

BUSINESS LAW

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B.COM CBCS — 2nd Semester

COMPREHENSIVE STUDY TUTORIAL

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Unit I	Elements of Law Relating to Contract — Indian Contract Act, 1872
Unit II	Indian Contract Act: Specific Contracts
Unit III	Sale of Goods Act, 1930
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UNIT I

Elements of Law Relating to Contract | Indian Contract Act, 1872

1.1 Introduction to Indian Contract Act, 1872

The Indian Contract Act, 1872 is one of the oldest statutes in Indian law, receiving its assent on **25th April 1872**. It lays down the essential principles for formation of contracts and also governs special contracts such as indemnity, guarantee, bailment, pledge, and agency.

Definition [Section 2(h)]: A contract is "an agreement enforceable by law." An agreement involves an offer by one party and its acceptance by another. When enforceable by law, it becomes a contract.

Remember: An Agreement + Legal Enforceability = Contract

1.2 Essential Elements of a Valid Contract

- 1. Offer and Acceptance:** There must be a clear offer by one party and unqualified acceptance by the other, creating legal obligations between them.
- 2. Free Consent:** Consent must be free — not obtained by coercion, undue influence, fraud, misrepresentation or mistake. Vitiating consent makes a contract voidable.
- 3. Competency of Parties [Section 11]:** Parties must be of majority age, of sound mind, and not disqualified by law. Minors, persons of unsound mind, and alien enemies cannot contract.
- 4. Lawful Consideration:** Consideration means "quid pro quo" — something in return. It must be real, lawful and not illusory.
- 5. Lawful Object:** The purpose of the agreement must not be illegal, immoral or opposed to public policy. Agreements to commit crimes are void.

1.3 Offer / Proposal

Section 2(a) defines a proposal as when a person signifies to another his willingness to do or abstain from doing something, with a view to obtaining the assent of that other person.

Classification of Offer:

- **General Offer:** Made to the public at large. Anyone can accept it. E.g., reward advertisements.
- **Specific/Special Offer:** Made to a specific, identified person. Only that person can accept.
- **Cross Offer:** Two parties make identical offers to each other without knowledge of each other's offer. Does not constitute a valid contract.
- **Counter Offer:** Acceptance with modifications — amounts to rejection of the original offer.
- **Standing/Continuing Offer:** Open to the public for acceptance over a period. Tenders are classic examples.

Invitation to Offer vs. Offer:

Offer

Invitation to Offer

Definite and capable of acceptance	Preliminary; invites others to make offers
Creates binding obligation if accepted	Does not create binding obligation
E.g., "I offer to sell my car for ₹2 lakh"	E.g., Price lists, display of goods, auction ads

1.4 Acceptance

Section 2(b): A proposal is accepted when the person to whom it is made signifies his assent thereto. Acceptance converts an offer into a promise.

Rules of Valid Acceptance:

1. Must be absolute and unqualified (Section 7)
2. Must be communicated to the offeror
3. Must be in the prescribed or reasonable mode
4. Must be given within a reasonable time before the offer lapses
5. Mere silence is NOT acceptance
6. Must be given only by the person to whom the offer was made

1.5 Consideration

Section 2(d): Consideration is "something done, abstained from, or promised, at the desire of the promisor." It is the price paid for an obligation — also known as **quid pro quo**.

- Must be at the desire of the promisor
- May move from promisee or any other person
- May be past, present, or future
- Must be real, though not necessarily adequate

1.6 Free Consent & Its Vitiating Factors

Consent is free when not caused by any of the following five factors (Section 14):

- **Coercion [S.15]:** Committing or threatening to commit any act forbidden by IPC or unlawfully detaining property to force agreement. Makes contract **voidable**.
- **Undue Influence [S.16]:** One party dominates the will of another to gain unfair advantage (e.g., doctor–patient, solicitor–client). Burden of proof on dominant party. Makes contract **voidable**.
- **Fraud [S.17]:** Deliberate deception by a party to induce the other to enter into a contract. Makes contract **voidable**.
- **Misrepresentation:** Innocent false statement that induces the other party. Makes contract **voidable**.
- **Mistake:** Error regarding nature of transaction, person, or subject matter. Makes contract **void**.

