UNIT 4: SPECIAL CONTRACTS

UNIT STRUCTURE

4.1 Learning Objectives

4.2 Introduction

4.3 Contract of Indemnity

4.4 Contract of guarantee

4.4.1 Kinds of guarantee

4.5 Bailment

4.5.1 Kinds of bailment

4.6 Pledge

4.7 Let Us Sum Up

4.8 Further Readings

4.9 Answers To Check Your Progress

4.10 Model Questions

4.1 LEARNING OBJECTIVES

After going through this unit, you will be able to-

- Discuss the concept of contract of Indemnity
- Discuss the concept and kinds of contract of Guarantee
- Discuss the difference between contract of Indemnity and contract of Guarantee
- Explain the concept and kinds of Bailment
- Discuss the rights and duties of Bailor and Bailee
- Explain the concept of pledge and discuss the valid elements of pledge
- Discuss the right and duties of pledger and pledge.

4.2 INTRODUCTION

Special contracts are contained in sections 124 to 238 of the Indian Contract Act. These special contracts are Indemnity, Guarantee , Bailment, Pledge and Agency. In this unit we are going to discuss about contract of

indemnity, guarantee, bailment and plege. The contract of indemnity and guarantee are the special types of contract which help from protection against loss in the form of a promise to pay for loss of money or goods. Section 124 to 147 of the Indian Contract Act, 1872 discuss about contract of Indemnity and Guarantee. Through this unit, you will also be able to know the kinds of guarantee and also understand about the concept of surety and creditor. Thus, through this unit, you will able to know the detail concept of special type of contract indemnity and guarantee, bailment and pledge as stipulated under the Indian Contract Act, 1872.

4.3 CONTRACT OF INDEMNITY

The contract of indemnity is the compensation of security against loss of money or goods. The principles of general law of contract are equally applicable for it as under the Indian Contract Act, 1872. Under contract of indemnity the person who indemnifies or pays the loss is known as 'indemnifier' and in whose favor such promise is made to pay the loss is known as 'indemnified' or 'indemnity holder'. Under Section 124 of the Indian Contract Act, 1872 define a contract of indemnity as 'a contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself or by conduct of any other person'. Thus, it is valid when-

- there is a promise
- to save another person from loss or make good the loss
- which may be caused by the conduct of the promisor himself or by the conduct of any other person
- the promisor undertakes to make good the loss
- it covers indemnity for loss caused by human only

P contract to indemnify a sum of Rs 5000 to Q for the loss which may be caused or any proceeding which may be carried on by R against Q. This is a contract of indemnity.

Hence, indemnity for loss caused due to fire or in the death of a person or expiry of stipulated period as in case in insurance do not fall under

Sec 124 of the Indian Contract Act, 1872. It is because the life of a person cannot be valued and the question for amount of loss suffered by the assured does not arise.

Definition is not exhaustive

The definition of contract of indemnity given by Sec. 124 of the Contract Act is not exhaustive. Contract of indemnity includes:

(a) only express promise to indemnify and

(b) cases where loss is caused by the conduct of the promisor himself or by the conduct of any other person.

It does not include:

(a) implied promise to indemnify and

(b) cases where the loss is caused by accident and event not depending on the conduct of the promisor or any other person.

Rights of the indemnity-holder when sued

The indemnity holder is entitled to the following rights:

1. Indemnity-holder is entitled to recover all damages which he might have been compelled to pay in any suit in respect of a matter covered by the contract.
2. Indemnity holder is entitled to recover all costs incidental to the institution or defending of the suit. But the party indemnified cannot recover costs when he has not acted as a prudent man in defending the action against him or has not been authorised by the indemnifier to defend the suit or where the costs incurred have been unreasonable in amount.
3. Indemnity holder is entitled to recover all sums paid under any compromise of any such suit, provided the compromise was not contrary to the directions of the promisor and it has been made on the best available terms. Promisee must have acted prudently in making such a promise. (Sec. 125).

It is to be noted that a contract of indemnity being a type of the general contract and therefore, must satisfy all essentials of a valid contract such as competent parties, free consent, lawful object etc., otherwise it will not be valid.



