

Business Laws  
Semester – 1  
Unit-1  
Indian Contract Act, 1872 - Specific Contract

## SPECIFIC CONTRACT

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1. Contingent contract
2. Quasi Contract
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## CONTINGENT CONTRACT

A contingent contract is a contract to do or not to do something, if some event collateral to such contract does or does not happen.

Thus it is the contract the performance of which is dependent upon happening or non happening of an uncertain event, collateral to such contract.

Characteristics of a contingent contract:

1. The performance of the contract is dependent on certain contingency
2. The event must be collateral : incidental to the contract
3. The contingency is uncertain
4. Event should not be at the discretion of the promisor: the event whose happening or non happening the contract can be enforced , should not depend on the promisor.

## Types of Contingent Contract

1. Depending upon happening of an uncertain event: If the uncertain event takes place the contingent contract becomes valid and if the uncertain event does not take place the contingent contract is void.
2. Depending upon happening of an uncertain event in a fixed period: if the event happens within a fixed period, the contract is valid. If such event does not take place within the fixed period the contract is void.
3. Depending upon an impossible event: contingent contract depending on an impossible event is void ab initio.
4. Depending upon non happening of an uncertain event: if the event does not happen the contract is valid and if the event takes place the contract is void.
5. Depending upon non happening of an uncertain event in a fixed period: if the event takes place within that fixed period the contract is void and if that event does not take place within agreed period then it is valid.

### Examples of contingent contract:

1. A contracts to sell B 100 bales of cotton for Rs 2,00,000 if the ship by which they are coming returns safely.
2. A promises to give a loan of Rs 50,000 to B, if he is elected the president of a particular association.
3. A promises to pay Rs 90,000 to B if a certain ship does not return of course after charging usual premium.

## QUASI CONTRACT

- Contracts which are not created by parties but by law itself.
- They are not derived by the consent of the parties but are imposed by the law regardless of their consent and their dissent.
- Quasi Contracts are based on the maxims “*nemo debet locu platari ex liena justua*” (no man must grow rich out of another persons cost)
- Quasi contracts are also called constructive contracts

### Characteristics of a Quasi contract

1. Imposed by Law no formal contract
2. Principles of justice of equity and good conscience
3. A right in one person and imposes the liability on the other person
4. The rights are granted to a particular person only and not to the whole world.

## Types of Quasi contract

1. **Supply of necessities:** the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.
2. **Payment by an interested person:** a person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it is entitled to be reimbursed by the other.
3. **Obligation to pay for non gratuitous acts:** when a person lawfully does anything for another person or delivers anything to him, not intending to do so gratuitously and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of or to restore the things so done or delivered.
4. **Responsibilities of the finder of the goods:** a person who finds the goods to another and takes them into his custody is subject to the same responsibilities as a bailee. Till the owner is found out, the property in the goods will vest in the finder and he can retain the goods as his own against the whole world.
5. **Mistake or coercion:** a person to whom money has been paid or anything delivered by mistake or under coercion, must repay or return it to the person who is paid it by mistake or under coercion.

## **Contract of Indemnity**

A contract of indemnity is a contract in which one party promises to compensate or protect the other party from the losses arising in future.

### **Parties to the contract of Indemnity**

Indemnifier: The person who is promising to pay compensation is called indemnifier.

Indemnity Holder: The person who loss is compensated is called indemnity holder

### **Essentials of valid contracts of indemnity**

1. Indemnifier and indemnity holder
2. It should contain an offer, a consideration, free consent, the competence of both parties and the legality of the object to become a valid contract.
3. There should be a promise between two parties whereby one party promises another to save him from any losses suffered by him.
4. The losses may be due to the conduct of the promisor himself or any other person.
5. Contract may be expressed or implied.

Rights of an indemnifier	Rights of an indemnifier holder
<ul style="list-style-type: none"> <li>• Right of subrogation: on payment of the amount of loss or liability to the indemnified the indemnifier is subrogated to all the rights of indemnified.</li> <li>• Right to equities: after making payment to the indemnified for the loss, indemnifier is entitled for all equities which indemnified could have enforced against the third party liable for loss</li> <li>• Right to refuse indemnity: The indemnifier has the right to refuse indemnity provided the loss caused to the indemnity holder is beyond the scope of the contract</li> </ul>	<ul style="list-style-type: none"> <li>• Right to recover damages: all damages which he may be compelled to pay in any suit of any matter to which he promises to indemnify apply.</li> <li>• Right to recover cost: all the cost he may be compelled to pay in any such suit.</li> <li>• Right to recover all sums paid: he is entitled to recover all the sums which he may have paid under the terms of any compromise of any such suit, provided such compromise is not contrary to the order of the promisor.</li> <li>• Suit for specific performance: An indemnity holder is entitled to sue the indemnifier even before he has suffered any damage.</li> </ul>



## CONTRACT OF GUARANTEE

A guarantee means the promise to pay another's debt or fulfill another's contractual obligations if that party fails to pay its debt or perform its obligations.

