UNIT II

The Indian Contract Act 1872: Specific Contract

1. Define contract of indemnity. What are the essential elements/ features of a contract of indemnity?

Ans. Contract of indemnity is a special kind of contract. The term 'indemnity' literally means "security or protection against a loss" or compensation. According to Section 124 of the Indian Contract Act, 1872 "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 the conduct of any other person, is called a contract of indemnity."

The essential elements/ features of a contract of indemnity are:

(i)Parties to a contract: There must be two parties, namely, promisor or indemnifier and the promisee or indemnified or indemnity-holder.
(ii)Protection of loss: A contract of indemnity is entered into for the purpose of protecting the promisee from the loss. The loss may be caused due to the conduct of the promisor or any other person.
(iii)Express or implied: The contract of indemnity may be express (i.e. made by words spoken or written) or implied (i.e. inferred from the conduct of the parties or circumstances of the particular case).
(iv)Essentials of a valid contract: A contract of indemnity is a special kind of contract. The principles of the general law of contract contained in Section 1 to 75 of the Indian Contract Act, 1872 are applicable to them. Therefore, it must possess all the essentials of a valid contract.

2. What are the rights of indemnity holder?

Ans. As per Section 125 of the Indian Contract Act, 1872 the following rights are available to the promisee/ the indemnified/ indemnity-holder against the promisor/ indemnifier, provided he has acted within the scope of his authority.

(i) Right to recover damages paid in a suit [section 125(1)]: An indemnity-holder has the right to recover from the indemnifier all damages which he may be compelled to pay in any suit in respect of any matter to which the contract of indemnity applies.

(ii) Right to recover costs incurred in defending a suit [section 125(2)]: An indemnity-holder has the right to recover from the indemnifier all costs which he may be compelled to pay in any such suit if, in bringing or defending it, he did not contravene the orders of the promisor, and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorized him to bring or defend the suit.

(iii) Right to recover sums paid under compromise [section 125(3)]: An indemnity-holder also has the right to recover from the indemnifier all sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not contrary to the orders of the promisor, and was one which it would have been prudent for the promisee to make in the absence of any contract of indemnity, or if the promisor authorized him to compromise the suit.

3. Define contract of guarantee. What are the essential elements of a contract of guarantee?

Ans. Sec. 126 of the Indian Contract Act 1872, which deals with the contract of guarantee, has defined it as "A contract to perform the promise, or discharge the liability of a third person in case of his defaults".
A guarantee may be either **"**oral**"** or **"**written**".** Just like any other contract, it should also fulfil all the essentials of a valid contract.

Essentials of a Contract of Guarantee:

(i) Concurrence of All the Parties: All the three parties namely, the principal debtor, the creditor and the surety must agree to make such a contract.

(ii) Liability: In a contract of guarantee, liability of the surety is secondary i.e., the creditor must first proceed against the debtor and if the latter does not perform his promise, then only he can proceed against the surety.
(iii) Existence of a Debt: A contract of guarantee pre-supposes the existence of a liability, which is enforceable at law. If no such liability exists, there can be no contract of guarantee. Thus, where the debt, which is sought to be guaranteed, is already time barred or void, the surety is not liable.

(iv)Consideration: There must be consideration between the creditor and the surety so as to make the contract enforceable. The consideration must also be lawful. In a contract of guarantee, the consideration received by the principal debtor is taken to be the sufficient consideration for the surety.

(v) Writing not Necessary: A contract of guarantee may either be oral or written. It may be express or implied from the conduct of parties.

(vi) Essentials of a Valid Contract: It must have all the essentials of a valid contract such as offer and acceptance, intention to create a legal relationship, capacity to contract, genuine and free consent, lawful object, lawful consideration, certainty and possibility of performance and legal formalities.
(vii)No Concealment of Facts: The creditor should disclose to the surety the facts that are likely to affect the surety's liability. The guarantee obtained by the concealment of such facts is invalid. Thus, the guarantee is invalid if the creditor obtains it by the concealment of material facts.