CHECK YOUR PROGRESS

Q 1: Define indemnity.

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Q 2: Who is indemnifier?

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4.4 CONTRACT OF GUARANTEE

The term 'contract of guarantee' defines under Section 126 of the Indian Contract Act, 1872 as –

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

The person who gives the guarantee is called the 'surety'; the person in respect of whose default the guarantee is given is called the 'principal debtor', and the person to whom the guarantee is given is called the 'creditor'. A guarantee may be either oral or written."

It is a contract to discharge the liability of third person when the third person makes default to perform. The object of contract of guarantee is to provide additional security by the surety to the creditor in the form of promise to fulfill certain obligation if the principal debtor unable to perform it.

Example: P promise to pay Q Rs 2000 on behalf of R, if, R make default in returning Rs 2000 to Q, P will pay.

Here,

Q is creditor

R is principal debtor and

P is surety

Thus, for a contract of guarantee the following features must be present-

- A contract of guarantee may be either oral or written
- There should be principal debt
- Benefit to the principal debtor is sufficient consideration
- Consent of the surety should not have been obtained by misrepresentation or concealment.

Requisites of a valid guarantee

(a) Essentials of a valid Contract: The essentials of a valid contract like offer, acceptance, free consent, valid consideration, capacities of parties etc. must be present in the contract of guarantee.

(b) There must be someone primarily liable: There has to be a primary liability of a person who is other than the surety to the contract of guarantee. The surety becomes liable only if the principal debtor is unable to discharge his obligation. If there is no principal debtor, there cannot be a contract of guarantee. Guarantee given for the minor's debt is an exception to this rule.

(c) There should be no misrepresentation: A guarantee should be obtained after disclosing all the material facts that may affect the degree of responsibility of the surety. The surety must know all the facts of the case because if he neglects to do his duty he is responsible for the consequences. Under Section 142 & 143 any guarantee that is obtained by misrepresentation or concealment of facts by the creditor is invalid.

(d) Contract may be Oral or in Writing: As given in section 126 of the Contract Act a contract of guarantee may be either oral or written.

There are distinction between contract of indemnity and contract of guarantee:

S. No.	Contract of indemnity	Contract of guarantee
1	A contract of indemnity is defined as 'a contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself or by conduct of any other person'.	A 'contract of guarantee' is a contract to perform the promise, or discharge the liability, of a third person in case of his default.
2	Under contract of indemnity, there are two parties 'indemnifier' and 'indemnity holder'.	Under contract of guarantee, there are three parties 'creditor ', 'principal debtor 'and 'surety'.
3	The contract of indemnity protects the promisee from the loss.	The contract of guarantee is for the surety of the creditor.
4	In contract of indemnity, the primary	In contract of guarantee, the primary liability is of principal debtor.

liability is of the promisor.		
5	In contract of indemnity, there is only one agreement i.e the agreement between indemnifier and indemnity holder.	In case contract of guarantee, there three agreements i.e viz. agreement between- 1.) the creditor and the principal debtor; 2.)the creditor and surety and 3) the principal debtor and surety.
6	Indemnifier cannot sue a third party for the loss suffered.	Surety can sue the principal debtor.

4.4.1 Kinds of guarantee

In case of contract of guarantee, surety has to perform the promise or discharge the liability of the principal debtor in case of his default. This contract of guarantee may be specific guarantee or continuous guarantee.

Specific guarantee is a contract of guarantee where the surety guarantees against the conduct of the principal debtor in respect of a particular transaction.

Example: A guarantee to pay B Rs 15000 on behalf of C as repayment of loan, if, C make default in returning the same to B. It is a specific guarantee where the surety 'A' guarantees against the default in returning the loan by the principal debtor 'C' in respect of the particular transaction to the creditor 'B'.

In case of continuous guarantee, the guarantee extends to a series of transactions. The continuous guarantee may extend to a series of transactions during a fixed period e.g. for two years.

Example: P guarantee (surety) to pay Q (creditor) the dealer of tea Rs 1000 for supply of tea from time to time within two year to R (principal debtor). R (principal debtor) paid Rs 1000 for the tea supplies to Q (creditor) within first year. Thus, P (surety) has to pay Q (creditor) Rs 1000 on default of payment by R.

