INDEMNITY AND GUARANTEE CONTRACT

- The contract of indemnity and guarantee are special kinds of contracts.
- These contracts fulfil all the essential of a valid contract.
- **Indemnity Contract:** Indemnity contract is a type of contingent contract. The term 'Indemnity` Simply means 'Making Somebody Safe` or 'Paying Somebody back`.
- **Section 124** of contract Act defines that ''A contract by which one party promises to save the other from loss caused to him by the conduct of the promise himself by the conduct of any other person, is called a conduct of indemnity".
  The party who gives indemnity or who promises to compensate for or to make good the loss, is called Indemnifier and the party for whose protection or safety the indemnity is given or the party whose loss is made good is called 'Indemnified' or 'indemnity holder'.
  Important features of an indemnity contract –
  1. Two party.
  2. Promises for pay compensation of loss/damage.
  3. Loss/damage may be the own or other person.
  4. Creation of liabilities.
  5. It must be faith.
  6. All essential features of valid contract.
  7. Compensation for actual loss/damage.
  8. It may be express or implied.
  9. Loss/damage may be caused by some event, or accident, or some natural phenomenon or disaster.

Rights of Indemnified (Indemnity-Holder) –

1. Rights to claim for all damages/losses.
2. Rights to claim for all costs which is related to contract.
3. Rights to claim for all sums which his may have paid for contract.

Liabilities/Duties of Indemnified –

1. Liabilities to pay all damages/losses.
2. Liabilities to pay all costs related to contract.
3. Liabilities to pay all sums which are received by sell for contract from indemnified.

Guarantee Contract The object of the contract of guarantee is to enable. A person to obtain a loan, or some goods or service on credit. **According to section 126** of the contract Act ''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' or 'guarantor'** & the person in respect of whose default the guarantee is given is called the **principal debtor** or he is the party on whose behalf. Guarantee is given and the person to whom the guarantee is given is called the **'Creditor'.**

Essential features of a Guarantee Contract –

1. Three parties
2. Three agreement
3. Concurrence of the three parties
4. Contract may be expressed or implied
5. It may be oral or written
6. Liability of surety/guarantor is secondary is dependent on principal debtor's default.
7. Guarantee must be in the knowledge of debtor.
8. All essential of a valid contract.
9. Guarantee must not be obtained by means of misrepresentation.
10. Existence of a primary liability (principal debtor)

S.No.	Different Basis	Indemnity Contract	Guarantee Contract
1.	Nature of Contract	Promises to save the other from loss.	One party promises to discharge the liability of the third party in case of his default.
2.	No. of Parties	Only two parties are there	There are three parties.
3.	No. of contracts	There is only one contract	There are three contract between debtors, creditors and surety.
4.	Nature of Liability	The liability of the indemnifier is primary and independent.	The liability of the surety is secondary and dependent.
5.	Arising of Liability	Indemnifier's liability arises only on the happening of a contingency.	Arises only after the default of debtor in payment.
6.	Existence of debt or duty	There is no existence debt or duty in this contract.	There is always some existing debt or duty in this contract.
7.	Request by the debtor	It is not necessary for the indemnifier to act at the request indemnified.	The surely generally gives guarantee to the request of the debtor.
8.	Right to sue	The indemnifier cannot sue the third party for loss in his own name.	It surety has discharged. The debt after the default of the principal debtor, he becomes entitled to sue the debtor in his own name.

Kinds of Guarantee –

1. **Specific or Simple Guarantee:** When a guarantee is given in respect to a single debt or specific transaction is to come to an end when the guarantee debt is paid or the promise is duly performed. It is called a specific or simple guarantee.

2. Continuing guarantee: Section 129, of the contract Act defines a guarantee which towards to a series of transaction, is called a continuing guarantee, thus, a continuing guarantee is not confined to a single transaction but keeps on moving to several transaction continuously.

Revocation of Guarantee – Revocation of guarantee means cancellation of guarantee already accrued, it may be noted that the specific guarantee cannot be revoked if the liability has already accured. However a continuing guarantee can be revoked and on the revocation of such a guarantee the liability of the surely or guarantor comes to an end for the future transaction. The surety continues to be liable for the transactions which have taken place up to the time of revocation. A continuing guarantee may be revoked in any of the following ways- A Guarantee may be revoked in any of the following ways-

1. By notice of revocation.

2. By death of surely.

3. By discharge of surely in various circumstances

A. By Novation (Sec.62)
B. By variance in terms (Sec. 133)
C. By release/discharge of principal Debtor (Sec.-134)
D. When the creditor events in to an agreement with the principal debtors (Sec.13..)
E. By creditor act or omission impairing surety's eventual remedy (Sec. 139)
F. By invalidation of contract (Sec.142,143,144)