(viii) No Misrepresentation: The guarantee should not be obtained by misrepresenting the facts to the surety. Though the contract of guarantee is not a contract of *uberrimae fidei* i.e., of absolute good faith, and thus, does not require complete disclosure of all the material facts by the principal debtor or creditor to the surety before he enters into a contract. But the facts, that are likely to affect the extent of surety's responsibility, must be truly represented

4. Distinguish between contract of indemnity and contract of guarantee.

Ans. The differences between the two types of contract are enumerated below:

Basis	**Contract of Indemnity**	**Contract of Guarantee**
1. Meaning	It refers to a Contract by which one party promises to save the other from loss caused by conduct of the promisor or another person.	It refers to a Contract to perform the promise or discharge the liability of a third person in case of his default.
2. Parties	In a contract of indemnity, there are two parties-indemnifier and indemnity-holder.	In a contract of guarantee, there are three parties-the principal debtor, the creditor and the surety
3. Number of	In case of indemnity, there is one	In guarantee, there are three

contracts	contract only, i.e. between indemnifier and indemnity-holder.	contracts-one between the principal debtor and the creditor, second between the surety and the creditor and the third between the surety and the principal debtor.
4. Liability	The nature of liability of the indemnifier is primary and independent.	The liability of the surety is collateral or secondary; the primary liability is of the principal debtor.
5.Purpose	The purpose of a contract of indemnity is the reimbursement of the loss.	A contract of guarantee is made for the security of a debt.
6.Interest	In case of indemnity, the promisor has some interest in the transaction.	In a guarantee, the surety has no other interest.

5. Define continuing guarantee. How is it revoked?

Ans. Sec. 129 of the Act defines continuing guarantee as, "a guarantee which extends to a series of transactions." Generally, indefinite numbers of transactions are dealt in continuing guarantee. Such guarantee may be in respect of a future transaction during fixed period for example for one year.

Revocation of Continuing Guarantee:
Following are the circumstances in which the continuing guarantee can be revoked:-

(i)By notice: According to Sec. 130, the continuing guarantee may be revoked at any time by the surety as to future transactions by due notice to the creditor.

(ii) By death: Death of the surety operates as revocation of the continuing guarantee with reference to the future transactions unless the contract otherwise provide, [sec. 131]

(iii)By variation in contract: If any variation is done in the terms of contract of guarantee between the creditor and the principal debtor without the knowledge of the surety, the contract of guarantee is revoked.

(iv) By Novation: The contract of guarantee will be revoked when the parties agree to substitute a new 'contract for the old contract or rescind or alter the old contract, [sec. 133]

(v) By creditor's act of omission: Any omission by the creditor which repairs the eventual remedy of the surety against the debtor amounts to revocation of the contract of guarantee.

6. What are rights of surety? Explain.

Ans. Rights of Surety:

Rights of Surety against the Principal Debtor:

(i) Right of Subrogation: After the payment of the debt to the creditor, the surety is subrogated to the rights of the creditor i.e., he has the same rights as those of the creditors. Therefore, he can sue the principal debtor to exercise those rights. Thus if the surety has performed his promise towards the creditor, all the rights of the principal debtor against the creditor devolve upon him.

(ii) Right of Indemnity : According to Section 145 of the Indian Contract Act,1872 In every contract of guarantee there is an implied promise by the principal debtor to indemnify the surety, and the surety is entitled to recover from the principal debtor whatever sum he has rightfully paid under the guarantee, but no sums which he has paid wrongfully.

Rights of Surety against the Creditor:

(i) Right to Claim Securities: After payment of the debt to the creditor or the performance of the promise of the principal debtor, the surety can recover all the securities which the creditor had with him either before or after the contract of guarantee was entered into. This right is available to the surety whether or not he knows about the existence of such security. He is entitled to all of them.

(ii)Right of Equities: After paying the amount due to the creditor, the surety is entitled to all equities of the creditor that he had against the debtor as well as any other person with regard to the debt.

(iii) Right of Set-off: Sometimes, the principal debtor is entitled to certain counter claim or deductions from the loan obtained from the creditor. In such cases, the surety is entitled to the benefit of such counter claim or deductions, if the creditor files a suit against the surety.

Rights of Surety against Co-sureties

When two or more persons give a guarantee for the same debt, they are called as co-sureties. All of them are equally liable to the creditor for the payment of the debt to the creditor. The rights of one co-surety against the other co-sureties are as follows:

(i) Right to Contribute Equally: If two or more persons are co-sureties for the same debt either jointly or severally, or whether under the same or different contracts and whether with or without the knowledge of each other, the co-sureties in the absence of any contract to the contrary, are liable as between themselves, to pay each, an equal shares of the whole debt, or that part of it which remains unpaid by the principal debtor.
Sometimes, one co-surety discharges the entire obligations. In such cases, he can obtain equal contribution from the other co-sureties.