But say, in the second year Q (creditor) the dealer of tea

supply tea from time to time to R (principal debtor) in Rs 1200. Now, P (surety) has to pay Q (creditor) Rs 1000 on default of payment by R not Rs 1200.

Creditor

Under contract of guarantee, there are three parties 'creditor', 'principal debtor 'and 'surety' and they enter three agreements viz. creditor with the principal debtor, creditor with surety and principal debtor with surety to perform the promise, or discharge the liability, of the principal debtor in case of his default. The creditor has the right to sue either principal debtor or surety or both to recover the amount made default in payment by the principal debtor. In certain cases, the creditor shall not act upon the guarantee of the surety until another person joined as co-surety and the creditor has the right to sue either principal debtor or sureties as he prefer. But if creditor loses the securities taken at the time of contract of surety ship, the creditor is entitled to recover the amount to that extent. In case of securities received by the creditor after the contract of guarantee, the sureties have no rights on those securities or otherwise the sureties has the rights on the securities received by the creditor at the time of contract of suretyship entered for the payment made due to default made by the principal debtor.

Surety

In case of contract of guarantee, the surety is the person who makes good the loss which may arise due to promise and default made by the principal debtor to the creditor. The Section 128 of the Indian Contract Act, 1872 define the liability of surety as– "The liability of surety is co-extensive with that of principal debtor, unless it is otherwise provided by the contract." It means the liability of surety is exactly the same as that of the principal debtor. The liability of the creditor can recover from the hand of surety all what he could recover from the principle debtor only. As stated in the example above, P guarantee (surety) to pay Q (creditor) the dealer of tea Rs 1000 for supply of tea from time to time within two year to

R (principal debtor). Thus, P (surety) has to pay Q (creditor) Rs 1000 only on default of payment by R.

If the liability of principal debtor is reduced for any payment made to the creditor by the principal debtor than the liability of surety will also reduce accordingly. Now, say R paid Rs 200 to Q, than the liability remaining payable to Q on default of R by P is Rs 800 only.

On the other hand, the liability arise for default caused to the creditor by the principal debtor for illegal contract which is enforceable at law, the surety cannot be held liable.

Besides, if the principal debtor makes any default than the creditor has option to sue either principal debtor or surety or both.

Limit on surety's liability by contract:

As stated above that the liability of surety is co-extensive with that of principal debtor, unless it is otherwise provided by the contract i.e if the contract between the parties so provides, the liability of the surety may be less as that of the liability of the principal debtor if he make any default. E.g, P guarantee (surety) to pay Q (creditor) the dealer of tea Rs 600 for supply of tea from time to time within a year to R (principal debtor) where R is liable to pay Rs 1500. Thus, P (surety) has to pay Q (creditor) Rs 600 only on default of payment by R not Rs 1500.

Co-surety and its liability:

In certain cases, the creditor shall not act upon the guarantee of the surety until another person joined as co-surety. Thus, in such contract surety can be made liable only if such co-surety join the contract, otherwise not. As stated above the liability of surety is co-extensive with that of principal debtor, unless it is otherwise provided by the contract i.e this same principle is applicable and hence, the rights and liabilities of sureties are same and thus, if the contract between the parties so provides, the liability of the sureties may less as that of the liability of the principal debtor. Besides, if the principal debtor makes any default than the creditor has option to sue either principal debtor or sureties or all and the co-surety cannot

insist the creditor to choose any of them for proceeding.

The rights of surety

The right of surety may be classified under following three heads:

(a) Right against the principal debtor;

(b) Right against the creditor;

(c) Right against the co-sureties.

A. Right against the principal debtor

- Rights of subrogation: When the surety makes payment upon default of principal debtor against guaranteed debt, he gets all the rights which the creditor has against the principal debtor.
- Right to indemnity: In every contract of guarantee, there is an implied promise of the principal debtor to indemnify the surety and the surety can recover from the principal debtor whatever sum rightfully paid under the said guarantee. If he sustains any damage beyond the amount paid, he can recover that damage also.