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

### Parties to the contract of guarantee

1. surety: a surety is a person who gives the guarantee to pay in case of default.
2. Principal debtor: the person for whom the guarantee has been taken by the surety is the principal debtor
3. Creditor: a promise of guarantee is given to the creditor to whom the payment has to be made.

### Essentials of a valid contract of guarantee:

1. Essentials of a valid contract: all essentials of a valid contract is required
2. A principal debt must pre exists: a contract of guarantee seeks to secure payment of a principal debt.
3. Consideration: consideration received by the principal debtor is sufficient for the surety.

## RIGHTS OF SURETY

1. **Rights against the principal debtor:** The surety has the right of subrogation and the right to claim indemnity from the principal debtor.
2. **Right of subrogation:** when a surety makes a payment to a creditor on behalf of the principal debtor in case of a default he acquires the rights of a creditor against the principal debtor. He can recover the entire amount that he has paid to the creditor. This is called the right of subrogation.
3. **Rights of indemnity:** When a contract of guarantee is entered into there is an implied promise that the principal debtor will indemnify the surety for all the payments rightfully made by him. If he has made any payments he will not be able to recover any amounts.

### Example:

A has to pay Rs 4,00,000 to B. C is the surety for the debt. B demands the payment from A on the due date. A fails to pay the amount. C who is the surety is compelled to make the payment on behalf of A. C has the right to recover the amount from A with all the benefits promised to B as he has now acquired the right of a creditor.

Contract of Indemnity	Contract of Indemnity
To perform the promise or discharge the liability of the third person in case of default	Is a contract by which one party promises to save the loss caused by the conduct of the promisor
Ex: If you lend Rs 3 lac to C I will see that the money comes back	If you lend Rs 20,000 to C and he does not pay to you I will pay to you
Two parties : 1. indemnifier: Promisor 2. Indemnifier Holder: Promisee	Three Parties: 1. Surety: Person who gives guarantee 2. Principal Debtor: Person for whom the guarantee is given 3. Creditor: Person to whom the guarantee is given
One contract	Three contract
Indemnifier cannot sue third party in his own name	If the principal debtor fails to pay and the surety discharges his debt the surety can proceed against the principal debtor in his own right