(ii) Liability of Co-sureties bound in Different Sums: If the co-sureties are bound in different sums, they are liable to pay equally but not more than the maximum amount guaranteed by each one of them.

7. Define bailment. What are the essential elements of contract of bailment?

Ans. A bailment is a delivery of goods one person to another for some purpose upon a contract that they shall be returned or otherwise disposed of according to the directions of the person delivering. The person delivering the goods is called the "Bailor". The person to whom they are delivered is called "Bailee".

Essentials or Features of Bailment:
Following are the important essential of bailment :

(i) Contract : It is the basic essential for the bailment. For the delivery of goods contract between the two parties is necessary. Contract may be oral or written, implied or expressed.

(ii)**Moveable Property:** It is the main feature of bailment that it is only for the moveable property and not for the immoveable property.

(iii) Delivery of Goods: It is also necessary that goods should be delivered by one person to another.

(iv) Change of Possession: Bailment contract also brings change in the possessions of the goods. Only b without possession is not sufficient for this contract.

(v)Purpose of Bailment: The object of bailment may be for the safety of goods or for hire or for the use.

(vi) Temporary Delivery: The delivery of the goods may not be for the permanent purpose. it is essential that delivery must be made for the temporary purpose.

(vii) Ownership: Right of ownership remains with bailor and it does not change by the delivery of goods to other person.

(viii) Returnable: It is very important feature of the bailment. The bailee should return the goods to the bailor or disposed according the directions of the bailor.

8. What are the different types of bailment?

Ans. Bailment may broadly be classified into two categories, namely,

- Gratuitous bailment, and
- Non-gratuitous bailment.

1. Gratuitous Bailment:

A bailment with no considerations is called a gratuitous bailment. In this kind of bailment neither the bailor, nor the bailee is entitled to any remuneration or reward. Such a bailment may be for the exclusive benefit of either party, i.e., the bailor or the bailee discussed as below:

(a) Bailment for the exclusive benefit of the bailor: In this case the bailor delivers the goods for the exclusive benefits and the bailee does not derive any benefit out of it.

For example, “A” leaves his pets with “B”, his neighbour to be looked after during A’s physical absence. In this case, A alone is being benefited by the bailment.

(b)Bailment for the exclusive benefit of the bailee: This is the case where a bailor delivers the goods to the bailee for the exclusive benefits of the bailee and does not gain anything from the contract himself.

For example, you lend your book to a friend of yours for a week without any charge or favour. In this case the recipient of the book as a bailee, is the sole beneficiary of this transaction of bailment.

2. Non-Gratuitous Bailment:

Contrary to gratuitous bailment, a non-gratuitous bailment or bailment for reward is one that involves some consideration passing between the bailor and the bailee. Obviously in this case the delivery of goods takes place for the mutual benefit of both the parties.

9. Briefly explain the rights and duties of bailor?

Ans. Duties of the bailor

The bailor owes the following duties to bailee in respect of the goods bailed out by him:

(i)Duty to disclose faults: In case of gratuitous bailment**,** the bailor is expected to disclose to the bailee all the defects known to him and which would get in the way with the use of goods bailed.

A non-gratuitous bailment or bailment for reward**,** however, carries a greater responsibility on the part of bailor. He will be liable even if he was not in the know of the defects.

(ii)Duty to repay bailee's expenses: Bailor should contribute for expenses incurred by bailee. In case of Gratuitous bailment, bailer need not contribute for ordinary expenses and extra ordinary expenses or to the contributed by bailor. In case of Non-Gratuitous bailment, bailor should contribute for both ordinary expenses and extra ordinary expenses.

(iii)Duty to indemnify the bailee: The bailor is bound to make good the loss suffered by the bailee that is in excess of the benefit actually derived, where he had delivered the goods gratuitously and compelled the bailee to return them before the expiry of the period of bailment.

(iv)Duty to compensate bailee for breach of warranty: Every contract of bailment warrants the bailee about the bailor's title being defect free. Thus, if bailee subsequently suffers any loss by the reason of the bailor's title being defective, it is the duty of the bailor to compensate the bailee for breach of warranty.

(v)Duty to claim back the goods: The bailor is bound to accept the goods upon being returned by the bailee in accordance with the terms of bailment. If he refuses or fails to accept back the goods, if offered at a proper time and at a proper place, without any reasonable ground, he shall be responsible for any loss or damage to the goods and not the bailee.