Nature and Extent of Surety's Liability –

1. The liability of surety is co- extensive.
2. The liability of surety arises the same moment when default is made by the principal debtor.
3. The surety is free to restrict/ limit his liability.
4. Sometimes the suriey is liable though the principal debtors is not liable.
5. If there is a condition precedent for the surety's liability; the surety will be liable, only when that condition is fulfilled first.
6. In a continuing guarantee liability of surety extends to a series of transaction over a period of time.
7. The surety will not be liable if the creditor has obtained guarantee either by misrepresenting a material fact regarding the transaction or by keeping silence to material circumstances.
8. A discharge of principal debtor by operation of law does not discharge the surely from liability.

Discharge of surety from liability – The following is the modes or circumstances under which a surety is discharge from his liability –

1. By revocation

a) Notice by surety
b) Death of surety
c) Notation.

2. By conduct of the creditor

a) Variance (change) in terms of the contract
b) Release or discharge or the principal debtor.
c) Certain arrangements made by the creditors with the principal debtors without the consent of surety,
d) Creditors act or omission impairing surety's eventual (ultimate) remedy.
e) Loss of security.

3. By invalidation of conduct of guarantee

a) Guarantee obtained by misrepresentations
b) Guarantee obtained by concealment
c) Failure of co-surety to join a surety

RIGHT THE SURETY

I.Right against the Principal debtor

1. Right of subrogation
2. Right of indemnity

II. Right against the Creditor

1.Right to security
2. Right to claim set off

III. Right against the Co-Sureties

1. Equal contribution
2. Liability of co-securities bond in different sums
3. Right to share benefits of securities.

BAILMENT

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

Definition of Bailment Sec. 184 defines Bailment as the delivery of goods by one person to another for some purpose, upon a contract, that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the 'bailor' and the person the person to whom they are delivered is called the 'bailee'.

Examples

(a) A delivers a piece of cloth to B, a bailor, to be stitched into a suit. There is a contract or bailment between A and B.

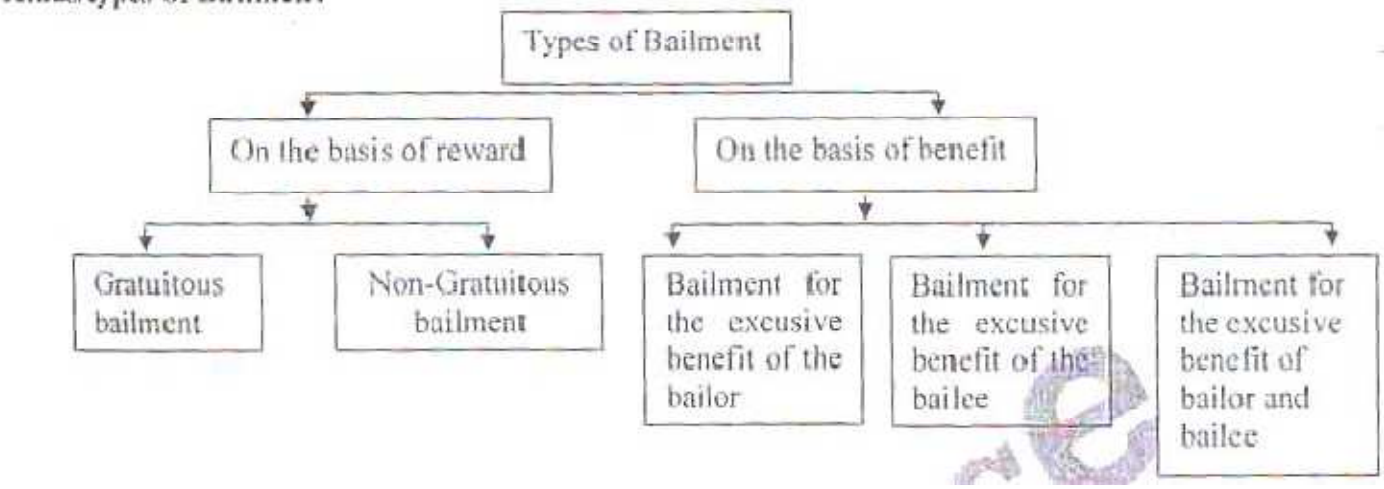
(b) A sells certain goods to B who leaves them in the possession of A . The relationship between B and A is that of bailor and bailee.

