

# SPECIAL CONTRACTS



# Contract of Indemnity & Guarantee [Sec 124 - 147]

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CMA INTERMEDIATE - BUSINESS LAWS & ETHICS

Contract of Indemnity  
[Sec 124-125]

Contract of Guarantee  
[Sec 126-127]

Continuing Guarantee  
[Sec 129-132]

Discharge of Surety.  
(Sec 133-139)

Rights of Surety  
[Sec 140-147]

**Contract of Indemnity (Sec 124)**

Contract by which

one party promises [Indemnifier]

to save the other [Indemnified]

**From the loss caused to other person.**

**By the conduct of**

promisor himself

OR

Any other person

# Definition of Contract of Indemnity

## INCLUDES

Only express promise to indemnify

Cases where loss is caused by conduct of

promisor himself

or

any other person.

i.e loss must be caused by human agency only.

## EXCLUDES

Implied promise

Act of God.

# Right of Indemnity Holder [Sec 125]

To recover from the indemnifier

All **damages** which he may be compelled to pay in any suit

All **cost** which he may be compelled to pay in any suit

All **sums** which he may have paid under any compromise of any suit.

# Contract of Guarantee [Sec 126]

Contract ⇒ may be either oral or written

To perform the promise

or

discharge liability

of third person in case of his default



## 3 Parties involves

Person giving guarantee  
↓  
Surety

To whom guarantee  
given  
↓  
Creditor

For whose default  
guarantee is given  
↓  
Principal Debtor

## Contract of Guarantee is tripartite Agreement

Principal contract  
between  
↓  
Principal Debtor      Creditor

Secondary contract between  
↓  
Creditor      Surety

Implied contract  
↓  
Surety      Principal Debtor

Note:- Right of surety is not affected by the fact that the creditor has refused to sue principal Debtor or has not demanded the sum due

# Essential Elements of a Guarantee

## Principal Debt

- The existence of principal debt is necessary
- If there is no principal debt, there can be no such guarantee.

## Existence of liability

No misrepresentation  
or concealment  
[Sec 142 & 143]

Writing  
not  
necessary

Any guarantee obtained by creditor by

Misrepresentation <sup>or</sup> without his knowledge <sup>or</sup> keeping silent  
or assent

As to material part of transaction is void.

Joining of other co-sureties (Sec 144)  
as condition by surety

Guarantee not valid until other co-surety joins

with surety

# Consideration

Guarantee without consideration is void

Sec 127 consideration received by principal debtor is sufficient consideration to surety for giving guarantee

But past consideration is no consideration

No need of direct consideration between

Surety

Creditor

# Types of Guarantee

## Specific Guarantee

Which extends to single debt / specific transaction

↓  
Surety's liability comes to an end when debt discharged

## Continuing Guarantee

Which extends to series of transaction

↓  
Surety's liability continues until revocation of Guarantee

By notice of revocation to creditor For future transaction

By death of surety For future transaction

For Past  
↓  
heirs are liable and can be sued.

unless there is contract to contrary

# Nature and Extent of Surety's Liability (Section 128)

Co extensive with Principal Debtor i.e. of same amount for which Principal Debtor is liable.

Only liable when Principal debtor makes default i.e. Surety's liability is secondary in nature

If Principal Debtor due to defect in the document ceases to be liable, surety also ceases.

Creditor may proceed directly against surety unless otherwise agreed.

## DISCHARGE OF SURETY.

By revocation of continuing guarantee

By Notice

By Surety's Death

By Novation [Sec 62]

Surety is discharged for future transaction but not for past transaction.

# By conduct of Creditor:

By variance in Terms of Contract. (Sec 133)

Creditor enters into fresh contract with PD discharging PD

By release or discharge of PD if (Sec 134)

Creditor does any Act or omission which discharge the P.D.

When Creditor (Sec 135)

compounds with Agrees not to sue

Principal Debtor

Creditor's Act or Omission impairing surety's eventual remedy (Sec 139)

Loss of Security (Sec 141)

Note: Creditor's forbearance to sue<sup>10</sup> Principal Debtor does not discharge surety.