Rights of the Bailor:

(i) Right to enforce bailee's performance: Since the bailor delivers goods to the bailee for some specific purpose, the former, especially in case of non-gratuitous bailment, has an elemental right to achieve that purpose or obtain the benefit (i.e., performance) through the latter.

(ii)Right to claim damages: In all cases of bailment, the bailor has the right to claim for damages against the loss, if any, caused to the goods bailed due to the bailee's negligence or misconduct.

(iii) Right to avoid the contract: According to Section 153, if any act of the bailee is inconsistent with the terms of the bailment, the bailor may avoid the contract.

(iv)Right to claim compensation: The bailor has the right to claim compensation from the bailee if any damages are caused to the goods bailed due to the unauthorized use of the goods.

(v) Right to demand return of goods: The bailor can compel the bailee to return the goods bailed when the time of bailment has expired.

10. Briefly explain the rights and duties of bailee.

Ans. Duties of a Bailee

(i)Take proper care of goods: According to section 151, it is the duty of a bailee to take care of goods bailed to him. Bailee should take care of these goods as an ordinary man will take care of his goods of the same value, quality, and quantity. Thus, if the bailee takes due care of goods then he will not be liable for any loss, deterioration of such goods.

(ii) Not to make unauthorized use*:* As per section 153, the Bailee shall not make any unauthorized use of goods bailed. In case he makes any unauthorized use, then bailor can terminate the bailment.

(iii)Keep goods separate: The bailee needs to keep the goods separately from his own goods. He should not mix the goods under bailment with his own goods.

(iv) Not set adverse title: A bailee must not set an adverse title to the goods bailed.

(v) Return Goods: The duty of the bailee is to return the goods without demand on the accomplishment of the purpose or the expiration of the time period. In case of his failure to do so, he shall be liable for the loss, destruction, deterioration, damages or destruction of goods even without negligence.

(vi) Return increase or profits: A bailee shall return the goods along with any increase or profit accruing to the goods to the bailor, in the absence of any contract to the contrary.

Right of a bailee:

(i) Enforcement of right: The bailee can, by suit, enforce the duties of the bailor**.**

(ii) Bailment by several joint owners (Section 165): If several joint owners of goods bail them, the bailee may deliver them back to, or according to direction of, one joint owner, without the consent of all, in the absence of any agreement to the contrary.

(iii)Right to compensation (Section 166): If the bailor has no title to the goods and the bailee in good faith delivers them as per the direction of the bailor, the bailee will not be liable for such delivery.

(iv)Right of Third person, claiming well hailed (Section 167): If the person other than the bailor, claim the goods bailed, the bailee has the right to apply to the court for stopping the delivery of goods to the bailor and to decide title to the goods

(v) Right of lien: The Bailee has right to claim lien for remuneration. The term 'Lien' means right of one person to retain possession of goods owned by another until the possessor's claims against the owner have been satisfied.

(vi) Right to sue: A bailee can sue the person who has wrongfully deprived him of the use or possession of the goods bailed.

11. Define pledge. Distinguish between bailment and pledge.

Ans. Pledge is a kind of bailment. Pledge is also known as Pawn. It is defined under section 172 of the Indian Contract Act, 1892. By pledge, we mean bailment of goods as a security for the repayment of debt or loan advanced or performance of an obligation or promise. The person who pledges the goods as security is known as Pledger or Pawnor and the person in whose favour the goods are pledged is known as Pledgee or Pawnee.

Basis	Bailment	Pledge
1.Meaning	Transfer of goods from one person to another for a specific purpose is known as the bailment.	Transfer of goods from one person to another as security for repayment of debt is known as the pledge.
2.Defined In	It is defined under section 148 of the Indian Contract Act, 1872	It is defined under section 172 of the Indian Contract Act, 1872.
3.Parties	The person who delivers the bailed goods is known as Bailor and the person receiving such goods is known as Bailee.	The person who delivers the pledged goods is known as Pledger or Pawnor and the person receiving such goods is known as Pledgee or Pawnee.

4.Consideration	The consideration may or may not be present.	Consideration is always there.
5.Right to Sell	Bailee has no right to sell the goods bailed.	Pledgee or Pawnee has the right to sell the goods.
6.Use of Goods	Bailee can use the goods only for a specific purpose only and not otherwise.	Pledgee or Pawnee cannot use the goods pledged.
7.Purpose	The purpose of bailed goods is for safekeeping or repairs etc.	The purpose of pledged goods is to act as security for repayment of debt or performance of the promise.