B. Right against the creditor

- Right to claim security: According to section 141 of the Act, the surety has the right of subrogation after performing his duty or making a payment to the creditor. All the rights of the creditor are passed on to the surety. Accordingly the surety gets the right to the benefit of every security, which the creditor has against the principal debtor even if the surety has no knowledge of the existence of such securities. If the creditor loses the security, the surety is discharged of his responsibilities limited to the value of his security.
- **Right of Set off:** Set-off implies a counter claim or deduction from the amount of loan. If the creditor sues the surety, he can claim set-off or counter claim, which the debtor had against the creditor.
- **Right to Share Reduction:** If the surety has paid the amount to the creditor on behalf of the principal debtor and the debtor becomes insolvent, the amount has to be recovered from him,

then the surety can claim from the creditor a reduction in his liability to the extent of the amount of dividend that is claimed by the creditor from the official receiver of the debtor.

- **Right to ask the Creditor to Terminate the Debtor's Services:** When a person gives a guarantee for the honest performance of another employee and the employee defaults, the surety has a right to demand that the employee be dismissed. Such dismissals are usually in the case of fidelity contracts, for example contracts relating to insurance.

C. Right against the co-sureties

- **Right to Contribution:** Under Section 146 of the Indian Contract Act, wherever there are co-sureties for the same amount, they are liable to share an equal amount of the debt which remains unpaid by the principal debtor. If a surety pays more than his share he has the right to ask the other sureties to participate in contributing an equal amount towards the debt.
- **Bound in Different Sums:** If co-sureties are bound in different sums their liability will be shared equally, subject to the maximum amount guaranteed by each of them.
- **Right to share benefits of security:** If at the time of guarantee, one of the co-sureties receives a security from the principal debtor, or on payment of the debt, he receives security from the creditor. In such a case, the co-sureties are entitled to share the benefits of security.

Discharge of surety from liability:

The mode of discharge of surety from his liability may be:

- Revocation by the surety: The surety can revoke a continuing guarantee by giving notice to the creditor for the future transactions.
- By surety's death: A continuing guarantee revoked automatically from surety's death as to future transaction.
- By variance in the terms of contract: It is expected that the

liability which is agreed to be paid due to default of the principal debtor under certain terms, it should remain unchanged for that particular period and if it changes without consent of the surety, the surety is discharged from the contract of guarantee.

- Discharge of principal debtor: As principal debtor is discharged from his debt, the surety is also discharged from the contract of guarantee.
- When creditor compounds with, gives time to or agrees not to sue the principal debtor: If the surety gives his assent on such contract where the creditor promise to give time to pay debt or agrees not to sue the principal debtor, the surety is discharged from his liabilities.
- By loss of the securities by the creditor: When creditor loses the securities which the creditor has taken at the time of contract of suretyship, the surety is discharged from his liabilities to that extent.



CHECK YOUR PROGRESS

Q 3: Define **guarantee**.

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Q 4: Who is **surety**?

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4.5 BAILMENT

The contract of indemnity is the compensation of security against loss of money or goods. Section 148 of the Indian Contract Act, 1872 defines Bailment as “A bailment is the delivery of goods by one person to another for some purpose upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them.” The person delivering the goods is called the “bailor”, the person to whom they are delivered is called the

"bailee". Thus, bailment involves two main essentials:

a. Delivery of goods by one person to another for some purpose upon a contract

b. When the purpose is accomplished the goods shall be returned or otherwise disposed of according to the directions of the person delivering them

1. Delivery of goods by one person to another for some purpose upon a contract

It means goods delivered or transferred from one person to another. This delivery may or may not be actual according to Section 148 of the Indian Contract Act, 1872. A person may possess the goods as bailee for another contract and the owner as bailor although the good is not delivered under bailment. For example, P sells his horse to Q. But P asked to keep for a month the horse with him on Q's behalf. Before this sale P keep the horse as owner, but now he keep the horse as bailee for Q.

2. When the purpose is accomplished the goods shall be returned or otherwise disposed of according to the directions of the person delivering them

The delivery or transfer of goods from one person to another is only for some purpose or otherwise disposed of according to the directions of the person delivering them. Thus it is different from sale or gift. Here the goods have to be returned in same or altered form.

