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**REVIEW DOCUMENT**

**INDIAN CONTRACT ACT, 1872**

**Special kinds of Contracts(Sec-124-238)**

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## **INDIAN CONTRACT ACT, 1872**

### **Special kinds of Contracts(Sec-124-238)**

#### **OBJECTIVE**

The Law of Contract constitutes the most important branch of merchantile or Commercial law. It affects everybody, more so, trade, commerce and industry.

#### **IMPORTANT PROVISIONS ( In short)**

Section 124. A contract in which one party promises other party to bear losses to him - Contract of Indemnity.

#### **Section 125. Rights of Indemnity Holder when Sued:**

The promisee in a contract of Indemnity, acting within the scope of his authority, is entitled to recover from the promisor-

- 1.All damages which he may be compelled to pay suit in respect of any matter to which the promise to indemnify applies,
2. All costs which he may be compelled to pay in any such suit if, in bringing or defending it, he did not contravene the orders of the promisor, and acted as if it would have been prudent for him to act in the adsence of any contract of Indemnity, or if the promisor authorised him to bring or defend the suit; and
3. All sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not contrary to the others of the promisor, and was one which it would have been prudent for the promisee to make in the ansence of any Contract of Indemnity, or if the promisor authorised him to compromise the suit.

#### **Section 126. Contract of Guarantee**

A contract of Guarantee is a contract to perform the promise, or discharge the liability of a third person in case of his default.

#### **Section 127. Consideration for guarantee**

Anything done, or any promise made, for the benefit of the principal debtor, may be a sufficient consideration to the surety for giving the guarantee.

### **Section 129. Continuing guarantee**

A guarantee which extends to a series of transaction, is called, a continuing guarantee.

### **Section 130. Revocation of continuing guarantee**

A continuing guarantee may at any time be revoked by the surety, as to future transactions, by notice to the creditor.

### **Section 131. Revocation of continuing guarantee by surety's death**

The death of surety operates , in the absence of Contract as a revocation of a continuing guarantee, so far as regards future transactions. But for all the transactions made before his death, the surety's estate will be liable.

### **Section 141. Surety's rights against the Creditor:**

A surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into a whether the surety knows of the existence of such security or not; and, if the creditor loses or, without the consent of the surety parts with such security, the surety is discharged to the extent of the value of the security.

### **Section 142. Guarantee obtained by misrepresentation, invalid**

Any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid.

### **Section 143. Guarantee obtained by concealment, invalid**

Any guarantee which the creditor has obtained by means of keeping silence as to material circumstances, is invalid.

## **Bailment And Pledge**

### **Section 148. Bailment, bailor and bailee defined:**

A bailment is a transaction whereby one person delivers goods to another person for some purpose, upon a contract that they are, when the purpose is accomplished to be returned or otherwise disposed of according to the directions of the person delivering them.

### **Section 151. Care to be taken by bailee -**

Care to be taken by bailee In all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quantity and value as the goods bailed.

### **Section 165. Bailment by several joint owners -**

If several joint owners of goods bail them, the bailee may deliver them back to, or according to the directions of, one joint owner without the consent of all in the absence of any agreement to the contrary.

### **Section 167. Right of third person claiming goods bailed -**

If a person, other than the bailor, claims goods bailed he may apply to the court to stop delivery of the goods to the bailor, and to decide the title to the goods.

### **Section 168. Right to finder of goods may sue for specified reward offered -**

The finder of goods has no right to use the owner for compensation for trouble and expense, voluntary incurred by him to preserve the goods and to find out the owner; but he may retain the goods against the owner until he receive such compensation; and where the owner has offered a specific reward for the return of goods lost, the finder may sue for such reward, and may retain the goods until he received it.

### **Section 170. Bailee's particular lien**

When the goods are bailed for a particular purpose and the bailee in due performance of bailment, expands his skill and labour, he has in the absence of an agreement to the contrary a lien on the goods i.e, the bailee can retain the goods until his charges in respect of labour and skill used on the goods are paid by the bailor.

### **Section 172. Pledge, Pawnor, and Pawnee defined -**

The bailment of goods as security for payment of a debt or performance of a promise is called pledge. The bailor is in this case called pawnor. The bailee is called pawnee.