12. What are rights and duties of Pawnee?

Ans. Rights of Pawnee:

1. Rights of retaining: The Pawnee may retain the goods pledged until his dues are paid. He may retain them not only for the payment of the performance of the promise, but for the payment of the debt, and all necessary expenses incurred by him in respect of the position or for the preservation of the goods pledged. The Pawnee can only exercise a particular lien over the goods.

2. Rigths of retainer subsequent advances: When the Pawnee is lends money to the same pawnor after the date of right retainer over the pledged goods extends to subsequent advance also .this presumption can be rebutted only by a contract to the contrary.

3. Right to extraordinary expenses: The Pawnee is entitled to receive from the pawnor extraordinary expenses incurred by him for the preservation of the goods pledged or such expenses; he has no right to retain the goods; he can only sue to recover them.

4. Rights against true owner: when the pawnor's title is defective and the pawnor has obtained possession of the goods pledged by him under a voidable contract has not been rescinded at the time of the pledge, the panwee acquires a goods title to the goods, provided he acts in good faith and without notice of the pawnor's defect of title.

5. Pawnee's rights where pawnor makes default: Where the pawnor fails to redeem his pledge, the Pawnee can exercise the following rights:
(i) He may file a suit against the pawnor upon the debt or promise and may retain the goods pledged as a collateral security.
(ii) He may sell the goods pledged after giving the pawnor a reasonable notice of the sale.
(iii) He can recover any deficiency arising on the sale of the goods by him from the pawnor.

Duties of Pawnee:

1.Care of goods: It is the duty of the Pawnee to take care of goods pledged with him.

2. **No change of form:** The Pawnee should not mix the form of the goods pledged with him. If he does so, the pawnor can claim for damages.

3. No mixture: The Pawnee should not mix the goods of the pawnor with his own goods or with some-one else's goods.

4. Return of profit: If the Pawnee has earned any profit from the use of the goods pledged with him, he must return such profit to the Pawnor.

5. Return of goods: The Pawnee must return the goods pledged with him to the pawnor as soon as the debt is paid in full or pawnor performs promise.

13. What are rights and duties of Pawnor?

Ans. Rights of a Pledger

(i)The pledger has a right to claim back the security pledged on repayment of the debt with interest and other charges.

(ii)The pledger has a right to receive a reasonable notice in case the pledgee intends to sell the goods and in case he does not receive the notice he has a right to claim any damages that may result.

(iii)In case of sale, the pledgor is entitled to receive from the pledgee any surplus that may remain with him after the debt is completely paid off.

(iv)The pledgor has a right to claim any accruals to the goods pledged.

(v)If any loss is caused to the goods because of mishandling or negligence on the part of the pledgee, the pledgor has a right to claim the same.

Duties of a Pledger:

(i)A pledgor must disclose to the pledgee any material faults or extraordinary risks in the goods to which the pledgee may be exposed.

(ii)A pledgor is responsible to meet any extraordinary expenditure incurred by the pledgee for the preservation of the goods.

(iii)Where the pledgee has exercised his right of sale of goods, any shortfall has to be made good by the pledgor.

(iv)The pledgor is liable for any loss caused to the pledgee because of defects in his (pledgor's) title the goods.

14. Define contract of agency. What are the essentials of contract of agency?

Ans. Agency can be defined as the relationship between two persons, wherein a person has the authority to act on behalf of another, bind him/her into a legal relationship with the third party. There are two parties in a contract of agency – principal and agent.
Section of 182 of the Contract Act, 1872 defines the term Agent and Principal as; "An agent is a person employed to do any act for another or to represent another in dealings with third persons. The person for whom such act is completed, or who is so represented, is known the Principal."

The contract which creates the connection of principal and agent is known as *"*Agency *or* agency agreement*".*

Essentials of Contract of Agency:
These are the essentials of Contract of Agency which are given below:

(i)Agreement: There shall be an agreement between the principal and agent.

(ii)Consideration not necessary: The contract shall be with or without consideration.

(iii)Intention to Act on behalf of the principal: There shall be an intention of the agent to act on behalf of the principal. When the agent enters into a contract for himself, then the principal will not be liable.

(iv)Creation of Agency: The Contract of Agency could be created in any of the subsequent ways.

(v)Express Agency: The agency or agency agreement could also be created by words of mouth or by an agreement in writing.

