Unit -1

The **Indian Contract Act**, **1872** prescribes the **law** relating to contracts in **India** and is the key **act** regulating **Indian contract law**. ... It determines the circumstances in which promises made by the parties to a **contract** shall be legally binding.

James fitzames Stephen

There actually are simple... **Indian contract Act** was **drafted** by sir James fitzames Stephen who headed the 3rd **Indian law** commission during the British regime and after the independence it continued by the virtue of art.

Section 10 of the **Indian Contract Act** says, “all agreements are contracts if they are made by the free consent of the parties competent to **contract**, for a lawful consideration and with a lawful object and are not expressly declared to be void”.

Essential Elements Of A Contract: Everything You Need to Know

The 7 essential elements of a contract are the offer, acceptance, meeting of the minds, consideration, capacity, legality, and sometimes a written document. *3 min read*
The 7 essential elements of a contract are the offer, acceptance, meeting of the minds, consideration, capacity, legality, and sometimes a written document.

Contract Basics

Contracts are legal agreements between two parties or more. Legally binding contracts must have essential elements in order to be enforced in court. Some contracts that are missing one or two of these essentials will still hold up in a court, but it's best to have them all covered.

A contract is made basically any time one entity offers something to another and the offer is accepted. Think of the last time you accepted a job offer. The company offered you a job and you accepted, therefore a contract was formed. Employment contracts are one of the most common types of legal agreements.

Contract Classification

Usually, the types of contracts you'll come across in the business world are classified as simple contracts. These can be made:

- In writing
- Verbally
- With action

Bilateral contracts are one of the basics where both parties act to uphold the agreement. If one person promises something to someone else and that person agrees to give something in return, they've entered into a bilateral contract. When a product or service

is sold and the customer provides payment, the company selling the item and the customer entered into a bilateral contract.

Unilateral contracts are agreements where one party promises something in return for the action of the other. If you've even returned a lost dog for a reward, you've entered into a unilateral contract. The dog owner paid you a reward for the action of finding their pet.

Deeds are required to be handwritten and sealed with the signatures of both involved parties under the witness of a third party. These include agreements like:

- Transferring land
- Mortgages
- Conveyances

Offer

First, an offer must be extended in order to begin a contract. This should include details of the agreement and its terms and conditions. Simply put, the offer is the offeror's attempt at entering into a contract with another.

Sometimes businesses will look for contractors through an invitation to treat by letting people know that they are interested in entering into a contract.

Acceptance

Once the offer is extended, it's in the hands of the offeree to either accept or reject the proposal and its terms and conditions. Offerees can accept offers via mail, email, or verbally.

Most states use the mailbox rule meaning that, if an offer is accepted via mail or email, the moment the acceptance is placed in a mailbox to be mailed or sent via email, it has officially been accepted. This holds true even if the offerer never receives the acceptance. Within this acceptance, there needs to be a clear statement that the terms of the agreement are all accepted.

Meeting of the Minds

The meeting of the minds in contract law refers to the moment when both parties have recognized the contract and both agreed to enter into its obligations. This is also called:

- Genuine agreement
- Mutual agreement
- Mutual assent
- Consensus ad idem

Even after the parties have entered into the contract, it can be voided a few different ways including duress, undue influence, fraud, or misrepresentation.

Consideration

Something of value must be exchanged in order to have a valid legal agreement. Usually, things like products, property, protection, or services are offered for the exchange of money.

If not trading in money at all, the parties should be sure that the court would view whatever they are trading, also called their consideration, as valuable.

Capacity

Each party must be fully able or have the legal capacity to enter into the contract in order for it to be considered valid. For instance, you cannot enter into a legal contract with a three-year-old. Both parties must be of their right mind in order to form a contract, so a valid agreement could not take place if one of the parties is under the influence of any mind-altering substance.

This also includes the desire of both parties to enter into the agreement free from coercion.

Legality

Contracts cannot be created to govern the trade of illegal products or services. A drug dealer cannot enforce a contract with their buyer if their buyer doesn't pay them.

Each party must show legal intent, meaning that they intend for the results of their agreement to be completely legal.

If you need help with understanding the 7 essential elements of a contract, you can post your legal need on UpCounsel's marketplace. UpCounsel accepts only the top 5 percent of lawyers to its site. Lawyers on UpCounsel come from law schools such as Harvard Law and Yale Law and average 14 years of legal experience, including work with or on behalf of companies like Google, Menlo Ventures, and Airbnb.

Capacity to Contract

One of the most essential elements of a valid contract is the competence of the parties to make a contract. Section 11 of the Indian Contract Act, 1872, defines the capacity to contract of a person to be dependent on three aspects; attaining the age of majority, being of sound mind, and not disqualified from entering into a contract by any law that he is subject to. In this article, we will look at all aspects in a detailed manner.

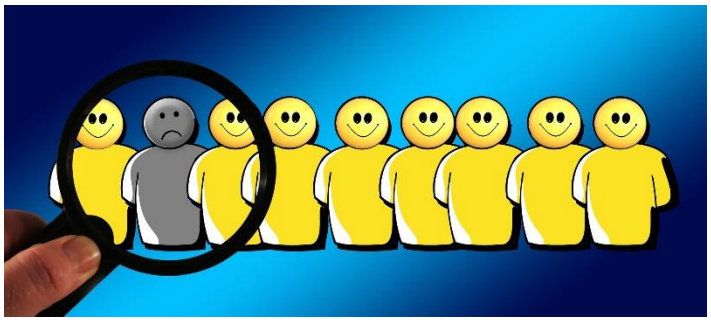
Capacity to Contract

According to Section 11, "*Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind and is not disqualified from contracting by any law to which he is subject.*"

So, we have three main aspects:

1. Attaining the age of majority
2. Being of sound mind

3. Not disqualified from entering into a contract by any law that he is subject to



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1] Attaining the Age of Majority

According to the Indian Majority Act, 1875, the age of majority in India is defined as 18 years. For the purpose of entering into a contract, even a day less than this age disqualifies the person from being a party to the contract. Any person, domiciled in India, who has not attained the age of 18 years is termed as a minor.

Let's look at certain laws governing a minor's agreement:

A Contract made with a Minor is Void

Since any person less than 18 years of age does not have the capacity to contract, any agreement made with a minor is void ab-initio (from the beginning).

Example, Peter is 17 years and 6 months old. He needs some money to go on vacation with his friends. He approached a moneylender and borrows Rs 25,000. As security, he signs some papers mortgaging his laptop and motorcycle. Six months later, when he attains the age of majority, he files a suit declaring that the mortgage executed by him when he was a minor is void and should be cancelled. The Court agrees and relieves Peter of all liability to repay the loan.

Also, if a minor enters into a contract, then he cannot ratify it even after he attains majority since the contract is void ab-initio. And, a void agreement cannot be ratified.

A Minor can be a Beneficiary of a Contract

While a minor cannot enter a contract, he can be the beneficiary of one. Section 30 of the Indian Partnership Act, 1932, also specifies that while a minor cannot

become a partner in the partnership firm, the benefits of the firm can be extended to him.

Example, Peter lends some money to his neighbour, John and asks him to mortgage his house as security. John agrees and the mortgage deed is made favouring Peter's 10-year-old son – Oliver. John fails to repay the loan and Peter, as the natural guardian of Oliver, files a suit against John to recover his money. The Court holds the case since a minor can be a beneficiary of a contract.

A Minor is always given the Benefit of being a Minor

Even if a minor falsely represents himself as a major and takes a loan or enters into a contract, he can plead minority. The rule of estoppel cannot be applied against a minor. He can plea his minority in defence.

Contract by Guardian

Under certain circumstances, a guardian of a minor can enter into a valid contract on behalf of the minor. Such a contract, which the guardian enters into, for the benefit of the minor, can also be enforced by the minor.

However, guardians cannot bind a minor by a contract for buying immovable property. But, a contract entered into by a certified guardian of a minor, appointed by the Court, with approval from the Court for the sale of a minor's property can be enforced.

Insolvency

A minor cannot be declared insolvent as he cannot avail debts. Also, if some dues are pending from the properties of the minor and he is not personally liable for the same.

Joint contract by a Minor and an Adult

In case of a joint contract between an adult and a minor, executed by the guardian on behalf of the minor, the liability of the contract falls on the adult.

2] Person of Sound Mind

According to Section 12 of the Indian Contract Act, 1872, for the purpose of entering into a contract, a person is said to be of sound mind if he is capable of understanding the contract and being able to assess its effects upon his interests.

It is important to note that a person who is usually of an unsound mind, but occasionally of a sound mind, can enter a contract when he is of sound mind. No person can enter a contract when he is of unsound mind, even if he is so temporarily. A contract made by a person of an unsound mind is void.

3] Disqualified Persons

Apart from minors and people with unsound minds, there are other people who cannot enter into a contract. i.e. do not have the capacity to contract. The reasons for disqualification can include, political status, legal status, etc. Some such persons are foreign sovereigns and ambassadors, alien enemy, convicts, insolvents, etc.

Solved Question on Capacity to Contract

Q1. Rajiv has been in the lunatic asylum for 10 years. The doctors say that he is improving and there are times when he communicates and behaves like a normal person. Also, he is 25 years old. Does Rajiv have the capacity to contract?

Ans: Rajiv has attained the age of majority. Also, the doctors state that he is of a sound mind for intervals of time. Hence, he can enter into a contract during the period when his mind is sound, i.e when he has the capacity to contract.

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Free Consent

There have to be two parties to a contract, who willingly and knowingly enter into an agreement. But how does the law determine if the parties are both these things? This is where the concept of free consent comes in. Let us learn more about free consent and the elements vitiating free consent.

Free Consent

In the Indian Contract Act, the definition of Consent is given in Section 13, which states that "it is when two or more persons agree upon the same thing and in the same sense". So the two people must agree to something in the same sense as well. Let's say for example A agrees to sell his car to B. A owns three cars and wants to sell the Maruti. B thinks he is buying his Honda. Here A and B have not agreed upon the same thing in the same sense. Hence there is no consent and subsequently no contract.

Now Free Consent has been defined in Section 14 of the Act. The section says that consent is considered free consent when it is not caused or affected by the following,

1. Coercion
2. Undue Influence
3. Fraud
4. Misrepresentation
5. Mistake

Elements Vitiating Free Consent

Let us take a look at these elements individually that impair the free consent of either party.

1] Coercion (Section 15)

Coercion means using force to compel a person to enter into a contract. So force or threats are used to obtain the consent of the party under coercion, i.e it is not free consent. Section 15 of the Act describes coercion as

- committing or threatening to commit any act forbidden by the law in the IPC
- unlawfully detaining or threatening to detain any property with the intention of causing any person to enter into a contract

For example, A threatens to hurt B if he does not sell his house to A for 5 lakh rupees. Here even if B sells the house to A, it will not be a valid contract since B's consent was obtained by coercion.

Now the effect of coercion is that it makes the contract voidable. This means the contract is voidable at the option of the party whose consent was not free. So the

aggravated party will decide whether to perform the contract or to void the contract. So in the above example, if B still wishes, the contract can go ahead.

Also, if any monies have been paid or goods delivered under coercion must be repaid or returned once the contract is void. And the burden of proof proving coercion will be on the party who wants to avoid the contract. So the aggravated party will have to prove the coercion, i.e. prove that his consent was not freely given.

Who Performs the Contract?

2] Undue Influence (Section 16)

Section 16 of the Act contains the definition of undue influence. It states that when the relations between the two parties are such that one party is in a position to dominate the other party, and uses such influence to obtain an unfair advantage of the other party it will be undue influence.

The section also further describes how the person can abuse his authority in the following two ways,

- When a person holds real or even apparent authority over the other person. Or if he is in a fiduciary relationship with the other person
- He makes a contract with a person whose mental capacity is affected by age, illness or distress. The unsoundness of mind can be temporary or permanent

Say for example A sold his gold watch for only Rs 500/- to his teacher B after his teacher promised him good grades. Here the consent of A (adult) is not freely given, he was under the influence of his teacher.

Now undue influence to be evident the dominant party must have the objective to take advantage of the other party. If influence is wielded to benefit the other party it will not be undue influence. But if consent is not free due to undue influence, the contract becomes voidable at the option of the aggravated party. And the burden of proof will be on the dominant party to prove the absence of influence.

Legality of Object and Consideration

3] Fraud (Section 17)

Fraud means deceit by one of the parties, i.e. when one of the parties deliberately makes false statements. So the misrepresentation is done with full knowledge that it is not true, or recklessly without checking for the trueness, this is said to be fraudulent. It absolutely impairs free consent.

So according to Section 17, a fraud is when a party convinces another to enter into an agreement by making statements that are

- suggesting a fact that is not true, and he does not believe it to be true
- the active concealment of facts
- a promise made without any intention of performing it
- any other such act fitted to deceive

Let us take a look at an example. A bought a horse from B. B claims the horse can be used on the farm. Turns out the horse is lame and A cannot use him on his farm. Here B knowingly deceived A and this will amount to fraud.

One factor to consider is that the aggravated party should suffer from some actual loss due to the fraud. There is no fraud without damages. Also, the false statement must be a fact, not an opinion. In the above example if B had said his horse is better than C's this would be an opinion, not a fact. And it would not amount to fraud.

Performance of Reciprocal Promise

4] Misrepresentation (Section 18)

Misrepresentation is also when a party makes a representation that is false, inaccurate, incorrect, etc. The difference here is the misrepresentation is innocent, i.e. not intentional. The party making the statement believes it to be true. Misrepresentation can be of three types

- A person makes a positive assertion believing it to be true
- Any breach of duty gives the person committing it an advantage by misleading another. But the breach of duty is without any intent to deceive
- when one party causes the other party to make a mistake as to the subject matter of the contract. But this is done innocently and not intentionally.

The last factor of mistake will be covered by the next article.

Solved Question on Free Consent

Q: What are the effects of fraud on a contract?

Ans: When a contract is entered into via fraud, the defrauded party can

i. Rescind the contract within a reasonable time
ii. Sue for damages
iii. Can insist the other party to perform the contract on the condition that he shall be put in the position in which he would have been if the false statement had been made true

Legal Rules Regarding Consideration

Enforcing any legal contract requires it to have an element of consideration included in it. In simple words, it is nothing but a price that the promisee agrees to pay to the promisor. Now, this price can be paid as a benefit to the promisor and/or a loss or detriment to the promisee. In this article, we will look at this dual aspect of consideration in detail.

Basic Understanding of Consideration

According to Section 2(d) of the Indian Contract Act, 1872, consideration is defined as follows:

"When at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or abstain from doing something, such act or abstinence is called a consideration for the promisee."

This is a complex sentence. Let's break it down for further understanding and rewrite it as follows:

At the desire of the promisor if the promisee either

- Does something (in the past, present or future) OR
- Abstains from doing something (in the past, present or future)

Then, this act of doing or abstinence is called Consideration. Now, it has two aspects, either doing some act or abstaining from doing something. Let's look at some examples:

Example 1 – Doing something

Peter and John enter into a contract where Peter promises to deliver 15 curtains to John in one month's time. Also, John promises to pay Peter an amount of Rs 3,000 on delivery. In this contract, John's promise to pay Rs 3,000, on delivery, is the consideration for Peter's promise. Also, Peter's promise of delivering 15 curtains is the consideration of John's promise to pay.

Example 2 – Not doing something

Peter has taken a loan from his friend John. However, he has not repaid the loan yet. John promises not to file a suit against Peter if he promises to repay the loan within a week. In this case, abstinence on the part of John is due to the consideration of Peter's promise of repayment of the loan.

Rules Regarding Consideration

According to Section 2(d) of the Indian Contract Act, 1872, the follows features are essential for a valid consideration:

(i) Consideration must move at the desire of the promisor

Consideration can be offered by the promisee or a third-party only at the request or desire of the promisor. If an action is initiated at the desire of the third-party, it is not a consideration.

Peter is going back home from work. On his way, he sees that his neighbor John's house is on fire. He immediately arranges for a water hose and manages to douse the fire. Peter cannot claim any reward for his effort because it was a voluntary act and was not done at the desire of John (promisor).

(ii) Consideration may move from the promisee to any other person

If you look at the definition of consideration according to section 2 (d) of the Indian Contract Act. 1872, it explicitly states the phrase 'promisee or any other person…' This essentially means that in India, consideration may move from the promise to any other person. However, it is important to note that there can be a stranger to consideration but not a stranger to the contract.

Peter gifted his son, Oliver an apartment in the city with a condition that he pays a fixed amount of money to his uncle, John, every year. On the same day, Oliver executed a deed to pay a fixed amount of money to John every year. However, Oliver failed to pay and John filed a suit for recovery. Oliver pleaded that he was not liable since no consideration had moved from John. However, the court held the words 'promisee or any other person…' and allowed John to maintain his suit for recovery.

