

CONTRACT - II
INDIAN CONTRACT ACT, INDIAN PARTNERSHIP
ACT, SALE OF GOODS ACT AND LIMITED LIABILITY
PARTNERSHIP ACT

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OBJECT OF THE COURSE:

The primary goal of this course is to acquaint the students with the basics of Special Contracts and make them able to grasp the nuances of the contractual transactions involving these forms of contracts. After studying this course students will be able to analyse the implications of a contractual arrangement falling under any of the discussed head of special contracts. They will be able to determine the legality of the transactions and also the rights and duties of the parties thereto. They will also be able to purposefully deal with the disputes arising out of such contractual arrangements.

This course is to be taught after the students have been made familiar with the general principles of contract in which the emphases is on understanding and appreciating the basic essentials of a valid contract and on the existence of contractual relationship in various instances. This course should provide an insight into the justification for special statutory provisions for certain kinds of contracts.

The *main objectives* of this course are:

- To learn the fundamental principles underlying these special forms of contract.
- To learn the limits of the freedom of the parties within the prescriptions of law in relation to the special forms of contract and consequently better appreciate the impact on the classical theory of freedom of contract.
- To appreciate the relationship of general principles with the special contracts.
- To develop skills of legal analysis and argument.
- To understand how law allocates for the economic risks involved in commercial transactions.

- To understand the growing importance of special contracts and to have a foundational understanding of the new forms special contracts including technology transfer agreements, e-contracts including software licensing agreements, infrastructure contracts, government contracts, public private partnerships etc.
- To emphasize on the drafting skills of the students.

In addition, this course will consider how the evolution of these contractual principles has impacted the changing business environment and also the effect of the later on the former. We would seek to determine the functions of these contractual forms in societal evolution and business institutions.

COURSE MODULE

1. Indemnity

6 Lectures

- 1.1. The concept
- 1.2. Need for indemnity to facilitate commercial transactions.
- 1.3. Definition of Indemnity
- 1.4. Nature and extent of liability of the indemnifier
- 1.5. Commencement of liability of the indemnifier
- 1.6. Situations of various types of indemnity creations.
- 1.7. Documents/agreements of indemnity
- 1.8. Nature of indemnity clauses

2. Guarantee

6 Lectures

- 2.1. The concept.
- 2.2. Definition of guarantee: as distinguished from indemnity.
- 2.3. Basic essentials for a valid guarantee contract.
- 2.4. Position of minor and validity of guarantee when minor is the principal debtor, creditor or surety.

- 2.5. Continuing guarantee.
- 2.6. Nature of surety's liability
- 2.7. Duration and termination of such liability.
- 2.8. Illustrative situations of existence of continuing guarantee.
- 2.9. Creation and identification of continuing guarantees.
- 2.10. Rights of surety
- 2.11. Position of surety in the eye of law.
- 2.12. Co-surety and manner of sharing liabilities and rights.
- 2.13. Extent of surety's liability.
- 2.14. Discharge of surety's liability

3. Bailment

8 Lectures

- 3.1. Identification of bailment contracts in day today life.
- 3.2. Manner of creation of such contracts
- 3.3. Commercial utility of bailment contracts
- 3.4. Definition of bailment
- 3.5. Kinds of bailees
- 3.6. Duties of Bailor and Bailee towards each other
- 3.7. Rights of bailor and bailee
- 3.8. Finder of goods as a bailee.
- 3.9. Liability towards the true owner.
- 3.10. Obligation to keep the goods safe
- 3.11. Right to dispose of the goods.
- 3.12. Lien and types of Lien

4. Pledge

5 Lectures

- 4.1. Pledge: comparison with bailment
- 4.2. Commercial utility of pledge transactions
- 4.3. Definition of pledge under the Indian contract Act
- 4.4. Rights of the pawner and pawnee.
- 4.5. Pawnee's right of sale as compared to that of an ordinary bailee
- 4.6. Pledge by certain specified persons mentioned in the Indian Contract Act.

5. Agency**8 Lectures**

- 5.1. Identification of different kinds of agency transactions in day to day life in the commercial world
- 5.2. Kinds of agents and agencies.
- 5.3. Distinction between agent and servant.
- 5.4. Essentials of an agency transaction
- 5.5. Various methods of creation of agency
- 5.6. Delegation
- 5.7. Duties and rights of agent
- 5.8. Scope and extent of agent's authority.
- 5.9. Liability of the principal for acts of the agent including misconduct and tort of the agent.
- 5.10. Liability of the agent towards the principal.
- 5.11. Personal liability towards the parties
- 5.12. Methods of termination of agency contract
- 5.13. Liability of the principal and agent before and after such termination.