## By Invalidation of Contract

By Misrepresentation  
(Sec 142)

By concealment  
(Sec 143)

Failure of Co-surety  
to join (Sec 144)

## When Surety Not Discharged. (Sec 136 & Sec 137)

↓  
Surety not discharged when  
agreement made with third  
person to give time to P.D

↓  
Creditor's forbearance to  
sue does not discharge  
Surety.

# Rights of Surety

Against the Principle Debtor

Right of Subrogation  
[Sec 140]

On payment of debt surety get all the rights which creditor had against the P.D.

Implied promise to indemnify surety  
[Sec 145]

Surety is entitled to recover from P.D all sums which surety has fully paid.

Against the Creditor

A surety has same benefit in every security which creditor has against P.D **AT THE TIME WHEN CONTRACT OF SURETYSHIP ENTERED**

irrespective of fact whether existence of security was known to surety or not

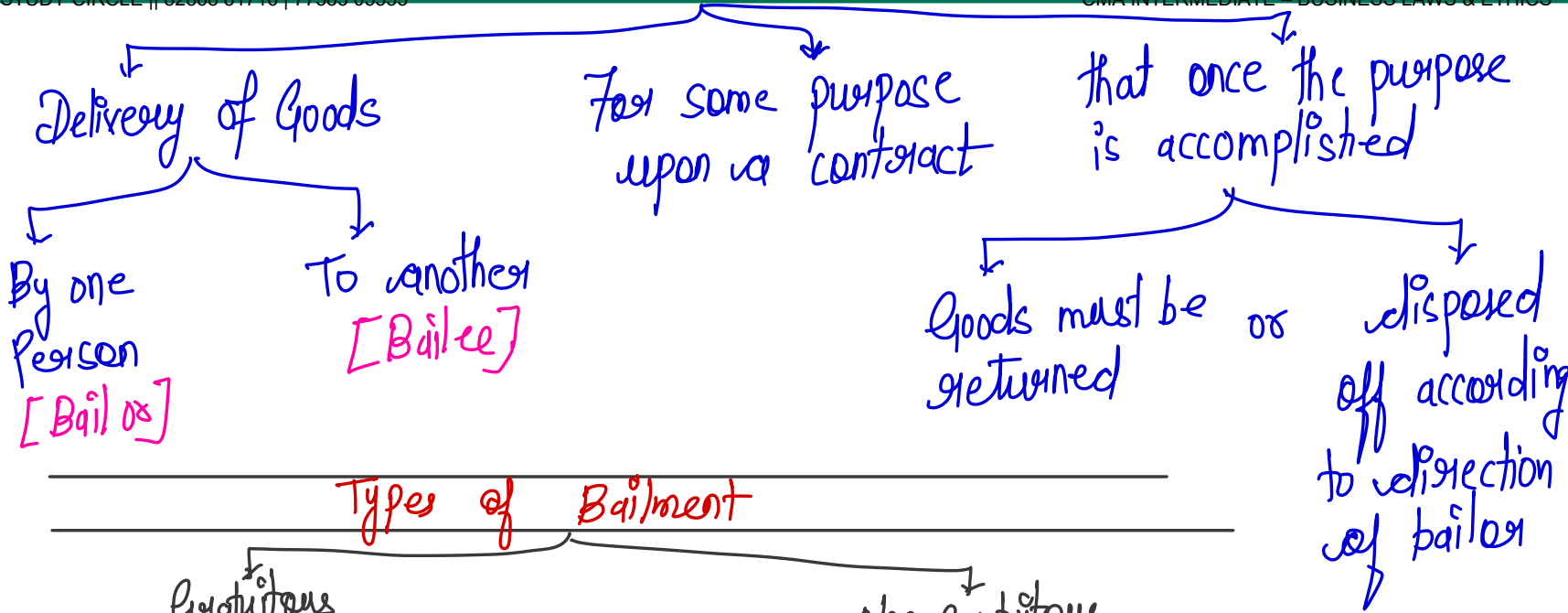
Against the co-sureties  
(Sec 146)

co-sureties are liable to contribute equally.

If creditor without consent of surety parts with such security → surety is discharged to that extent.