(iii) It can be in the past, present or future

a. Past

Since consideration is the price of a promise, it is normally given to induce the promise. However,it can be given before the promise is made by the promisor. This is past consideration. It is important to note that past consideration is not considered for a new promise since it is not been given in lieu of the promise. According to Indian law, 'past considerations' is 'good consideration' if it was given at the desire of the promisor.

Peter employs John to work on his field during the months of agricultural harvesting. He promises to pay John an amount of Rs 5,000 for his services when he sows the new crop in the fields. The services of John in the past constitute a valid consideration.

a.1. Past Voluntary services

At times, a person might render voluntary services without any request or promise from another. If the person receiving the services makes a subsequent promise to pay for the services, then such a promise is enforceable in India under Section 25(2) of the Indian Contract Act, 1872 which states:

'An agreement made without consideration is void, unless it's a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do; or unless.'

Peter finds John's wallet on the road. He returns it to him and John promises to pay Peter Rs 500 for his services. This is a valid contract.

b. Present

If the promise and consideration take place simultaneously then it is present or executed consideration. An example is Peter goes to a shop, buys a bag of chips and pays for the same on-spot.

c. Future

When the consideration for a promise moves after the contract is formed, it is a future or executor. It is also valid if it depends on the condition.

Peter promises to create architectural plans for John's new house. John promises to pay Peter an amount of Rs 50,000 provided the plans are approved by his wife.

(iv) It must have value in the eyes of the law

While the law allows the parties to decide an 'adequate' consideration for them, it must be real and have value in the eyes of law. While the Court will not consider inadequacy, it will look at it to determine if the consent was given by the party with free-will or not.

Peter's wife agrees to withdraw the suit she has filed against him in return for his promise to pay her a monthly maintenance amount. This is a good consideration and holds value in the eyes of law.

(v) It should be over and above the Promisors' existing obligations

If the promisor is already obligated either by his promise or law to perform or abstain from a certain act, then it is not a good consideration for a promise.

Peter receives a summons from the Court to appear before it as a witness for John. John promises to pay him Rs 10,000 to appear in the Court. This contract is not valid because Peter is obligated by law to appear in the Court on receiving a summons.

(vi) It cannot be Unlawful

A consideration that is against the law or public policies is not valid.

Peter offers Rs 10,000 to John to beat up his business rival. John beats him up but Peter refuses to pay him. John cannot file a suit for recovery since the consideration is against the law.

Solved Question on Legal Rules Regarding Consideration

Q1. Which of these contracts are valid?

1. Peter promises to pay John an amount of Rs 500,000 if his car meets with an accident and gets damaged more than 50% provided John pays him Rs 25,000 per year for the next 10 years.
2. Arjun promises to take care of Ravi's house while Ravi is away for work for six months provided he pays him Rs 5,000 upon his return.

3. Rita promises to get Amita a job with the Indian Government if Amita promises to pay her Rs 20,000 when she gets the job.

Ans.

1. Peter's promise is the consideration for John's payment and vice versa. Further, these are lawful considerations and have value in the eyes of law. Hence, it is a valid contract.
2. Arjun's promise is the consideration for Ravi's payment and Ravi's payment is for Arjun's promise. Further, these are lawful considerations and have value in the eyes of law. Hence, it is a valid contract.
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Discharge of a Contract

A contract creates certain obligations on one or all parties involved. The discharge of a contract happens when these obligations come to an end. There are many ways in which a contract is discharged. In this article, we will look at various such scenarios.

1] Discharge by Performance

When the parties to a contract fulfil the obligations arising under the contract within the time and manner prescribed, then the contract is discharged by performance.

Example: Peter agrees to sell his cycle to John for an amount of Rs 10,000 to be paid by John on the delivery of the cycle. As soon as it is delivered, John pays the promised amount.

Since both the parties to the contract fulfil their obligation arising under the contract, then it is discharged by performance. Now, discharge by the performance of a contract can be by:

1. Actual performance
2. Attempted performance

As shown in the example above, actual performance is when all the parties to a contract do what they had agreed for under the contract. On the other hand, it is possible that when the promisor attempts to perform his promise, the promisee refuses to accept it. In such cases, it is called attempted performance or tender.

2] Discharge by Mutual Agreement

If all parties to a contract mutually agree to replace the contract with a new one or annul or remit or alter it, then it leads to a discharge of the original contract due to a mutual agreement.

Example: Peter owes Rs 100,000 to John and agrees to repay it within one year. They document the debt under a contract. Subsequently, he loses his job and requests John to accept Rs 75,000 as a final settlement of the loan. John agrees and they make a contract to that effect. This discharges the original contract due to mutual consent.

3] Discharge by the Impossibility of Performance

If it is impossible for any of the parties to the contract to perform their obligations, then the impossibility of performance leads to a discharge of the contract. If the impossibility exists from the start, then it is impossibility ab-initio. However, the impossibility might also arise later due to:

- An unforeseen change in the law
- Destruction of the subject-matter essential to the performance
- The non-existence or non-occurrence of a particular state of things which was considered a given for the performance of the contract
- A declaration of war

Example: Peter enters into a contract with John to marry his sister Olivia within one year. However, Peter meets with an accident and becomes insane. The impossibility of performance leads to a discharge of the contract.

4] Discharge of a Contract by Lapse of Time

The Limitation Act, 1963 prescribes a specified period for performance of a contract. If the promisor fails to perform and the promisee fails to take action within this specified period, then the latter cannot seek remedy through law. It discharges the contract due to the lapse of time.

Example: Peter takes a loan from John and agrees to pay instalments every month for the next five years. However, he does not pay even a single instalment. John calls him a few times but then gets busy and takes no action. Three years later, he

approaches the court to help him recover his money. However, the court rejects his suit since he has crossed the time-limit of three years to recover his debts.

5] Discharge of a Contract by Operation of Law

A contract can be discharged by operation of law which includes insolvency or death of the promisor.

6] Discharge by Breach of Contract

If a party to a contract fails to perform his obligation according to the time and place specified, then he is said to have committed a breach of contract.

Also, if a party repudiates a contract before the agreed time of performance of a contract, then he is said to have committed an anticipatory breach of contract.

In both cases, the breach discharges the contract. In the case of:

- an actual breach, the promisee retains his right of action for damages.
- an anticipatory breach of contract, the promisee cannot file a suit for damages. It also discharges the promisor from performing his part of the contract.

7] Discharge of a Contract by Remission

A promisee can waive or remit the performance of promise of a contract, wholly or in part. He can also extend the time agreed for the performance of the same.

In example 3 above, Peter only repays a part of the money he owes to John. However, John agrees to accept it as a final settlement of the debt. John's act of remission discharges the contract.

8] Discharge by Non-Provisioning of Facilities

In many contracts, the promisee agrees to offer reasonable facilities to the promisor for the performance of the contract. If the promisee fails to do so, then the promisor is discharged of all liabilities arising due to non-performance of the contract.

Example: Peter agrees to fix John's garage floor provided he keeps his car out for at least 6 hours. Peter approaches him a few times but John is reluctant to get his car out. John fails to provide reasonable facilities to Peter (an empty floor). This discharges him of all obligations arising under the contract.

9] Discharge of a Contract due to the Merger of Rights

In some situations, it is possible that inferior and superior right coincides in the same person. In such cases, both the rights combine leading to a discharge of the contract governing the inferior rights.

Example: Peter rents John's apartment for two years. One year into the contract, he offers to buy the property from John, who agrees. The enter a sale contract and Peter becomes the owner of the apartment. Here Peter has two rights; one accorded by the lease agreement making him the renter and second by the sale agreement making him the owner. The former being an inferior right merges with the superior one and discharges the lease contract.

Solved Question on Discharge of a Contract

Q: Peter agrees to sell his laptop to John for an amount of Rs 15,000. He also promises to deliver it within 2 days. The next day, when Peter approached John with his laptop, John refuses to accept it without any valid reason. Is the contract discharged?

Ans: Yes, in the above case the contract is discharged. The contract is discharged since Peter attempted the performance of his promise.

Remedies for Breach of Contract

The Indian Contract Act lays out all the provisions for the performance of a contract. It also contains the provisions in case of breach of contract by either party. Let us take a detailed look at the available remedies for breach of contract.

Remedies for Breach of Contract

When a promise or agreement is broken by any of the parties we call it a breach of contract. So when either of the parties does not keep their end of the agreement or does not fulfil their obligation as per the terms of the contract, it is a breach of contract. There are a few remedies for breach of contract available to the wronged party. Let us take a look.

1] Recession of Contract

When one of the parties to a contract does not fulfil his obligations, then the other party can rescind the contract and refuse the performance of his obligations.

As per section 65 of the Indian Contract Act, the party that rescinds the contract must restore any benefits he got under the said agreement. And section 75 states that the party that rescinds the contract is entitled to receive damages and/or compensation for such a recession.

2] Sue for Damages

Section 73 clearly states that the party who has suffered, since the other party has broken promises, can claim compensation for loss or damages caused to them in the normal course of business.

Such damages will not be payable if the loss is abnormal in nature, i.e. not in the ordinary course of business. There are two types of damages according to the Act,

- Liquidated Damages: Sometimes the parties to a contract will agree to the amount payable in case of a breach. This is known as liquidated damages.
- Unliquidated Damages: Here the amount payable due to the breach of contract is assessed by the courts or any appropriate authorities.

3] Sue for Specific Performance

This means the party in breach will actually have to carry out his duties according to the contract. In certain cases, the courts may insist that the party carry out the agreement.

So if any of the parties fails to perform the contract, the court may order them to do so. This is a decree of specific performance and is granted instead of damages.

For example, A decided to buy a parcel of land from B. B then refuses to sell. The courts can order B to perform his duties under the contract and sell the land to A.

4] Injunction

An injunction is basically like a decree for specific performance but for a negative contract. An injunction is a court order restraining a person from doing a particular act.

So a court may grant an injunction to stop a party of a contract from doing something he promised not to do. In a prohibitory injunction, the court stops the commission of an act and in a mandatory injunction, it will stop the continuance of an act that is unlawful.

5] Quantum Meruit

Quantum meruit literally translates to “as much is earned”. At times when one party of the contract is prevented from finishing his performance of the contract by the other party, he can claim quantum meruit.

So he must be paid a reasonable remuneration for the part of the contract he has already performed. This could be the remuneration of the services he has provided or the value of the work he has already done.

Solved Example on Breach of Contract

Q: In what cases can a decree of specific performance not be given?

Ans: In certain cases, the court cannot order specific performance. Such cases are,

i. when monetary compensation is a sufficient redressal
ii. where the court cannot oversee the performance or execution of the contract
iii. when the contract entered into is of personal services
iv. one of the parties of a contract is a minor

Unit-2

Contractt of Guarantee

Contract of Guarantee means a contract to perform the promises made or discharge the liabilities of the third person in case of his failure to discharge such liabilities.

Contract of Guarantee

As per section 126 of Indian Contract Act, 1872, a contract of guarantee has three parties: –

Surety: A surety is a person giving a guarantee in a contract of guarantee. A person who takes responsibility to pay a sum of money, perform any duty for another person in case that person fails to perform such work.

Learn more about Discharge and Rights of Surety here.

Principal Debtor: A principal debtor is a person for whom the guarantee is given in a contract of guarantee.

Creditor: The person to whom the guarantee is given is known as the creditor.

For example, Mr. X advances a loan of 25000 to Mr. Y and Mr. Z promise that in case Mr. Y fails to repay the loan, then he will repay the same. In this case of a contract of guarantee, Mr. X is a Creditor, Mr. Y is a principal debtor and Mr. Z is a Surety.

Contract of Indemnity

It is a contract in which one party promises to save the other from the loss caused to him by the acts of promisor or by any other person.

In a contract of indemnity, there are two parties namely indemnifier (promisor) and indemnified (promisee).

Source: freepik.com

Differentiation between contract of indemnity and contract of guarantee

There is a difference between the two special types of contracts, contract of indemnity and contract of guarantee which is as follows: –

1. In a contract of guarantee, there are three parties to a contract namely surety, principal debtor and creditor whereas in case of indemnity there are only two parties to a contract, promisor, and promisee.
2. In case of the contract of guarantee, the liability of the surety is secondary whereas in a contract of indemnity the liability of promisor is primary.
3. Surety provides guarantee only when requested by the principal debtor in a contract of guarantee. Indemnifier is not required to act at the request of the debtor, in a contract of indemnity.
4. In a contract of guarantee, there is an existing liability for debt or duty, surety guarantees the performance of such liability. In a contract of indemnity, the possibility of incurring a loss is contingent against which indemnifier undertakes to indemnify.
5. Surety is eligible to proceed against the principal debtor on payment of debt, in case principal debtor fails to pay the debt. Indemnifier cannot sue third parties in his own name.

Surety's Liability

According to section 128 of Indian Contract Act, 1872, the liability of a surety is co-extensive with that of principal debtor's unless the contract provides.

Liability of surety is same as that of the principal debtor. A creditor can directly proceed against the surety. A creditor can sue the surety directly without sueing

principal debtor. Surety becomes liable to make payment immediately when the principal debtor makes default in such payment.

However, primary liability to make payment is of the principal debtor, surety's liability is secondary. Also, where the principal debtor cannot be held liable for any payment due to any defect in documents, then surety is also not responsible for such payment.

Kinds of Guarantees

A contract of guarantee may be for an existing liability or for future liability. A contract of guarantee can be a specific guarantee (for any specific transaction only) or continuing guarantee.

Specific Guarantee: A specific guarantee is for a single debt or any specified transaction. It comes to an end when such debt has been paid.

Continuing Guarantee: A continuing guarantee is a type of guarantee which applies to a series of transactions.

A continuing guarantee applies to all the transactions entered into by the principal debtor until it is revoked by the surety. A continuing guarantee can be revoked anytime by surety for future transactions by giving notice to the creditors. However, the liability of a surety is not reduced for transactions entered into before such revocation of guarantee.

Revocation of Guarantee

1. By surety by giving a notice of revocation for future transactions.
2. On the death of surety. A continuing guarantee is revoked for all the future transactions due to the absence of a contract. However, his legal representatives will continue to be liable for transactions entered into before his death.

Discharge of a surety

- By giving notice of revocation for future transactions (section 130).
- In case of death of surety, the guarantee is revoked for all the future transactions (section 131).
- When there is a change in terms and condition of the contract between the creditor and principal debtor without obtaining the consent of surety. The

surety will be discharged of all the transactions taking place after such change in terms and condition (section 133). For example – Q rents his house to R at a fixed rent, P becomes surety for rent payable by R to Q. R and Q agree on a higher rent for which they do not obtain P's consent. In such a case P will be discharged as a surety after such change in contract.

- In case the creditor releases the debtor or makes any omission due to which results in the discharge of principal debtor's liability (section 134).
- When the principal debtor makes payment of debt.
- When the creditor enters into an arrangement with the principal debtor for not to sue him or to provide extra time for payment of debt, the surety will be discharged (section 135).
- The surety will be discharged when the creditor does any act which is inconsistent with the rights of surety.

Solved Example for you

Write the circumstances when the contract of guarantee is invalid.

Answer: – Circumstances, when the contract of guarantee is invalid, are as follows:-

- The guarantee is obtained by misrepresentation of facts
- When the creditor obtains guarantee without disclosure of material facts or with the intention of committing fraud.
- When the contract is made on a condition that creditor shall not act upon until there enters a co-surety to a contract of guarantee and the other party fails to join.

Contract of Guarantee

Contract of Guarantee means a contract to perform the promises made or discharge the liabilities of the third person in case of his failure to discharge such liabilities.

Contract of Guarantee

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- When the contract is made on a condition that creditor shall not act upon until there enters a co-surety to a contract of guarantee and the other party fails to join.

Previous

Next

Creditors come into existence due to the range of financial transactions a company has entered. If a company owes you money, you are a creditor of that company. For example, if you have provided the company with a loan or if you have supplied goods or services that are yet to be paid, you are a creditor. Employees can also be creditors of a company if they are owed payments such as superannuation or outstanding wages. Despite the circumstances under which you become a creditor, you will either be a secured or unsecured creditor.
A secured creditor has a security interest in some or all of a company's assets whereas an unsecured creditor does not. A security interest can take the form of a charge or mortgage. Your status as a secured or unsecured creditor becomes important if a company is in financial difficulty or insolvent as it will determine your rights and obligations in company affairs as well as your priority in receiving payment.