1.7 Types of Contracts

Type	Description
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Void Contract	Cannot be enforced by any court of law [S.2(j)]
Voidable Contract	Enforceable at the option of one party but not the other [S.2(i)]
Illegal Contract	Forbidden by law; all illegal contracts are void
Express Contract	Terms expressed in words (oral or written) [S.9]
Implied Contract	Arises by implication of law or conduct of parties [S.9]
Tacit Contract	Inferred from conduct (e.g., sale at auction fall of hammer)
Executed Contract	Both parties have performed their obligations
Executory Contract	Obligations remain to be performed in future
Unilateral Contract	Only one party has to perform an obligation
Bilateral Contract	Both parties have outstanding obligations

1.8 Contingent Contracts [Section 31]

A contingent contract is a contract to do or not to do something if some event collateral to the contract does or does not happen. Examples: Insurance contracts, indemnity contracts.

Example: A contracts to pay B ₹1,00,000 if B's house is destroyed by fire — this is a contingent contract.

Essentials of a Contingent Contract:

- Performance depends on happening/non-happening of a future event
- The event must be collateral (not part of the contract itself)
- The event must not be a mere will of the promisor

1.9 Quasi Contracts

Quasi-contracts are obligations imposed by law in the absence of an actual contract, based on principles of equity, justice and good conscience. There are **five types** recognised under the Act:

1. Claim for necessaries supplied to persons incapable of contracting
2. Right to recover money paid for another person
3. Obligation of person enjoying benefits of a non-gratuitous act [S.70]
4. Responsibility of finder of lost goods [S.71]
5. Liability for money paid or thing delivered by mistake or coercion [S.72]

1.10 Performance and Discharge of Contracts

Section 37 requires parties to either perform or offer to perform their respective promises. Performance by all parties is the most natural mode of discharge.

7 Modes of Discharge of Contract:

1. **By Performance:** Actual or attempted performance of obligations
2. **By Mutual Agreement:** Both parties agree to terminate the contract

3. **By Supervening Impossibility:** Destruction of subject matter, change of law, death, or war
4. **By Operation of Law:** Death, insolvency, merger, or loss of evidence
5. **By Lapse of Time:** Contract not performed within stipulated period (per Limitation Act)
6. **By Material Alteration:** Promisee makes material alteration without consent of other party
7. **By Breach of Contract:** Actual breach (on due date) or anticipatory breach (before due date)

1.11 Remedies for Breach of Contract

- **Rescission:** The aggrieved party can treat the contract as cancelled and claim compensation.
- **Quantum Meruit:** "As much as is earned" — compensation for partial work done when contract is terminated by the other party.
- **Damages:** Ordinary (direct losses), Special (indirect losses under special circumstances), Exemplary (punitive, for breach of marriage contract or bank dishonoring cheque), Nominal (symbolic damages).
- **Specific Performance:** Court orders the party to perform the contract exactly as agreed — used when money compensation is inadequate.
- **Injunction:** Court orders a party to refrain from doing something that constitutes breach.
- **Restitution:** Restoring the benefit received by the party in breach, to prevent unjust enrichment.

UNIT II

Indian Contract Act: Specific Contracts

2.1 Bailment [Sections 148–181]

Definition [S.148]: Bailment is the delivery of goods by one person (Bailor) to another (Bailee) for a specific purpose, with an agreement that they shall be returned or disposed off as directed when the purpose is accomplished.

Example: A delivers his car to B (mechanic) for repairs — A is the Bailor, B is the Bailee.

Characteristics of Bailment: Delivery of goods | Agreement | Specific Purpose | Return of goods

2.2 Pledge

Pledge is the **bailment of goods as security** for payment of debt or performance of a promise. The person delivering goods is the **Pledgor (Pawnor)** and the person receiving them is the **Pledgee (Pawnee)**. Ownership remains with the pledgor.

Example: A borrows ₹25,000 from B and keeps gold ornaments as security — A is Pledgor, B is Pledgee.

2.3 Contract of Indemnity [Section 124]

A contract by which one party (the **Indemnifier**) promises to save the other (the **Indemnity Holder**) from loss caused by the promisor's or any third party's conduct. It is a type of contingent contract.

2.4 Contract of Guarantee [Section 126]

A contract to perform the promise or discharge the liability of a third person in case of his default. There are **three parties**: Principal Debtor, Creditor, and Surety.