4.5.1 Kinds of bailment

Bailment may be classified on the basis of Benefit and Reward. On the basis of benefit bailment may be classified in to following three types:

a. **Bailment for the exclusive benefit of bailor:** When the delivery of goods by the bailor to the bailee is done for the exclusive benefit of the bailor and the bailee gets nothing in return, that is consideration does not pass between the bailor and the bailee. E.g. when goods are delivered to a neighbour or someone else for safe custody without any charge.

b. **Bailment for the exclusive benefit of bailee:** When the delivery of goods by the bailor to the bailee is done for the exclusive benefit of the bailee and the bailor gets nothing in return. Hence consideration does not pass between bailor and the bailee. E.g. delivery of a car to a friend to go somewhere.

c. **For the mutual benefit of both the bailor and the bailee:** When the delivery of goods by the bailor to the bailee is done for the mutual benefit of both the parties. In this case consideration passes between the bailor and the bailee.

On the basis of reward bailment may be classified in to following types:

a. **Gratuitous Bailment:** In this case no consideration passes between the bailor and the bailee. Here, neither the bailor nor the bailee is entitled to any remuneration.

b. **Non-Gratuitous Bailment:** In this case consideration passes between the bailor and the bailee. The bailment for the mutual benefit of the bailor and the bailee is a non-gratuitous bailment. E.g. letting out a bike for hire.

Duties of Bailor

In the following paragraphs we shall discuss the duties of the bailor :

a) **To disclose the faults in the goods bailed:** The bailor should disclose the known faults about the goods, which he/she has bailed to the bailee. If the bailor does not disclose the defects then he/she is liable for any damage caused to the bailee due to such defects in the goods, whether he/she was or was not aware of the existence of such faults in the goods.

b) **Repay necessary expenses:** In case of gratuitous bailment, the bailor has to repay to the bailee all necessary expenses incurred by him for the purpose of bailment. In case of non-gratuitous bailment, the bailor is held responsible to bear only extra-ordinary expenses.

c) **To indemnify the bailee:** If a gratuitous bailment is terminated by the bailor before the specified time then any loss the bailee incurs due to such termination shall not be borne by the bailor. However if the loss suffered by the bailee exceeds the benefit he/she has derived from bailment then in such a case the bailor shall indemnify the bailee.

d) **To receive back the goods:** Once the purpose for which the goods were bailed out has been fulfilled, it becomes the duty of the bailor to receive back his/her goods from the bailee. If the bailor refuses to take back the goods then he is liable to pay compensation to the bailee who incurs expenses in keeping the goods in his/her custody.

e) **Responsibility for any loss due to defect in title:** If the title of the good is defective and due to that the bailee suffers a loss then the bailor is responsible to the bailee for the loss suffered by him/her.

Duties of Bailee

In the following paragraphs we shall discuss the duties of the bailee:

a) **To take reasonable care of the goods:** According to section 151 of the Indian Contract Act 1872 “the bailee is to take care of the goods as a man of ordinary prudence would, under similar circumstances, take care of his own goods of the same bulk, quality and value as the goods bailed”. Section 152 states that if, in spite of taking all reasonable care, the goods are damaged or destroyed in any way, then the bailee is not liable for the loss, destruction or the deterioration of the goods bailed.

b) **Not to make unauthorized use of goods:** The bailee is not to use the goods in a manner, which is inconsistent with the terms of the contract. If bailee uses the goods in an inconsistent manner then he/she is liable to make compensation to the bailor for loss of or any damage arising to the goods from such use.

c) **Not to mix goods bailed with his/her own goods:** The bailee should not mix the goods bailed with his/her own goods. If the bailee mixes the goods with his/her goods-

(i) With the Bailor's consent- in such a case both the bailor and the bailee shall have a proportionate interest in the mixture produced due to the mixing of the goods.

(ii) Without the bailor's consent the goods can be separated: In this case the bailee is liable to bear the expenses of separation as well as the damage caused to the bailed goods due to such a mixture.

d. To return the goods bailed: According to Section 160, it is the duty of the of the bailee to return, or deliver according to the bailor's directions,the goods bailed,without demand,as soon as the time for which they were bailed has expired, or the purpose for which they were bailed has been accomplished." Again according to Sec.165, "where there are several joint bailors, the bailee may return the goods to any one of the joint owners"

e. To return increase or profit accrued: According to Section 163, in the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, or according to his directions, any increase or profit which may have accrued from the goods bailed.