(vi)Implied agency: An implied agency or agency agreement arises from conduct, situation or relationship of parties.

15. Distinguish between agent and servant.

Ans.

Basis	Agent	Servant
1. Authority to create contractual relationship	An agent has the authority to create contractual relations between the principal and a third party	A servant ordinarily, has no such authority.
2. Control and Supervision	An agent is not bound to work under direct control and supervision of his employer. A 'principal' directs the agent as to what is to be done.	A servant is bound to work under direct control and supervision of his employer.
3. Number of Masters	An agent may work for several principals at the same time.	A servant usually serves only one master.
4.Remuneration	An agent generally gets his remuneration in terms of commission calculated on the basis of the amount of business transacted.	Remuneration for a servant is paid by way of salary or wages
5. Duty Assignment	An agent never occupies the position of a servant because whenever he acts, he acts on behalf of his principal and binds him/her (principal) to third parties.	A servant in certain cases to some extent may be assigned the duties of an agent, and may act as one.

16. Explain the different methods of creating agency.

Ans. The agency can be created in the following ways:

(i)Express Agency: One can enter into the contract of agency through an express agreement, i.e. oral or written. In a written contract of agency, the power of attorney is transferred in the name of the agent, conferring him the authority and power to act on behalf of the principal, subject to the terms and conditions specified in the contract.
When the purpose of creation of agency is to transfer the immovable property, it is required to be registered,

(ii)Implied Agency: When something is not directly or clearly stated, it is said to be implied. Therefore, the implied agency is created by way of conduct, the situation of the parties, i.e. principal and agent, or necessity of the case.

(a)Agency by Estoppel: Suppose a person by his conduct informs another person that a particular person is his agent and the person who is signified as an agent is present and hearing at the time when it is intimated. Now, if the third person enters into a contract with that person thinking that he is the agent. This is the case of agency by estoppel, where the agent will be precluded from refusing his authority.

(b)Wife as an agent: When a legally married couple lives together, the wife is supposed to have the authority of his husband to pledge his credit, in order to afford the basic necessities of life, according to their standard of living. However, it has certain exceptions, if the husband proves that:

- He has explicitly warned the dealer not to give the goods on credit to his wife, or
- He has explicitly forbidden his spouse to pledge his credit, or
- He has already supplied the mentioned stuff in sufficient quantity to his wife or
- He is providing sufficient allowance to his wife.

(c)Agency of Necessity: There may be certain circumstances that compel the parties to enter into a contract of agency. Suppose a person is entrusted with property or goods of another person, he is obligated to take reasonable care of it as well as to incur necessary expenses so as to preserve and protect such property.

(iii)Agency by Ratification: Agency can also be created by ensuing ratification. When a person who does not have any authority claims to act as an agent or a legally employed agent performs an act which is beyond his authority, then the principal is not legally bound by the contract entered into on his behalf. However, he may ratify the act performed by the agent and accept the liability. This results in an agency by ratification.

(iv)Agency by operation of law: At times contract of agency comes into operation by virtue of law. For example: According to partnership act, every partner is agent of the firm as well as other parties. It is implied agency.

17. Explain the rights and duties of an agent.

Ans. Duties of an Agent:
Following are the important duties of an agent:

1. Obey the Instruction: It is the basic duty of an agent that he should act upon the lawful instructions of the principal.

2. Conducting Business: It is the duty of an agent that he should conduct the business of a principal. While performing the services he should keep in view the directions of the principal or prevailing customs in business.

3. Showing of Accounts: It is the duty of an agent that he should maintain the accounts properly and submit it to the principal on his demand.

4. Return of Undue Profit: If an agent has earned undue profit from the business, he should return it to the principal.

5. Use of Skill and Knowledge: It is the duty of the agent that he should perform his duties with as much skill and knowledge as is generally shown by an ordinary prudence in similar business.

6. Communication with Principal: It is the duty of the agent that he should give all the information's about the business to the principal. He should seek instructions from his principal. He should not keep anything secrets from his principal.

7. Payment of All Sums: It is the duty of an agent to pay his principal all the sums received on his account.

8. Principal Death Case: If principal dies or becomes insane, it is the duty of the agent that he should protect or save the goods as he was doing in the life of the principal. Now he will protect the interest of the legal heirs.

9. Separate Account: An agent should not mix his account with the principal. It is the duty that he should keep the accounts of a principal separate.

