SPECIAL CONTRACTS: ANALYSING ITS DIFFERENCE FROM A GENERAL CONTRACT

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ABSTRACT:

This research paper seeks to argue how each type of special contract; Indemnity, guarantee, bailment, pledge, and agency, is different from a general contract. These contracts are distinguished from general contracts based on differences in their essentials and the pertaining exceptions to it. The contract of indemnity must possess all the essentials of a valid contract except that the indemnifier does not get any consideration. The contract of guarantee must have all the essentials of a valid contract but, the principal debtor may or may not be a minor also there is no consideration necessary between the principal debtor and surety. Bailment, what makes it a special contract is that a contract of bailment even exists in the case of finder of goods. Pledge, all pledges are bailment thus a pledge must include all the essentials of a valid bailment. Agency, must contain all essentials of a valid contract but consideration is not necessary, further a minor can become an agent.

There are multifarious types of contracts for every use, for example, a sale of property, insurance, loan, renting, and so on, these are all distinct and encompassed in the Indian contract act. Contract law forms the heart of our judicial process and serves as the backbone of our whole society. Our contract law system fosters and facilitates public and private agreements that allow for the exchange of goods and services at all layers of our society. Contract law, which might justifiably be termed the pillar of marketplace society, applies to all interactions. Because of this vast placement of types of contracts under the Indian contract act, there are specific distinctions needed, one such type is the special contract.

What is a general contract and its essentials?

There are multiple definitions for a contract yet the task of coming up with the most germane and appropriate definition without any loopholes continues to vex philosophers. Loosely defining a contract is a verbal or written legally enforceable agreement that is binding over the rights and obligations of the parties. For example, a sale agreement is entered into by the parties for the exchange of consideration, where one party gets the money and the other gets the property.

The essentials of a valid contract are:

- Offer: must be communicated by the offeror to the offeree it is mentioned in section 2 of the ICA.

- Acceptance: when the offeree accepts the offeror's offer, it should be usual and reasonable, Section 7 of the Indian Contract Act talks about unqualified acceptance.

- Legal relationship: both parties should have an intention to enter a relationship. The contract legally relates the parties involved in it.

- Consensus Ad Idem: Meeting of minds the intention of the parties involved should meet.

- Competency: the parties involved should be major, of sound mind, not insolvent, and not under intoxication.

- Free Consent: the contract should be entered without coercion, undue influence, fraud, misrepresentation, or mistake.

- Lawful consideration: the consideration should be legal or not against public policy.

- Lawful object: the object of the contract should be legal.

Contract of Indemnity:

An indemnity is a contract entered in by two parties only where the indemnifier promises to secure the indemnity holder against loss, damage, hurt, or exemption from incurred liabilities

caused to the latter due to the acts of the promisor, the indemnifier, or third party.[1] This is mentioned in section 124 of the Indian Contract Act. This bipartite agreement does not seek to cover losses when the same is self-induced by the indemnity holder.

Essentials

- There must be two parties involved in the contract only.
- The contract must be entered in with the intention to cover the losses of the indemnity holder.
- The contract can be either expressed or implied, in case of gratuitous agreements by way of conduct of the parties.
- It must possess all the essentials of a valid contract.
- There is only one contract.

The indemnifier does not get any consideration. The indemnifier doesn't need to receive any consideration in the contract, it should be entered into to protect the indemnity holder from any type of losses that might be incurred unless it is an insurance where the consideration received by the indemnifier is the premium paid by the policyholder. This being the case life insurance is not a type of indemnity as it is not an agreement to compensate or pay for losses but an assurance that on occurrence of death.[2] Further, one cannot put a value on someone's life. So, if the loss is caused to the indemnity holder due to the actions of a third party, he can sue the third party only after he has discharged the indemnity holder of his loss.

In the case of *Adamson v Jarvis*[3], where the plaintiff was sued by the defendant for conversion. The plaintiff sued the defendant back as he had acted as per the instructions of the defendant and was entitled to compensation as per the indemnity contract entered between the two.

