

Unit 1

Q.1 What do you understand by contract of indemnity? What are its essentials? How it differs from contract of guarantee? Discuss.

Q.1(a) What do you understand by contract of indemnity?

- Contract of indemnity: The word 'indemnity' finds its roots in Latin word 'indemnis', which stands for unhurt or free from loss. Indemnities are contractual agreements that provide compensation for losses, damages, or liabilities sustained by another party.
- The term 'indemnity' simply means to make good the loss or to compensate the party who has suffered some loss. The term 'contract of indemnity' is defined in Section 124 of the Indian Contract Act as follows, "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."
- The person who promises to compensate for the loss is called the "indemnifier"
- The person to whom this promise is made or whose loss is to be made good is known as "indemnity-holder" or "indemnified".
- For example, A contracts to indemnify B against the consequences of any proceedings which C may take against B in respect of a certain sum of money. This is a contract of indemnity, here A is the indemnifier and B is the indemnified.

Q.1(b) What are essentials of contract of indemnity?

- i. Parties to a contract;
- ii. Protection of loss;
- iii. Express or implied;
- iv. Essentials of a valid contract;
- v. Number of contracts i.e., one contract

Q.1(c) How contract of indemnity differs from contract of guarantee? Discuss.

- In a contract of indemnity there are only two parties i.e., indemnifier and the indemnified while in a contract of guarantee there are three parties i.e., principal debtor, creditor and the surety.
- In a contract of indemnity there is only one contract, whereas in a contract of guarantee, there are three contracts.
- In a contract of indemnity, the indemnifier undertakes to save the indemnified from any loss caused to him by the conduct of indemnifier himself or the conduct of any other person, while in a contract of guarantee, the surety undertakes for the payment of debts of principal debtor, if the principal debtor fails to pay it.
- In a contract of indemnity, the liability of indemnifier is primary and independent, while in a contract of guarantee the liability of surety is secondary i.e., it arises only on the default of principal debtor. The primary liability is that of the principal debtor.
- In a contract of indemnity, indemnifier's liability arises only on the happening of a contingency, while in a contract of guarantee there is an existing duty or debt. the performance of which is guaranteed by the surety.
- In a contract of indemnity, indemnifier acts independently without any request of the debtor or the third party, while in a contract of guarantee the surety guarantees at the request of principal debtor. In a contract of guarantee, if the principal debtor fails to pay and the surety discharge his debt, the surety can proceed against the principal debtor in his own right, while in a contract of indemnity, the indemnifier cannot sue the third party in his own name unless there is an assignment in indemnifier's favour.
- Guarantee must not be obtained by misrepresentation. (142)
- Guarantee must not be obtained by concealment of facts. (143)

Q.2 State the circumstances in which surety is discharged from its liability?

Q.2(a) Explain revocation of contract of guarantee.

- **By notice(section 130):** A specific guarantee may be revoked by a surety by notice to the creditor if the liability of the surety has not yet accrued. A continuing guarantee may at any time be revoked by the surety as to future transactions by notice to the creditor.
- **By the death of surety(section 131):** In the absence of any contract to the contrary, the death of a surety operates as a revocation of a continuing guarantee as to future transactions taking place after the death of surety.
- **By novation (section 62):** A contract of guarantee is said to be discharged by novation when a fresh contract is entered into either between the same parties or between other parties, the consideration being the mutual discharge of the old contract. The original contract of guarantee comes to an end and the surety under original contract is discharged.

Q.2(b) Explain discharge of surety by conduct of the creditor.

- **By variance in terms of contract (section 133):** Any variance, made without the surety's consent, in the terms of the contract between the principal debtor and the creditor, discharges the surety as to transactions subsequent to the variance.
- **By Release or discharge of the principal debtor (section 134):** A surety is discharged if the creditor makes a contract with the principal debtor by which the principal debtor is released, or by any act or omission of the creditor, which results in the discharge of the principal debtor.
- **By Arrangement between principal debtor and creditor (section 135):** Where the creditor, without the consent of the surety, makes an arrangement with the principal debtor for composition, or promise to give him time to, or not to sue him, the surety will be discharged.
- **By creditor's act or omission impairing surety's eventual remedy (section 139):** If the creditor does any act which is against the right 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 security.

Q.2(c) How surety will be discharged by invalidation of contract?

- **Guarantee obtained by misrepresentation:** 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 (Section 142).
- **Guarantee obtained by concealment:** 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. (Section 143).

Q.3 What is continuing guarantee? When and how is it revoked?

Q.3(a) What is continuing guarantee?

Continuing Guarantee: A guarantee which extends to a series of transactions is called a continuing guarantee (Section 129). The surety's liability in this case would continue till all the transactions are completed or till the guarantor revokes the guarantee as to the future transactions. A fidelity guarantee is a continuing guarantee as it continues for a period of time.

Example: On M's recommendation S, a wealthy landlord employs P as his estate manager. It was the duty of P to collect rent every month from the tenants of S and remit the same to S before the 15th of each month. M. guarantee this arrangement and promises to make good any default made by P. This is a contract of continuing guarantee.

In order to understand continuing guarantee, the following points should be noted:

- i) The most important feature of a continuing guarantee is that it applies to a series of separable, distinct transactions. Therefore, when a guarantee is given for an entire consideration, it cannot be termed as a continuing guarantee.
- ii) In deciding whether particular contract of guarantee is a specific guarantee or a continuing guarantee there must be the intention of the parties as expressed by the terms of the contract and the prevailing circumstances.

Q.3(b) When and how continuing guarantee may be revoked?