### **Section 178. Pledge by mercantile agent -**

Pledge by mercantile agent where a mercantile agent is, with the consent of the owner, in possession of goods or the documents of title to goods, any pledge made by him, when acting in the ordinary course of business of a mercantile agent, shall be as valid as if he were expressly authorised by the owner of the goods to make the same; provided that the pawnee acts in good faith and has not at the time of the pledge notice that the pawnor has not authority to pledge.

## **LAW OF AGENCY**

### **Section 182. "Agent" and "principal" defined -**

An "agent" is a person employed to do any act for another, or to represent another in dealing with third persons. The person for whom such act is done, or who is so represented, is called the "principal".

### **Section 183. Who may employ agent -**

Any person who is of the age of majority according to the law to which he is subject, and who is of sound mind, may employ an agent.

### **Section 184. Who may be an agent -**

As between the principal and third persons, any person may become an agent, but no person who is not of the age of majority and sound mind can become an agent, so as to be responsible to the principal according to the provisions in that behalf herein contained.

### **Section 185. Consideration not necessary-**

No consideration is necessary to create an agency.

### **Section 187. Definitions of express and implied-**

An authority is said to be express when it is given by words spoken or written. An authority is said to be implied when it is to be inferred from the circumstances of the case; and things spoken or written, or the ordinary course of dealing, may be accounted circumstances of the case.

### **Section 190. When agent cannot delegate -**

An agent cannot lawfully employ another to perform acts which he has expressly or impliedly undertaken to perform personally, unless by the ordinary custom of trade a sub-agent may, or, from the nature or agency, a sub-agent must, be employed.

### **Section 191. "Sub-agent" defined -**

A "sub-agent" is a person employed by, and acting under the control of, the original agent in the business of the agency.

### **Section 201. Termination of Agency -**

An agency is terminated by the principal revoking his authority, or by the agent renouncing the business of the agency; or by the business of the agency being completed; or by either the principal or agent dying or becoming of unsound mind; or by the principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors.

### **Section 202. Termination of Agency, where agent has an interest in subject-matter-**

Where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.

### **Section 203. When principal may revoke agent's authority -**

The principal may, save as is otherwise provided by the last preceding section, revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principal.

### **Section 221. Agent's lien on principal property -**

In the absence of any contract to the contrary, an agent is entitled to retain goods, papers, and other property, whether movable or immovable, of the principal received by him, until the

amount due to himself for commission, disbursements and services in respect of the same has been paid or accounted for to him.

### **Landmark cases**

- Coggs v Bernard (1703) 2 LdRaym 909 (also Coggs v Barnard) is a landmark case both for English property law and contract law, decided by Sir John Holt, Chief Justice of the King's Bench. It sets out the duties owed by a bailee – someone in possession of property owned by another.

The case overturned the then leading case in the law of bailments, Southcote's Case (1601), which held that a general bailee was strictly liable for any damage or loss to the goods in his possession (e.g., even if the goods were stolen from him by force). Under the ruling in Coggs v Bernard, a general bailee was only liable if he had been negligent. Despite his reappraisal of the standard of liability for general bailees, Holt CJ refused to reconsider the long-standing common law rule that held common carriers strictly liable for any loss or damage to bailed property in their possession.

- Panaganti Rama Rayanimgar (Dead) ... vs UmadeRajahaRaje Damara Kumara ... on 17 January, 1933

It is argued that the purchaser in the present case, i.e., the appellant, cannot be said to have agreed impliedly to indemnify the owner of the property against the incumbrance, inasmuch as he is not the purchaser of the equity of redemption but has only purchased the property subject to a "charge". Or, in other words, the argument is that as a "charge" does not import an agreement to pay as in the case of a "mortgage", a contract of indemnity cannot be implied in the present case.

### **CONCLUSION**

These contracts are known as special kind of contracts. nowadays, contracts are not simply restricted to paper based contracts but electronic contracts are born out of need of speed, convenience and efficiency which is governed by Information Technology Act, 2000.

## About the Author



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I'm Aarohi Adbe, student of B.A.LLB 3rd year from Manikchand Pahade law college Aurangabad, Maharashtra. Amazing experience interning with LEGALEAGLE LAWY FORUM and got to increase my knowledge. People were very supportive and were always there to solve the queries. Every work was on time which actually motivated me to complete my work before deadline.