.**

But the husband will not be liable if he shows that:

- he had expressly warned the tradesman not to supply goods on credit to his wife; or
- he had expressly forbidden the wife to use his credit; or
- he already sufficiently supplies his wife with the articles in question; or
- he supplies his wife with a sufficient allowance



#### **Duties of Agent –**

##### **A) Duty in conducting principal's business - Section 211**

1. An agent is bound to conduct the business of his principal according to the directions given by the principal.

2. In the absence of any such directions according to the custom which prevails in doing business of the same kind at the place where the agent conducts such business.
3. When the agent acts otherwise, if any loss be sustained, he must make it good to his principal, and if any profit accrues, he must account for it.

**B) Skill and diligence required from agent – Section 212**

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'

**Example** - A, an agent for the sale of goods, having authority to sell on credit, sells to B on credit, without making the proper and usual enquiries as to the solvency of B. B at the time of such sale is insolvent. A must make compensation to his principal in respect of any loss thereby sustained.

**C) Agent's accounts – Section 213**

An agent is bound to render proper accounts to his principal on demand.

**D) Agent's duty to communicate with principal – Section 214**

It is the duty of an agent, in cases of difficulty, to use all reasonable diligence in communicating with his principal, and in seeking to obtain his instructions.

**E) 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**

**F) Not to deal on his own account - Section 216**

If an agent, without the knowledge of his principal, deals in the business of the agency on his own account instead of on account of his principal, the principal is entitled to claim from the agent any benefit which may have resulted to him from the transaction. **In simple words agent cannot make secret profits.**

**G) Agent's duty to pay sums received for principal – Section 218**

Subject to such deductions, the agent is bound to pay to his principal all sums received on his account.

<b>Rights of Agent –</b>
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**A) 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:
- All moneys due to him in respect of advances made
- In respect of expenses properly incurred by him in conducting such business
- Such remuneration as may be payable to him for acting as agent.

**B) Right to remuneration - Section 219**

- a) An agent has a right to receive the agreed remuneration or in absence of agreement, a reasonable remuneration for rendering the services to the principal that are not voluntary or gratuitous.
- b) He becomes eligible to receive the remuneration as soon as he completes the work that he undertook.

**C) Agent not entitled to remuneration for business misconducted – Section 220**

An agent who is guilty of misconduct in the business of the agency, is not entitled to any remuneration in respect of that part of the business which he has misconducted.

**D) Lien on Goods – Section 221**

- a) Some agents who have the possession of goods, securities or properties of their principal also have a lien on these goods, securities or properties regarding their remuneration and also for any expenses or liabilities that they incur.
- b) When he is an unpaid seller, he has a right to stop the goods in transit

**E) Right to be Indemnified – Section 222 and 223**

An agent represents his principal to the third parties. As per sections 222 and 223, an agent has a right to be indemnified by his principal for all charges, expenses, and liabilities that he incurs during the course of the agency.