Voluntary Administration

A company that goes into voluntary administration aims to improve the way business is run in order to continue business activity for the long term. If insolvency is likely, another purpose of voluntary administration is to administer company affairs so that creditors receive a more optimal return. The outcome of voluntary administration will either be: (i) reinstatement of

directors' control, (ii) wind up of company and appointment of liquidator, or (iii) creation of a deed of company arrangement to outline the repayment of debts.
During voluntary administration, both secured and unsecured creditors rights are limited. For example, a secured creditor cannot enforce their security interest in company assets and unsecured creditors need to receive administrator consent or court permission in order to enforce their debt claims. There are, however, two meetings where creditors can take part. The first meeting of creditors will be to vote on the potential replacement of the administrator and the creation of a committee of creditors. The second meeting of creditors will be to vote on the company's future. After reviewing the voluntary administrator's reports, the creditor will be able to determine which of the three above outcomes should be pursued. In order to vote in both meetings, creditors need to lodge details of their debt and claims directly with the voluntary administrator.

Receivership

A secured creditor has certain rights if a company is not able to fullfill its obligations arising from a security interest. For example, they can appoint a receiver whose role will be to secure a part or all of the company assets in order to repay the creditor's debt. Any assets that may need to be sold must be done at the market value or the best price reasonably obtainable. In receivership, the receiver's prime obligations are owed to the secured creditor. This also means that the receiver is not obliged to report to unsecured creditors either in writing or in a formal meeting. During a receivership however, an unsecured creditor can still apply to the court to wind up the company (liquidation).

Liquidation

Liquidation refers to the winding up of the company. Effectively this means that a liquidator takes control of company affairs for the benefit of all creditors. Both secured and unsecured creditors can initiate this process either through a court order or as a result of the creditors' decision. Creditors can decide to go into liquidation following voluntary administration or through a shareholder resolution.
During liquidation, unsecured creditors have the following rights and responsibilities:

- Lodge details of debt or claim with the liquidator in a 'Proof of Debt' form;
- Vote at a creditors' meeting once the 'Proof of Debt' form is approved;
- Approve liquidator's fees;
- Request the liquidator to recover unfair preferences;
- Inform liquidator about their knowledge of company affairs;

- Receive information from the liquidator through a creditors' meeting or access to reports;
- Ask questions about the liquidation process and status;
- Receive dividends after priority creditors have been paid and;
- Lodge complaints to the Australian Securities and Investment Commission (ASIC) or the court on the execution of the liquidator's duties.

The rights held by secured creditors are similar to those of unsecured creditors, for example to vote at creditors' meetings and to receive dividend payments. However, even when a company is in liquidation, a secured creditor can still appoint a receiver to take control of secured assets to repay their debt. Secured creditors can also request the liquidator to deal with the secured assets on their behalf.
Company insolvency is complicated and highly regulated. If you are a creditor and the company is in financial difficulty, it is important to know where you stand. At LegalVision we have commercial lawyers who specialise in insolvency. As a creditor it would be important to get the appropriate legal advice to ensure you are aware of your rights, responsibilities and options.

Rights and Discharge of Surety

A contract of guarantee refers to a contract to perform the promise or discharge the liability of a third person in case of any default by him. Surety is the person giving the guarantee. The person for whom the guarantee is given is the Principle Debtor. The person to whom the surety gives the guarantee is the Creditor. A guarantee may be oral or in writing. Here we will discuss the Discharge and Rights of Surety.

Discharge and Rights of Surety

A contract of guarantee shall also satisfy all the necessary conditions or elements of a valid contract. As per section 127, anything is done or any promise made for the benefit of the principal debtor provides sufficient consideration to the surety for giving the guarantee to the creditor.

For example, Bharat asks Anil to sell goods to him on credit and deliver them. Anil agrees to it on a condition that Charu will guarantee the payment of the price of the goods. Charu guarantees the payment in consideration of Anil's promise to deliver the goods. This is sufficient consideration for Charu's or Surety's promise.

Rights of a Surety

A surety has the following rights:

1. Rights against the Creditor

As per section 141, a surety is eligible to the benefit of every security which the creditor has against the principal debtor. This holds true even if at the time of entering into the contract of guarantee the surety was unaware of the existence of such a security.

Also, when the creditor losses or parts with such security without the consent of the surety, this discharges the surety to the extent of the value of such security.

2. Rights against the Principal Debtor

Once the surety discharges the debt, he obtains the rights of a creditor against the principal debtor. He can now sue the principal debtor for the amount of debt paid by him to the creditor due to the default of the principal debtor.

In a case where the principal debtor on discovering that the debt has become due, starts disposing of his properties in order to prevent seizure by the surety, the surety can compel the debtor to pay the debt and discharge him from his liability to pay.

3. Surety's rights against the co-sureties

When a surety pays more than his share to the creditor, he has a right of contribution from the co-sureties, who are equally liable to pay. For example, Anthony, Barkha, and Chaya are the co-sureties to David for a sum of ₹30000 lent to Erwin who made default in payment.

Thus, Anthony, Barkha, and Chaya are liable to pay ₹10000 each as between them. So, in this case, if anyone of them pays more than ₹10000, he can claim the excess from the other two co-sureties so as to reduce his payment to ₹10000 only. However, if one of the co-sureties becomes insolvent, the other co-sureties shall contribute his share equally.

Discharge of a Surety (Sec.130 – 141)

A surety is discharged from his liability on:

1. The death of a surety as regards future transactions in case of a continuing guarantee in the absence of a contract to the contrary.
2. Notice of revocation as regards future transactions in case of a continuing guarantee. For example, Anu gives a guarantee to Bela to the extent of ₹50000, that Freida will pay all the bills that Bela will draw upon her. Bela draws bills on Freida and she accepts the bill. Anu gives notice of revocation. Freida dishonours the bill at maturity. Anu is liable as it was a transaction before the notice of revocation.
3. Any variation in the terms of the contract between the principal debtor and the creditor without surety's consent.
4. If the creditor releases the principal debtor, the surety also automatically discharges.
5. When the creditor makes an arrangement for composition or promises to give time or not sue the principal debtor without surety's consent, the surety will be discharged.
6. Any act or omission to do an act by the creditor which results in harming the rights of the surety, and also impairs the eventual remedy of the surety himself against the principal debtor, discharges the surety.
7. Where the creditor loses or parts with any security which he receives from the principal debtor without the consent of the surety, this discharges the surety to the extent of the value of such security.

Solved Example on Discharge and Rights of Surety

What is the extent of surety's liability?

Ans:

As per section 128, the liability of a surety is co-extensive with that of the principal debtor unless the contract provides to the contrary. As soon as the Principal Debtor makes any default in the payment of the debt, the surety becomes liable. Thus, a creditor is not bound to proceed against the principal debtor first. He can directly sue the surety without suing the principal debtor. However, until the principal debtor makes any default, the creditor cannot ask the surety to pay the debt. Hence, the surety's liability is secondary and the liability of the principal debtor being primary.

Contract of Indemnity

A contract of indemnity is one of the most important forms of commercial contracts. Several industries, such as the insurance industry, rely on these contracts. This is because of the nature of these contracts. They basically help businesses in indemnifying their losses and, therefore, reduce their risks. This is extremely important for small as well as large businesses.

Contract of Indemnity

A contract of indemnity basically involves one party promising the other party to make good its losses. These losses may arise either due to the conduct of the other party or that of somebody else.

To indemnify something basically means to make good a loss. In other words, it means that one party will compensate the other in case it suffers some losses.

For example, A promises to deliver certain goods to B for Rs. 2,000 every month. C comes in and promises to indemnify B's losses if A fails to so deliver the goods. This is how B and C will enter into contractual obligations of indemnity.

A contract of insurance is very similar to indemnity contracts. Here, the insurer promises to compensate the insured for his losses. In return, he receives consideration in the form of premium. However, the Contract Act does not strictly govern these kinds of transactions. This is because the Insurance Act and other such laws contain specific provisions for insurance contracts.

Parties under Indemnity Contracts

There are generally two parties in indemnity contracts. The person who promises to indemnify for a loss is the Indemnifier. On the other hand, the person whose losses the indemnifier promises to make good is the Indemnified. We can also refer to the Indemnified party as the Indemnity Holder. For example, in the earlier example, C is the Indemnifier and B is the Indemnity Holder.

Nature of Indemnity Contracts

An indemnity contract may be either express or implied. In other words, parties may expressly create such a contract as per their own terms. The nature of circumstances may also create indemnity obligations impliedly. For example, A does an act at the request of B. If B suffers some losses and A offers to compensate him, they impliedly create an indemnity contract.

Rights of an Indemnity Holder

When parties expressly make a contract of indemnity, they can determine their own terms and conditions. However, sometimes they may not do so. In such a case, the indemnity holder can enforce the following rights against the indemnifier:

1) The indemnifier will have to pay damages which the indemnity holder will claim in a suit.

2) The indemnity holder can even compel the indemnifier to pay the costs he incurs in litigating the suit.

3) If the parties agree to legally compromise the suit, the indemnifier has to pay the compromise amount.

Contract of Guarantee

Apart from indemnity contracts, the Contract Act also governs contracts of guarantee. These contracts might appear similar to indemnity contracts but there are some differences between them.

In guarantee contracts, one party contracts to perform a promise or discharge a liability of a third party. This will happen in case the third party fails to discharge its obligations and defaults. However, the burden of discharging the burden will first lie on the defaulting third party.

The person who gives the guarantee is the Surety. On the other hand, the person for whom the Surety gives the guarantee is the Principal Debtor. Similarly, the person to whom he gives such a guarantee is the Creditor.

Differences between Indemnity and Guarantee

There are some important differences between the contracts of indemnity and guarantee.

Firstly, there are just two parties in indemnity, while there are three in contracts of guarantee.

Secondly, in a guarantee, there is an existing debt/duty which the surety guarantees to discharge. On the other hand, liability in indemnity is contingent and may not arise at all.

Thirdly, an indemnifier might act without the debtor's behest, while a surety always waits for the principal debtor's request.

Finally, the liability of an indemnifier towards the indemnity holder is primary. Whereas, in guarantee, the surety's liability is secondary. This is because the primary liability lies on the principal debtor himself.

Questions on Contract of Indemnity

Question: Mention the missing word(s) in the following sentences.

(a) Contracts of _____ are similar to the contracts of indemnity.

(b) We can also refer to the Indemnified party as the _____.

(c) A contract of indemnity may be either express or _____.

(d) The primary liability in indemnity lies on the indemnifier, while in guarantee it lies on the _____.

Answers: (a) insurance (b) indemnity holder (c) implied (d) principal debtor

BAILMENT

*The temporary placement of control over, or possession of*personal property*by one person, the bailor, into the hands of another, the bailee, for a designated purpose upon which the parties have agreed.*

The term *bailment* is derived from the French *bailor*, "to deliver." It is generally considered to be a contractual relationship since the bailor and bailee, either expressly or impliedly, bind themselves to act according to particular terms. The bailee receives only control or possession of the property while the bailor retains the ownership interests in it. During the specific period a bailment exists, the bailee's interest in the property is superior to that of all others, including the bailor, unless the bailee violates some term of the agreement. Once the purpose for which the property has been delivered has been accomplished, the property will be returned to the bailor or otherwise disposed of pursuant to the bailor's directions.

A bailment is not the same as a sale, which is an intentional transfer of ownership of personal property in exchange for something of value. A bailment involves only a transfer of possession or custody, not of ownership. A rental or lease of personal property might be a bailment, depending upon the agreement of the parties. A bailment is created when a parking garage attendant, the bailee, is given the keys to a motor vehicle by its owner, the bailor. The owner, in addition to renting the space, has transferred possession and control of the vehicle by relinquishing its keys to the attendant. If the keys were not made available and the vehicle was locked, the arrangement would be strictly a rental or lease, since there was no transfer of possession.

A gratuitous loan and the delivery of property for repair or safekeeping are also typical situations in which a bailment is created.

Categories

There are three types of bailments: (1) for the benefit of the bailor and bailee; (2) for the sole benefit of the bailor; and (3) for the sole benefit of the bailee.

A bailment for the mutual benefit of the parties is created when there is an exchange of performances between the parties. A bailment for the repair of an item is a bailment for mutual benefit when the bailee receives a fee in exchange for his or her work.

A bailor receives the sole benefit from a bailment when a bailee acts gratuitously—for example, if a restaurant, a bailee, provides an attended coatroom free of charge to its customers, the bailors. By virtue of the terms of the bailment, the bailee agrees to act without any expectation of compensation.

A bailment is created for the sole benefit of the bailee when both parties agree the property temporarily in the bailee's custody is to be used to his or her own advantage without giving anything to the bailor in return. The loan of a book from a library is a bailment for the sole benefit of the bailee.

Elements

Three elements are generally necessary for the existence of a bailment: delivery, acceptance, and consideration.

Actual possession of or control over property must be delivered to a bailee in order to create a bailment. The delivery of actual possession of an item allows the bailee to accomplish his or her duties toward the property without the interference of others. Control over property is not necessarily the same as physical custody of it but, rather, is a type of constructive delivery. The bailor gives the bailee the means of access to taking custody of it, without its actual delivery. The law construes such action as the equivalent of the physical transfer of the item. The delivery of the keys to a safe-deposit box is constructive delivery of its contents.

A requisite to the creation of a bailment is the express or implied acceptance of possession of or control over the property by the bailee. A person cannot unwittingly become a bailee. Because a bailment is a contract, knowledge and acceptance of its terms are essential to its enforcement.

Consideration, the exchange of something of value, must be present for a bailment to exist. Unlike the consideration required for most contracts, as long as one party gives up something of value, such action is regarded as good consideration. It is sufficient that the bailor suffer loss of use of the property by relinquishing its control to the bailee; the bailor has given up something of value—the immediate right to control the property.

Rights and Liabilities

The bailment contract embodying general principles of the law of bailments governs the rights and duties of the bailor and bailee. The duty of care that must be exercised by a bailee varies, depending on the type of bailment.

In a bailment for mutual benefit, the bailee must take reasonable care of the bailed property. A bailee who fails to do so may be held liable for any damages incurred from his or her negligence. When a bailor receives the sole benefit from the bailment, the bailee has a lesser duty to care for the property and is financially responsible only if he or she has been grossly negligent or has acted in bad faith in taking care of the property. In contrast, a bailee for whose sole benefit property has been bailed must exercise extraordinary care for the property. The bailee can use the property only in the manner authorized by the terms of the bailment. The bailee is liable for all injuries to the property from failure to properly care for or use it.

Once the purpose of the bailment has been completed, the bailee usually must return the property to the bailor, or account for it, depending upon the terms of the contract. If, through no fault of his or her own, the return of the property is delayed or becomes impossible—for example, when it is lost during the course of the bailment or when a hurricane blows the property into the ocean—the bailee will not be held liable for nondelivery on demand. In all other situations, however, the bailee will be responsible for the tort of conversion for unjustifiable failure to redeliver the property as well as its unauthorized use.

The provisions of the bailment contract may restrict the liability of a bailee for negligent care or unauthorized use of the property. Such terms may not, however, absolve the bailee from all liability for the consequences of his or her own fraud or negligence. The bailor must have notice of all such limitations on liability. The restrictions will be enforced in any action brought for damages as long as the contract does not violate the law or public policy. Similarly, a bailee may extend his or her liability to the bailor by contract provision.

Termination

A bailment is ended when its purpose has been achieved, when the parties agree that it is terminated, or when the bailed property is destroyed. A bailment created for an indefinite period is terminable at will by either party, as long as the other party receives due notice of the intended termination. Once a bailment ends, the bailee must return the property to the bailor or possibly be liable for conversion.

CONTRACT OF BAILMENT

Section 148-181

Contract of Bailment is defined under section 148 of the Indian Contract Act.

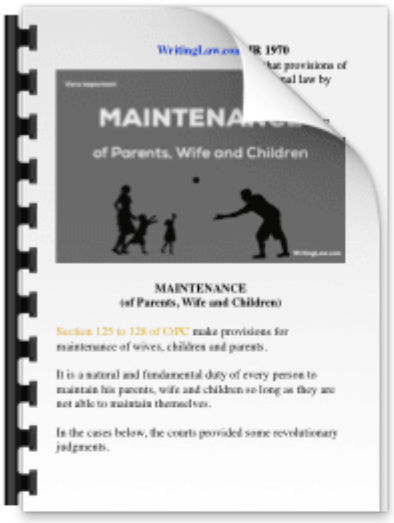
A bailment is the delivery of goods by one person to another for some purpose; upon a contract that they shall, when the purpose is accomplished, the property must be returned back or otherwise disposed off according to the directions of the person delivering them.

● The person who delivers the goods (movable property) is called the **Bailor**.

● The person to whom the goods are delivered is called the **Bailee**.

● And the contract between the Bailor and Bailee is called the **contract of Bailment**.

The contract of Bailment is created only about movable property.