# BAILMENT (SECTION 149)



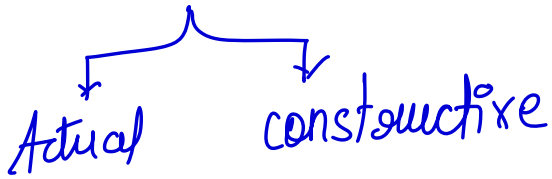
## Types of Bailment

Gratuitous  
↓  
no remuneration  
eg:- lending book to friend.

Non-Gratuitous  
↓  
mutual benefit for both bailor as well as bailee  
eg:- renting of motor car

# Essential Elements of Bailment

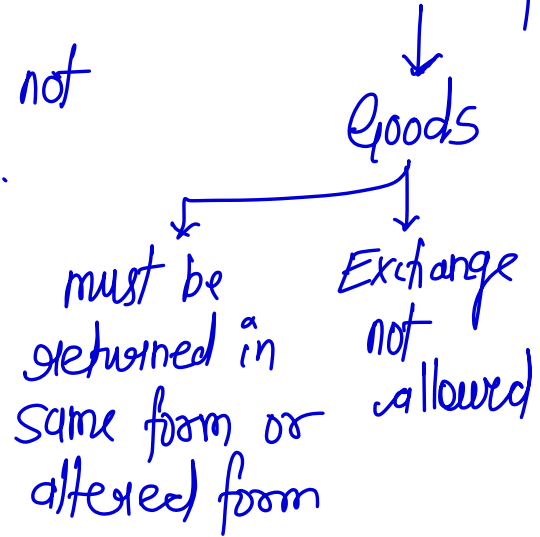
① Delivery of Possession



② Delivery should be upon a contract

④ Ownership is not transferred.

③ Delivery should be upon some condition / purpose.





If not disclosed  
↓  
Bailor responsible  
for damage to  
bailee

Duties of Bailee = Rights of Bailor

Take reasonable  
care of goods  
bailed to him  
as a man of  
ordinary  
prudence  
[Sec 151]

If Bailee

Not to make  
unauthorized  
use of goods (Sec 154)

↓  
Bailment is voidable  
at option of bailor  
if bailee makes  
inconsistent use  
of goods (Sec 153)

Not to mix goods  
↓  
If bailee mixes the  
goods with his own  
goods

With the consent  
of bailor (Sec  
155)  
↓  
Both the parties

Without the  
consent of  
Bailor  
↓  
↓

To return any  
accretion, profit  
or increase in  
goods (Sec 163)

To return the  
goods (Sec 160)  
↓  
If by default of bailee  
goods not returned,  
he is responsible

takes reasonable  
care he is  
not responsible  
for damages. (Sec 152)

shall have interest  
in proportion to  
their respective  
shares

Goods  
can  
be  
separated  
↓ (Sec 156)