Revocation of continuing guarantee

A continuing guarantee may be revoked in any of the following ways:

1) By Notice of Revocation: In respect of future transaction the surety may at any time revoke his guarantee by giving a notice to creditor. In such a case, the surety remains liable for the transactions which have already taken place. For example, A guarantees to B to the extent of Rs. 10,000, that C shall pay for all the goods bought by him during the next three months. B sells goods worth Rs. 6,000 to C. A gives a notice of revocation, C is liable for Rs. 6,000. If any goods are sold to C after the notice of revocation, A shall not be liable for that.

2) By Death of Surety: Unless there is contract to the contrary, the death of surety operates as a revocation of the continuing guarantee in respect to the transactions taking place after the death of surety.

3) In the Same Manner in which the Surety is Discharged: A continuing guarantee is also revoked under all the circumstances under which a surety is discharged from the liability, such as

- i) Novation (Section 62)
- ii) Variance in terms of Contract (Section 133)
- iii) Release or discharge of principal debtor (Section 134)
- iv) When the creditor enters into an arrangement with the principal debtor (Section 135)
- v) Creditor's act or omission impairing surety's eventual remedy (Section 139)
- vi) Loss of Security (Section 141).

Q.4 “There can be no valid contract of guarantee unless there is someone primarily liable.” In the light of this statement explain the essentials of a contract of guarantee. What will be the position of surety if the principal debtor is minor?

Q.4(a) What do you mean by meaning of contract of guarantee?

- The object of contract of guarantee is to enable a person to obtain an employment, a loan or goods on credit. According to *Section 126* of the Indian 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'.
- The person in respect of whose default the guarantee is given is called the principal debtor';
- The person to whom the guarantee is given is called the creditor.
- Mode of contract of guarantee can be oral and written.

Q.4(b) How many contracts are there under contract of guarantee?

- First between the creditor and the principal debtor, out of which the guaranteed debt arises;
- Second contract is between the surety and the principal debtor who implies that the principal debtor shall indemnify the surety, if the principal debtor fails to pay and the surety is asked to pay.
- The third contract is between the surety and the creditor by which surety undertakes (guarantees) to pay the principal debtor's liabilities (debt) if the principal debtor fails to pay.

Q.4(c) What are the essential features of a contract of guarantee?

- It may be express or implied.
- Existence of a debt. for which some person other than the surety should be primarily liable.
- Consideration, but it is not necessary that the surety should be benefited.
- All the essentials of a valid contract should be present.
- Creditor and surety must be competent i.e., principal debtor need not be Competent to contract.
- Surety's liability is dependent on principal debtor's default.
- Guarantee must not be obtained by misrepresentation.
- Guarantee must not be obtained by concealment of material facts.

Q.4(d) What will be the position of surety if the principal debtor is minor?

- Case of misrepresentation where the surety has concealed the fact of minority of the principal debtor from the creditor.
- Where the minor was supplied with necessities for which the creditor is bound to be reimbursed.
- *Kashiba v. Shripal* where at time of bond execution of a minor, her father joined in and stated that in case of her failure to pay, he will be dealing with the matter regarding the payment from his income. It was held that her father will be liable on account of guarantee being given by him for his minor daughter's bond.

EXERCISE-4

Q.4(a) Explain the essentials of a contract of guarantee.

Q.4(b) What will be the position of surety if the principal debtor is minor?

Q.4(c) What are the essential features of a contract of guarantee?

Q.4(d) What will be the position of surety if the principal debtor is minor?

City Law College LL.B(HONS.) SEM-II LAW OF CONTRACT-II

UNIT-II

Q.1 Define bailment and state its essential elements. Do you agree that bailment can arise without contract? Explain with the help of decided case laws. (2022)

Q.1(a) What do you mean by bailment?

- The word 'bailment' is derived from 'bailler', a French word which means "to deliver"
- Section 148 of the Indian Contract Act defines a 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". The person to whom they are delivered is called the "bailee".
- For example, you deliver some gold to a jeweller B to make bangles for your sister. In this case you are bailor and B is bailee and by delivering gold to B, a relationship of bailment is created between you and the jeweller.
- Another example, if you give a piece of cloth to a tailor for stitching it as a shirt. There is a contract of bailment between you (Bailor) and tailor (Bailee)

Q.1(b) What are essential elements of valid bailment?

- **Agreement:** For creating a bailment, the first essential requirement is the existence of an agreement between the bailor and the bailee.
- **Delivery of goods:** For bailment, it is necessary that the goods should be delivered to the bailee. It follows that bailment can be of movable goods only. It is further necessary that the possession of the goods should be voluntarily transferred and in accordance with the contract.
- For example, A, a thief enters a house and by showing the revolver, orders the owner of the house to surrender all ornaments in the house to him. The owner of the house surrenders the ornaments. In this case although, the possession of goods has been transferred but it does not create bailment because the delivery of goods is not voluntary.
- **Purpose:** In a bailment, the goods are delivered for some purpose. The purpose for which the goods are delivered is usually in the contemplation of both the bailor and the bailee.
- **Return of Specific goods:** It is important that the goods which form the subject matter of the bailment should be returned to the bailor or disposed off 'according to the directions of bailor, after the accomplishment of purpose or after the expiry of period of bailment.

Q.1(c) Do you agree that bailment can arise without contract?

- Yes, a valid bailment can arise even without a valid contract between the two parties.
 - For example, a lost good finder becomes a bailee and has the responsibility to return it to its owner, the bailor, even if no contract exists between them.
 - Lasalgaon Merchants Coop Bank Ltd vs Prabhudas Hathibhai
 - State of Gujarat vs Memon Mahomed Haji Ha
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EXERCISE 1

Q.1(a) What do you mean by bailment?