**ESSENTIALS  
OF  
BAILMENT**

**MEANING**

**BAILOR  
BAILEE**

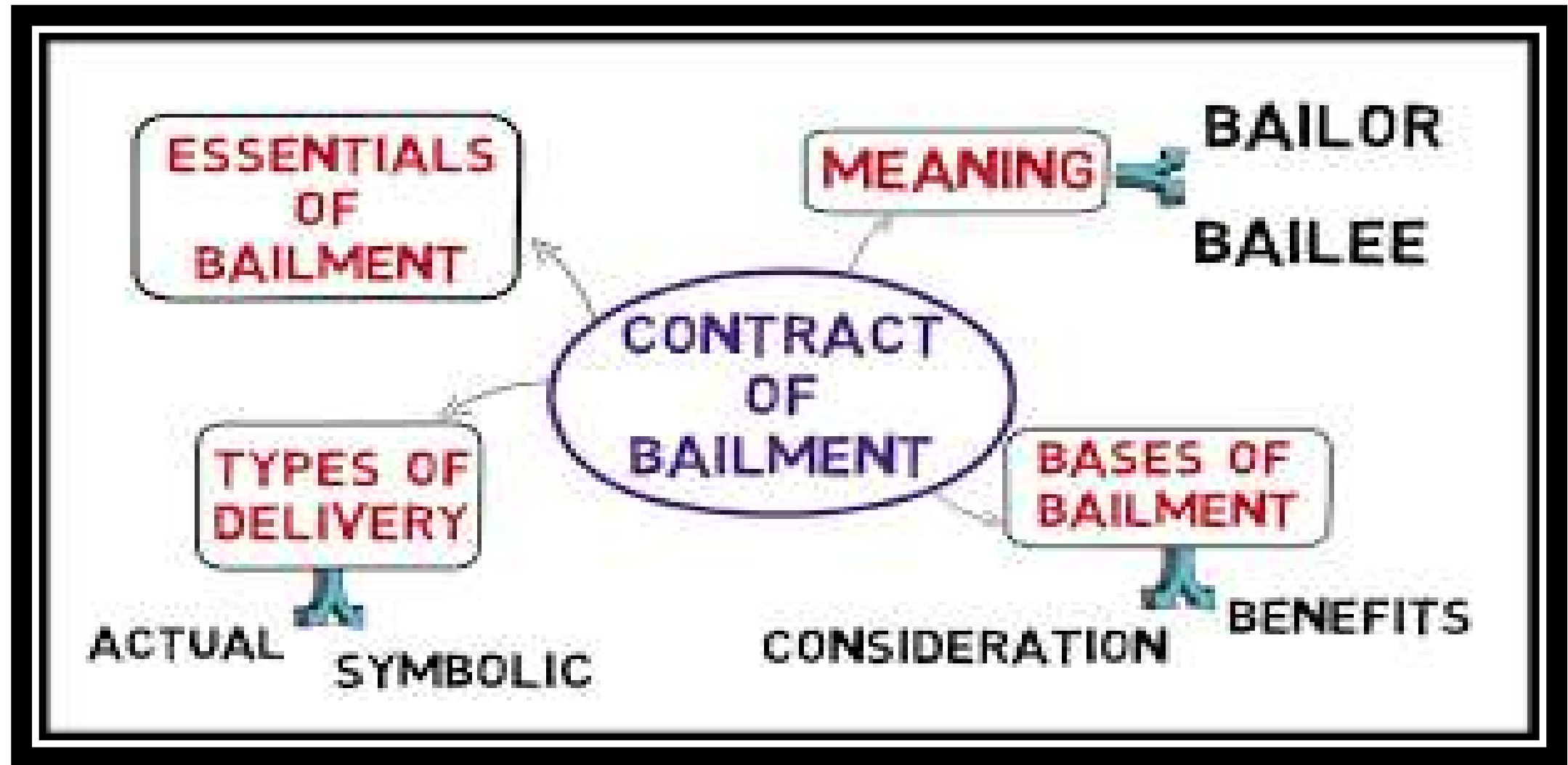
**CONTRACT  
OF  
BAILMENT**

**TYPES OF  
DELIVERY**

**BASES OF  
BAILMENT**

**ACTUAL      SYMBOLIC**

**CONSIDERATION      BENEFITS**





## ■ **ESSENTIALS AND LEGAL RULES AS TO BAILMENT:**

- **Contract:** A bailment is usually created by agreement b/w the bailor & bailee.
- **Delivery of Goods:** In bailment, the possession of goods must be delivered by the bailor to the bailee.
- **No Transfer of Ownership:** In bailment, possession is transferred from one person to another but ownership of goods remains with the bailor.
- **Delivery of Goods for Some Purpose:** The delivery of goods must be for some specific performance.
- **Return of Specific Goods:** Goods are delivered to the bailee with the condition that the same goods will be returned to the bailor after the accomplishment of purpose.
- **Movable Goods:** In bailment, the goods bailed must be movable.
- **Deposit of Money Into Bank:** Deposit of money into bank by a customer is not a contract of bailment because the money deposited is not returned in identical coins and notes deposits.



# PLEDGE

## Meaning:

- The bailment of goods as security for payment of debt or performance of a promise is called pledge.
- Here the bailor is called the 'pledger' or 'pawnor' and the bailee is called the 'pledgee' or 'pawnee' (sec. 172).
- Any kind of movable property may be pledged.
- Even saving passbook may be pledged.



### **Essentials of pledge:**

- The goods must be delivered by borrower to the lender as a security for repayment of debt or for performance of a promise.
- The possession of the goods passes from one person to the other person and not the ownership.
- Pledge can be of only movable goods- documents of title, shares, valuables etc.
- Immovable properties can not be pledged.

## Distinction between Bailment and Pledge

<b>Differs in</b>	<b>Bailment</b>	<b>Pledge</b>
1. Purpose	Some special purpose: Repair or lease or safe custody	Pledge is provide as security for repayment of loan or fulfillment of an obligation.
2. Right of using the goods	There is no restriction. It depends on the nature of transaction or terms of the contract	A pledgee has no right to use the goods pledged
3. Right to sell the goods	A bailee may either retain the goods or sue the bailor for the performance	A pledgee has the right to sell the goods pledged, on the default after giving notice to the pledgor.
4. Consideration	Consideration may or may not be in a bailment	Consideration is necessary for the purpose of security for the payment of debt



THANK YOU