Rights of Bailor

Following are the rights of bailor:

a. Right to sue: The bailor has the right to sue the bailee for the enforcement of the duties and liabilities of the bailee.

b. Right to terminate: According to section 153 of the Indian Contract Act "the bailor can at any time terminate the contract of bailment if he/she finds that the bailee has done an act which is inconsistent with the terms of the contract of bailment."

c. Right to demand return of goods at any time: According to section 159 of the Indian Contract Act, in case the bailor has lent the goods gratuitously to the bailee, the bailor has a right to terminate the contract anytime before the expiry of the period.

However if the termination causes loss to the bailee and the loss is in excess of the benefit derived by him/her then the bailor has to indemnify the bailee's loss.

d. **Unauthorized use of goods by the bailee:** According to Section 154, if the bailee makes any use of the goods bailed which is not according to the conditions of the bailment, he is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them.

e. **Claim damages:** Bailor has the right to claim damages for loss, destruction, or deterioration of the goods bailed, owing to bailee's negligence.

f. **Suit against wrongdoer:** According to section 180 of the Indian Contract Act if a third person wrongfully deprives the bailee from the rightful use or possession of bailed goods or does them any injury or damage then the bailor or the bailee can bring a suit against that person for such deprivation or injury.

g. **Right to claim increase in value or profits:** Bailor has the right to get any increase or profit from the goods bailed.

Rights of Bailee

The duties of the bailor are the rights of the bailee which we are all ready discuss in this unit.

4.6 PLEDGE

Pledge is a special kind of contract where assets are delivered as security for the repayment of a debt. According to section 172 of the Indian Contract Act, when bailment of goods is done as security for payment of a debt or performance of a promise it is called a pledge. In case of a contract of pledge the bailor is called the pledger or pawnor and the bailee is called the pledgee or pawnee.

Example: A borrow a sum of Rs.100000 from B and keep his car as security for repayment of the debt. This bailment is called pledge or pawn. Here, A is the pawnor and B the pawnee.

Essential elements of pledge

Following are the essentials of pledge:

a. **Delivery of goods:** The goods must be delivered by the borrowers to the lenders as a security for repayment of the debt or for performance of a promise.

b. **Possession of the goods:** The possession of the goods passes from one person to another person but ownership remains with the original owner.

c. **Moveable goods only:** Only moveable goods can be pledged. Immoveable properties like-share, debenture, document of title to goods etc. cannot be pledged.

d. **Return of goods:** The goods pledged with the pawnee, to be returned on receipt of his full dues.

Duties of pawnor/pledger

Following are the duties of a pawnor under the contract of pledge:

a. **Duty to pay debt:** It is the duty of the pawnor to repay the loan taken from the pawnee within the time and the manner specified in the contract.

b. **Duty to compensate:** It is the duty of the pawnor to compensate pawnee for any extra ordinary expenses incurred by him.

c. **Duty to pledge:** It is the duty of the pawnor to pledge only those goods for which he has good's title. If the pawnor's title is defective and this fact is not in the knowledge of the Pawnee, the Pawnee has good's title.

Rights of pawnor/pledger

Following are the rights of a pawnor under the contract of pledge:

a. **Right to get goods back:** After returning the debt along with interest or charges thereon or after performing the promise, the pawnor is entitled to get his goods back.

b. **Right to redeem debt: According to the provisons of Section 177,** In case the pledger fails to repay the debt or does not perform the promise within the stipulated time, then he/she may still redeem the

goods pledged at any subsequent time before the actual sale of the goods take place. However the pawnor has to pay any expenses which have arisen due to his / her default.

c. **Right for preservation and maintenance of goods:** The Pawnor has a right to see that his/ her goods are kept safely with the Pawnee, i.e. whether the Pawnee preserves the goods and properly maintains them or not.

d. **Expenses of separation**: If the Pawnee has mixed the goods of the pawnor with some one else goods not belonging to pawnor without the consent of the pawnor, the pawnor has a right to recover the expenses of separation and cost of damage if any from the Pawnee.