Q.1(b) What are essential elements of valid bailment?

Q.1(c) Do you agree that bailment can arise without contract?

Q.2 Describe different types of bailments.

Bailment may be classified on two basis, i.e., reward and benefit.

Q.2(a) Explain bailment on the basis of remuneration.

- Bailment can be classified as gratuitous and non-gratuitous bailment on the basis of whether the parties are getting or not getting some value out of the contract of bailment.

Q.2(b) What is gratuitous bailment?

- When there is no consideration involved in the contract of bailment it is called a **gratuitous** bailment.

Q.2(c) Give an example of gratuitous bailment.

- For example, when you lend your cycle to your friend so that he can have a ride or when you borrow his book to read, it is a case of gratuitous bailment because no exchange of money or any other consideration is involved. Neither you nor your friend would be entitled to any remuneration here.

Q.2(d) What is non-gratuitous bailment?

- A contract of bailment which involves some consideration passing between bailor and bailee, is called a **non-gratuitous** bailment.

Q.2(e) Give an example of non-gratuitous bailment.

- For example, if your friend hires a cycle from a cycle shop or you borrowed a book from a bookshop on hire, this would be a case of non-gratuitous bailment.

Q.2(f) Explain bailment on the basis of benefit.

On the basis of the benefits accruing to the parties, the contract of bailment may be divided into the following types:

- **Bailment for the exclusive benefit of the bailor:** This is the case where a contract of bailment is executed only for the benefit of the bailor, and the bailee does not derive any benefit from it.
 - For example, if you are going out of station and leave your valuable goods with your neighbour for safety, it is you as bailor, who alone is being benefited by this contract.
 - **Bailment for the exclusive benefit of the bailee:** This is the case where the contract of bailment is executed only for the benefit of the bailee and the bailor does not derive any benefit from the contract.
 - For example, if you lend your books to a friend, without charge. So that he can study for his exams, it is your friend as the bailee, who alone is going to be benefited by this contract.
 - **Bailment for the mutual benefit of bailor and bailee:** In this case both the bailor and the bailee derive some benefit from the contract of bailment.
 - For example, if you give your shirt to be stitched by the tailor, both of you are going to be benefited by this contract, while you get a stitched shirt, the tailor gets the stitching charges.
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EXERCISE 2

Q.2(a) Explain bailment on the basis of remuneration.

Q.2(b) What is gratuitous bailment?

Q.2(c) Give an example of gratuitous bailment.

Q.2(d) What is non-gratuitous bailment?

Q.2(e) Give an example of non-gratuitous bailment.

Q.2(f) Explain bailment on the basis of benefit.

Q.3 What are the various duties of the bailee under the Indian Contract Act, 1872? Give a brief account of each.

Q.3(a) What are the duties of bailor under contract of bailment?

- Duty to disclose defects S. 150
- Duty to bear expenses S. 158
- Duty to indemnify the bailee
- Duty to bear risks
- Duty to take back goods

Q.3(b) Explain in brief the duty of bailor to disclose defects.

- The law of bailment imposes a duty on bailor to disclose the defects in the goods bailed.
- Bailor is under an obligation to inform those defects in the goods which would interfere with the use of the goods for which the goods being bailed or would expose the bailee to some risk.
- In case of gratuitous bailment, the law imposes a duty on the bailor to reveal all the defects known to him, which would interfere with the use of goods bailed.
- For example, A the owner of a scooter allows B, his friend, to take his scooter for a joyride. A knows that the brakes of the scooter were not working well. A does not disclose this fact to B. Consequently, B meets with an accident. A is liable to compensate B for damages.
- In case of non-gratuitous bailment, i.e., bailment for reward, the bailor has a duty to keep the goods in a fit condition. The goods should be fit to be used for the purpose; they are meant.

Q.3(c) Explain the duty of bailor to bear expenses.

- In case, where the bailee is not to receive any remuneration is that the bailor should bear the usual expenses in keeping the goods or in carrying the goods or to have work done upon them by the bailee for the bailor.
- For example, if A, a farmer gives some gold to his friend B, who is a goldsmith, to make a gold ring. B is not to receive any remuneration for the job. But A has a duty to repay to B any expenses incurred by him in making the ring.

Q.3(d) Explain the duty of bailor to indemnify the bailee.

- It is the duty of the bailor to indemnify the bailee, for any loss which the bailee may suffer because of the bailor's title being defective.
- For example, A asks his friend B to give him cycle for one hour. B instead of his own cycle gives C's cycle to A. While A was riding, the true owner of the cycle catches A and surrenders him to police custody. A is entitled to recover from B, all costs, which A had to pay in getting out of this situation.

Q.3(e) Explain the duty to bear risks.

- It is the duty of bailor to bear the risk of loss, deterioration and destruction, of the things bailed, provided that the bailee has taken reasonable care to protect the goods from loss etc.

Q.3(f) Explain the duty of bailor to receive back the goods.

- It is the duty of the bailor that when the bailee, in accordance with the terms of bailment, returns the goods to him the bailor should receive them.
- If the bailor, without any reasonable reason refuses to take the goods back, when they are offered at a proper time and at a proper place, the bailee can claim compensation from the bailor for all necessary and incidental expenses, which the bailee undertakes to keep and protect the goods.

EXERCISE- 3

Q.3(a) What are the duties of bailor under contract of bailment?

Q.3(b) Explain in brief the duty of bailor to disclose defects.