**A) Non-liability of employer of agent to do a criminal act – 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.

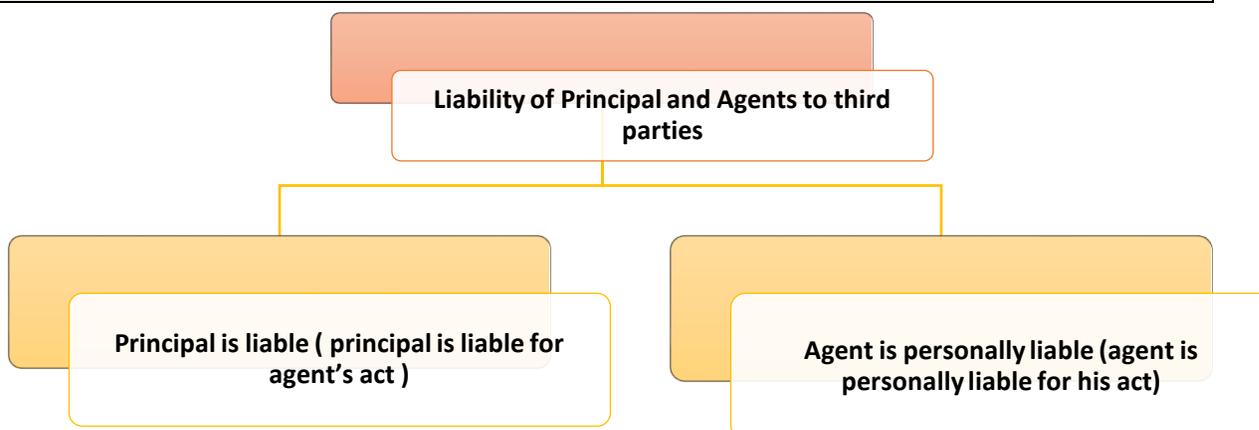
**Example –**

- ✓ **A employs B to beat C, and agrees to indemnify him against all consequences of the act. B thereupon beats C, and has to pay damages to C for so doing. A is not liable to indemnify B for those damages.**
- ✓ **B, the proprietor of a newspaper, publishes, at As request, a libel upon C in the paper, and A agrees to indemnify B against the consequences of the publication, and all costs and damages of any action in respect thereof. B is sued by C and has to pay damages, and also incurs expenses. A is not liable to B upon the indemnity.**

**B) Compensation to agent for injury caused by principal's neglect – Section 225**

The principal must make compensation to his agent in respect of injury<sup>1</sup> caused to such agent by the principal's neglect or want of skill.

**Liability of Principal and Agents to third parties –**



**Cases where principal is liable for agent's act –**

**1) When agent exceeds his authority and principal ratifies it – Section 227**

When an agent does more than he is authorized to do, and when the part of what he does, which is within his authority, **can be separated from the part which is beyond his authority**, so much only of what he does as is within his authority is binding as between him and his principal. In simple words, principal will only be liable for those acts which are authorized by him.

**2) Principal is bound by the notice given to agent – Section 229**

Any notice given to or information obtained by the agent, provided it be given or obtained in the course of the business transacted by him for the principal, shall, as between the principal and third parties, have the same legal consequences as if it had been given to or obtained by the principal.

**3) 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

**4) Liability for Misrepresentation or fraud by an agent when agent is acting within his authority – Section 238**

Misrepresentation made, or frauds committed, by agents acting in the course of their business for their principals, have the same effect on agreements made by such agents as if such misrepresentations or frauds had been made or committed by the principals; but misrepresentations made, or frauds committed, by agents, in matters which do not fall within their authority, do not affect their principals.

**5) 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.

**Illustration –**

**A consigns goods to B for sale, and gives him instructions not to sell under a fixed price. C, being ignorant of Bs instructions, enters into a contract with B to buy the goods at a price lower than the reserved price. A is bound by the contract.**

**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) When agent is incompetent to contract.**

**Cases where agent is personally liable for his act –**

- 1) 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.**
- 2) Undisclosed agent - **Section 236**  
Where a contract is entered into by a person apparently in the character of agent, but in reality in his own account.
- 3) When he signs a negotiable instrument in his own name without making it clear that he is signing as an agent.
- 4) When he is working for a foreign principal.
- 5) Where he is acting for a principal who cannot be sued on account of his being a foreign sovereign, ambassador etc.
- 6) Where trade, usage or custom holds him liable in certain kinds of business.
- 7) Where the **agency is coupled with interest** in the subject matter of the agency.
- 8) **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  
**Example -** A authorizes B to buy 500 sheep for him. B buys 500 sheep and 200 lambs for one sum of 6,000 rupees. A may repudiate the whole transaction

**Miscellaneous**

- A) Consequence of inducing agent or principal to act on belief that principal or agent will be held exclusively liable – Section 234**

When a person who has made a contract with an agent induces the agent to act upon the belief that the principal only will be held liable, or induces the principal to act upon the belief that the agent only will be held liable, he cannot afterwards hold liable the agent or principal respectively.

**B) Right of person dealing with agent personally liable – Section 233**

In cases where the agent is personally liable, a person dealing with him may hold either him or his principal, or both of them, liable.