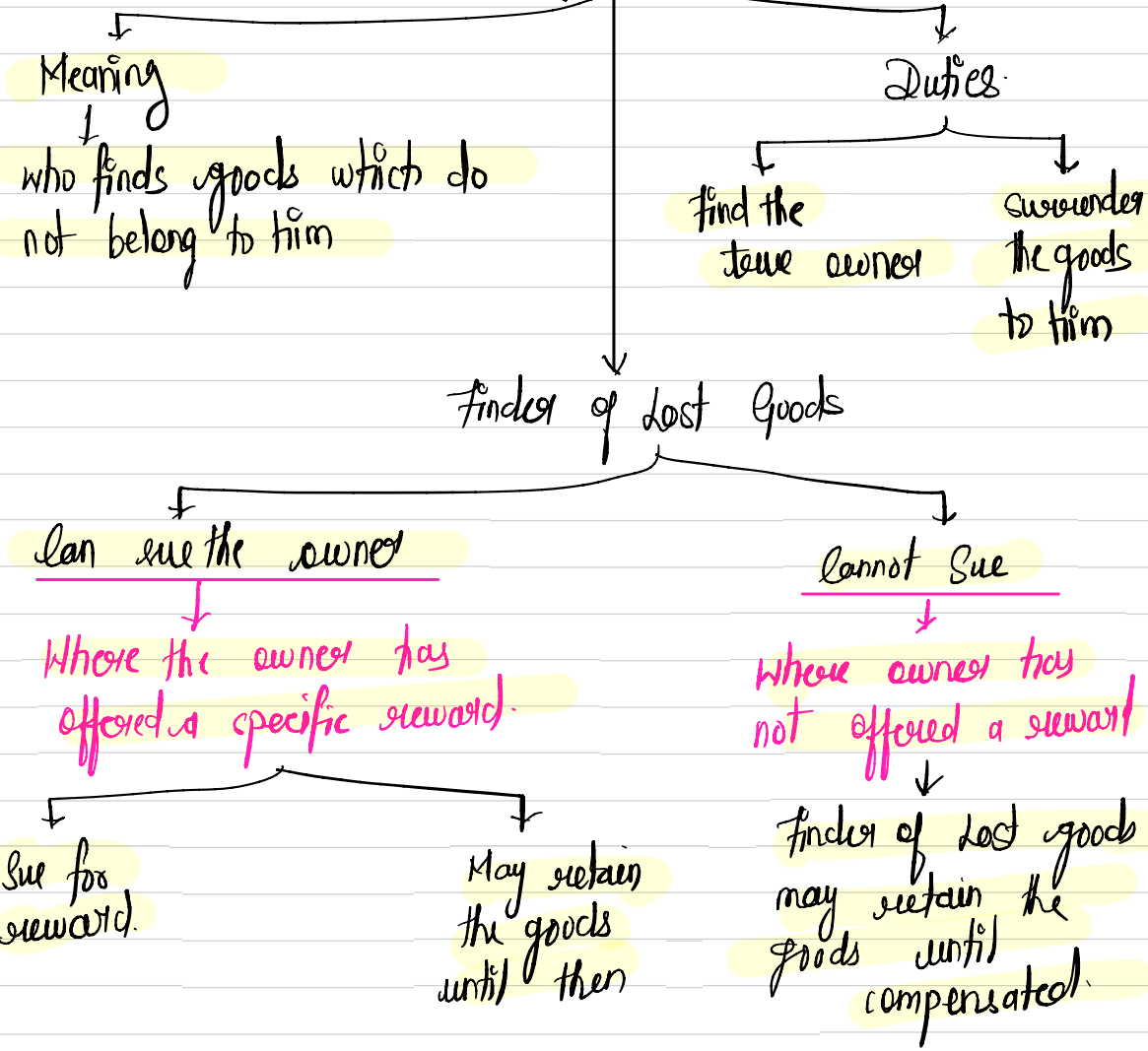
ownership  
remains in  
parties  
respectively

↓  
Bailee is bound  
to bear expense  
of separation

Impossible  
to  
separate (Sec 157)  
for loss (Sec 161)

↓  
Bailee  
is entitled  
for  
compensation  
by bailee.

# \* Finder of lost goods: [Sec 168]



## \* When finder of a goods can sell the goods. Sec 169

↓  
Owner cannot be found after <sup>18</sup> OR  
owner refuses upon demand to pay the

# Reasonable Diligence.

# Lawful charges.

↓  
finder may sell it

↙ If the thing is in danger of perishing and losing the greater part of value.

↘ Lawful charges of finder amounts to 1/3<sup>rd</sup> or more of goods found.  
18000 dog.

$$18000 \times \frac{1}{3} = \underline{\underline{12000}}$$

# \* General Lien & Particular Lien.

↓  
Meaning

Right to retain the goods in possession belonging to the other person until demand (Payment for work & labour) of the person in possession is fulfilled.

↓  
Restrictions

↙ Lien gives only a right to retain the goods in possession

↘ No right to sell it.

## Particular Lien [Section 170]

→ Where the bailee rendered any service involving the exercise of labour or skill in respect of goods bailed, he has unless otherwise agreed a right to retain such goods until he receives remuneration for service rendered.

Conclusion.