Q.3(c) Explain the duty of bailor to bear expenses.

Q.3(d) Explain the duty of bailor to indemnify the bailee.

Q.3(e) Explain the duty to bear risks.

Q.4 What are the various duties of the bailee under the Indian Contract Act, 1872? Give a brief account of each.

Q.4(a) How many duties of bailee are there under contract of bailment?

There are six duties of bailee i.e.

- Duty to take reasonable care of the goods bailed
- Duty not to make any unauthorised use of goods
- Duty not to mix bailor's goods with his own goods
- Duty not to set up adverse title
- Duty to return the goods
- Duty to return accretions to the goods

Q.4(b) Define duty to take reasonable care of the goods bailed.

- Section 151 of the Indian Contract Act lays down the degree of care, which a bailee should take, in respect of goods bailed to him.
- The bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed.
- The standard of care is same whether the bailment is gratuitous or for reward. So, a bailee is liable when the goods suffer loss due to the negligence on the part of bailee.

Q.4(c) Explain duty not to make any unauthorised use of goods.

- The bailee is under a duty to use the bailed goods in accordance with the terms of bailment.
- If bailee does any act with regard to the goods bailed, which is not in accordance with the terms of bailment, the contract is voidable at the option of the bailor.

Q.4(d) Explain the duty of bailee not to mix bailor's goods with his own goods.

Next duty of the bailee is to keep the goods of the bailor separate from his own. Sections 155 to 157 of the Act lays down this duty in the following ways:

- 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 have an interest, in proportion to their respective shares, in the mixture thus produced. (Section 155).
- If the bailee, without the consent of the bailor, mixes the goods of the bailor with his goods, and the goods can be separated or divided, the property in the goods remains in the parties respectively; but the bailee is bound to bear the expense of separation or division, and any damages arising from the mixture (Section 156).
- If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, in such a manner that it is impossible to separate the goods bailed from the other goods and deliver them back, the bailor is entitled to be compensated by the bailee for the loss of the goods (Section 157).

Q.4(e) Explain duty of bailee not to set up adverse title.

- The bailee is duty bound not to do any act which is inconsistent with the title of the bailor. He should not set up his own title or the title of a third party on the goods bailed to him.

Q.4(f) Explain the duty of bailee to return the goods.

S. 160-161 Shaw & Co v. Symmonds & Sons (Books)

- It is the duty of the bailee to return or to deliver the goods according to the directions of bailor, without demand on the expiry of the time fixed or when the purpose is accomplished.

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Q.4(g) Explain the duty of bailee to return accretions to the goods: S. 163

- In the absence of any contract to the contrary, the bailee must deliver to the bailor, or according to his directions, any increase or profit which have accrued from the goods bailed.
- For example, A leaves a cow in the custody of B to be taken care of. The cow gives birth of a calf. B is bound to deliver the calf as well as the cow to A.

EXERCISE- 4

Q.4(a) How many duties of bailee are there under contract of bailment?

Q.4(b) Define duty to take reasonable care of the goods bailed.

Q.4(c) Explain duty not to make any unauthorised use of goods.

Q.4(d) Explain the duty of bailee not to mix bailor's goods with his own goods.

Q.4(e) Explain duty of bailee not to set up adverse title.

Q.4(f) Explain the duty of bailee to return the goods.

Q.4(g) Explain the duty of bailee to return accretions to the goods:

Unit 3

POINTER NOTES

Law of Contract II

Q.3 What do you mean by ex-post facto agency? Explain in brief requisites of valid ratification.

Q.1 What do you mean by contract of agency? Who can appoint agent?

Q.1(a) What is contract of agency?

- Section 182 of the Contract Act, an 'agent' a person employed to do any act for another or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the 'principal'.
- Thus, it is clear from the definition, that an agent is a connecting link between his principal and third parties. Merely because one person gives advice to another in matters of business, the former does not become an agent of the latter.
- An agent is employed mainly to bring about to contract between the principal and third parties, it is absolutely essential that both the principal and the third party must be persons capable of entering into a contract.
- The relation of agency is based on the Latin Maxim "Qui facit per alium, facit per se." i.e., he who acts through another does the act himself. (Krishna v, Ganapathi)

Q.1(b) Who can appoint an agent?

- Section 183 provides as follows: Any person who is of the age of majority according to the law to which he is subject to and who is of sound mind, may employ an agent.
- Thus, a minor or a person of unsound mind cannot act as a principal. Though the section prohibits a minor from appointing an agent, does not preclude the guardian of a minor from appointing an agent to the minor (Madanlal Dhariwal v. Bherulal).

Q.1(c) Who may be an agent?

- Section 184 of the Contract Act, which says between the principal and the third persons any person may become an agent, but no person who is not of the age of majority and of sound mind can become an agent.
- Section 185 expressly provides that no consideration is necessary to create an agency. The fact that the principal has agreed to be bound by the acts of the agent is a sufficient detriment to the principal. Therefore, it is not necessary that there should be a separate consideration.

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Max. Marks - 30

Obt. Marks.....

Q.1(a) What is contract of agency?

Q.1(b) Who can appoint an agent?

Q.1(c) Who may be an agent?

Q.2 Explain various modes by which an agency may be created.

The relationship of principal and an agent may be created in any of the following ways:

- 1) express agreement,
- 2) implied agreement.
- 3) ratification, and
- 4) operation of law.

Q.2(a) What do you mean by creation of agency by express and implied agreement?