10. Performance with Honesty: It is the duty of an agent that he should deal the business honestly. If he conducts the business dishonestly then he is not entitled to receive the reward of his services.

Rights of an Agent:
Following are the important rights of an agent:

1. Right of Remuneration: It is basic right of an agent that he should receive the remuneration of his services.

2. Right of Compensation: In case of injury caused to agent by the negligence of the principal may be compensated by the principal.

3. Right to Retain Money: In conducting the business if an agent advances or spends some money for the betterment of a business. He has also right to retain that amount from the total sum received by him on account of the principal.

4. Right of Lien: An agent has also a right to retain the goods or property of a principal till the payment in due is received by him.

5. Indemnity Right: An agent has a right to be indemnified against the liabilities falls on him.

18. Name and explain the different types of agent.

Ans. The agents may be classified into two categories:

A. On the basis of authority.
B. On the basis of nature of work.

A. On the basis of authority.

(i)Universal Agent: A Universal agent is one who is authorised to do all the acts which the Principal can lawfully do and can delegate.

(ii) Special Agent: A Special Agent is one who is employed to do some particular act or represent his Principal in some particular transactions.

(iii) General Agent: A General Agent is one was employed to do all acts connected with particular business or employment. For example, A general manager of a firm.

B. On the basis of nature of work.

(i)Commercial or mercantile agent: A mercantile agent is one who is authorised to sell goods or consign goods for the purpose of sale or to buy goods or to raise money on the security of goods. Mercantile agents include:

(a) De Credere Agent: He is one who in consideration of an extra commission guarantee his Principal that the third person with whom he enters into contracts on behalf of the principal shall perform their financial obligations that is, if the buyer does not pay, he will pay. Thus he occupies the position of a surety it as well as an Agent.

(b) Broker: He is one who is employed to make contracts for the purchase and sale of goods. He is not entrusted with the possession of goods. He simply acts as a connecting link and brings it to parties together to bargain and if the circumstances materialise he becomes entitled to his commission called brokerage.

(c) Factor: A factor is a mercantile agent to whom goods are entrusted for sale. He enjoys wide discretionary powers in relation to the sale of goods. A Factor is an agent who is entrusted with the possession and contract of the goods to be sold by him for his Principal.

(d) Commission Agent: Commission Agent is a mercantile Agent who buys or sells goods for his Principal on the best possible terms in his own name and who receives Commission for his labours. He may have possession of course or not.

(e) Auctioneers: An auctioneer is an agent to sell property at a public auction. He is primary an agent for the seller, but upon the property being knocked down he becomes also the agent of the buyer. He is mercantile agent within the meaning of Section 2(9) of the Sale of goods Act.

(ii) Non-mercantile agent: A non-mercantile agent is one who is not engaged in business of selling or buying goods, but act in their respective professional capacities i.e. render professional services for their principal.

19. Discuss the various modes in which an agency may be terminated.

Ans. Termination/ Revocation of Agency or Agency Agreement:

An agency or agency agreement could also be terminated in any of the subsequent ways:

(i) Agreement: An agency or agency agreement can be terminated at any time by a mutual agreement between the principal and the agent. Therefore, the authority of an agent terminates when the principal and therefore the agent complies with to terminate it.

(ii)Revocation by the Principal: The principal can revoke the authority of the agent at any time before the agent has exercised his authority.

(iii)Revocation by Agent: An agency or agency agreement can be terminated or revoked by the agent himself because a person cannot be compelled to work as an agent.

(iv)Completion of business of Agency: An agency or agency agreement comes to an end automatically when the business of the agency is completed.

(v) Expiry of time: If the agent is appointed for a fixed period, the agency comes to an end on the expiry of the fixed period, even though the business may not have been completed.

(vi)Death of the Principal or Agent: An agency or agency agreement terminates automatically on the death of the principal or agent.

(vii)The insanity of the Principal or Agent: An agency or agency agreement terminates automatically, where the principal or the agent becomes of an unsound mind. When the principal becomes insane, the agent cannot act for an individual of unsound mind.

(viii)Insolvency of the Principal: An agency or agency agreement is also terminated by the insolvency of the principal.

(ix) Destruction of Subject matter: An agency or agency agreement terminates on the destruction of the subject matter of the Contract of Agency.

(x) Principal or Agent becomes Alien enemy: If the principal and agent are citizens of two different countries and a war breaks out between the two countries, the contract of agency (agency agreement) is terminated.