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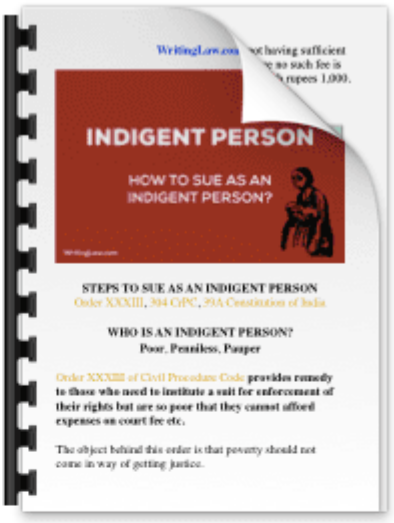

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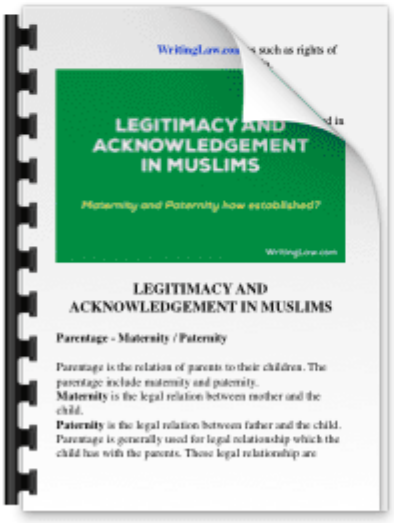

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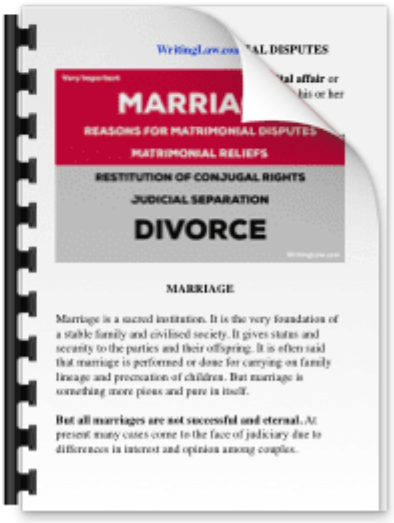

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RIGHTS AND DUTIES OF BAILEE

Duties of Bailee

1. Duty to **take care** of the goods.

2. Duty to **return** goods.

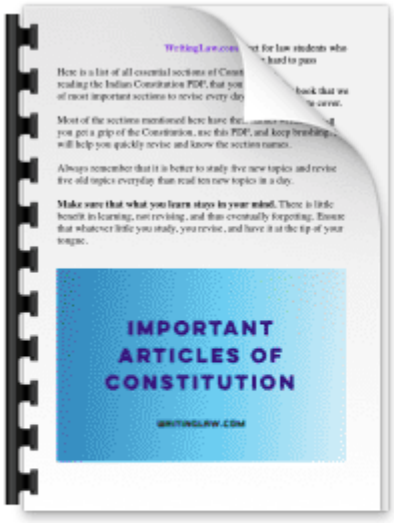
After the accomplishment of purpose then it is the duty of the Bailee to return the goods to the Bailor.

3. To make **proper use** of goods Bailed.

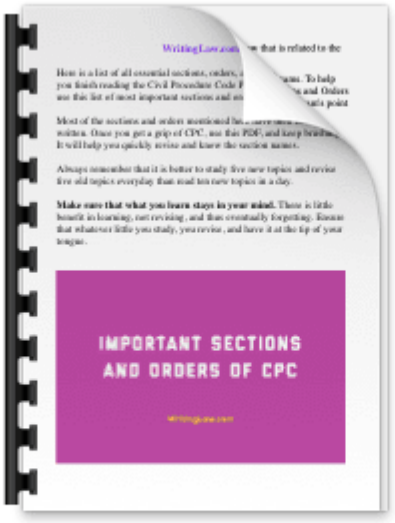
The use of the goods which is mentioned under the contract, the use must be according to the contract.

4. Duty **not to mix** his own goods with the goods of Bailor.

5. Duty **not to question the title** of the Bailor.



1. Important Articles of Indian Constitution.pdf



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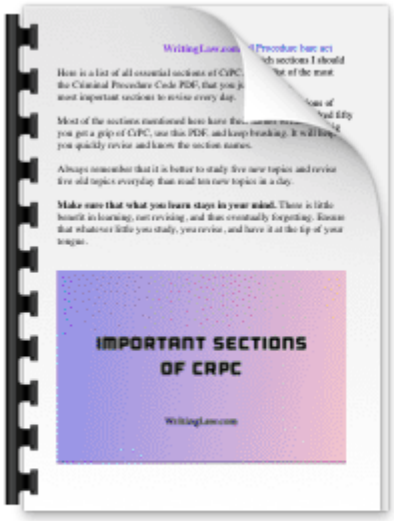

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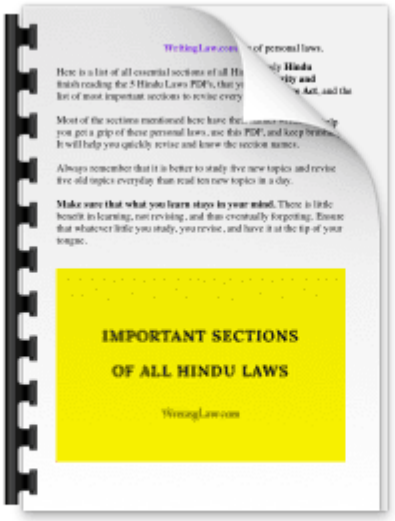

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6. Duty of Bailee **to pay increase or profit** from goods Bailed.

For Example:

A gives a cow to B on bailment and after the bailment cow gives birth to calf. It is the duty of the Bailee to return cow as well as the calf to the Bailor.

Rights of Bailee

1. Right to **get compensation**.

2. Right to **terminate** the contract of Bailment.

If the terms and condition are decided by the parties while making a contract and the goods are not according to terms and condition of the contract then the Bailee has right to terminate the contract.

3. Right to **get expenses**.

If the expenses are incurred by the Bailee regarding the goods bailed then afterwards the Bailee is entitled to get the expenses.

RIGHTS AND DUTIES OF BAILOR

Duties of Bailor

1. It is the duty of Bailor to **disclose faults** in goods bailed.

It is the paramount duty of the Bailor to express the fault of the goods to the Bailee.

2. Duty of the Bailor to **give compensation** to the Bailee.

3. Duty to **give expenses**.

Rights of Bailor

1. Right to **get his goods back**.

2. Right to **get the increase or profit** from the goods bailed.

3. Right to **get compensation**.

4. Right to **terminate** the contract.

Rights and Duties of a Pledger

Rights

1. The pledger has a right to claim back the security pledged on repayment of the debt with interest and other charges.
2. The pledger has a right to receive a reasonable notice in case the pledgee intends to sell the goods and in case he does not receive the notice he has a right to claim any damages that may result.
3. In case of sale, the pledgor is entitled to receive from the pledgee any surplus that may remain with him after the debt is completely paid off.
4. The pledgor has a right to claim any accruals to the goods pledged.
5. If any loss is caused to the goods because of mishandling or negligence on the part of the pledgee, the pledgor has a right to claim the same.

Duties

1. A pledgor must disclose to the pledgee any material faults or extraordinary risks in the goods to which the pledgee may be exposed.
2. A pledgor is responsible to meet any extraordinary expenditure incurred by the pledgee for the preservation of the goods.
3. Where the pledgee has exercised his right of sale of goods, any shortfall has to be made good by the pledgor.
4. The pledgor is liable for any loss caused to the pledgee because of defects in his (pledgor's) title the goods.

Rights and duties of a Pledgee

Essential Elements of the Pledge:

According to Section 172 of the Indian Contract Act, 1872, the following conditions are to be satisfied to constitute a pledge.

a) Delivery of goods,

b) Such delivery of goods is as security for payment of debt and

c) The subject matter must be movable property.

a) Delivery of Goods: To constitute a pledge, there must be bailment of goods, that is the delivery of goods from one person (borrower in case of loan) to the another person (the person giving loan). Such delivery of the possession of the goods may be actual or constructive.

Rights of Pledgee:
Sections 173 to 176 deals about the rights of the pledgee.

1. Right to retain the pledged goods.
2. Right to recover extraordinary expenses from the pledger.
3. Right to sue and sell the pledged property.

Unit-3

Define a Contract of Sale and explain its essential elements.

According to Section 4 of the Sales of Goods Act, **contract of sale** of goods means “a contract where by the seller transfers or agrees to transfer the property in goods to the buyer for a price.” A contract of sale may be absolute or conditional according as the parties desire. It may be between one part-owner and another. The term “contract of sale” is a generic term. A contract of sale may be either a sale or an agreement to sell.
Sale: Where under a contract of sale, the property in goods is immediately transferred from the seller to the buyer, the contract is called a sale. Thus, it is an executed contract.
Agreement to Sell: Where under a contract of sale, the transfer of property in goods is to take place at a future time or subject to the fulfillment of certain conditions, the contract is called an agreement to sell. It is an executory contract. An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods was to be transferred.
Essentials of Contract of sale:
Two Parties: A sale has to be bilateral because the property in goods has to pass from one person to another. Therefore there must be two parties seller and buyer. A person cannot buy his own goods.

Sale and Agreement of Sale

Agreement of Sale or the agreement to sell becomes a sale when certain conditions are met. Here we will see certain aspects derived from the Sale of Goods Act, that determine the nature of a Sale and Agreement of Sale. Let us see more!

Sale and Agreement of Sale (Section 4)

A contract is a formal or verbal agreement that is enforceable by law. Every contract must have an agreement but every agreement is not a contract. The section 4(1) of the Sale of Goods Act, 1930 states that – 'A contract of sale of goods is a contract whereby the seller either transfers or agrees to transfer the property in goods to the buyer for a decided price.'

In Section 4(4) of the Act, it is maintained that for an agreement of sale to become a sale, the time has to elapse or the conditions have to be fulfilled subject to which the property in the goods is to be is to be transferred.

The point that is to be understood from the above discussion is that a contract for the sale of goods can either be a sale or an agreement of sale. Let us see both the cases in the light of the Act.

Sale

Here the property in goods is transferred at once to the buyer from the seller. The Section 4(3) of the Act says that "where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is then known as a sale." A sale is carried out on deliverable goods. Goods are said to be in a deliverable state when they are in such a condition that the buyer would, under the contract, be bound to take delivery of them [Section 2(3)].

The transfer of goods may be affected directly, after the fulfillment of a contingency or to a party authorized by the seller.

Agreement To Sell

We saw that in a sale the property in the goods is transferred from the seller to the buyer. However, in an agreement to sell, the ownership of the property in goods is not transferred immediately. The objective of the agreement is to transfer the goods at a future date, once some contingent clauses in the agreement or certain conditions are satisfied.

The Act in Section 4(3), defines what an agreement to sell is. The section 4(3) of the sale of Goods Act defines it as, "where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell."

Thus we see that a contract for the sale of goods may be either sale or agreement to sell. This depends on the condition whether it postulates an immediate transfer of property from the seller to the buyer or whether it postulates the transfer to take place at some future date.

Now the question is that how does this transition from agreement to sell to sale occur? The agreement to sell will become a sale if and only when the time elapses or the conditions are fulfilled subject to which the contract of sale is to be fulfilled.

Elements of A Contract Of Sale

From the Sale of Goods Act, 1930, we see that certain elements must co-exist for a contract of sale to be constituted. they are as follows:

1. The presence of two parties is a must. As is the case with a contract, there must be at least two parties in the contract of sale. One shall become the seller and the other a buyer.
2. The clauses therein present in the contract of sale must limit their scope to only the movable property. This "movable property" may constitute existing goods, goods in the possession or the ownership of the seller or future goods.
3. One of the important elements is the consideration of price. A price in value (currency and not in kind) has to be paid or promised. The price consideration or the actual payment could be partly in kind and partly in money but never in kind alone.

4. The ownership of the property of goods must change from the seller to the buyer. In the contract of sale, like we saw in the elements of a contract, an offer has to be made and then accepted. The offer is made by a seller and then accepted by the buyer.
5. The contract of sale may be absolute or conditional.
6. The other essential elements of a contract, that we have already seen must also be present here. The crucial elements of a contract like competency of parties, the legality of object and consideration etc. have to be present like in any other contract.

Solved Question on Sale and Agreement of Sale

Q: What is the specific condition that makes a contract an agreement to sell?

Answer: The condition is defined in Section 4(3) of the Sale of Goods Act, 1930 as:

"where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell."

Thus here the ownership of goods is not transferred immediately but an intention to transfer the ownership is made clear.

What Are Terms of Contract Conditions and Warranties?

Terms of contract conditions and warranties are used to designate the responsibilities of the parties involved in the agreement. They are set out in a contract in order to determine remedies in a case of a breach of obligations on the part of either party. There are distinct differences between the two.

What Is a Condition?

A condition is essentially the basis for a contract. It provides for the obligations of each party in an agreement. The simplest way to think of a condition in contract law is found in the terms "If…then." "If" one party fulfills an obligation as contained in the agreement, "then" the other party to the agreement must fulfill their obligation to that party.

For instance, a condition in a contract for a sale of goods might include the terms that the successful completion of a contract relies upon an agreed upon delivery date of the

goods. In order to fulfill the terms of that contract, the seller will only receive compensation for their goods if the buyer receives those goods by that set date.

If the seller should fail to meet that deadline, then the seller can be held in breach of the contract. The injured party can treat this failure of the seller to meet their obligations as "repudiatory," meaning the injured party has two options:

- Terminate the contract (acceptance of the repudiation) and walk away from any obligations they may owe the seller; or
- Treat the contract as continuing (affirmation of the contract).

In either case, the injured party can sue for damages, no matter the reason for the breach or how little the loss to the party may be.

Two Types of Conditions

Two types of conditions can be found in a contract: Expressed or Implied Conditions.

- **Expressed Conditions:** As the name implies, these are conditions that have been clearly described and agreed upon by both parties to an agreement. If obligations laid forth in an expressed condition are not met, a breach of contract can be determined with liability assessed and damages awarded.
- **Implied Conditions:** These are conditions that are assumed to be accepted by both parties regarding their obligations. These may include conditions that ownership is not in question, the goods are not damaged, or that it is not necessary to provide detailed descriptions of the goods being sold beyond its name. For instance it's accepted that a bowling ball is a bowling ball and not a basketball, and thus no further description is required. However, implied conditions can be superseded by an expressed condition if the parties prefer to place emphasis on that issue.

Confusion Surrounding Representations

There are often misunderstandings as to whether a representation constitutes a condition in a contract. Throughout the negotiation process, discussions may have taken place that are considered to be "representations," or statements of fact, that are made with the sole purpose of getting a person to sign a contract.

The major difference between the two is that failure to deliver on a representation can only result in liability for misrepresentation, not breach of contract. The responsibility for determining whether damages can be awarded for misrepresentation rests with the aggrieved party. They must prove that they relied on statement as a term of the contract, that they placed considerable importance on the statement, and they believed the statement was true.

What Is a Warranty?

A warranty is a term in a contract that is more like a promise by one party than a condition agreed upon by both parties. A major difference is that if a party fails to live up to a warranty, the aggrieved party can sue for damages, but that failure does not provide cause for termination of the contract.

If the other party considers the warranty by one party important enough, then it could be classified as a condition. Generally, however a warranty is usually only a statement of facts. They can be expressed or implied and can be for the lifetime of the contract or be contractual only for a limited time.

If you suspect that an agreement has been breached, it's always a good idea to seek legal counsel in order to more thoroughly identify the different terms in a contract and determine what remedies are available. Remedies can vary greatly depending on the type of term for which the other party has not met their obligations, and the strategies to

Introduction

In a contract for sale of goods or property, the ownership of such goods or property is also passed to the buyer. It is important to determine the exact point at which the property is passed from seller to the buyer as the risk involving the property depends on it. Thus, the following shall be determined:

1. a) The exact point of time when the property in the goods is passed from the buyer to the seller.
2. b) The point of time at which risk passes on to the buyer from seller.
3. c) The time when right of ownership and possession is passed on to the buyer by seller.

The three stages involved in the performance of contract of sale of goods are:

1) Transfer of property in goods (Section 18 to 25)

2) Transfer of possession of goods (Section 26)

3) Transfer of title (Section 27-30)

Rules relating to Passing of Property

1) Passing of risk (Section 26): The section provides the goods, unless the property is transferred to the buyer, shall remain with the seller. As soon as the property is transferred to the buyer, the goods are at the buyer's risk whether the goods have been delivered or not. But, if delivery is delayed due to the fault of either party, the risk lies with the party at fault. Therefore, 'property' and 'risk' goes simultaneously.