Key Characteristics:

- Must satisfy all essentials of a valid contract
- Requires concurrence of all three parties
- Must be supported by lawful consideration
- Primary liability lies on the principal debtor
- Contains an implied indemnity for the surety
- Creditor must disclose all relevant facts to the surety
- May be oral or written [Section 126]

2.5 Law of Agency [Section 182]

An **agent** is a person employed to act for another (the **principal**) or represent the principal in dealings with third persons. The relationship is called **agency**.

Essentials of Agency:

- Agreement between principal and agent
- Principal must be of majority age and sound mind [S.183]
- No consideration necessary to create agency [S.185]

Termination of Agency [Section 201]:

- Principal revoking agent's authority
- Agent renouncing the agency
- Completion of agency business
- Death or unsoundness of mind of either party
- Principal being adjudicated insolvent

2.6 Finder of Lost Goods [Section 71]

A finder of lost goods has the same responsibilities as a bailee — must take proper care, cannot appropriate the goods, and must return them to the true owner if found.

The finder may **sell the goods** only if: (a) the article is in danger of perishing, or (b) lawful charges amount to two-thirds or more of the article's value.

UNIT III

Elements of Law Relating to Sale of Goods Act, 1930

3.1 Introduction

The Sale of Goods Act, 1930 came into force on **1st July 1930**. It governs the transfer of ownership of goods from seller to buyer and deals with rights of unpaid sellers, duties of parties, and remedies for buyers.

Remember: The Act originally extended to whole India except Jammu & Kashmir.

3.2 Contract of Sale [Section 4(1)]

A contract of sale is a generic term encompassing both **Sale** and **Agreement to Sell**. When property in goods is transferred immediately, it is a Sale; when transfer is to happen in future or subject to conditions, it is an Agreement to Sell.

Sale vs. Agreement to Sell — Comparison:

Sale	Agreement to Sell
Executed contract	Executory contract
Property passes immediately to buyer	Property passes at a future date/condition
Risk passes with property	Risk remains with seller till property passes
Breach: seller can sue for price	Breach: seller can only sue for damages
Seller cannot resell the goods	Seller may resell the goods

3.3 Conditions and Warranties [Section 12]

Condition [S.12(2)]	Warranty [S.12(3)]
Essential to the main purpose of the contract	Collateral / secondary to the main purpose
Breach gives right to repudiate the contract AND claim damages	Breach gives right to claim damages only
More important stipulation	Less important stipulation

3.4 Doctrine of Caveat Emptor

"Caveat Emptor" means **"Let the Buyer Beware."** The buyer must examine goods carefully before purchase. The seller is not bound to disclose defects in the absence of a direct enquiry.

Exceptions to Caveat Emptor:

- When seller makes a representation (innocent or fraudulent) about the product

- When seller actively conceals a defect not discoverable by ordinary examination
- When goods supplied by description do not correspond to the description
- When goods supplied by description are not of merchantable quality

3.5 Rights of Unpaid Seller

A seller is "unpaid" when the whole price has not been paid or tendered, or a conditional payment instrument has been received.

Rights Against the Goods:

- **Right of Lien:** Right to retain goods until the price is paid
- **Right of Stoppage in Transit:** Right to stop goods in transit and regain possession until full price is paid
- **Right of Resale:** Goods perishable / notice given but buyer fails to pay / expressly reserved in contract

Rights Against the Buyer Personally: Sue for price or sue for damages for non-acceptance.

UNIT IV

Partnership Law — Partnership Act, 1932 & LLP

4.1 Introduction to Partnership Act, 1932

Definition [Section 4]: Partnership is "the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all."

4.2 Essential Characteristics of Partnership

- **Two or More Persons:** Minimum 2 partners required; Companies Act 2013 sets the maximum limit.
- **Agreement:** Partnership arises from contract — not from status, inheritance, or operation of law.
- **Business:** Must carry on a business — includes every trade, occupation, or profession.
- **Sharing of Profits:** Profits (and losses) must be shared in an agreed ratio.
- **Mutual Agency:** Every partner is both an agent and principal — acts bind all partners.
- **Utmost Good Faith:** Partners must be just and faithful to each other.
- **Unlimited Liability:** Each partner is jointly and severally liable, including personal assets.
- **No Separate Legal Existence:** Firm has no independent legal identity apart from its partners.
- **Restriction on Transfer:** A partner cannot transfer his interest without consent of all others.