Consideration in a contract of bailment In a contract of bailment, the consideration is generally in the form money payment either by the bailor or the bailee, as for example, when A gives his bicycle to B for repair, or when A gives his car to B on hire. Such consideration in money form, however, is not necessary to support the promise on the part of the bailee to return to goods. The detrainment suffered by the bailor, in parting with possession of the goods, is a sufficient consideration to support the contract of bailment.

Distinction between Bailment and Contract of sale

S. No.	Basics of distinction	Bailment	Contract of sale
1	Transfers of ownership/possession	There is only a transfer of possession of goods from the bailor to the bailee.	There is a transfer of ownership of goods from the seller to the buyer.
2	Consideration not to be passed	The consideration need not be passed between bailor and bailee.	The consideration in terms of price must be passed between seller and buyer.
3	Return of goods	The bailee must return the goods to the bailor on the fulfillment of the purpose for which the bailment is made.	There is no question of such return of goods in contract of sale.

Kinds/types of Bailment



DUTIES OF A BAILOR

- Duty to disclose defects [Section 151]
- Duty to bear expenses [Section 158]
- Duty to indemnity the bailee in case of premature termination of gratuitous bailment [Section 159]
- Duty to indemnity the bailee against the defective title of bailor [Section 164]
- Duty to receive back the goods [Section 164
- Duty to bear the risk of loss [Section 152]

DUTIES OF A BAILEE

- Duty to take care of the goods bailed [Section 151&152]
- Duty not to make any unauthorised use of goods [Section 154]
- Duty not to mix bailor‘s goods with his own goods [Section 155 to 157]
- Duty to return the goods [Section 160 & 161]
- Duty to return accretion to the goods [Section 163]

Rights of a Bailor

- Right to claim damage in case of negligence [Section152]
- Right to terminate the contract in case of unauthorized use [Section 153]
- Right to claim compensation in case of unauthorized use [Section 154]
- Right to claim the separation of goods in case of unauthorized mixture of goods which cannot be separated [Section 157]
- Right to demand return of goods [Section 160]
- Right to claim compensation in case of unauthorized retention of goods [Section 161]
- Right to demand accretions to goods[Section 163]

RIGHTS OF A BAILEE

- Right to claim damage [Section 150]
- Right to claim reimbursement of expenses [Section 158]
- Right to be indemnified in case of premature termination of gratuitous bailment [Section 159]
- Right to recover loss in case of bailor‘s defective title [Section 164]
- Right to recover loss in case of bailor‘s refusal to take the goods back [Section 164]
- Right to deliver goods to any one of the joint bailors [Section 165]
- Right to deliver goods to bailor in case of bailor‘s defective title [Section 166]
- Right to particulars lien [Section 170]

Meaning of Lien Lien means the right of a person having possession of goods belonging to another to retain those goods until the satisfaction of sum claimed by the person in possession of the goods. If may be noted thet the possession of goods must be lawful and continuous.

For example, X took Y’s godown on rent of Rs.5,000 p.m on an agreement that X cat at any time deposit or take out his goods from the godown. After six months, X stopped paying the rent. Y auctioned X’s goods and claimed lien. Y cannot claim lien because it was agreed that X can take out his goods whenever he wanted.

Type of Lien

(a) Particular Lien [Section 170] A particular lien is right to retain only those goods in respect of which some charges are due.

Example:- X gives a piece of cloth to Y, a tailor, to make a coat. Y promises X to deliver the coat as soon as it is finished. Y is entitled to retain the coat till he is paid for (if he has not allowed any credit period) but is not entitled to retain the coat (if he has allow one month's credit for the payment.)

(b) General Lien [Section 171] A general lien is a right to retain all the goods as a security for the general balance of account until the full satisfaction of the claims due whether in respect of those goods or other goods. The general lien is available to other person only when there is an express contract to that effect.

FINDER OF GOODS Finder of goods is the person whom finds some goods which do not belong to him.
Example if X finds a purse or a diamond ring or a watch, which does not belong to him, he will be called as a finder of goods.

Rights of a Finder of Goods

- Right to lien [Section 168]
- Right to sue for reward [Section 168]
- Right to sell [Section 169]

Duties of a Finder of Goods [Section 171] Finder of goods is subject to the same responsibility as a bailee. The duties of a finder of goods are as follows:-

- Duty to take reasonable care
- Duty not use for personal purpose
- Duty not to mix with his own goods
- Duty to find the owner

PLEDGE

Meaning of pledge (or pawn) [Section 172] The bailment of goods as security for payment of a debt or performance of a premise is called pledge (or pawn).
Example X borrows of Rs. 1,00,000 from Citi Bank and keeps his shares as security for payment of a debt. It is a contract of pledge.