[1] Indian Contract Act, 1872, s 124
[2] Nida Tahever Khan, "The Twilight of Contract of Indemnity in the Contract Act, 1872: A Critical Analysis" 2022
[3] Adamson v Jarvis, 1872

Contract of Guarantee:

A contract of guarantee is an undertaking to pay another person's debt or obligation. It is a tripartite agreement including, the surety, the principal debtor, and the creditor. It is an undertaking to compensate for the liabilities of the debtor. The surety gives the guarantee for payment of liabilities in case the principal debtor defaults. The primary contract is between the principal debtor and the creditor and the contract of guarantee between the surety and the principal debtor is secondary. A contract between the surety and the creditor is implied and thus they have an agreement.[4]

Essentials

- It must have all the essentials of a valid contract.
- The contract must be made with the agreement of all three involved parties
- The contract should be entered into for the benefit of the principal debtor.
- Consideration, there must be a consideration between the principal debtor and the creditor while consideration between the principal debtor and the surety may or may not be necessary and consideration between the surety and creditor is not required.[5]
- There must exist a liability. Before the surety guarantees the creditor there should be a contract between the principal debtor and the creditor.
- It is not necessary to have a contract of guarantee in writing.

In the case of a contract of guarantee the principal debtor can be a minor or of unsound mind, in other words, he can be incompetent to enter into a contract, while the other two parties must be of competency. It is important for the principal debtor to benefit the surety may or may not benefit. Thus, there is no consideration necessary to exist between the principal debtor and the surety, except the guarantee of the surety paying the debtor's debt.

[4] Indian Contract Act, 1872, s 126
[5] Indian Contract Act, 1872, s 127

In the case of *Bank of Bihar v Damodar Prasad and Anr.*[6] The surety had taken a guarantee to pay for the principal debtor if he defaults after two of the demand notice for an amount of Rs.12,000/-. The demand was raised neither the principal debtor nor the surety acknowledged them and as a result of which the bank sued the defendant. It was held that even though the debtor was solvent it was the surety's duty to pay the decretal amount.

Contract of Bailment:

Bailment comes from the French word *'Ballier'* which means delivery. It is essentially a contract regarding the delivery of possession of goods for a specific purpose, on completion of which the goods are returned or disposed of as per the instructions of the owner of the goods. The two parties involved are the bailor, the one who delivers, and the bailee, the one whom the goods are delivered to.[7] Bailment has been defined under section 148 of the Indian Contract Act.

For example, X delivered his car to Y for repairs, and on completion of the repairs the car will be returned, as per instructions of X, to X on completion of the repairs for a decided sum of money.

Essentials:

- Delivery of possession: as stated in section 149, the delivery can be actual, constructive, or symbolic.
- Delivery upon contract: the goods should be returned as stated in the contract or expressed or implied.
- The goods should be delivered for some specific purpose.
- On completion of the purpose or a time period the goods should be returned as per the bailor's instructions.

The ownership of goods is not transferred in case of bailment only possession rights are given to the bailee. Keeping this in mind, in the case of a bank locker the bank does not have complete

[6] Bank of Bihar v Damodar Prasad & Anr. (1969) 1 SCR 620
[7] Indian Contract Act, 1872, s 148

control over the contents in the locker as the keys are with the owner. Bailment gives the right of lien to the bailee, with the help of a specific lien it gives the right to the goods until he receives the remuneration for the task performed by him. For example, A approaches a tailor with cloth material to stitch a shirt the tailor makes the shirt but A does not pay him for the same thus the tailor has the right to retain the shirt he made. A general lien is used by bankers when they provide loans to people as a security in case of default of the same.

In the case of *R D Saxena v. Balram Prasad Sharma*[8], the appellant was appointed as legal advisor to the Madhya Pradesh State Co-operative Bank Ltd. He was later on terminated from the post and was asked to return all the files to the bank. The appellant sent a bill for expenses worth Rs. 97000/- to the bank. The bank did not pay him the cost and thus, he retained the files with himself and did not give it to the bank. The bank consequently filed a case with the court holding the appellant liable for misconduct. The bar council held him liable for professional misconduct and terminated his license as well. The Supreme Court as well held him liable for misconduct. Since there was no bailment of goods the appellant did not have a right of lien, to hold back the files with him.

Contract of Pledge:

A pledge is a type of bailment, every pledge is bailment but every bailment is not a pledge. It is providing security of movable goods only, unlike a mortgage, against a debt. Bailment of goods as security until the debt is repaid. The parties involved are known as the pawnor, the one who gives the goods, and the pawnee, the one who gives the loan.