2) Rules as to the passing of property in the goods (Section 18-25): The general rules relating to the transfer of property in the goods are:

1. a) Ascertainment of goods (Section 18): The property in the goods cannot be transferred by the seller to the buyer if the contract for sale is of ascertained goods. Therefore, the goods must be ascertained for transfer of property in the goods.
2. b) The intention of parties [Section 19(1)]: The property in the goods is passed to the buyer when both the parties intend to do so. The terms of the contract, conduct of parties and circumstances of case shall be considered for determining the intention of the parties.

3) Specific Goods (Section 20-22): Rules relating to the transfer of property in specific goods are provided under Section 20 to 22 which are as follows:

1. a) Goods in Deliverable State (Section 20): A state in which a buyer is bound to take delivery of the goods is known as a deliverable state. When a contract for transfer of property in the goods is unconditional, the transfer of property in the goods is said to be done when such contract is made.
2. b) Goods to be put in deliverable state (Section 21): In some contracts, the seller is supposed to do something with the goods for putting them in deliverable state, and the property in the goods is not said to be transferred unless such thing is done to the goods and the buyer is given notice of the same.
3. c) Price of goods ascertained through weighing (Section 22): Where the price of the specific goods in a contract of sale is to be determined by weighing, measuring or some other method, the property in the goods is not said to be passed unless such weighing, measuring or the method is used for ascertainment of price and buyer is given notice of the same.

4) Unascertained goods (Section 23): In a contract for sale of unascertained goods by description, the property in the goods passed on to the buyer if the goods of the said description are in deliverable state and are unconditionally appropriated to the contract by the buyer with the consent

of seller or vice-versa. The consent can be either express or implied and can be given after or before the appropriation is done.

As per a contract, if the goods are delivered to the buyer, carrier or bailee who doesn't have a right of disposal (named by a buyer or not) by the seller, it is assumed that he has unconditionally appropriated the goods to the contract.

5) Goods sent on approval basis (Section 24): When the goods are delivered to the buyer on specific terms i.e. 'approval', 'sale on return' or any other such term, the property is said to be transferred when:

1. a) The buyer indicated his approval or acceptance to the seller;
2. b) The buyer acts in a way which indicates adoption of the transaction;
3. c) The buyer retains the goods even after expiry of fixed period.

6) Reserving right of disposal (Section 25): If a seller reserves a right to dispose the goods until fulfillment of certain conditions, then the property in the goods cannot is not transferred to the buyer until such conditions are fulfilled even if the goods are specific or subsequently appropriated.

Contracts Involving Sea Routes

Where the contracts are for sale involving sea routes, there are special clauses and conditions prepared keeping in mind the international customs and practices of merchants:

1. ***A) Free Alongside Ship Contracts:*** In FAS contracts, the property in the goods sold passed to the buyer when the seller delivers the goods alongside the ship whose name has been mentioned in the contract of carriage between the parties. The seller's and buyer's duties under such contracts are as following:

Seller's Duties:

- Delivery of goods alongside the ship.
- Notify the buyer of delivery alongside the ship.

Buyer's Duties:

- Arrangement for affreightment contract.
- Notify the seller of the ship name and delivery alongside the ship.
- Bear risks and pay charges for the goods delivered alongside the ship.

1. ***B) Free on board Contracts:*** Under FOB contracts, if a seller agrees to sell goods, then the seller have to put the goods on a ship on behalf of

buyer, at his own expenses under the contract of carriage by sea for transmitting the goods to buyer.

Seller's duties:

- Delivery of goods on the ship named by buyer. Once the goods are put on a ship, they are at buyer's risk. The seller's duty ends once he delivers goods to the ship at his own expenses.
- Notify the buyer about the shipping of goods. The notification is in order to enable the buyer to protect the goods against loss during transmission of goods. If the seller fails to notify the buyer, the goods will be at his risk.

Buyer's Duties

- Arrange for the contract of aafireightment;
- To tell the seller the name of the ship through which the goods are delivered.
- Bear risks and charges relating to delivery of goods on ship.

The property in the goods is said to be passed on to the buyer when the goods are delivered. If the buyer fails to name a ship for transfer of goods, the seller can sue the buyer for the non-acceptance of goods but he cannot sue for the price.

1. ***C) Cost, Insurance and Freight Contracts:*** When a seller agrees to sell goods, the price of goods shall include the price of goods, cost of insurance and freight. Such contracts are said to be performed when the documents, bill of lading, insurance policy, invoice, etc are delivered to the buyer through a bank. The bank transfers the documents at a charge. The seller is said to be the owner of goods till the time buyer receives the documents and pays for the goods.
2. ***D) Ex-Ship Contracts:*** Under these contracts, the seller delivers the goods from a ship arrived at the port of destination at his own expenses. The property in the goods is not said to be transferred until the goods are delivered to the buyer.

Case Laws relating to Passing of Propert-

Badri Prasad v. State of M.P: In this case, the court held that in the cases of sale of trees, the property in the goods is said to be transferred when the trees fell after they are being cut as they cannot be ascertained unless they fall.

Multanual Chempalal v. C.P. Shah & Co.: In this case, it has been held that section 26 of the Sale of Goods Act, the risk passes only when the property is passed but if there is a contract to the contrary, the risk passes

before the title to the property is passed. Thus, the parties can enter into a contract which provides for passing of risk before the passing of property.

Conclusion

The Sale of Goods Act, 1930 provides for several aspects relating to the passing of property in a contract for sale of goods or property. There are several rules provided under Sections 18 to 25 of the Act through which rights and liabilities of the buyer and seller can be determined. Passing of property in the goods signifies the transfer of ownership in the goods which is a different concept from the possession of goods as possession only

Performance of Contract of Sale

There are many rules and definitions governing the law on sales in sections 31 to 40 of the Sale of Goods Act, 1930. In this article, we will be looking at various definitions and duties of buyers, sellers, and third parties (wherever applicable).

Definition of Delivery

According to Section 2 (2) of the Sale of Goods Act, 1930, delivery means voluntary transfer of possession of goods from one person to another. Hence, if a person takes possession of goods by unfair means, then there is no delivery of goods. Having understood delivery, let's look at the law on sales

Law on Sales

1] The Duty of the Buyer and Seller (Section 31)

It is the duty of the seller to deliver the goods and the buyer to pay for them and accept them, as per the terms of the contract and the law on sales.

2] Concurrency of Payment and Delivery (Section 32)

The delivery of goods and payment of the price are concurrent conditions as per the law on sales unless the parties agree otherwise. So, the seller has to be willing to give possession of the goods to the buyer in exchange for the price. On the other hand, the buyer has to be ready to pay the price in exchange for possession of the goods.

Rules Pertaining to the Delivery of Goods

The Sale of Goods Act, 1930 prescribes the following rules regarding delivery of goods:

a. Delivery (Section 33)

The delivery of goods can be made either by putting the goods in the possession of the buyer or any person authorized by him to hold them on his behalf or by doing anything else that the parties agree to.

b. Effect of part-delivery (Section 34)

If a part-delivery of the goods is made in progress of the delivery of the whole, then it has the same effect for the purpose of passing the property in such goods as the delivery of the whole. However, a part-delivery with an intention of severing it from the whole does not operate as a delivery of the remainder.

c. Buyer to apply for delivery (Section 35)

A seller is not bound to deliver the goods until the buyer applies for delivery unless the parties have agreed to other terms in the contract.

d. Place of delivery [Section 36 (1)]

When a sale contract is made, the parties might agree to certain terms for delivery, express or implied. Depending on the agreement, the buyer might take possession of the goods from the seller or the seller might send them to the buyer.

If no such terms are specified in the contract, then as per law on sales

- The goods sold are delivered at the place at which they are at the time of the sale
- The goods to be sold are delivered at the place at which they are at the time of the agreement to sell. However, if the goods are not in existence at such time,

then they are delivered to the place where they are manufactured or produced.

e. Time of Delivery [Section 36 (2)]

Consider a contract of sale where the seller agrees to send the goods to the buyer, but not time of delivery is specified. In such cases, the seller is expected to deliver the goods within a reasonable time.

f. Goods in possession of a third party [Section 36 (3)]

If at the time of sale, the goods are in possession of a third party. Then there is no delivery unless the third party acknowledges to the buyer that the goods are being held on his behalf. It is important to note that nothing in this section shall affect the operation of the issue or transfer of any document of title to the goods.

g. Time for tender of delivery [Section 36 (4)]

It is important that the demand or tender of delivery is made at a reasonable hour. If not, then it is rendered ineffectual. The reasonable hour will depend on the case.

h. Expenses for delivery [Section 36 (5)]

The seller will bear all expenses pertaining to putting the goods in a deliverable state unless the parties agree to some other terms in the contract.

i. Delivery of wrong quantity (Section 37)

- Sub-section 1 – If the seller delivers a lesser quantity of goods as compared to the contracted quantity, then the buyer may reject the delivery. If he accepts it, then he shall pay for them at the contracted rate.
- Sub-section 2 – If the seller delivers a larger quantity of goods as compared to the contracted quantity, then the buyer may accept the quantity included in the contract and reject the rest. The buyer can also reject the entire delivery. If he wants to accept the increased quantity, then he needs to pay at the contract rate.
- Sub-section 3 – If the seller delivers a mix of goods where some part of the goods are mentioned in the contract and some are not, then the buyer may accept the goods which are in accordance with the contract and reject the rest. He may also reject the entire delivery.
- Sub-section 4 – The provisions of this section are subject to any usage of trade, special agreement or course of dealing between the parties.

j. Installment deliveries (Section 38)

The buyer does not have to accept delivery in installments unless he has agreed to do so in the contract. If such an agreement exists, then the parties are required to determine the rights and liabilities and payments themselves.

k. Delivery to carrier [Section 36 (1)]

The delivery of goods to the carrier for transmission to the buyer is prima facie deemed to be 'delivery to the buyer' unless contrary terms exist in the contract.

l. Deterioration during transit (Section 40)

If the goods are to be delivered at a distant place, then the liability of deterioration incidental to the course of the transit lies with the buyer even though the seller agrees to deliver at his own risk.

m. Buyers right to examine the goods (Section 41)

If the buyer did not get a chance to examine the goods, then he is entitled to a reasonable opportunity of examining them. The buyer has the right to ascertain that the goods delivered to him are in conformity with the contract. The seller is bound to honor the buyer's request for a reasonable opportunity of examining the goods unless the contrary is specified in the contract.

Acceptance of Delivery of Goods (Section 42)

A buyer is deemed to have accepted the delivery of goods when:

- He informs the seller that he has accepted the goods; or
- Does something to the goods which is inconsistent with the ownership of the seller; or
- Retains the goods beyond a reasonable time, without informing the seller that he has rejected them.

Return of Rejected Goods (Section 43)

If a buyer, within his right, refuses to accept the delivery of goods, then he is not bound to return the rejected goods to the seller. He needs to inform the seller of his refusal though. This is true unless the parties agree to other terms in the contract.

Refusing Delivery of Goods (Section 44)

If the seller is willing to deliver the goods and requests the buyer to take delivery, but the buyer fails to do so within a reasonable time after receiving the request, then

he is liable to the seller for any loss occasioned by his refusal to take delivery. He is also liable to pay a reasonable charge for the care and custody of goods.

Solved Example on law on sales

Q: Peter agrees to sell 100 kilograms of tomatoes to John at Rs. 20 per kilo. However, he delivers 120 kilograms instead. Can John reject the delivery? What other option does John have according to the law on sales?

Answer: Since the contract was for 100 kilograms but Peter delivers 120 kilograms, John has the following options:

- He can reject the entire lot
- Accept 100 kilograms and reject the additional 20 kilograms
- He can accept the entire 120 kilograms and pay at the contract rate.

Previous

Next

involves delivery or custody

Rights of Unpaid Seller against Buyer

In a contract, there is always a reciprocal promise. Even in a contract of sale, both the buyer and the seller must perform their duties. And if the buyer does not pay the seller his due, the seller becomes an unpaid seller. This means such unpaid seller has some rights against the buyer. Let us see.

Rights of Unpaid Seller Against Buyer

When the buyer of goods does not pay his dues to the seller, the seller becomes an unpaid seller. And now the seller has certain rights against the buyer. Such rights are the seller remedies against the breach of contract by the buyer. Such rights of the unpaid seller are additional to the rights against the goods he sold.

1] Suit for Price

Under the contract of sale if the property of the goods is already passed but he refuses to pay for the goods the seller becomes an unpaid seller. In such a case. the seller can sue the buyer for wrongfully refusing to pay him his due.

But say the sales contract says that the price will be paid at a later date irrespective of the delivery of goods,. And on such a day the if the buyer refuses to pay, the unpaid seller may sue for the price of these goods. The actual delivery of the goods is not of importance according to the law.

2] Suit for Damages for Non-Acceptance

If the buyer wrongfully refuses or neglects to accept and pay the unpaid seller, the seller can sue the buyer for damages caused due to his non-acceptance of goods. Since the buyer refused to buy the goods without any just cause, the seller may face certain damages.

The measure of such damages is decided by the Section 73 of the Indian Contract Act 1872, which deals with damages and penalties. Take for example the case of seller A. He agrees to sell to B 100 liters of milk for a decided price. On the day, B refuses to accept the goods for no justifiable reason. A is not able to find another buyer and the milk goes bad. In such a case, A can sue B for damages.

3] Repudiation of Contract before Due Date

If the buyer repudiates the contract before the delivery date of the goods the seller can still sue for damages. Such a contract is considered as a rescinded contract, and so the seller can sue for breach of contract. This is covered in the Indian Contract Act and is known as Anticipatory Breach of Contract.

4] Suit for Interest

If there is a specific agreement between the parties the seller can sue for the interest amount due to him from the buyer. This is when both parties have specifically agreed on the interest rate to be paid to seller from the date on which the payment becomes due.

But if the parties do not have such specific terms, still the court may award the seller with the interest amount due to him at a rate which it sees fit.

Remedies of Buyer Against the Seller

Just as the seller can rescind the contract, then so can the seller. When the seller breaches the contract the buyer also has certain remedies against the seller. Let us take a look at some remedies that the Sales Act prescribes for the buyer.

1] Damages of Non-Delivery

If the seller wrongfully or neglectfully refuses to deliver the goods to the buyer, then the buyer can sue for non-delivery of the goods. According to Section 57 of the Sale of Goods Act, if the buyer faces losses due to the wrongful actions of the seller (non-delivery) he can sue for damages caused due to this.

Let's take for example A whose agrees to sell to B 10 pair of shoes for 1000/- each. B was going to sell the same shoes to C for 1100/- a pair. A neglects to deliver the goods to B. Now, B can sue A for non-delivery. He can sue for the amount of 100/- per pair, i.e. 1000/- (the difference between B's cost price and sale price)

2] Suit for Specific Performance

If the seller commits a breach of contract, the buyer can approach the court to ask the seller for specific performance. The court after deliberation can command the seller for specific performance. One important point to keep in mind is that this remedy is only available if the goods are ascertained or specific.

Example: There was a contract between A and B, that A will sell to B a very expensive painting on a specific date. On the said day A refuses to sell. B can approach the court, who orders A to sell the painting to B at the ascertained price.

3] Suit for Breach of Warranty

When the seller breaches the warranty of the goods, the buyer cannot simply reject the goods on such basis. The buyer has two options in such a case,

- set up against the buyer the said breach of warranty in the extinction of the price
- or sue the seller for breach of warranty

4] Repudiation of Contract

If the seller repudiates the contract, the buyer does not have to wait until the date of the contract. He can treat the contract as rescinded and sue for damages immediately. This will be an anticipatory breach of contract.

5] Sue for Interest

The Act specifically states that nothing in the act will affect the right of the seller or the buyer to recover interest or special damages due to him by the contract. And if there is no specific clause in the contract, the court can come to the rescue of the affected party.

Solved Question on Rights of Unpaid Seller against Buyer

Q: What is an unpaid seller?

Ans: An unpaid seller is one whose

- entire price has not been paid or tendered
- has accepted a bill of exchange for the price, but such bills have been dishonored

Unit -4

Types of Negotiable Instruments (Features, Function, Practice)

Negotiable instruments are freely transferable commercial documents and each type of negotiable instrument has unique functions and features.

Negotiable instruments are is a commercial document that satisfies certain conditions and transferable either by the application of law as by the custom of bleed concerned.

This instrument can be transferred freely from hand to hand and has a legal life that can be transferred by more delivery or endorsement.

Most Common Types of Negotiable Instruments are;

- Promissory notes.
- Bill of exchange.
- Check.
- Government promissory notes.
- Delivery orders.
- Customs Receipts.

Most negotiable instruments fall under the following two categories; the Negotiable instrument by statute and Negotiable instruments by custom or usages.