Where there is no contract to the contrary

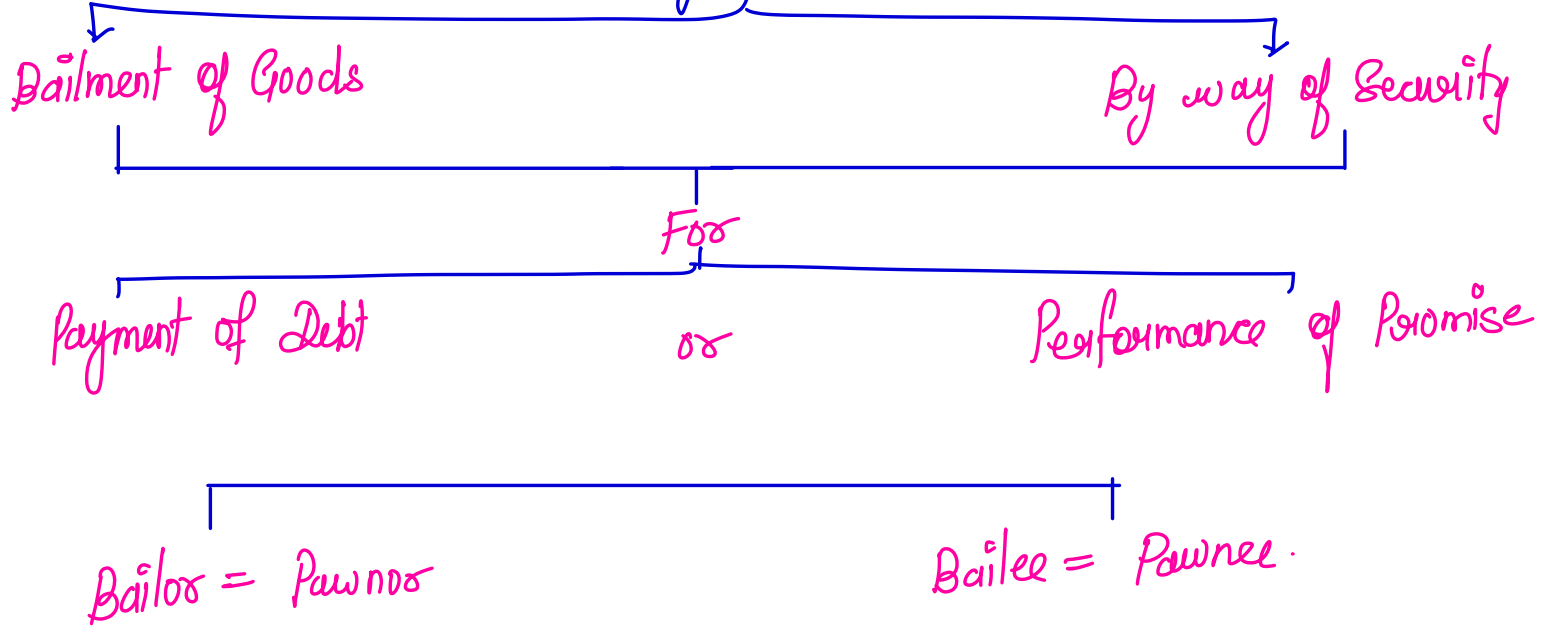
And

Bailee rendered some services or labour or skill to the goods.



# PLEDGE ⇒ Sec 172-182

## Pledge (Sec 172)



## Rights of Pawnee

1] Right to retain the pledged Goods by Pawnee [Sec 173]

Not only for payment of debts or performance of promise.

But also for interest on debt and all necessary expenses for possession and preservation of goods

2] Right to retention of subsequent debts. (Sec 174)

But he can do so only when it has been provided in contract

3] Pawnee's right to receive extraordinary expenses from pawnor for preservation of goods pledged. (Sec 175)

Pawnee cannot retain goods.

But he can sue pawnor.