Essentials

- Since a pledge is a type of bailment therefore all the essentials of a bailment must be there. But there should be a consideration in the pledge unlike a gratuitous bailment.

- The subject matter of the pledge is goods.

- Goods pledged for shall be in existence.

- There should be a delivery of goods from the pledger to the pledgee.

[8] *R D Saxena v. Balram Prasad Sharma,* (AIR 2000 SC 2912)

A pledge can be given by a non-owner as well, a mercantile agent can pledge the goods under his possessions with the owner's consent while the Pawnee was not aware of the ownership status of the same, this is stated under section 178 of the Indian Contract Act. The Pawnee should not have the knowledge that the goods do not belong to the agent. Secondly when a person has possession of goods under a voidable contract. In the case where A took a watch from B by way of coercion and pledged it to C, in that case the watch will go to C and not the actual owner that is A, the owner will be compensated with the amount. Thirdly, in case of limited or joint ownership, where the pledged goods are jointly owned by two parties then the extent of the pledge will be to the share of the pledgee in the goods.

In the case of *Lallan Prasad v. Rahmat Ali*[9]*, an* exchange of Rs. 20000/- against a promissory note and goods was performed. The appellant filed a case against the respondent station that he failed to deliver the goods. The court held that the goods had been delivered to the appellant as he had a promissory note which meant that he had constructive and symbolic ownership over the goods.

Contract of Agency:

An agency is a legal relationship where one party, the principal, engages another party, the agent, to act for him/ her. It involves two parties, but to make it a contract a third party has to be involved. Inferring from section 182, an agent is a link between the principal and the third party, and can be a buyer.[10] It is not necessary to pay a consideration or a fee to the agent. The principal is liable for the action of the agent. It is based on the legal maxim, *"Qui facit per, allium facit per se,"* meaning he who does through another does by himself. An Agency can also be created by way of necessity or by an implied or expressed way.

Characteristics:

- Competency of the principal, the principal should be competent to enter into a contract.[11]

- Competency of the agent, the agent does not have to be of sound mind or of the age of

[9] *Lallan Prasad v. Rahmat Ali,* 1967 AIR 1322, 1967 SCR (2) 233
[10] Indian Contract Act, 1872, s 182
[11] Indian Contract Act, 1872, s 183

majority to enter into a contract of agency.[12]

- It is not necessary to provide a consideration to the agent for his acts unless expressed so in the contract. However, the ICA does not seek to deprive the agent of his rightful remuneration.[13]

- As per section 186 and 187 the contract between the agent and the principal may be expressed or implied.

What makes agency a special contract is that it is not necessary to have a consideration for the agent in it, but the Indian Contract act does not seek to deprive the agent of his rightful remuneration if the same can be proved with the help of the terms of the contract entered in by the parties. the contract between the agent and the principal can be implied or expressed but an expressed writing of the legal relation between the agent and the principal is necessary when the agent on behalf of the principal enters into an agreement of sale, proxying the principal who, for example is the director, in a board meeting lastly when a company gives power of attorney to anyone it cannot be oral it has to be in writing. As per section 185 of the ICA the agent in the relationship can be a minor or of unsound mind, basically of incompetency. This is because in case of default or for any reason when the third party wants to reclaim its damages it can sue the principal and hold him liable vicariously for the acts of the agent. Thus, by appointing a minor agent it is the principal risks.

In the case of *State Bank of India v. Shyama Devi,* Shyama devi was approached by her friend who was also an employee at the bank. He approached her as a friend to take money to deposit in the bank it was later realised that the friend fled away with the money and no deposits had been made. The court held in favour of the bank that this was not in the course of the employment of the employee and thus the bank will not be liable for the damages. This shows how the principal will and will not be held liable for the same depending on the course of employment.

Conclusively, this shows how each type of special contract is different from a general contract. Every contract is different and the essentials of consideration are different in each type of contract. To avoid legal issuers parties must come to a mutual agreement. Contracts are needed

[12] Indian Contract Act, 1872, s 184
[13] Indian Contract Act, 1872, s 185

for all types of agreements and thus all types of special contracts serve the purpose for the same.