Negotiable instrument acts state three instruments. check, bill of exchange and promissory notes are negotiable instruments.

They are therefore called negotiable instruments by statute.

Negotiable instruments by Statute are;

Promissory Notes as Negotiable Instrument

PROMISSORY NOTE

THIS AGREEMENT is dated _____ (the **"Agreement"**).

Parties

(1) **Dragon Law**, having its registered office at 9th Floor, Cyberport Tower, 100 Pok Fu Lam Road, Hong Kong (the "**Borrower**").

(2) **John Doe** of 698 Wing Lok Street, Quarry Bay, Hong Kong (the "**Lender**").

Background

The Borrower promises to pay the Lender the sum of five hundred thousand Hong Kong dollars (HKD 500,000) (the "**Main Debt**"), as specified below:

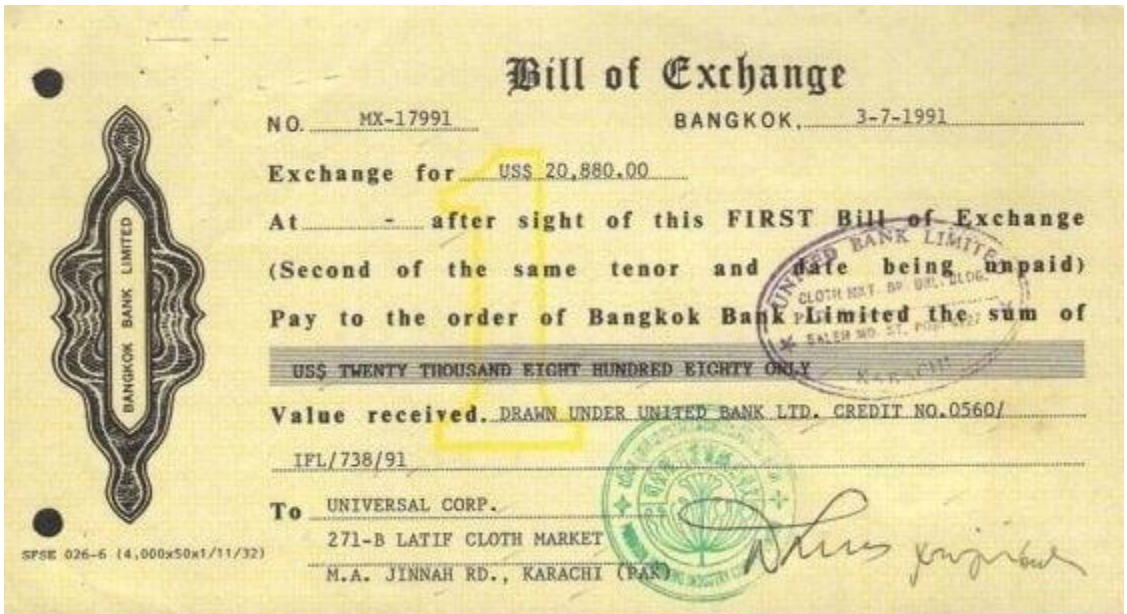
Agreed Terms

The promissory note is a signed document of written promise to pay a stated sum to a specified person or the bearer at a specified date or on demand.

The promissory note is an instrument in writing containing an unconditional rule signed by one party to pay a certain sum of money only to, or to the order of a certain person or to the bearer of the instrument.

Thus a promissory note contains a promise by the debtor to the creditor to pay a certain sum of money after a certain date. The debtor is the maker of the instrument.

Bill of Exchange as Negotiable Instrument

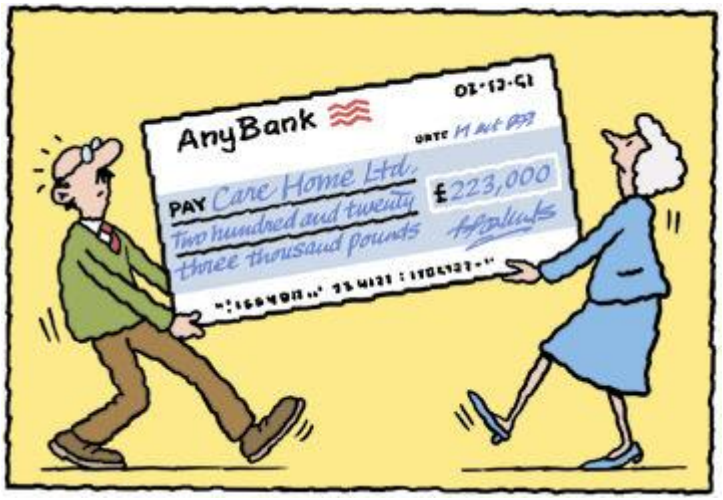


The Bill of Exchange contains an order from the creditor to the debtor to pay a certain person after a certain period.

The person who draws it is called drawer (creditor) and the person on whom it is drawn is called drawee (debtor) or acceptor.

The person to whom the amount is payable is called payee.

Check as Negotiable Instrument



A Check (cheque in royal Britain) is a bill of exchange drawer a specified banker not expressed to be payable otherwise than on demand.

It is an instrument in writing, containing unconditional order, signed by the maker (depositor), directing a certain banker to pay a certain sum of money to the bearer of that instrument.

Some other instruments have acquired the character of negotiability by customs or usage of trade.

Negotiable instruments by custom or usages are mainly, the government promissory notes, delivery orders, and railway receipts have been held to be negotiable by usage or custom of the trade.

instrument Act – Meaning and essential elements of a Negotiable instruments

12 months ago

The **law** relating to "negotiable instruments" is contained in the Negotiable Instruments Act, 1881. The Act extends to the whole of India. The Negotiable Instruments Act, 1881, has been amended for more than a dozen times so far.

The latest in the series are: (i) the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 (effective from 1st April, 1989), and (ii) the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 (effective from 6th February, 2003). The provisions of all the Amendment Acts have been incorporated at relevant places in Part IV of this book.

The Negotiable Instruments Act, 1881, as amended up-to-date, deals with three kinds of negotiable instruments, i.e., Promissory Notes, Bills of Exchange and Cheques.

Definition:

The word negotiable means 'transferable by delivery,' and the word instrument means 'a written document by which a right is created in favour of some person.'

Thus, the term "negotiable instrument" literally means 'a written document transferable by delivery.'

According to Section 13 of the Negotiable Instruments Act, "a negotiable instrument means a promissory note, bill of exchange or cheque payable either to order or to bearer." "A negotiable instrument may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees" [Section 13(2)].

The Act, thus, mentions three kinds of negotiable instruments, namely notes, bills and cheques and declares that to be negotiable they must be made payable in any of the following forms:

(a) Payable to order:

A note, bill or cheque is payable to order which is expressed to be 'payable to a particular person or his order.' For example, (i) Pay A, (ii) Pay A or order, (iii) Pay to the order of A, (iv) Pay A and B, and (v) Pay A or Bare various forms in which an instrument may be made payable to order.

But it should not contain any words prohibiting transfer, e.g., 'Pay to A only' or 'Pay to A and none else' is not treated as 'payable to order' and therefore such a document shall not be treated as negotiable instrument because its negotiability has been restricted.

It may be noted that documents containing express words prohibiting negotiability remain valid as a document (i.e., as an agreement) but they are not negotiable instruments as they cannot be negotiated further.

(b) Payable to bearer:

'Payable to bearer' means 'payable to any person whosoever bears it.' A note, bill or cheque is payable to bearer which is expressed to be so payable or on which the only or last endorsement is an endorsement in blank.

Thus, a note, bill or cheque in the form "Pay to A or bearer," or "Pay A, B or bearer," or "Pay bearer" is payable to bearer. Also, where an instrument is originally 'payable to order,' it may become 'payable to bearer' if endorsed in blank by the payee.

For example, a cheque is payable to A. A endorses it merely by putting his signature on the back and delivers to B with the intention of negotiating it (without making it payable to B or S's order). In the hands of B the cheque is a bearer instrument.

Section 31 of the Reserve Bank of India Act:

It is important to note that the above definition is subject to the provisions of Section 31 of the Reserve Bank of India Act, 1934, which as amended by the Amendment Act of 1946, provides as under:

1. No person in India other than the Reserve Bank or the Central Government can make or issue a promissory note 'payable to bearer.'
2. No person in India other than the Reserve Bank or, the Central Government can draw or accept a bill of exchange 'payable to bearer on demand'.
3. A cheque 'payable to bearer on demand' can be drawn on a person's account with a banker.

The effect of the above provisions is that:

(i) A promissory note cannot be originally made 'payable to bearer,' no matter whether it is payable on demand or after a certain time. It must be made 'payable to order' initially. However, on being endorsed in blank it can become 'payable to bearer' or 'payable to bearer on demand' subsequently and it shall be valid in that case.

(ii) A bill of exchange may be originally made 'payable to bearer' but it must be payable otherwise than on demand (say, payable three months after date) in that case. If it is 'payable on demand' then it must be made 'payable to order.' However, on being endorsed in blank subsequently, it can become 'payable to bearer on demand.'

(iii) A cheque drawn on a bank can be originally made 'payable to bearer on demand' and it shall be valid. In fact cheques are always payable on demand.

The object of the above provisions of the Reserve Bank of India Act is to prevent private persons from infringing the monopoly of 'Note Issue' of the Reserve Bank and the Government of India.

For, if individuals are allowed to issue instruments 'payable to bearer on demand,' then there may be someone so rich and well known person whose bills of exchange and promissory notes may be taken as currency notes.

A currency note bears the words' I promise to pay the bearer the sum of Rupees 10, 50 or 100,' as the case may be. The general public is, therefore, prohibited to issue such notes or bills.

Section 32 of the Reserve Bank of India Act, 1934, makes the issue of such bills or notes a criminal offence and declares them illegal and unenforceable at law. Accordingly, 'a promise to pay A or bearer' or 'a promise to pay the bearer' is not enforceable at law and the document containing such a promise is illegal and void.

More comprehensive definition:

The definition given in Section 13 of the Negotiable Instruments Act does not set out the essential characteristics of a negotiable instrument. Possibly the most expressive and all-encompassing definition of negotiable instrument had been suggested by Thomas who is as follows:

"A negotiable instrument is one which is, by a legally recognised custom of trade or by law, transferable by delivery or by endorsement and delivery in such circumstances that (a) the holder of it for the time being may sue on it in his own name and (b) the property in it passes, free from equities, to a bona fide transferee for value, notwithstanding any defect in the title of the transferor."

Essential Features of Negotiable Instruments are given below:

1. *Writing and Signature:*

Negotiable Instruments must be written and signed by the parties according to the rules relating to Promissory Notes, Bills of Exchange and Cheques. Demand Drafts are also construel as Negotiable Instruments in the limiting case as they have the same property as N.I. Instrumes.

2. *Money:*

Negotiable instruments are payable by legal tender money of India. The liabilities of the parties of Negotiable Instruments are fixed and determined in terms of legal tender money.

3. *Negotiability:*

Negotiable Instruments can be transferred from one person to another by a simple process. In the case of bearer instruments, delivery to the transferee is sufficient. In the case of order instruments two things are required for a valid transfer: endorsement (i.e., signature of the holder) and delivery. Any instrument may be made non-transferable by using suitable words, e.g., “pay to X only.”

4. *Title:*

The transferee of a negotiable instrument, when he fulfils certain conditions, is called the holder in due course. The holder in due course gets a good title to the instrument even in cases where the title of the transferrer is defective.

5. *Notice:*

It is not necessary to give notice of transfer of a negotiable instrument to the party liable to pay. The transferee can sue in his own name.

6. *Presumptions:*

Certain presumptions apply to all negotiable instruments. Example: It is presumed that there is consideration. It is not necessary to write in a promissory note the words “for value received” or similar expressions because the payment of consideration is presumed. The words are usually included to create additional evidence of consideration.

7. *Special Procedure:*

A special procedure is provided for suits on promissory notes and bills of exchange (The procedure is prescribed in the Civil Procedure Code). A decree can be obtained much more quickly than it can be in ordinary suits.

8. *Popularity:*

Negotiable instruments are popular in commercial transactions because of their easy negotiability and quick remedies.

9. *Evidence:*

A document which fails to qualify as a negotiable instrument may nevertheless be used as evidence of the fact of indebtedness.

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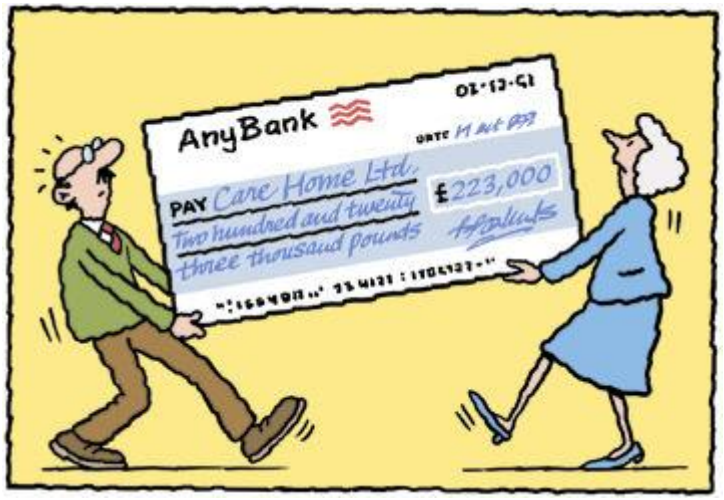

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Holder and Holder in Due Course

Admin Lawnn

2 years ago

Holder and Holder in Due Course

Synopsis

Introduction

The Negotiable Instruments Act, 1881 (hereinafter referred to as the Act) is a statute which regulates the working of instruments which can be negotiated for amount. It lays down the frame work under which these instruments operate and any contravention in these rules has been made punishable.

For the purposes of understanding the working of the negotiable instruments it is imperative to understand the complexities of the parties involved in a transaction in which a negotiable instrument is involved.

Section 8 and Section 9 of the Act discuss the concept and definition of a holder and holder in due course. Generally a holder of a negotiable instrument is one which acquires it by a transfer.

Holder

Sec 8 of the Act contemplates that any person who is entitled to get the possession and subsequently receive payment or recover payment from the parties for a promissory note, bill of exchange, cheque which he is entitled to possess.

If the promissory note, bill of exchange, cheque gets lost or destroyed then the holder is the person who is entitled at the time of the loss or destruction.

Ingredients

Following are the ingredients to be satisfied for qualifying to be holder:

1. The person must be entitled for possessing the instrument in his own name. It is not necessary that the person be in actual physical possession of the instrument. The principle is that there must be right a right accruing under a legal title.

- The person must be named in the instrument as a payee or indorsee. He can also be a bearer of the instrument if it is a bearer instrument. In cases where the holder dies the heir of such a holder becomes the holder even when he is not a payee or indorsee or a bearer of the instrument.
- A person must be de jure(as per law) holder and not a de facto (as per facts) holder.

2. Where a person comes to hold a negotiable instrument and he does not have a title to hold or possess it then he will not be called a holder. A person who finds an instrument lying somewhere or a thief although may acquire possession of such an instrument, no right accrues to them. Therefore they cannot be termed as a holder.

- The person by way of the instrument must be entitled to recover or receive a sum of money or amount which the parties are liable to pay the holder. Therefore not only possession but the right to receive is also an important aspect in order to be termed a holder. By receiving the amount the person who was liable to pay is discharged from the liability.

- In cases where a person acquires an instrument by either finding it or where a person has committed theft of such an instrument, he is not entitled to receive the amount. Thus he is not called a holder.

Rights of a Holder

The rights of a holder are:

- As per Sec 8 of the act to possess an instrument and to receive and recover the amount which is due as per the instrument;

- As per Sec 50 of the Act to endorse the instrument;

- As per Sec 125 of the Act to cross the instrument after it is issued. Where a cheque is crossed the holder may cross it as generally or specifically. He also has the option of adding words like not negotiable or account payee;

- As per Sec 49 of the Act to convert blank endorsement to full endorsement;

- As per Sec 45 A to get a duplicate of the instrument which is lost;

- As per Sec 61 and Sec 64 of the Act to present the instrument for acceptance if it is a bill and if it is some other instrument then get payment for it.

Holder in Due Course

Sec 9 of the Act contemplates that any person who becomes the possessor of a promissory note, bill of exchange or a cheque for a consideration and the instrument is payable to bearer or payee or endorsee before the amount became payable and he believes that no defect exists in the title of the person from whom he derived his title is called a holder in due course.

If a negotiable instrument is acquired by a person bonafidely for a value and he believes there is no defect in the title from whom he took the instrument in good faith becomes the true owner of the negotiable instrument and a holder in due course.