4.3 Types of Partners

- **Active/Actual Partner:** Takes active part in business; must give public notice on retirement.
- **Sleeping/Dormant Partner:** Does not take active part; not disclosed to public; not required to give notice on retirement.
- **Silent Partner:** Has no voice in management by agreement but shares profits/losses.
- **Partner in Profit Only:** Entitled to profits only, not liable for losses; unlimited liability to third parties.
- **Partner by Estoppel:** Not actually a partner but represents himself as one; liable to third parties on the principle of estoppel.
- **Nominal Partner:** Name used only; not entitled to profits but liable for firm's acts.
- **Sub-Partner:** Partner shares his profits with a stranger; sub-partner has no rights against the firm.
- **Working Partner:** Manages and controls business; receives salary plus profit share.

4.4 Rights and Duties of Partners

Rights of Partners	Duties of Partners
<ul style="list-style-type: none"> • Right to take part in business [S.12(a)] 	<ul style="list-style-type: none"> • Carry on business for greatest common advantage [S.9]
<ul style="list-style-type: none"> • Right to be consulted on all matters 	<ul style="list-style-type: none"> • Be just and faithful to co-partners

• Right of access to firm's books	• Render true accounts
• Right to share profits equally [S.13(d)]	• Provide full information about the firm
• Right to interest on advances at 6% p.a.	• Indemnify for loss caused by fraud [S.10]
• Right to indemnity [S.13(e)]	• Be liable jointly and severally to third parties [S.25]

4.5 Modes of Dissolution of Partnership

- **By Mutual Agreement:** All partners agree to dissolve.
- **Compulsory Dissolution:** All partners (or all but one) declared insolvent; business becomes illegal.
- **On Contingencies [S.42]:** Expiry of fixed term; completion of venture; death or insolvency of a partner.
- **By Notice (Partnership at Will):** Any partner gives written notice to all others.
- **By the Court:** On grounds like unsound mind of partner, permanent incapacity, misconduct, persistent breach, transfer of interest, or when business cannot be carried on except at a loss.

4.6 Limited Liability Partnership (LLP)

An LLP is a body corporate formed under the **LLP Act, 2008**. It combines benefits of both a company (separate legal entity, limited liability) and a partnership (flexibility).

Key Features:

- Separate legal entity from its partners
- Perpetual succession (unaffected by partner changes)
- Minimum 2 partners; no maximum limit
- At least 2 designated partners (at least 1 resident in India)
- Designated partners require DPIN (Designated Partner Identification Number)
- LLP Agreement governs mutual rights and duties
- Indian Partnership Act, 1932 does NOT apply to LLPs

Partnership vs. Company vs. LLP — At a Glance:

Feature	Partnership	Company	LLP
Legal Entity	No	Yes	Yes
Registration	Optional	Mandatory	Mandatory
Liability	Unlimited	Limited	Limited
Perpetual Succession	No	Yes	Yes
Governing Law	Partnership Act 1932	Companies Act 2013	LLP Act 2008
Min. Members	2	2 (Pvt.) / 7 (Public)	2
Common Seal	No	Mandatory	Optional

UNIT V

Negotiable Instruments Act, 1881

5.1 Introduction

The Negotiable Instruments Act, 1881 governs Promissory Notes, Bills of Exchange, and Cheques — the three most common negotiable instruments. It applies to the whole of India and to all residents, including foreigners.

Definition [Section 13]: A negotiable instrument means "a promissory note, bill of exchange or cheque payable either to order or to bearer."

5.2 Essential Elements of a Negotiable Instrument

- Negotiability — freely transferable from one person to another without formality
- Transferee can sue in his own name without notice to prior parties
- Bona fide transferee for value gets a clean title, free from defects
- Certain presumptions apply [Sections 118–119] (consideration, date, due course, etc.)

5.3 Types of Negotiable Instruments

1. Promissory Note [Section 4]

A written instrument containing an **unconditional undertaking** signed by the maker to pay a certain sum of money to a specified person or to bearer. Parties: **Maker** and **Payee**.

- Must be in writing
- Must contain an unconditional promise to pay
- Maker must be certain
- Payee must be certain
- Sum payable must be certain

2. Bill of Exchange [Section 5]

A written instrument containing an **unconditional order** directing a certain person to pay a certain sum to a specified person or bearer.