- When an agent acts within the scope of his authority, his acts bind the principal as well as the third party. The agent derives this authority by the contract by which he is employed as an agent. This contract may be express or implied. Section 186 of the Act says "the authority of an agent may be expressed or implied."
- Section 187 further says, "an authority is said to be express when it is given by words spoken or written. 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".
- For example, A is residing in Delhi and he has an agriculture farm at Bombay appoints B. by a deed called the power of attorney, as a caretaker of his farm. In this way, the relationship of principal and agent has been created between A and B by an express agreement (power of attorney).
- For example. A has a car, but he cannot drive it. He allows his neighbour B to drive it. B while driving the car with A meets with an accident and injures C. C can sue A for damages because B is his implied agent.

Q.2(b) Explain in detail implied agencies.

Implied Agency includes the following:

- **Agency by Estoppel:** When a person, by his conduct or statement, wilfully leads another person to believe that a certain person is his agent, then he is estopped or prevented from denying the truth of agency. (sec. 237)
- For example, X tells Y in the presence and within the hearing of Z that he (X) is Z's agent. Z keeps quiet and does not contradict this statement. Later on, Y enters into a contract with X, honestly believing that X is Z's agent. Z is bound by this contract, and in a suit between Z and Y, Z cannot be permitted to say that X was not his agent, even though X was not in actual fact his agent.
- **Agency by Holding Out:** Agency by holding out is a type of agency by estoppel. Here, the alleged principal by 'his affirmative or positive conduct leads others to believe that person doing some act on his behalf is doing with his authority.
- For example, A allows his servant to purchase goods on credit from a nearby shop, and later on he pays for such goods. Later on, when the servant was not in A's employment, he buys goods on A's credit from the same shop. The shopkeeper can recover the price from A, because A had held out the servant as his agent on earlier occasions, so A will be bound for subsequent transactions entered into under similar circumstances.

Q.2(c) Explain the nature and scope of 'agency by necessity'.

Agency by Necessity: Sometimes, owing to the exigencies of circumstances, the law confers agency on some persons to act as an agent of another person without waiting for the consent of that person. However, before an agency of necessity can be inferred, the following conditions have to be satisfied:

- i. There should be an actual and definite necessity for acting on behalf of the principal;
- ii. Within the available time it should be impossible to obtain the principal's instructions;
- iii. The person acting as agent must have acted bona fide. In such situations, the principal is bound by the acts of the agent. For example, some milk was consigned from Bombay to Delhi. The tanker carrying the milk met with an accident. The milk being perishable was sold by the transporter, The sale is binding upon the principal. In this case, the transporter became an agent by necessity.

Q.2 Explain various modes by which an agency may be created.

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Q.2(a) What do you mean by creation of agency by express and implied agreement?

Q.2(b) Explain in detail implied agencies.

Q.2(c) Explain the nature and scope of 'agency by necessity'.

Q.3 What do you mean by ex-post facto agency? Explain in brief requisites of valid ratification.

Q.3(a) What do you mean by ex-post facto agency?

- Sometimes a person may act for another person without any express or implied authority from that other person. The person in whose name the act has been done may either disown the act of that person or may approve the actions. This act of affirmation by the person in whose name the act has been done is known as 'ratification'.
- Ex-post facto agency means agency arising after the event. For example, A appointed B as his agent to buy wheat for him. In addition to buying wheat, B buys 10 bags of rice for A. Afterwards, A agrees to take the delivery of rice as well. A is liable to pay the price of rice. This is a case of ratification of unauthorised acts.
- Section 196 of the Contract Act provides 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.
- Section 197 provides that ratification may be express or may be implied in the conduct of the person on whose behalf the acts are done. For example, A, without authority, buys goods for B. Later on, B sells those goods to C and deposits the sale proceeds in his bank account. B's conduct implies a ratification of the purchase made by A.

Q.3(b) Explain in brief requisites of valid ratification.

Essentials of a Valid Ratification:

1. **The agent must act on behalf of another person who is identifiable:** When the agent enters into a contract, he should expressly contract as an agent. Further, the contract should specify an identifiable person as principal.
 - For example, A representing himself to be an agent of B, but without authority or knowledge of B entered into a contract with C to buy 100 bales of cotton on behalf of B. Subsequently, the prices of cotton bales go up. B on becoming aware of the transaction purported to have been done on his behalf, ratifies it. C refuses to perform the contract. B can compel C to perform the contract. (Keighley Maxstead & Co. v. Durant)
2. **Existence of the principal:** For valid ratification it is necessary that the principal should be in existence at the time of when the act is done in his name.
3. **Principal should be competent to contract at the time when the act was done as well as at the time of ratification.**
4. **Full knowledge of all relevant facts:** No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective (Section 198).
5. **Within reasonable time:** The ratification must be done without any unreasonable delay. If the ratification is not done within a reasonable time, it will not be binding.
6. **Ratification must be of whole transaction:** The ratification must be made for the whole transaction. A ratifier cannot ratify a part which is beneficial to him and reject the rest. When a person ratifies a part of the unauthorised transaction, it is treated as the ratification of whole transaction (Section 199).
7. **No damage to third party:** Any ratification which might cause any damage to third party or terminate any right or interest of a third party cannot be ratified. (Sec. 200)
8. **Act to be ratified must be lawful:** Only those acts can be ratified which are valid and lawful. An act which is void, unlawful or illegal cannot be ratified. (Sunil v. Maharashtra State Mining Corporation.)
9. **Act to be ratified should be within the power of the principal:** The principal can ratify only such acts which are within his power. Hence, an act which is beyond the competence of principal cannot be ratified.

Q.4 Discuss in brief the rights and duties of an agent.