Ingredients

Following are the ingredients to be satisfied for qualifying to be holder:

- The person must hold the instrument for a valuable consideration;

- The person may become the holder of the instrument before it gets matured;

- The negotiable instrument must be complete in all forms and requisites;

- The holder must have received the instrument in good faith.

If a person acquires the negotiable instrument after it has matured then he does not become a holder in due course.

Rights of a Holder in Due Course

Sec 53 of the Act contemplates that a negotiable instrument get cleansed of the defects when it passes through the hands of a holder in due unless fraud was committed with regard to the instrument or there was an illegality in the instrument committed by the person holding the instrument;

1. No person who is the maker can deny the validity of a promissory note, bill of exchange or a cheque as originally drawn in a suit by the holder in due course of the instrument.

2. Sec 118 of the Act contemplates that every holder is presumed to be a holder in due course. The burden of proof is on the other parties to show that the person is not a holder in due course. Once it is proved that the holder has acquired the instrument trough illegal means then the onus shifts on the holder.

3. Sec 121 of the act contemplates that the maker of a promissory note, bill of exchange or a cheque cannot deny the validity of payee's capacity at the date of the promissory note, bill of exchange or a cheque to endorse the same. Therefore a holder in due course is entitled to recover amount mentioned in the instrument even though the payee has no capacity to endorse the instrument.

4. Sec 36 of the act contemplates that until the instrument is satisfied; all the parties to an instrument are liable to the holder in due course. The liability is joint and several.

5. Sec 58 of the act contemplates that the holder in due course has a better title to the transferor of the instrument. In cases where the title of the transferor was defective the holder in due course will get a good title. However, if the title is forged the holder in due course does not get a title since there is no defect in title but rather there is no title.

6. Sec 46 and Sec 47 of the act contemplate that the liable parties cannot deny the liability to a holder in due course who negotiates a bill of exchange or promissory note on the ground that the delivery of the instrument was subject to conditions or was for a specific purpose.

7. Sec 42 of the Act contemplates that when a bill is drawn in a fictitious person's name and the signature is of the same person who was the drawer, the acceptor cannot take the plea that the payee was a fictitious person.

8. Sec 20 of the act contemplates that when an instrument which is duly signed and stamped and left blank partially or completely and delivered to someone else to be filled up. Then if such a person fills an amount which is more than what he had been authorised to do, then the holder in due course can recover the whole amount mentioned but the amount shall not be more than the amount of the stamp affixed on the instrument.

9. Sec 120 of the Act contemplates that when a holder in due course files a suit for recovery of amount which is due on the instrument, then the maker of the promissory note, bill of exchange or cheque cannot take the plea to evade his liability that when the instrument was drawn it was invalid.

- The maker is estopped (legally prevented) from denying that the instrument was invalid.

10. Sec 122 of the Act contemplates that the endorser of a negotiable instrument cannot deny the signatures or the capacity to contract of any party in a suit filed by the holder in due course against an endorser.

Difference between Holder and Holder in Due Course

Holder	Holder in Due Course
Holder is a person who can lawfully possess an instrument and receive or recover the amount from parties	A holder in due course takes the instrument in bonafide faith for a consideration before the instrument's maturity
Consideration is not necessary	Consideration is necessary
Possession may taken after maturity	Possession can only taken before maturity
Holder does not get a better title than the previous party	The title gets cured from any defects
Holder cannot recover amount from all prior parties. Only from the maker and transferor	Right to recover from all prior parties

Case Law

1. In the case of ***Gemini v Chandran 2007 (1) KHC 698***, it was held that there is no provision in the Act by which a holder in due course can be presumed to be a holder. There is a presumption by virtue of sec 118 of the Act that a holder is a holder in due course in some specific situations. Therefore holder in due course and holder do not mean the same.

2. In the case of ***S.V. Prasad v. Suresh Kumar AIR 2005 AP 37***, it was held that a holder in due course acquires a right to recover the amount from the holder of the instrument. The endorsement can take place without having participation from the maker of the instrument. The holder in due course acquires the same right which was with the holder. He can neither improve nor modify the liability.

3. In the case of ***Milind Shripad Chandurkar v. Kalim Khan (2011) 4 SCC 275***, it was held that a suit for recovery of amount which is liable through a negotiable instrument can only be filed by a person who is a holder in due course of the negotiable instrument.

4. In the case of ***Braja Kishore Dikshit v. Purna Chandra Panda AIR 1957 Orissa 153*** it was held that there are certain prerequisites for a person to be called a holder in due of a negotiable instrument.

- Firstly he must have become the holder by way of a consideration.

- Secondly, he must have got the possession of the instrument before it became overdue and lastly, he must be a transferee in bonafide faith and he should have any cause to believe that the title was defective of the transferor.

Conclusion

Thus it can be concluded that a holder is a person who has a possession of a legal instrument. That person must be entitled to possess the

instrument legally and also recover the amount which is due from the instrument. He must also have the legal capacity to enforce his rights in his own name.

Whereas a holder in due course is a person who can possess an instrument for a consideration. The person must become the holder of the instrument before it gets matured and the negotiable instrument must be complete in all forms and requisites and the holder must have received the instrument in good faith.

NEGOTIATION OF NEGOTIABLE INSTRUMENTS

Sec. 30. What constitutes negotiation. - An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof. If payable to bearer, it is negotiated by delivery; if payable to order, it is negotiated by the indorsement of the holder and completed by delivery.

METHOD OF TRANSFER

1. By assignment
2. By operation of law
3. By negotiation, which may be completed by indorsement completed by delivery or by mere delivery

ASSIGNMENT

- Method of transferring a non-negotiable instrument whereby the assignee is merely placed in the position of the assignor and acquires

the instrument subject to all defenses that might have been setup against the original payee

MODE OF ASSIGNMENT

- Differs in no respect from that of any other contract
- Although some sort of written instrument is customarily employed, it may be written either on the instrument itself or on a separate piece of paper

EFFECT OF ASSIGNMENT OF A NON-NEGOTIABLE INSTRUMENT

- The effect of the assignment is that the party holding the right drops out of the contract and another takes his place
- The assignee is substituted in place of the assignor
- The assignee and every subsequent person to whom the instrument comes by assignment may be considered as the person who made the instrument in the first instance and as having said and done everything in making the instrument which the original assignor did or said.
- Each assignee takes his chance as to the exact position in which any party making an assignment of it stands
- And as it is called in law, the assignee takes the contract subject to equities, that is, to defenses to the contract which would avail in favor of the original party up to the time the notice of the assignment is given to the person against whom the contract is sought to be enforced

ASSIGNMENT OF A NEGOTIABLE INSTRUMENT

- A person taking a negotiable instrument by assignment in a separate piece of paper takes it subject to the rules applying to assignment
- And where the holder of a bill payable to order transfers it without indorsement, it operates an equitable assignment

TRANSFER BY OPERATION OF LAW

1. By the death of his holder where the title vests in his personal representative, or
2. By the bankruptcy of the holder, where title vests in his assignee or trustee
3. Upon the death of a joint payee or indorsee in which case the general rule is that the title vests at once in the surviving payee or trustee

NEGOTIATION

- Transfer of the instrument from one person to another in such a manner as to constitute the transferee the holder thereof
- May either be by indorsement completed by delivery or by mere delivery

DISHONOUR AND DISCHARGE OF NEGOTIABLE INSTRUMENT

A NEGOTIABLE INSTRUMENT MAY BE DISHONOURED BY (I) NON-ACCEPTANCE (II) NON-PAYMENT

Dishonour by non-acceptance

A bill of exchange is said to be dishonoured, by non-acceptance in the following cases: -

1. When the drawee or one of the several drawees (not being partners) makes default in acceptance upon being required to accept the bill (48 hours required).
2. Where the presentment for acceptance is excused and the bill is not accepted.
3. Where the drawee is incompetent to contract.
4. Where the drawee makes the acceptance qualified.
5. If the drawee is fictitious person or after reasonable search cannot be found.

Dishonour by Non-payment

A promissory note, bill of exchange or cheque is said to be dishonoured by non-payment when the maker, acceptor of the bill or drawee of the cheque makes default in payment upon being duly required to pay the same . (Sec 92)

Also, a promissory note or bill of exchange is dishonoured by non-payment when presentment for payment is excused expressly by the maker of the note or acceptor of the bill and PN or BE remains unpaid.

Effect of Dishonour

- As soon as a negotiable instrument is dishonoured (either by non-acceptance or by non-payment) the holder becomes entitled to sue the parties liable to pay thereon.
- The holder MUST, however, give notice of dishonour to all the parties against whom he intends to proceed.

Notice of Dishonour

- Notice of dishonour means formal communication of the fact of dishonour.
- Such a notice also serves the purpose of enabling the person so notified to protest himself against the prior parties.

Notice By Whom

- Notice of dishonour must be given by the holder or by some party to the instrument who remain liable thereon;
- Any party receiving the notice of dishonour must also transmit the same to all prior parties in order to make them liable to him.
- No suit can be filed against the prior party if he has not transmitted the fact of dishonour of instrument.
- One person can give the notice only.
- Duly authorised person can also give notice.

Notice to Whom

- Notice of dishonour must be given to all parties (other than the maker of note, acceptor of a bill or drawee of a cheque) to whom the holder seeks to make liable or other duly authorised agents.
- In case of death of a person, notice must be given to his legal representative and were he has been declared insolvent to his Official Assignee.
- In case after dispatch of notice and before it receipt the person dies, it will be treated as if the notice has been served. (Not knowing the fact).

Mode of Giving Notice

- It may be oral or in writing. If it is in writing it must be sent by post
- It should be given in reasonable time.

What is Reasonable Time?

In determining what is reasonable time the consideration is to be given: -

1. Nature of the instrument
2. The usual course of dealing with respect to similar instruments
3. Distance between the parties
4. While calculating public holidays shall be excluded.
5. In case a party received the notice of dishonour is to transmit the same to his prior parties, the transmission should be done in reasonable time.

When Notice of Dishonour is Unnecessary

1. Where the indorsee while signing in that capacity adds the words ‘notice of dishonour waived’.
2. Where the drawer of a cheque countermanded payment.
3. Where the party charged could not suffer damage for want of notice such as bank account closed or in case of accommodation bill.
4. Where the party to whom the notice is to be given not traceable or the party who has to give notice is unable to giver notice like death, accident or serious illness.
5. When the drawer also happens to be acceptor.
6. In case the Promissory Note which is not negotiable
7. When the party entitled to receive notice promise to pay unconditionally the amount as due after due date.

Consequences of not giving notice of dishonour

Any party to negotiable instrument (other than maker of a note, acceptor of a bill or drawer of cheque) is discharged from his obligation under the instrument unless circumstances are such where no notice is required to be sent.

Noting

- In case a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment notice, the holder may cause such dishonour to be noted by Notary Public.
- Noting must be made within reasonable time after dishonour and must specify (i) the date of dishonour (ii) the reason assigned for dishonour and (iii) the notary's charges.

Protest

"Protest" is a formal certificate issued by the notary public to the holder of the bill or note on his demand (noting is merely a record of dishonour on the instrument).

Contents of Protest

1. The instrument itself or a literal transcript of the instrument and of every thing written or printed thereon,
2. The name of the person for whom and against whom the instrument has been protested.
3. The fact and reason for dishonour
4. The place and time of dishonour
5. The signature of notary public
6. In case of acceptance for honour or payment for honour, the names of the persons by whom and for whom it is accepted or paid.

Discharge of the Instrument

- A negotiable instrument is said to be discharged when it becomes completely useless.
- In the following cases the instrument is deemed to be discharged: -
    1. When the party liable to make payment on the instrument makes the in due course to the holder.
    2. When the acceptor in his own right at or after maturity, holds the bill of exchange, which has been negotiated,, the instrument is discharged.
    3. When the party primarily becomes insolvent.

4. When the holder cancels the instrument with an intention to release the party primarily liable thereon from liability.

Discharge of One or More Parties.

- A party is said to be discharged from his liability when his liability on the instrument comes to an end.
- Discharge of one or more party does not discharge the instrument and rights under it can be enforced against those parties who continue to be liable thereon.

One or more parties to a negotiable instrument is/are discharged from liability in the following ways:-

1. By cancellation-When the holder of a negotiable instrument *deliberately* cancels the name of any of the party liable on the instrument with intent to discharge him from liability.
2. By release – If the holder of a negotiable instrument releases any party to the instrument by any method other than cancellation of names.
3. By payment
4. By allowing drawee more than 48 hours to accept
5. By taking qualified acceptance
6. By not giving notice of dishonour
7. By non-presentment for acceptance of bill
8. By delay in presenting cheque
9. By material alternation like:
   (i) Any alteration of the date, the sum payable, the time of payment and place of payment
   (ii) Alteration by the addition of anew party.
   (iii) Alteration of the rate of interest.
   (iv) Tearing off the material part of the instrument

Alteration not vitiating the instrument

1. Alteration made for the purpose of correcting a mistake or clerical error
2. Alteration made to carryout the common intention of the original parties

3. Alteration made before the instrument is issued
4. Alteration made with the consent of the parties liable on the instrument
5. Conversion of bearer cheque into order
6. Filling blanks in the case of inchoate or incomplete instrument
7. Conversion of blank endorsement into an endorsement in full.
8. Making qualified acceptance
9. Alteration which result of the accident

Meaning and Scope of information Technology Act

MDUtheintactone

12 months ago

The Information Technology Act, 2000 or ITA, 2000 or IT Act, was notified on October 17, 2000. It is the law that deals with cybercrime and electronic commerce in India. In this article, we will look at the objectives and features of the Information Technology Act, 2000.

Information Technology Act, 2000

In 1996, the United Nations Commission on International Trade Law (UNCITRAL) adopted the model law on electronic commerce (e-commerce) to bring uniformity in the law in different countries.

Further, the General Assembly of the United Nations recommended that all countries must consider this model law before making changes to their own laws. India became the 12th country to enable cyber law after it passed the Information Technology Act, 2000.

While the first draft was created by the Ministry of Commerce, Government of India as the ECommerce Act, 1998, it was redrafted as the 'Information Technology Bill, 1999', and passed in May 2000.

Objectives of the Act

The Information Technology Act, 2000 provides legal recognition to the transaction done via an electronic exchange of data and other electronic means of communication or electronic commerce transactions.

This also involves the use of alternatives to a paper-based method of communication and information storage to facilitate the electronic filing of documents with the Government agencies.

Further, this act amended the Indian Penal Code 1860, the Indian Evidence Act 1872, the Bankers' Books Evidence Act 1891, and the Reserve Bank of India Act 1934. The objectives of the Act are as follows:

- Grant legal recognition to all transactions done via an electronic exchange of data or other electronic means of communication or e-commerce, in place of the earlier paper-based method of communication.
- Give legal recognition to digital signatures for the authentication of any information or matters requiring legal authentication
- Facilitate the electronic filing of documents with Government agencies and also departments
- Facilitate the electronic storage of data
- Give legal sanction and also facilitate the electronic transfer of funds between banks and financial institutions
- Grant legal recognition to bankers under the Evidence Act, 1891 and the Reserve Bank of India Act, 1934, for keeping the books of accounts in electronic form.

Features of the Information Technology Act, 2000

1. All electronic contracts made through secure electronic channels are legally valid.
2. Legal recognition for digital signatures.
3. Security measures for electronic records and also digital signatures are in place
4. A procedure for the appointment of adjudicating officers for holding inquiries under the Act is finalized
5. Provision for establishing a Cyber Regulatory Appellant Tribunal under the Act. Further, this tribunal will handle all appeals made against the order of the Controller or Adjudicating Officer.
6. An appeal against the order of the Cyber Appellant Tribunal is possible only in the High Court
7. Digital Signatures will use an asymmetric cryptosystem and also a hash function

8. Provision for the appointment of the Controller of Certifying Authorities (CCA) to license and regulate the working of Certifying Authorities. The Controller to act as a repository of all digital signatures.
9. The Act applies to offenses or contraventions committed outside India
10. Senior police officers and other officers can enter any public place and search and arrest without warrant
11. Provisions for the constitution of a Cyber Regulations Advisory Committee to advise the Central Government and Controller.

Applicability and Non-Applicability of the Act

Applicability

According to Section 1 (2), the Act extends to the entire country, which also includes Jammu and Kashmir. In order to include Jammu and Kashmir, the Act uses Article 253 of the constitution. Further, it does not take citizenship into account and provides extra-territorial jurisdiction.

Section 1 (2) along with Section 75, specifies that the Act is applicable to any offense or contravention committed outside India as well. If the conduct of person constituting the offense involves a computer or a computerized system or network located in India, then irrespective of his/her nationality, the person is punishable under the Act.

Lack of international cooperation is the only limitation of this provision.