6. Sale of Goods, 1930**12 Lectures**

- 6.1. Concept of sale as a contract
- 6.2. Illustrative instances of sale of goods and the nature of such contracts.
- 6.3. Essentials of contract of sale
- 6.4. Essential conditions in every contract of sale
- 6.5. Implied terms in contract of sale
- 6.6. The rule of caveat emptor and the exceptions thereto under the Sale of Goods Act.
- 6.7. Changing concept of caveat emptor
- 6.8. Effect and meaning of implied warranties in a sale
- 6.9. Transfer of title and passing of risk
- 6.10. Delivery of goods: various rules regarding delivery of goods.
- 6.11. Unpaid seller and his rights
- 6.12. Remedies for breach of contract

7. The Indian Partnership Act,1932

12 Lecture

- 7.1. Nature of partnership: definition
- 7.2. Distinct advantages and disadvantages vis-à-vis partnership and private limited company
- 7.3. Mutual relationship between partners
- 7.4. Authority of partners
- 7.5. Admission of partners.
- 7.6. Outgoing of partners.
- 7.7. Registration of Partnership
- 7.8. Dissolution of Partnership

8. The Limited Liability Partnership, 2008

6 Lecture

- 8.1. Salient Features of LLP
- 8.2. Extent and limitations of LLP& Partnership
- 8.3. Incorporation of New LLP
- 8.4. Designate partner
- 8.5. Obtaining DPIN and digital signature
- 8.6. Drafting of LLP agreement
- 8.7. Certificate of Incorporation
- 8.8. Difference between LLP and company

Important Case Laws

New India Assurance Company Ltd. Vs Kusumanchi Kameshwra Rao & Others, 1997 Industrial Financial Corporation of India v/s Kannur Spinning & Weaving Mills Ltd, 2002

Bank of Bihar Ltd. v/s Damodar Prasad, 1969

Maharashtra Electricity Board Bombay v/s Official Liquidator and Another, 1982 Mukesh Gupta v/s Sicorn Ltd. Mumbai, 2004

Bank of India v/s Yogeshwar Kant Wahhera, 1987

Kellappan Nambiar v/s Kanhi Raman-1957

State Bank of India v/s V.N. Anantha Krishnam 2005

Industrial Financial Corporation of India v/s Kannur Spining & Weaving Mills Ltd.- 2002

Harigobind Aggarwal v/s State Bank Of India-1956

London General Omnibus V/s Holloway- 1912

Lloyd's v/s Harper-1880

Wingfield v/s De St Cron 1919

Durga Priya v/s Durga Pada 1928

Calcutta Credit Corporation Ltd. v/s Prince Peter of Greece-1964 Barbant & Comp. v/s King, 1895

Laxmi Narayan v/s The Secretary for State for India:1923:

Purshotam Das v/s Union of India-1967

A.T.Trust Ltd., v/s Trippunhura Devaswomi 1954.

Jagdish chand Trikha v/s Punjab National Bank, 1998

Ultzen v/s Nicoles, 1894

Pillai v/s Visalakshmi, 1938

Punjab National Bank v/s Sohan Lal, 1962,

Revenue Athority v/s Sunderasanam Pictures-1968

Digvijay Cement Co.Ltd. v/s State Trading Corpn., 2006.

Lloyds v/s Grace Smith HL 1912

Grace v/s Smith, 1775

Waugh v/s Carver, 1793

Cox v/s Hickman-1860

U.P., v/s Hamid Khan & Bros. and othrs-1986

Cox v/s Hickman, 1860

Grace V/s Smith-1775

M/s Samy Uktha Cotton Trading Co. v/s B.V.Suhhaiah-2005

Mir Abdul Khaliq v/s Addul Gaffar Seriff-1985

Suggested Readings:

1. R.K.Abhichandani (ed.), Pollock and Mulla on Contracts and Specific Relief Acts (1999) Tripathi, Bombay
2. Avtar Singh, Contract Act (20), Eastern, Lucknow.
3. Krishnan Nair, Law of Contract, (1999) Orient
4. Avtar Singh, Principles of the Law of Sale of Goods and Hire Purchase (1998), Eastern, Lucknow
5. A. G. Guest (ed.), Benjamin`s Sale of Goods (1992), Sweet & Maxwell.
6. Beatson (ed.), Ansons' Law of Contract, (1998), Oxford, London
7. Saharay, H.K., Indian Partnership and Sale of Goods Act (2000), Universal
8. Rohini Aggarawal, Mercantile and Commercial Laws, Taxmann (2018)
9. R.K.Bangia Law of Contract II