# 4] Pawnee's right when pawnor makes default (Sec 176)

Being a right against pawnor  
 AND  
 Retain the goods as security

OR

Sell the goods after giving  
 reasonable notice to pawnor

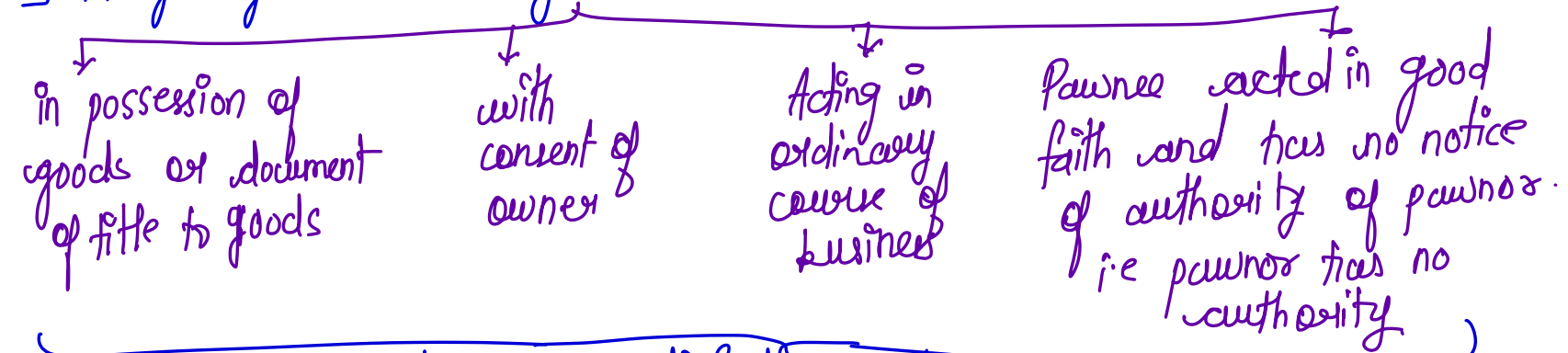
After sale proceeds

Less than the  
 value amount  
 ↓  
 Pawnor still  
 liable

Greater than the  
 amount value  
 ↓  
 Pawnee shall pay  
 over the surplus  
 to the pawnor

# PLEDGE BY NON OWNER

## a) Pledge by Mercantile Agent (Sec 178)



If all conditions are satisfied the pledge is a valid pledge.

## b) Pledge by person in possession of or under voidable contract (Sec 178 A)



But the contract has not been rescinded at the time of pledge

## Pawnee

Acquires good title to goods

If he acted in good faith & without notice of defective title.

3] Pledge where pawnor has only a limited interest [Sec 179]

Pawnor is not absolute owner of goods.

Pledge is valid to extent of that interest.

4] Pledge by co-owner in possession.

5] Pledge by seller or buyer in possession.

# THE INDIAN CONTRACT ACT 1872

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Not defined  
the term  
Agency.

Defined (Sec 182)

Agent

means a person  
employed.

to do any act for  
another

to represent  
another

In dealing with Third Person

Principal

means a  
person for  
whom

such act  
is done

or is  
represented

## TEST OF AGENCY.

Whether the person

has the capacity to bind  
the principal & make him  
answerable to third party

AND

can establish Privity  
of contract between  
the Principal & Third  
Parties.

If Yes

= Agency.

Rule of Agency is based on the Maxim

"Qui Facit Per Alium, Facit Per Se"

↓

he who acts through an Agent is himself acting.

\* Who may employ an Agent? (Sec 183)

Qualified

↓

any person who is  
major & of sound  
mind.

↓

may appoint an  
agent

Disqualified

↓

minor or person  
of unsound mind

\* Who may be appointed as an agent? Sec 184

Any person may become  
agent

Even a minor and person  
of unsound mind and  
principal shall be  
bound by his acts

But principal shall not be  
able to proceed against  
him for his  
negligent or mis conduct.



# Modes of creation of Agency

Express Appointment  
words spoken  
or written

not necessary  
to have formal  
agreement.

Agency by necessity

to prevent the Principal  
from loss in an emergency  
situation agent can do  
what he cannot do in ordinary  
course of business