**Termination of contract of agency –**

**Termination of contract of agency**

**By the act of the parties –**

- a) Mutual agreement
- b) Revocation by Principal (**Section 203 to 207**)
- c) Renunciation by Agent

**By the operation of law –**

- a) Performance of contract:
- b) Expiry of time
- c) Death / Insanity (**Section 209**)
- d) Insolvency
- e) Destruction of subject matter
- f) Parties becoming alien enemies.

**A) Mutual agreement –**

An agency may be revoked at any time by the principal and agent through mutual agreement.

**B) Revocation by principal – Section 203-207**

**1) Revocation where authority has not been exercised – Section 203**

The principal may revoke agent's authority **any time before agent has exercised the authority given by the principal –**

**2) Revocation where authority has been partly exercised – Section 204**

The principal cannot revoke the authority given to his agent after the authority has been partly exercised

**Example -** A authorizes B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's moneys remaining in B's hands. B buys 1,000 bales of cotton in his own name, so as to make himself personally liable for the price. A cannot revoke B's authority so far as regards payment for the cotton.

**3) Compensation for revocation by principal, or renunciation by agent – Section 205**

Where there is an express or implied contract that the agency should be continued for any period of time, the principal must make compensation to the agent, or the agent to the principal, as the case may be, for any previous revocation or renunciation of the agency **without sufficient cause.**

**4) Notice of revocation or renunciation – Section 206**

Reasonable notice must be given of such revocation or renunciation, otherwise the damage thereby resulting to the principal or the agent, as the case may be, must be made good to the one by the other.

**5) Revocation and renunciation may be expressed or implied – Section 207**

Revocation and renunciation may be expressed or may be implied in the conduct of the principal or agent respectively.

**When termination of agent's authority takes effect as to agent, and as to third persons – Section 208**

The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to them.

**Examples –**

- ✓ A directs B to sell goods for him, and agrees to give B five per cent. commission on the price fetched by the goods. A afterwards, by letter, revoke B's authority. B, after the letter is sent, but before he

receives it, sells the goods for 100 rupees. The sale is binding on A, and B is entitled to five rupees as his commission.

- ✓ A, at Madras, by letter, directs B to sell for him some cotton lying in a warehouse in Bombay, and afterwards, by letter, revokes his authority to sell, and directs B to send the cotton to Madras. B, after receiving the second letter, enters into a contract with C, who knows of the first letter, but not of the second, for the sale to him of the cotton. C pays B the money, with which B absconds. C's payment is good as against A.

In the following 2 cases, **agency is irrevocable** –

- 1) Where the agent has incurred personal liability
- 2) Where the agency is couple with interest.

### Sub-Agent and Substituted Agent

#### A) Sub-Agent –

- a) 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."
- b) Thus a sub-agent is an agent appointed by the agent.
- c) The relation of the sub-agent to the original agent is that of the agent and the principal.
- d) The general rule of law is that an agent cannot delegate his powers to another without the consent of the principal.
- e) This general principal is based upon the **Latin Maxim "delegatus non Protest delegate"** which means a delegatee cannot further delegate.
- f) **In the following cases, however, the agent may appoint a sub-agent:**
  - Where the principal has expressly allowed the appointment of a sub-agent.
  - Where the principal knows that the agent intends to appoint a sub-agent but he does not object to it.
  - Where the custom of trade permits the appointment of a sub-agent.
  - Where the act to be done is purely ministerial and does not involve exercise of discretion or any skill.
  - Where unforeseen emergencies arise which makes the appointment of subagent necessary.
- g) 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.

#### B) Substituted Agent –

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

**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**



Sub agent

Substituted agent

According to Section 191 of the Indian Contract Act, 1872 - A "sub-agent" is a person employed by, and acting under the control of, the original agent in the business of the agency	A Substituted agent is a person who is named by the Agent for performing such part of the business of the agency as is entrusted to him
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
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
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
There is no privity of contract between the principal and the sub-agent.	There is privity of contract between principal and substituted agent.