Q.4(a) Explain right to receive remuneration.

- **Right to Receive Remuneration:** An agent is a person employed to do any act for another, and for his services, he is entitled to receive remuneration. The amount of remuneration shall be such as may be fixed by the terms of agency. (sec.219)
- An agent is entitled for his remuneration when he has done what he had undertaken to do, even though the contract is not completed. For example, A was appointed as an agent by an export organisation to secure export orders. A secured some orders for the firm, but firm was dissolved. A is entitled to his commission, though the orders secured by him have not been executed.

Q.4(b) Explain right of retainer.

- **Right of Retainer:** Section 217 of the Contract Act empowers the agent to retain, out of any sums received on account of the principal in the business of the agency for the following payments:

- a) all moneys due to himself in respect of advance made,
- b) in respect of expenses properly incurred by him in conducting such business, and
- c) such remuneration as may be payable to him for acting as agent.

Q.4(c) Explain in brief right of lien exercised by agent.

- **Right of Lien:** The agent may retain principal's money until his proper payments have been made. Agent has another right i.e., right to retain his principal's goods, papers and other movable or immovable properties received by him until he is paid or accounted for his commission, disbursements and service charges. This lien of the agent is the particular lien. The right of lien has the following limitations:

- a) This right is available to the agent if there is no contract to the contrary.
- b) This right is available on those properties which have come into agent's possession lawfully. If the agent obtains possession by unlawful means, say by misrepresentation, or without authority from the principal, the agent cannot exercise lien.
- c) The lien is only a particular lien,
- d) Since the lien is a possessory right, it cannot be exercised once the possession is lost.

Q.4(d) How agent can indemnify himself from the principal and in which circumstances?

- **Right to be Indemnified:** Sections 222 and 223 grant right to indemnify to an agent against his principal for the consequences of all lawful acts done by the agent in performing his obligations.
- Section 222 provides, the employer of an agent is bound to indemnify him against the consequences of all lawful acts done by such agent in exercise of the authority conferred upon him.
- Example, B at Singapore, under instructions from A' of Calcutta contracts with C to deliver certain goods to him. A does not send the goods to B. and C sues B for breach of contract. B informs A of the suit, and A authorises him to defend the suit. B defends the suit, and is compelled to pay damages and costs, A is liable to B for such damages, costs and expenses.
- **Right to Compensation:** The agent has the right to receive compensation for the injuries or losses suffered due to the principal's neglect or want of skill (Section 225).

Q.4 Discuss in brief the rights and duties of an agent.

Q.4(a) Explain right to receive remuneration.

Q.4(b) Explain right of retainer.

Q.4(c) Explain in brief right of lien exercised by agent.

Q.4(d) How agent can indemnify himself from the principal and in which circumstances?

Q.5(a) What are the duties of an agent?

- **Duty to act according to the instructions or custom of trade:** Section 211 lays down that it is the duty of an agent to conduct the business of the agency strictly according to the directions given by the principal.
- For example, if an agent is asked by his principal to insure the goods, the agent failed to do so and the goods are destroyed by the fire. The agent is liable to compensate the principal for the loss.
- However, when the principal has not given any directions, in that case the agent should conduct the business according to the custom of the trade. For example, B, a broker in whose business it is not the custom to sell goods on credit, sells goods of his principal on credit. Before making the payment, the buyer becomes insolvent. The broker, B is liable to pay for the loss.

Q.5(b) Explain duty to take reasonable care and duty to render accounts.

- **Duty to act with reasonable care and skill:** It is the duty of an agent to conduct the business of the agency with reasonable care and skill. The degree of care and skill required from the agent depends upon the nature of business and circumstances of each case.
- The agent is required to act with reasonable diligence, to use skill as he possesses and to compensate the principal in respect of the direct consequence of agent's own neglect, want of skill or misconduct.
- **Duty to render accounts:** An agent is bound to render proper accounts to his principal on demand and to pay overall sums received on principal's behalf subject to any lawful deduction for remuneration or expenses properly incurred by him.
- **Duty to communicate with the principal:** Section 214 enjoins an agent, in case of difficulty, to use all reasonable diligence in communicating with his principal, and in seeking to obtain his instructions.
- **Duty not to deal on his own account:** An agent is not to deal on his own account in the business of agency, as no agent is permitted to put himself in the position where his interest conflicts with his duty. If an agent desires to deal on his own account in the business of agency, he must make a full and frank disclosure of all the material circumstances, which have come to his knowledge on the subject, to the principal and obtain his consent (*Lever Bros. v. Bell*).
- Example, A directs B, his agent, to buy a certain house for him. B tells A that the house cannot be bought and buys the house for himself. A may, on discovering that B has bought the house, compel him to sell it to A at the price he (B) gave for it.

Q.5(c) Explain duty not to use information obtained in the course of the agency against the principal.

- Where an agent has obtained information during the course of the agency, it is the duty of the agent not to use the same prejudicially to the interests of the principal. Where an agent does make use of such information, the principal may restrain him from doing so by an injunction.
- **Duty not to set up adverse title**
- **Duty not to make secret profits:** The relationship of principal and agent is based on mutual confidence; it is the agent's duty not to make any secret profits in the business of agency.
- **Duty to exercise his authority personally:** Section 190 of the Act requires an agent to perform acts personally which he has expressly or impliedly undertaken to perform personally. In other words, an agent must not delegate the authority given to him
- **Duty on the death or insanity of the principal:** Section 209 requires that when an agency is terminated by the principal dying or becoming of unsound mind, the agent is bound to take, on behalf of the representatives of his late principal, all reasonable steps for the protection and preservation of the interests entrusted to him.