Non-Applicability

According to Section 1 (4) of the Information Technology Act, 2000, the Act is not applicable to the following documents:

1. Execution of Negotiable Instrument under Negotiable Instruments Act, 1881, except cheques.
2. Execution of a Power of Attorney under the Powers of Attorney Act, 1882.
3. Creation of Trust under Indian Trust Act, 1882.
4. Execution of a Will under the Indian Succession Act, 1925 including any other testamentary disposition by whatever name called.
5. Entering into a contract for the sale of conveyance of immovable property or any interest in such property.

6. Any such class of documents or transactions as may be notified by the Central Government in the Gazette.

The Information Technology Amendment Act, 2008 (IT Act 2008) is a substantial addition to India's Information Technology Act (ITA-2000). The IT Amendment Act was passed by the Indian Parliament in October 2008 and came into force a year later. The Act is administered by the Indian Computer Emergency Response Team (CERT-In).

The original Act was developed to promote the IT industry, regulate e-commerce, facilitate e-governance and prevent cybercrime. The Act also sought to foster security practices within India that would serve the country in a global context. The Amendment was created to address issues that the original bill failed to cover and to accommodate further development of IT and related security concerns since the original law was passed.

Changes in the Amendment include: redefining terms such as "communication device" to reflect current use; validating electronic signatures and contracts; making the owner of a given IP address responsible for content accessed or distributed through it; and making corporations responsible for implementing effective data security practices and liable for breaches.

The Amendment has been criticized for decreasing the penalties for some cybercrimes and for lacking sufficient safeguards to protect the civil rights of individuals. Section 69, for example, authorizes the Indian government to intercept, monitor, decrypt and block data at its discretion. According to Pavan Duggal, a cyber-law consultant and advocate at the Supreme Court of India, "The Act has provided Indian government with the power of surveillance, monitoring and blocking data traffic. The new powers under the amendment act tend to give Indian government a texture and color of being a surveillance state

Beginner's Guide to RTI (Right To Information Act)

The Right to Information Act, simply known as RTI, is a revolutionary Act that aims to promote transparency in government institutions in India. The Act came into existence in 2005, after sustained efforts of anti-corruption activists.

It is termed revolutionary because it opens government organisations up for scrutiny. Equipped with knowledge about RTI, a common man can demand any government agency to furnish information. The organisation is bound to provide the information, that too within 30 days, failing which the officer concerned is slapped with a monetary fine.

When did RTI begin?

RTI Act has been made by legislation of Parliament of India on 15 June 2005. The Act came into effect on 12 October 2005 and has been implemented ever since to provide information to crores of Indian citizens. All the constitutional authorities come under this Act, making it one of the most powerful laws of the country.

The following Q&A will help you get familiar with the Act and how to use it.

1. How to File RTI?

Every Indian should know about RTI filing.The procedure to **File RTI** is simple and hassle-free.

- Write the application (or get it typed, your choice) on a paper in English/Hindi/the official language of the state. Some states have prescribed format for RTI applications. Address it to the PIO (Public Information Officer) of the department concerned.
- Ask specific questions. See to it that they are clear and complete, and not confusing whatsoever.
- Write your full name, contact details and address, where you want the information/response to your RTI be sent.
- Take a photocopy of the application for your record. If you're sending the application by post, it's advisable to send it via registered post, as then you will have an acknowledgement of your request's delivery. If you're submitting the application to the PIO in person, remember to take an acknowledgement from him/her.

Some important points:

- The Act is so people-friendly that if an illiterate person approaches a PIO and wants some info under the RTI, he/she can tell his requirement to the PIO and the officer is obliged to write it down for them and read it to them before processing it.
- One need not write the application on a clean sheet of paper. Even a crumpled, old, torn piece of paper will do, so long as your written content on it is legible.
- Until the RTI Act empowered the common man to demand information from government, only the members of Parliament had the privilege of seeking this information.
- If you are hesitant about sending your RTI application by post and can't take a day off work to catch hold of the PIO concerned, you can go to your post office and submit your application to the assistant PIO. The postal department has appointed many APIOs across its many offices. Their job is to receive RTI applications and forward them to the PIO or appellate authority concerned.

2. How to File Online RTI?

Currently, Central and a few State government departments have facility for filing **Online RTI.** However, there are multiple independent websites that let you file your application online. They charge you a nominal amount, for which they draft your application and send it to the relevant department. This is as good as sending an RTI application without having to worry about the particulars.

We at

OnlineRTI.com

file RTIs anywhere in India. Filing RTI through us is an easy 5 minute process. Our experts have information about RTI filing for thousands of government offices across the country

3. Which Government Organisations are required to give RTI information under RTI Act?

All government agencies, whether they are under a state government or the Centre, come under the purview of the Act. For example, Municipal Corporations, PSUs (Public Sector Units), Government departments, Ministries at the State as well as Central level, Judiciary, Government owned Companies, Government Universities, Government Schools, Works Departments, Road Authorities, Provident Fund department etc. The list is quite an exhaustive one.

You can ask a government how much money is being spent on renovation of its ministers' bungalows, what their telephone bill or fuel expenditure is. Or you can ask what amount was spent on MLAs'/MPs' foreign trips.

You can ask how much of allocated money your elected representatives have utilised on improving their constituency; you are entitled to ask for even a break-up of the amount spent, project-wise. This RTI information is available because it is the taxpayers' money that is being spent here. Few ministries and departments make online rti replies available to the public. You can see them on the respective websites.

Not only governments and their departments, but also smaller units such as your city corporation or gram panchayat fall under the ambit of RTI. Be it police, passport office, your electricity/water supply company or even the IRCTC, all are required to furnish RTI information.

Through RTI, we can get copies of government documents such as records, advices/opinions, reports, papers, file notings. Even email communications and data held in electronic form has to be made available to citizens upon an RTI application. We can even go to the department’s office and inspect their records and documents, if at all the RTI information is voluminous you can take photocopies, obtain certified copies, take printouts and what not.

4. Which Government Departments are exempted from the Act?

Twenty-odd organisations are exempted from RTI. But all these entities are related to the country's defence and intelligence, such as RAW, BSF, CRPF, CISF, Intelligence Burearu, National Security Guard etc.

Further, there are some specific instances whereby RTI information cannot be furnished. These instances relate to matters which:

- Would affect national security, sovereignty, strategic, economic and/or scientific interest.
- Have been disallowed by the court to be released.
- Have been disallowed by the court to be released.
- Relates to trade secrets or intellectual property, information which might affect/harm the competitive position of a third party.
- Relates to information under fiduciary relationship.
- Relates to foreign government information.
- Would affect the life/physical safety of any person.
- Would affect the process of an investigation.
- Relates to cabinet papers.
- Relates to personal information without any public interest.

However, RTI law says that any information which cannot be denied to a Member of Parliament or state legislature cannot be denied to any citizen.

5. How to use RTI to solve personal problems?

Be it never-ending delay in dispatch of passport or police dilly-dallying in giving you a **copy of FIR** you might have filed, submit an RTI application asking pointed questions. Highly likely this will be the beginning of the end of your woes. **Pending income tax return, pension's release, withdrawal or transfer of PF, release of Aadhaar card or issuance of property documents or driving licence.** Using the RTI tool in any of these scenarios—or other cases involving a government agency—will guarantee you an official response, based on which you can take things further if your issue is not solved.

A citizen can ask government officials reasons for delay in government service requested for. For example, if you have applied for passport and it has not been delivered. Then one can apply RTI with the following questions:

- Please provide daily progress done on my passport application.
- Please provide names of officers with whom my application has been lying during this period.
- Please inform as per your citizen's charter in how many days I should have got my passport.

In majority of cases, the problem gets resolved. This way you can use RTI to solve many other pending issues and especially the ones where bribe is being asked.

6. How to use RTI to solve problems in the community?

If in your community, you think the facilities are not as expected or you observe some government maintained property in bad condition, you can use RTI to get the government working on it.

For instance, if there is a road in very bad condition you can ask the following questions:

- How much money has been spent on the development of road in past 3 years?
- How was the money spent?
- Please provide a copy of the orders

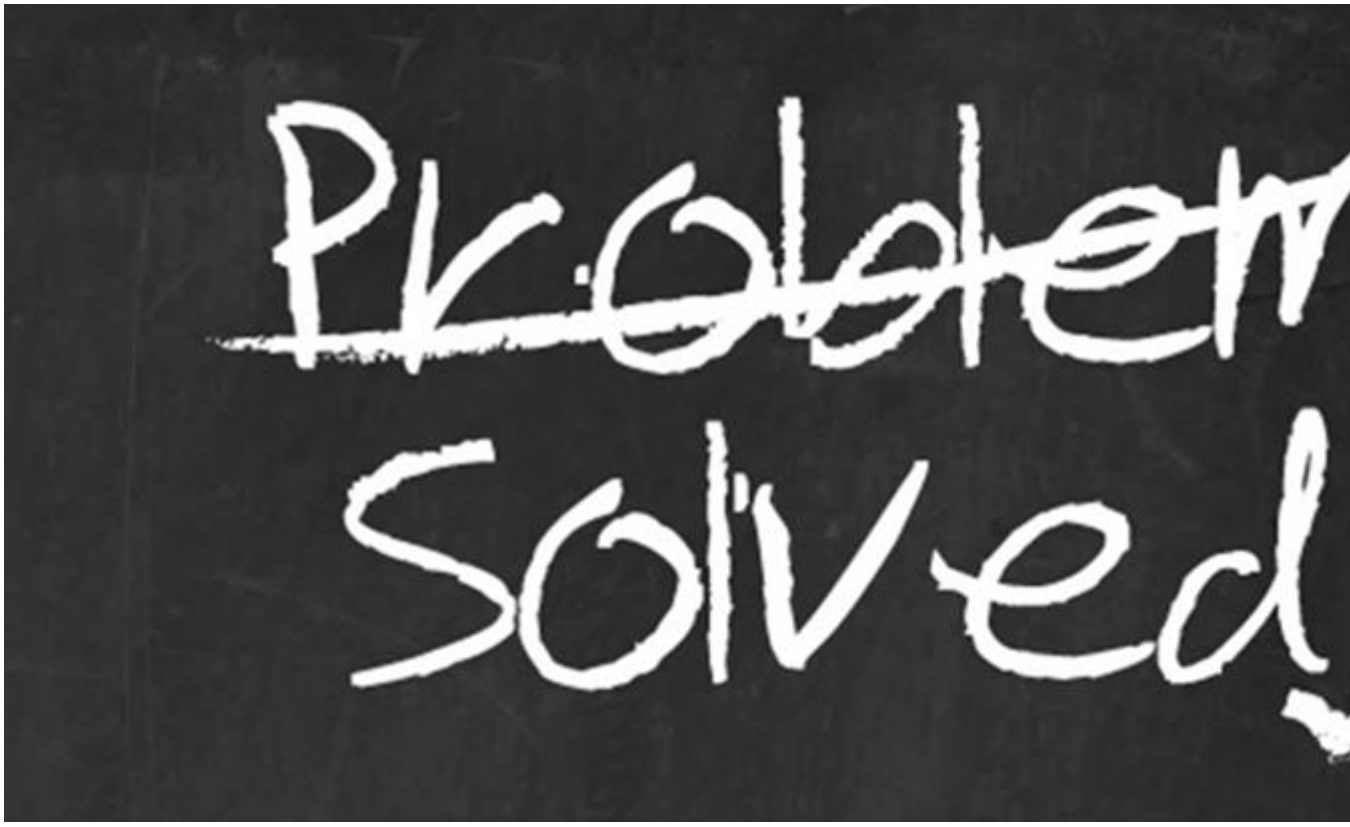
7. How to solve problems using RTI?

Which Personal Problems can be solved using RTI

- Pending Income Tax return
- Delayed PF withdrawal
- Delayed PF Transfer
- Delayed Passport
- Delayed Aadhar card
- Delayed IRCTC Refund
- Copies of answer sheets
- Property Documents like Occupancy Certificate/Completion Certificate
- Status of FIR
- Status of a complaint
- Status of EPF
- Delay in Scholarship

Which Social Problems can be solved using RTI

- Fix roads with pot holes
- Conduct social audit of government projects
- Know how your MP/MLA spent the fund allocated to him
- Know how a particular government project or scheme was implemented



8. How powerful is RTI Act and how is RTI any different from other anti-corruption laws?

   When it comes to RTI, there are watchdogs on multiple levels to ensure the Act is followed in letter and spirit. The Act has employed a 'perform or perish' approach, besides setting up a mechanism to dispense information.

   Every government organisation is needed to appoint one employee as a public information officer (PIO). Once a department gets an RTI request, it is the responsibility of the PIO to furnish the information to the applicant within 30 days. Failing to do so means, a monetary fine can be imposed on the PIO. The longer a PIO makes an applicant wait, the more the penalty levied on him/her. There have been instances where PIOs have been asked to cough up amount in thousands of rupees as fine.

   Every state has an Information Commission, comprising a Chief Information Commissioner and a few information commissioners. Former judges, IAS, IPS officers of impeccable record are appointed to these positions by the government. Above them in the hierarchy is the Central Information Commission and below them are first and second appellate authorities to see to it that an applicant does get the RTI information he/she has requested.

9. How many days does it take to get RTI response?

   As per law, the RTI information should be provided in 30 days. However, sometimes government records are misplaced or missing. Or the agency you've written to needs to co- ordinate with another department to provide you the information you want. In such situations, the information may take more than 30 days to arrive. In such case, the PIO concerned needs to send you a written intimation about the possible delay and the reason. If he/she fails to do so and you don't receive the info within 30 days, penalty can be levied on the PIO if the matter taken up with appellate authorities.

10. What is the fee for seeking information under the RTI?

    For central government departments one needs to pay Rs. 10 with every RTI application. Mode of payment may vary from government to government. While submitting application in person, some organisations accept cash while some do not. Some ask for Court Fee Stamp, some ask for Indian postal order (IPO). When sending an RTI application by post, we can use IPO/ court fee stamp of Rs. 10.

    Those below poverty line (BPL) do not have to pay Rs. 10 as fee for filing an RTI.

    If you've asked the government office to furnish copies of some records, you will need to pay Rs. 2 per page. Once the office receives your request and ascertains the amount you will need to pay towards making copies, you will get intimation via post. You can make the payment by sending postal order/court fee stamp/demand draft of the said amount.

11. Is RTI act different for different states?

    The central government has come up with RTI act which is applicable in all states except Jammu and Kashmir which has its own act very similar to central act.

    Each state has extended central act with state specific rules which contain rules on RTI fees, mode of payment, RTI application form and sometimes a limit on number of words or questions.

    In the following table, we have summarized rules of different states and also provided link to copy of respective rules

Duties of Subscribers for Become a Member of Digital Signature certificate

incometaxsoftware

7 years ago

[Duties of Subscribers for Become a Member of Digital Signature certificate]

The word ‘subscriber’ denotes a person who has paid subscription amount to avail some kind of service. A subscriber is in a way a customer or a buyer. He is a customer with a difference as he usually pays for a service in advance. In the Public Key Infrastructure (PKI), as discussed in the previous chapter, a subscriber is the customer who pays to become one of the members of the Digital Signature Certificate ‘club’. There are many steps involved before a person becomes a member/subscriber of the Digital Signature Certificate ‘club’.

STEPS TO BECOME A SUBSCRIBER

An applicant may have to perform the following steps before he becomes the subscriber of a Digital Signature Certificate:

Step1: Approach the Registration Authority (PA)/Local Registration Authority (LCA), of a licensed Certifying Authority with a request to issue a Digital Signature Certificate.

Step 2: Fill the application form for issue of Digital Signature Certificate and furnish the necessary documents. Also, select the kind of ‘Class’ Certificate required as each class of certificate provides specific functionality and security features. Verification requirements may differ with the type of ‘Class’ Certificate required.

Step 3: Enter into a ‘Certifying Authority-Subscriber’ Agreement.

Step 4: Applicant to generate signing key pair (signing private/public key pair) in a secure medium and prove the possession of private key corresponding to the public key.

Step 5: After verifying (validation procedure) the relevant credentials the Registration Authority (RA)/Local Registration Authority (LRA) forwards the application to the licensed Certifying Authority.

Step 6: After receiving the request, the licensed Certifying Authority generates the Digital Signature Certificate for the public key.

Step7: Interestingly, according to the CPS version 3.0 of TCS-CA, the Digital Signature Certificate of the Subscriber shall be considered to be accepted by the Subscriber when the corresponding Subscriber downloads the Certificate.

Step 8: Subscriber to verify the contents of the Digital Signature Certificate before he accepts it.

Step 9: Upon acceptance, the Certifying Authority to publish the Digital Signature Certificate in its repository.

For more information about digital signature certificate