Rights of pawnee/pledgee

Following are the rights of a pawnee under the contract of pledge:

a. **Right of retainer:** According to section 173 of the Indian Contract Act the Pawnee has the right to retain the goods pledged with him / her –

   (i) if the Pawnor does not repay the dues or does not perform the promise.

   (ii) the Pawnee may also retain the goods till the Pawnor pays the interest due on the debt.

b. **Right of retainer for subsequent advances:** According to section 174 of the Indian Contract Act if the pawnee lends money to the same pawnor after the date of the pledge then the pawnee's right of retention of goods extends to subsequent advances also.

c. **Right to extraordinary expenses:** According to section 175 the Pawnee is entitled to receive from the pawnor the reimbursement of extraordinary expenses incurred by him for the safe keeping of the goods pledged with him. Though he has no right to retain the goods for non-payment of such expenses, yet he/she can sue the Pawnor for the recovery of such expenses.

d. **Right in case of default pawnor:** In case the pawnor fails to repay the debt or fails to perform the promise, the pawnee will have the

following rights:

(i) He can file a suit against the pawnor for the debt,

(ii) He can retain the goods pledged as a collateral security,

(iii) He can sue for realization of the amount,

(iv) He can sale the goods pledged after giving the pawnor a reasonable notice of the sale.

e. Right against true owner, when the Pawnor's title is defective: According to section 178-A, "if the Pawnor has got the possession of goods which he /she has pledged with the Pawnee under a voidable contract (by fraud, misrepresentation, undue influence and coercion) and the contract has not been rescinded at the time of the pledge, the Pawnee acquires a good title to the goods. The Pawnee gets a good title only when he acts in good faith and does not have the knowledge of the Pawnor's defect of title".

Duties of pawnee/pledgee

Following are the duties of a pawnee under the contract of pledge:

a. It is the duty of the Pawnee to take reasonable care of goods pledge with him.

b. It is the duty of the Pawnee, not to make any unauthorized use of the goods pledge with him.

c. The Pawnee cannot change the form of the goods pledge with him. If he so, the pawnor can claim for damage.

d. The Pawnee cannot mix the goods pledged by the pawnor with his own goods.

e. If the Pawnee has earned any profit from the use of the goods pledge with him, whom he cannot use according to the terms of the contract, he must return such profit to the pawnor.



CHECK YOUR PROGRESS

Q 5: Who is a bailor?

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Q 6: Define pledge.

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4.7 LET US SUM UP

In this unit we have discussed the following:

- The contract of indemnity is the compensation of security against loss of money or goods.
- A contract of guarantee is a contract to perform the promise, or discharge the liability, of a third person in case of his default.
- This contract of guarantee may be specific guarantee or continuous guarantee.
- Bailment is the delivery of goods by one person to another for some purpose upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them.



- Pledge is a special kind of contract where assets are delivered as security for the repayment of a debt.

4.8 FURTHER READINGS



1) The Indian Contract Act, 1872; (Bare Act)
2) Law of Contract Part I, R K Bangia
3) Law of Contract Part II, R K Bangia

4.9 ANSWERS TO CHECK YOUR

PROGRESS

Ans. to Q. No. 1: The contract of indemnity is the compensation of security against loss of money or goods.

Ans. to Q. No. 2: Under contract of indemnity the person who indemnifies or pays the loss is known as indemnifier.

Ans. to Q. No. 3: Guarantee is a contract to perform the promise or discharge the liability, of a third person in case of his default.

Ans. to Q. No. 4: In a contract of guarantee, the person who gives the guarantee is called the surety.



Ans. to Q. No. 5: In a contract of bailment, the person delivering the goods is called the bailor.

Ans. to Q. No. 6: Pledge is a contract where assets are delivered as security for the repayment of a debt.

4.10 MODEL QUESTIONS

Q 1: Define 'contract of guarantee'. Discuss different types of guarantee.

Q 2: Define pledge. Discuss the rights and duties of pledger and pledgee.

Q 3: Discuss different kinds of bailment.

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