Implied Appointment

From circumstance

From conduct  
of parties

Agency by ratification

Act done

By one person

on behalf  
of another

But without authority or  
knowledge of another person

Other person

may elect to ratify such  
act  $\Rightarrow$  called agency

Disown such  
act

by ratification

No agency comes in to picture

# Agency by estoppel

Liability of principal for unauthorised act of agent

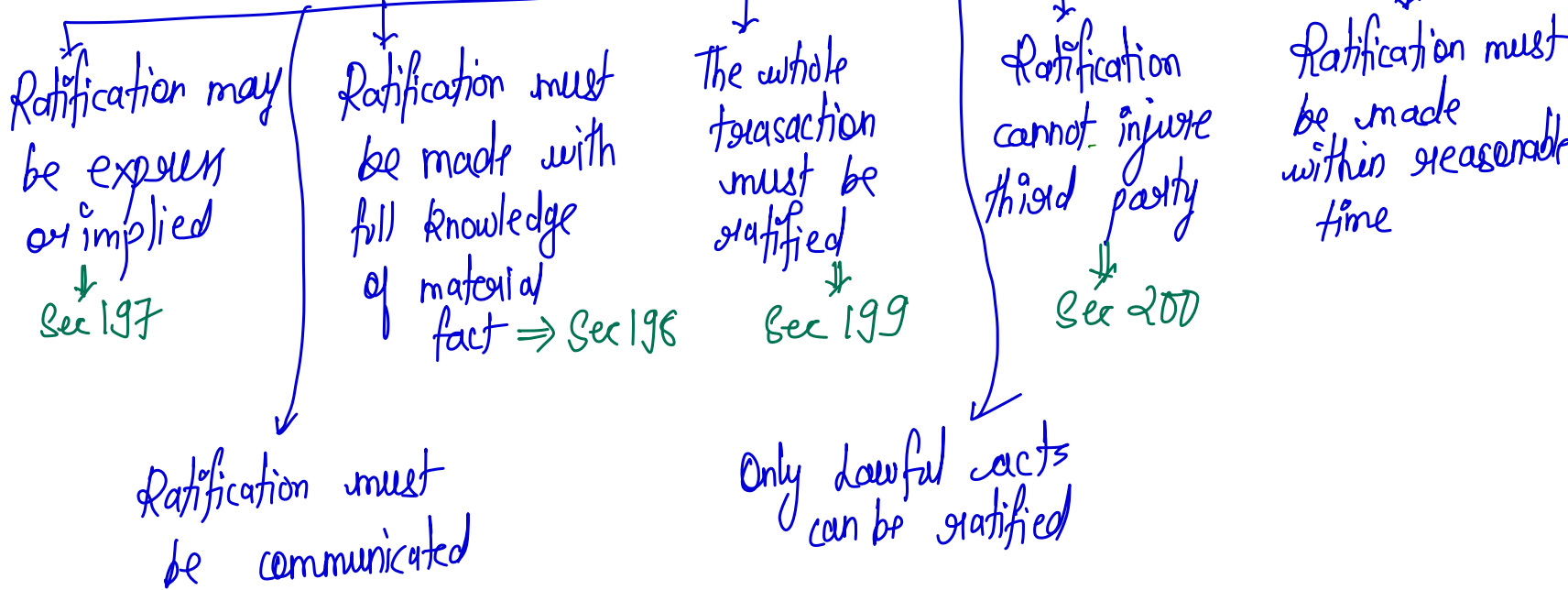
## Essentials

Representation made by principal (express or implied) stating that agent has authority to act although he has no authority

Principal must have induced third person from representation

third person believed it + made the contract.

# \* Essential of Valid Ratification.



## \* Extent of Agents Authority.

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Principal is bound by acts of Agent if agent acts within the scope of his authority.

## \* Agents Authority

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Normal Circumstances

↓  
Agent can do every lawful business to carry on the business or Acts permitted by custom.

Emergency.

Agent can do all such acts for the purpose of protecting his principal for loss

### Essentials

- 1] Agent had no opportunity to communicate with principal
- 2] Agent adopted most reasonable and practicable step
- 3] There was actual commercial necessity.
- 4] Agent acted in good faith for the benefit of principal.

# SUB AGENT / SUB AGENCY.

Where an agent appoints another agent.

Appointment of sub Agent is not lawful

Because Agent is the delegatee and delegatee cannot further delegate

Contract of Agency is of Fiduciary character.

Based on confidence reposed by Principal in Agent

"Delegatus non potest Delegate"

Exceptions: = Where agent can appoint sub agent.