Q.5(a) What are the duties of an agent?

Q.5(b) Explain duty to take reasonable care and duty to render accounts.

Q.5(c) Explain duty not to use information obtained in the course of the agency against the principal.

UNIT IV
POINTER NOTES
LAW OF CONTRACTS

Q.1 What do you understand by Government contracts? Explain essentials of valid government contract.

Q.1(a) What do you understand by government contracts?

- Government contracts are the kinds of contracts that are executed by the government for a variety of purposes such as construction, management, manpower supply, maintenance and repairs, IT-based projects, etc.
- When the central government or the state government gets involved in a contract it is known as a government contract. The party who executes the contract on the behalf of the government is referred to as a contractor.

Q.1(b) What are constitutional provisions of government contract?

- Article 298 of the Constitution of India lays down the power of the Central and state governments to carry out any trade or business and to the acquisition, holding and disposal of property and the making of contracts for any purpose. It is the executive power of the Union and the states.
- Article 299 of the Constitution of India reads; "All contracts made in the exercise of the executive power of the Union or of a State shall be expressed to be made by the President, or by the Governor of the State, as the case may be, and all such contracts and all assurances of property made in the exercise of that power shall be executed on behalf of the President or the Governor by such persons and in such manner as he may direct or authorise."

Q.1(c) What are the requirements of valid government contracts?

According to Article 299 the requirements of valid government contracts which need to be fulfilled are:

- All the contracts must be expressed to be made by the President in the case of the Central Government and the Governor in the case of state governments.
- All the government contracts must be executed on behalf of the President of India or the Governor of the states, depending on the situation.
- All the contracts must be executed by the President or the Governor depending on the situation.
- The use of the word "executed" in the Article means that the government contract must be in writing. An oral agreement between the government and the other party would not be valid for the purposes of Article 299.
- A government contract must always be executed by an authorised person in order to hold the government in contractual liability. A contract between the government and the other party would be invalid if it is not executed by the authorised person duly appointed by the President or the Governor, as the case may be.

Q.1(d) How government contracts are formed?

Government contracts are formed in the following manner:

- Every government contract must be expressed to be made by the President or the Governor.
- Every government contract must be executed on behalf of the President or the Governor.
- Every contract must be executed by a person authorised by the President or the Governor.

LL.B(Hons) Semester II
Exercise 1
Unit IV
Law of Contracts

Name of the Student.....
Checked By.....
Section.....
Max. Marks - 30

Mo. No.....
No.....
Roll. No.....
Obt. Marks.....

Q.1(a) What do you understand by government contracts?

Q.1(b) What are constitutional provisions of government contract?

Q.1(c) What are the requirements of valid government contracts?

Q.1(d) How are government contracts formed?

Q.2 What are the principles of government contracts? Explain the critical role played by the judiciary.

Q.2(a) What are the principles of government contract?

- **Transparency:** The principle of transparency guarantees that the state authorities enter into contracts with the other party through a medium which is objective and fair.
- **Economy:** In this principle, the selection procedure for government contracts must be arranged in such a manner that only the procedures that are strictly essential and have connected terms and urgent deadlines, the least amounts of resources will be used should be focused on by the government.
- **Responsibility:** This principle states that the parties to a contract, that is the contractors, state entities, government officials, etc. will be held accountable if any dispute arises out of the government contract. Therefore, they will be held liable for civil, criminal, and disciplinary actions when their acts and/or omissions caused damages or infringed any provision of the contract.

Q.2(b) Explain the principle of contractual balance under government contracts.

- The principle of contractual balance states that the government contracts must maintain equality between the parties with respect to their obligations, rights and consideration stated during the execution of the contract.
- Thus, if the balance between the parties is not maintained then necessary steps must be taken to restore the balance between the parties.

Q.2(c) Explain the critical role played by the judiciary.

- Article 299 is a mandatory requirement when it comes to government contracts and it is based on public policy and the protection of the general public.
- The courts have stated that the conditions laid down in Article 299 of the Constitution must be met in a government contract. If either party fails to meet any requirement stated under Article 299, then such a contract becomes null and void.
- Therefore, such a contract cannot be enforced by any of the contracting parties. And the government cannot be sued or held liable for damages for the breach of such a contract.
- In the case of *K.P. Chowdhary v. State of Madhya Pradesh* (1966), The Supreme Court held that under Article 299 the words 'mandatory terms' mean there should be no implied contract between the parties. As laid down in Article 299 a government contract must be written and thus failure to follow the provisions indicates that the contract between the bidder and the state government was void.

Q.2(d) Who can execute government contracts?

- Article 299 of the Constitution is that a government contract can be entered into on behalf of the Government by a person authorised for that purpose by the President or the Governor, as the case may be. If the contract was entered by any person not authorised by the President or the Governor then such contract would not be valid.
- In *Union of India v. N.K. (P) Ltd.* (1972) the Director of Railway Stores was authorised to enter into a contract on behalf of the President. However, the contract was entered into by the Secretary of the Railway Board. The Supreme Court held that the contract was entered into by an officer who was not authorised by the President for the said purpose hence, it is not a valid and binding contract.

LL.B(Hons) Semester II

Exercise 2

Unit IV

Law of Contracts

Name of the Student.....
Checked By.....
Section.....
Max. Marks - 30

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Obt. Marks.....

Q.2(a) What are the principles of government contract?

Q.2(b) Explain the principle of contractual balance under government contracts.

Q.2(c) Explain the critical role played by the judiciary.

Q.2(d) Who can execute government contracts?

