

**Law of CONTRACT - II**  
**INDIAN CONTRACT ACT, INDIAN PARTNERSHIP**  
**ACT, SALE OF GOODS ACT AND OTHER SPECIFIC CONTRACTS**

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**INTRODUCTION:**

As has already been examined in the last semester through an intensive study of the general principles of contract, the essence of all commercial transactions is but regulated by the law of contract. The expansion of commercial activities at a global market environment makes the understanding of the law of contract even more critical. Further, a lucid understanding of the fundamental principles of Special Contracts facilitates not only resolving the disputes arising out of such contracts but also in the drafting of contractual instruments.

The law of Special Contracts is marked by the peculiar and mostly predictable legal relationship subsisting between the parties. The frequency of these kinds of transactions in the affairs of men has led to the development of established rules of prescriptions and prohibitions determining the implications and permissible possibilities of these kinds of contractual relations. The fundamental principles of contractual relations continue to apply the special forms of contract unless specifically excluded; as in case of the rule of consideration in case of contract of agency.

The Law of Special Contracts can be classified under two very broad categories, viz. special contracts of personal relationships and special contracts of property related transactions. Again contracts relating to property may further be classified in to two broad categories viz, contracts relating to movable property and contracts relating to immovable property. New addition to this classical division is the contracts relating to intellectual property rights appropriation.

Beyond the Indian Contract Act, the law relating to special contracts covers various transactions such as mortgage, lease, exchange and negotiable instruments, employment contracts, security contracts, technology transfer contracts, software licensing contracts, service contracts etc. The legal dimensions of some of such contracts will be more properly and elaborately dealt in subsequent courses such as employment contracts as part of Labour Law, security contracts as part of Corporate Laws I and II and Mortgage, License etc. relating to immovable property as part of Transfer of Property and so on.

As a part the foundational course, the focus here is confined to the special contracts detailed in the Indian Contract Act, the law of sale of goods and the law of partnership, negotiable instruments, government contracts and infrastructure contracts and also at the recent developments in the field of special contract.

### **OBJECT OF THE COURSE:**

The primary goal of this course is to acquaint the students with the basics of Special Contracts and enable them to grasp the nuances of the contractual transactions involving these forms of contracts. At the conclusion of this course students will be able to analyze 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.

### **OBJECTIVES OF THE COURSE:**

This course is to be taught after the students have been made familiar with the general principles of contract in which the emphasis is on understanding and appreciating the basic essentials of a valid contract and on the existence of contractual relationship in various instances. Obviously, a course on special contracts should initiate the students to different kinds of contracts with emphasis on the intricacies therein. This course also 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 MODULES:**

### **1. Indemnity:**

- 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:**

- 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.
  - 2.5.1. Nature of surety's liability
  - 2.5.2. Duration and termination of such liability
- 2.6. Illustrative situations of existence of continuing guarantee.
  - 2.6.1 Creation and identification of continuing guarantees.
- 2.8. Rights of surety:
  - 2.8.1. Position of surety in the eye of law
  - 2.8.2. Various judicial interpretations to protect the surety.
- 2.9. Co-surety and manner of sharing liabilities and rights.
- 2.10. Extent of surety's liability.
- 2.11. Discharge of surety's liability.

### **3. Bailment:**

- 3.1. Identification of bailment contracts in day today life.
  - 3.1.1. Manner of creation of such contracts
- 3.2. Commercial utility of bailment contracts
- 3.3. Definition of bailment
- 3.4. Kinds of bailees
- 3.5. Duties of Bailor and Bailee towards each other
- 3.6. Rights of bailor and bailee
- 3.7. Finder of goods as a bailee.

- 3.7.1. Liability towards the true owner.
- 3.7.2. Obligation to keep the goods safe
- 3.7.3. Right to dispose off the goods.

#### **4. Pledge:**

- 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. Other statutory regulations(State & Centre)regarding pledge, reasons for the same
- 4.5. Rights of the pawner and pawnee.
  - 4.5.1. Pownee'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:**

- 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.
  - 5.2.1. Distinction between agent and servant.
- 5.3. Essentials of a agency transaction
- 5.4. Various methods of creation of agency
- 5.5. Delegation
- 5.6. Duties and rights of agent
- 5.7. Scope and extent of agent's authority.
- 5.8. Liability of the principal for acts of the agent including misconduct and tort of the agent.
- 5.9. Liability of the agent towards the principal.
- 5.10. Personal liability towards the parties
- 5.11. Methods of termination of agency contract
  - 5.11.1. Liability of the principal and agent before and after such termination.

#### **6. Sale of Goods:**

- 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
- 6.1.2. Remedies for breach of contract

**7. Partnership:**

- 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

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