Parties: Drawer (maker) | Drawee (person directed to pay) | Payee (recipient) | Acceptor (drawee after acceptance) | Endorsee (holder after endorsement)

3. Cheque [Section 6]

A bill of exchange drawn on a specified **banker**, always payable on **demand**. Also includes electronic cheques and truncated cheques.

Crossing of Cheques:

- **General Crossing:** Two parallel transverse lines with/without "& Co." — payment only through a bank.

- **Special Crossing:** Name of a specific bank between the lines — payment only to that bank.
- **Not Negotiable Crossing:** Transferee gets no better title than the transferor.
- **Account Payee Crossing:** Credited only to the account of the payee — most secure form.

5.4 Holder and Holder in Due Course

Holder [S.8]	Holder in Due Course [S.9]
Person entitled to possession in own name	Must be a holder (as defined in S.8)
Can receive or recover the amount	Must have given valuable consideration
Need not have given value	Must have acquired instrument before maturity
May or may not be aware of defects	Must have taken in good faith without knowledge of defects

5.5 Liabilities of Parties

- **Drawer [S.30]:** Liable to compensate the holder if instrument is dishonored AND due notice of dishonor has been given.
- **Drawee of Cheque [S.31]:** Must pay on due presentation if funds are sufficient. Wrongful dishonor = exemplary damages to drawer (NOT holder).
- **Maker/Acceptor [S.32]:** Primary debtors; primarily liable for the amount due on the instrument.
- **Endorser [S.35]:** Liable to every subsequent holder for loss caused by dishonor; stands in the position of a drawer.

5.6 Dishonor of Instruments

A negotiable instrument may be dishonored by (i) **Non-Acceptance** or (ii) **Non-Payment**. Bills of Exchange can be dishonored by non-acceptance; all instruments can be dishonored by non-payment.

5.7 Bouncing of Cheque [Section 138]

A drawer of a bounced cheque commits an offence punishable with **imprisonment up to 2 years**, or **fine up to twice the cheque amount**, or both (as per NI Amendment Act, 2002, effective February 6, 2003).

Conditions for Invoking Section 138:

1. Cheque dishonored due to insufficiency of funds or exceeding overdraft limit
2. Cheque issued to discharge a legally enforceable debt (not gifts or social obligations)
3. Cheque presented to bank within 6 months or period of validity, whichever is earlier
4. Payee/Holder must give written demand notice within 30 days of receiving bank's dishonor information
5. Drawer must fail to pay within 15 days of receipt of notice (cause of action on 16th day)

QUICK REVISION

Key Concepts & Important Sections at a Glance

Important Sections — Indian Contract Act, 1872

S.2(a)	Proposal/Offer	S.2(b)	Acceptance	S.2(d)	Consideration
S.2(h)	Contract	S.2(i)	Voidable Agreement	S.2(j)	Void Contract
S.7	Absolute & Unqualified Acceptance	S.10	Valid Contract	S.11	Competency
S.14	Free Consent	S.15	Coercion	S.16	Undue Influence
S.17	Fraud	S.31	Contingent Contract	S.37	Performance
S.70	Non-gratuitous Act (Quasi)	S.71	Finder of Goods	S.72	Mistake/Coercion (Quasi)
S.124	Contract of Indemnity	S.126	Contract of Guarantee	S.148	Bailment
S.182	Agent & Principal	S.201	Termination of Agency		

Important Sections — Other Acts

Sale of Goods Act, 1930:

S.4(1) – Contract of Sale | S.12(2) – Condition | S.12(3) – Warranty | S.19 – Transfer of Property | S.27 – Nemo dat rule

Partnership Act, 1932:

S.4 – Definition | S.7 – Partnership at Will | S.9 – Duty of Good Faith | S.12 – Rights | S.25 – Joint & Several Liability | S.39-44 – Dissolution

LLP Act, 2008:

S.7 – Designated Partners | S.11 – Incorporation | S.23 – LLP Agreement

NI Act, 1881:

S.4 – Promissory Note | S.5 – Bill of Exchange | S.6 – Cheque | S.8 – Holder | S.9 – Holder in Due Course | S.13 – Negotiable Instrument | S.30-35 – Liabilities | S.138 – Bouncing of Cheque

Best wishes for your examinations!

This tutorial has been carefully prepared to help you understand and revise all key concepts of Business Law for your B.Com 2nd Semester examinations. Read each unit carefully, understand the definitions and provisions, and practice applying them with examples.