Meaning of pawner (or pledgor) [Section 172) The person who delivers the goods as security for payment of a debt or performance of promise is called the pawnor or pledgor. In aforesaid example X is pawnor

Meaning of Pawnee (or pledge) [Section 172) The person to whom the goods are delivered as security for payment of a debt or performance of promise is called the Pawnee or Pledgee. In the aforesaid example. Citi Bank is the Pawnee.

Rights of Pawnee

- **Right** of retainer [Section 173]
- **Right** to claim reimbursement of extraordinary expenses [Section 173]
- **Right** to sue pawnor [Section 176]
- **Right** to sell [Section 176]
- **Right** against true owner [Section

duties of a Pawnee

- **Duty** to take reasonable care of the goods pledged
- **Duty** not to make unauthorized use of goods
- **Duty** not to mix pawnor's goods with his own goods
- **Duty** to return goods
- **Duty** to return accretion to the goods

Rights of Pawnor

- Right to get pawnee's duties duly enforced
- Right to redeem [Section 177]

Duties of Pawnor

- Duty to comply with the terms of pledge
- Duty to compensate the Pawnee for extraordinary expenses [Section 185]

S.NO.	Pledge	Bailment
1. Purpose	Pledge is bailment of goods for a specific purpose i.e. repayment of a debt or performance of a duty.	Bailment is for a purpose of any kind
2. Right to use	Pawnee cannot use the goods pledged	Bailee can use the goods as per terms of bailment
3. Right to sell	Pawnee can sell the goods pledge after giving notice to the pawnor in case of default by the pawnor.	Bailment can either retain the goods or sue the bailor for his dues.

A G E N C Y

Meaning of Agency: Agency is relation between an agent and his principal created by an agreement. Section 182 of the Contract Act defines an Agent as ''A person employed to do any act for another, or to represent another in dealings with third persons. The person for whom such act is done, or whom is so represented is called the principal".

Essential Features of Agency

1. The principal
2. The agent
3. An agreement
4. Consideration not necessary
5. Representative capacity
6. Good faith

Modes or Methods or Creation of Agency

1. **Agency by express agreement:** A contract of agency may be made by express words, whether written or oral.
2. **Agency by implied agreement:** ''An authority is said to be implied when it is to be inferred from the circumstances of the case.

(a) **Agency by estoppels** : When a principal by his conduct or act cause a third person to believe that a certain person is his authorized agent the agency is aid to be an agency by estoppels.

(b) **Agency by necessity** : It mean the agency which comes into existence when certain circumstances compel a person to act as an agent for an other without his express authority.

(c) **Agency by holding out** : When a principal by his active conduct or act and without any objection permits another to act as his agent, the agency is the result of principal's conduct as to the agent.

3. **Agency by ratification** : Ratification means confirmation of an act which has already been done. Sometimes, an act is done by a person on behalf of another person but without another person's knowledge and authority. If he accepts and confirm the act, he is said to have ratified it.

4. **Agency by operation of law** : In certain circumstances the law treats a person as an agent of another person. For example, (a) when a partnership is formed, every partner automatically becomes agent o another partner. (b) when a company is formed its promoters are treated as its agents by operation of law.

RIGHTS AND DUTIES OF AGENT Rights of an Agent

1. Right to retain money received on principal's account.
2. Right to receive remuneration.
3. Right of lien on principal's property.
4. Right to be indemnified.
5. Right to compensation for injury caused by principal's neglet.

Duties of an Agent

1. To follow the direction of the principal.
2. To conduct the business of agency with reasonable skill and diligence.
3. To render accounts on demand
4. To communicate with the principal.
5. Not to deal on his own account
6. To pay the amounts received for the principal
7. Not to delegate his authority
8. Not to act in excess of authority
9. Duty on termination of agency by principal's death or insanity.

TERMINATION OF AGENCY

Termination of agency means revocation (cancellation) of authority of the agent the modes of termination of agency may be classified are as :

(**a)** Termination of Agency by the act of the Parties.

1. By revocation o authority by the principal
2. By renunciation (giving up) of business of agency by the agency
3. By mutual agreement

(**b**) **Termination of agency by Operation of Law**

1. Completion of business of agency
2. Death or insanity of principal or agent
3. Insolvency of the principal
4. Destruction of subject matter
5. Expiry of time
6. Agency subsequently becoming unlawful.
7. Termination of sub agent's authority

Revocable agency

When the authority of agent cannot be revoked by the principal it is said to be an irrevocable agency. An agency is irrevocable in the following cases:

1. If the agency is coupled with interest : when an agent himself has a special interest in the property which forms the subject matter of the agency, such agency is said to be coupled with interest.
2. Where the agent has partly exercised his authority
3. When the agent has incurred a personal liability.