Where terms of appointment of Agent provides that Agent may appoint sub agent

Permitted under custom of trade

In case of unforeseen emergency

# Appointment of sub Agent

Properly

Without Authority

Who shall be liable  
for acts of sub Agent

- 1] Principal liable to 3<sup>rd</sup> parties
- 2] Agent is liable to Principal
- 3] Sub Agent is liable to Agent.

- 1] Principal is not liable to third party
- 2] Agent is liable to both Principal & 3<sup>rd</sup> party
- 3] Sub Agent is liable to Agent

## Substituted Agent

Substituted Agent is the Agent of Principal

though he is named by agent having authority to do so....

Agents duty in naming such person.

To exercise due diligence as a man of ordinary prudence would apply in his own case.

If he does not  
↓  
Agent liable

↓  
If he does this

↓  
He is not responsible to Principal for the acts or negligence of agent so selected.

# Duties and Obligation of Agent

① To conduct business of agency according to principals direction (Sec 211)

③ To render proper accounts (Sec 213)

④ Agents duty to communicate with principal (Sec 214)

⑤ Repudiation of transaction by principal  
↓  
If material facts are concealed by agent (Sec 215)

② Agent is bound to conduct business of agency with as much as skill as is generally possessed by person in similar business (Sec 212)

⑦ Agents duty to pay sums received for principal (Sec 218)

⑥ Not to deal on his own account (Sec 216)



# Rights of Agent

↓ ①  
Right to retain  
out of sums  
received on  
principals  
Account  
(Sec 217)

↓ ②  
Right to receive  
remuneration  
(Sec 219)  
However he is not  
entitled for remuneration  
in respect of that part  
of business which has  
been mis-conducted  
(Sec 220)

↓ ③  
Agent's lien  
on principals  
property  
(Sec 221)

↓ ⑥  
Non liability  
of employer  
of agent to  
do an criminal  
Act (Sec 224)

↓ ④  
Right to  
Indemnification  
for lawful  
Acts-  
(Sec 222)

↓ ⑤  
Right to  
Indemnification  
against act  
done in  
good faith  
(Sec 223)  
↓ ⑦  
Right to compensation  
to Agent for injury  
caused by principals  
neglect (Sec 225)

# Agents liability to third party.

- ① Principal liable for acts of agent (Sec 226)
- ② Principal not bound when agent exceeds authority (Sec 227)
- ③ Principal not bound when excess of agents authority not separable (Sec 228)
- ④ Consequence of Notice given to agent (Sec 229)  
⇒ Any notice obtained by agent in ordinary course of business, shall have same consequence, as if it has been obtained by principal
- ⑤ Agent cannot personally enforce, nor be bound by contracts on behalf of principal (Sec 230)
- ⑥ Rights of parties to contract made by agent not disclosed (Sec 231)
- ⑦ Performance of contract with agent supposed to be principal (Sec 232)
- ⑧ Right of person dealing with agent personally liable. (Sec 233)
- ⑨ Consequence of inducing agent or principal to act on behalf of that

Principal or agent will be held exclusively liable (Sec 234)

- ⑩ Liability of pretended Agent (Sec 235)
- ⑪ Person falsely contracting agent not entitled to perform (Sec 236)
- ⑫ Liability of principal inducing belief that agents unauthorized acts were authorized (Sec 237)
- ⑬ Effect of misrepresentation or fraud by agent (Sec 238)

## Termination of Agency

① Sec 202:  
Termination of Agency when agent has interest in subject matter

② Sec 203  
When principal can revoke agent's authority  
↓  
any time before agent exercised

③ Sec 204:  
Revocation when authority is partly exercised

④ Sec 205:  
Compensation for revocation

his authority

↓  
in absence of express  
contract cannot be  
terminated.

↓  
Sec 206:  
Notice of  
Revocation  
↓  
reasonable notice  
must be given

↓  
Sec 207:  
Notice of Revocation  
must be  
express or  
implied

↓  
Sec 208  
When termination  
of Agents authority  
takes effect as  
to agent and  
as to third  
party.

as to agent

↓  
when it comes to his  
knowledge

as to third party

↓  
when it <sup>th</sup> comes in to  
knowledge of third party.

↓  
Sec 209  
Agents duty as to  
termination due to  
Principals death  
or insanity

↓  
Sec 210  
Termination of  
sub agents  
authority