Q.3 Whether a writ petition can be issued against government for the enforcement of contractual obligation? Discuss.

Q.3(a) What do you mean by writ of mandamus?

- The meaning of mandamus is command.
- It is ordered to the public officials who failed to perform their duty in order to resume the work. Besides public officials, mandamus can be issued against any public body or corporation, an inferior court or tribunal, or the government for the same purpose.
- Mandamus cannot be issued against a private individual; it can't be issued against the president or state governor, nor against the Chief Justice of the High Court.

Q.3(b) Does writ petition stands against a breach of contract against the state.

- Yes, A writ of mandamus is issued to the public authority when it fails to do the duty entrusted to it by law.
- There are many judgements passed by the Hon'ble Supreme Court and High Courts that have allowed writ petitions against the breach of statutory contracts only when fundamental rights are violated.

Q.3(c) Explain case on violation of principle of natural justice.

- In the case of the Managing Director, Uttar Pradesh v. Vinay Narayan Vajpayee(1980), the employee's dismissal order was overturned by the Supreme Court on the grounds that, given the facts of the case, he should have been given the opportunity to question the witness called by the management against him,
- And that doing otherwise would have gone against the principles of natural justice. Moreover, the employee in question worked for a statutory corporation and was denied the opportunity to do so.

Q.3(d) Explain conditions to be fulfilled for taking resort to writ jurisdiction for the enforcement of government contracts.

- Writ petition being a public law remedy can be invoked only whenever the State or its instrumentalities fail to discharge any public function that they are obligated to do under any statute, not for private laws because contract between two parties is a realm of private law.
- Writ jurisdiction under Article 32 or 226 can be invoked only if there is violation of fundamental rights, arbitrariness or violation of principles of natural justice.
- As held in Radhakrishna Agarwal v. State of Bihar that in cases involving statutory contracts, creating rights and obligations of a statutory nature, such obligations can be enforced by taking resort to writ jurisdiction. But at first it is important to prove that;
- The other party is the State or State instrumentality under Article 12 of the Constitution of India or any other statute.
- The contract is a statutory contract.
- There must be a public law character attached to it.
- And all such violations because of which the writ jurisdiction can be invoked.

LL.B(Hons) Semester II

Exercise 3

Unit IV

Law of Contracts

Name of the Student.....
Checked By.....
Section.....
Max. Marks - 30

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Obt. Marks.....

Q.3(a) What do you mean by writ of mandamus?

Q.3(b) Does writ petition stands against a breach of contract against the state.

Q.3(c) Explain case on violation of principle of natural justice.

Q.3(d) Explain conditions to be fulfilled for taking resort to writ jurisdiction for the enforcement of government contracts.

Q.4 Under what circumstances can a person file suit for getting back possession of immovable property from which he has been dispossessed? Explain with the help of relevant provision of the specific relief act, 1963.

Q.4(a) Under which provisions method of recovery of possession of immovable property is provided?

- **Section 5 and 6 of the Specific Relief Act, 1963** provide methods for recovery of possession of the certain specific immovable property.
- It provides that a person entitled to the possession of any specific immovable property can recover it in the manner prescribed by the **Code of Civil Procedure, 1908 (5 of 1908)**.
- **Section 5** reads as, "*A person entitled to the possession of the specific immovable property can recover it in the manner provided by the Code of Civil Procedure, 1908*".
- The essence of this section is 'title,' i.e. the person who has better title is a person entitled to the possession. The title may be of **ownership or possession**.
- Thus, if 'A' enters into peaceful possession of land claiming his own although he might have no title, still he has the right to sue another who has ousted him forcibly from possession because he might have no legal title but at least has a possessory title.
- It is a principle of law that a person, who has been in a long continuous possession of the immovable property, can protect the same by seeking an injunction against any person in the world other than the true owner.
- It is also a settled principle of law that owner of the property can get back his possession only by resorting to due process of law. It states that a suit for possession must be filed having regard to the provision of the Code of Civil Procedure.

Q.4(b) Which provision deals with the provision related to suit by person dispossessed of immovable property.

- Sec.6 of Specific Relief Act, is only applicable if the plaintiff proves:
 1. That he is in juridical possession of the **immovable property** in dispute.
 2. That he had been dispossessed of without his consent and **without due process of law**.
 3. That dispossession took place **within six months** from the date of suit.
- **Section 5 and 6** both give alternative remedies and are mutually exclusive.
- Under **section 5**, a person dispossessed can get possession on the basis of title, whereas in **section 6**, a person dispossessed may recover possession by proving previous possession and further wrongful dispossession.
- Possession in the context of **section 6** means legal possession which may exist with or without actual possession and with or without rightful origin.
- The plaintiff in a suit under section 6 need not establish title.
- In **K.K. Verma v Union of India (1)** it was held that after the expiry of the tenancy agreement, the tenant continues to hold juridical possession and cannot be dispossessed unless the owner gets a decree of eviction against him.

Q.4(c) What are the objects of section 6 of Specific Relief Act?

- To discourage people from taking the law into their hands (however good their title may be).
- To provide a cheap and useful remedy to a person dispossessed of immovable property in due course of law.

LL.B(Hons) Semester II

Exercise 4

Unit IV

Law of Contracts

Name of the Student.....
Checked By.....
Section.....
Max. Marks - 30

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Obt. Marks.....

Q.4(a) Under which provisions method of recovery of possession of immovable property is provided?

Q.4(b) Which provision deals with the provision related to suit by person dispossessed of immovable property.

Q.4(c) What are the objects of section 6 of Specific Relief Act?
