

INDEMNITY AND GUARANTEE



CONTRACT OF INDEMNITY AND CONTRACT OF GUARANTEE

CONTRACT OF INDEMNITY : DEFINITION



Definition (Sec. 124)

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.

Indemnifier

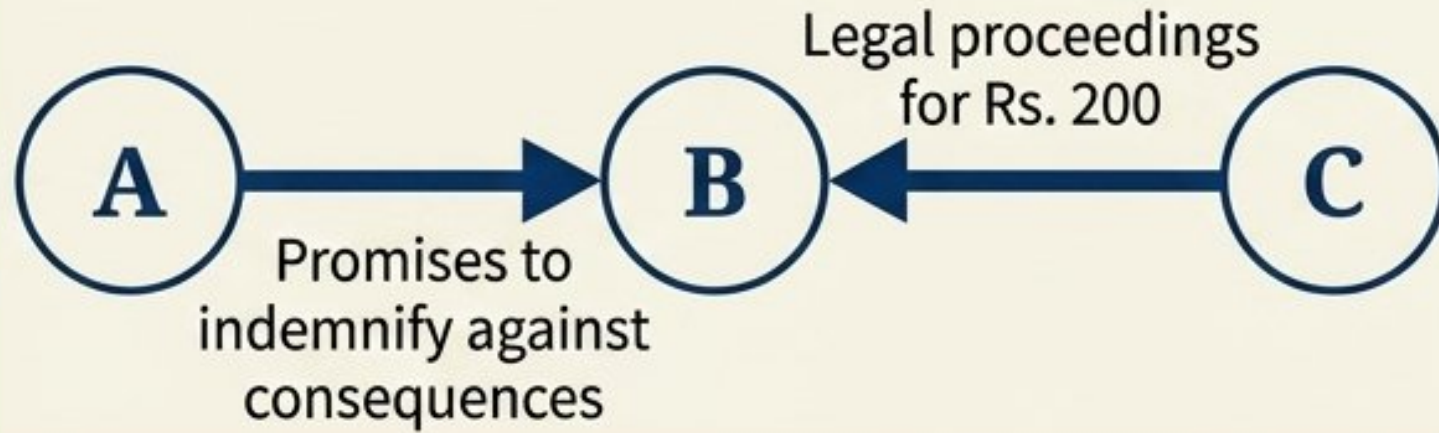
The person who promises to make good the loss is called the 'indemnifier'.

Indemnified / Indemnity-holder

The person whose loss is to be made good is called 'indemnified' or 'indemnity-holder'.

CONTRACT OF INDEMNITY

Valid Example



A contracts to indemnify B against the consequences of any proceedings which C may take against B in respect in a certain sum of 200 rupees.

Definition not exhaustive



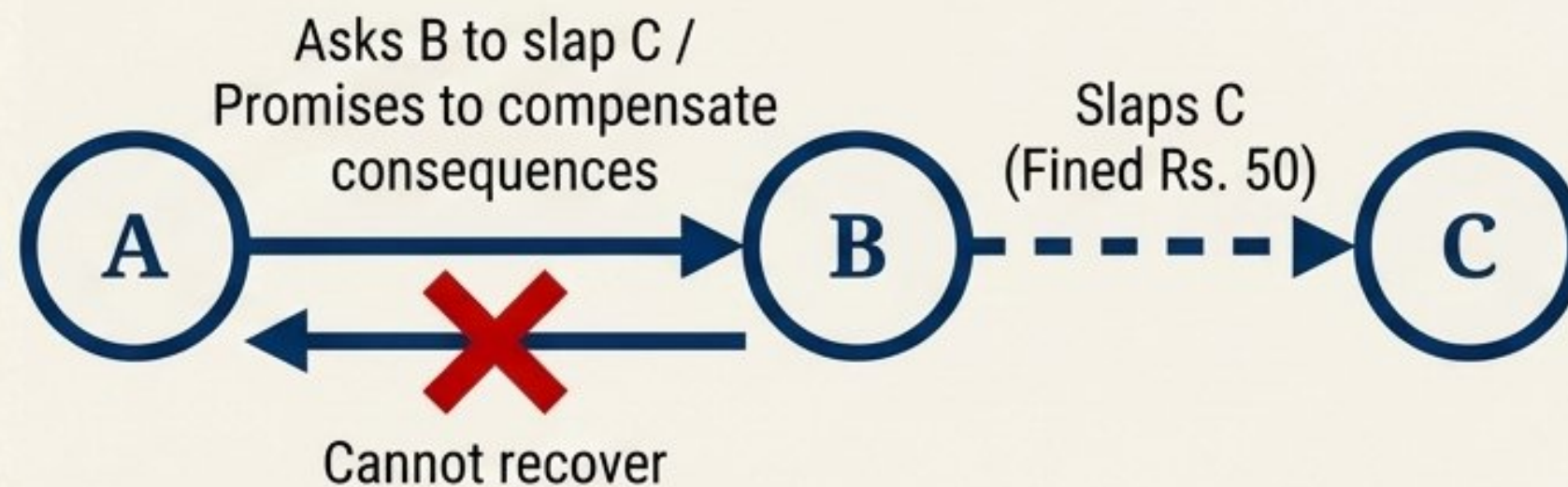
The definition in Section 124 strictly covers express promises and human conduct. It does not include implied promises or cases where loss arises from accidents and events not dependent on the conduct of any person (like a contract of insurance).

VALIDITY OF INDEMNITY



As a species of the general contract, a contract of indemnity is subject to the rules as to reality of consent, legality of object, etc. An indemnity procured by fraud or against public policy will not be enforceable.

Example (Illegal Object)



A asks B to slap C and promises to compensate him (B), against the consequences. B slaps C and is fined Rs. 50. B cannot recover the amount from A as the consideration and object of the contract is not legal.

RIGHTS OF THE INDEMNITY-HOLDER

The promisee in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor—



(1) All damages

which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnity applies.



(2) 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 prudently.



(3) All sums paid

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.

COMMENCEMENT OF THE INDEMNIFIER'S LIABILITY

View 1 (Bombay and Nagpur High Courts)

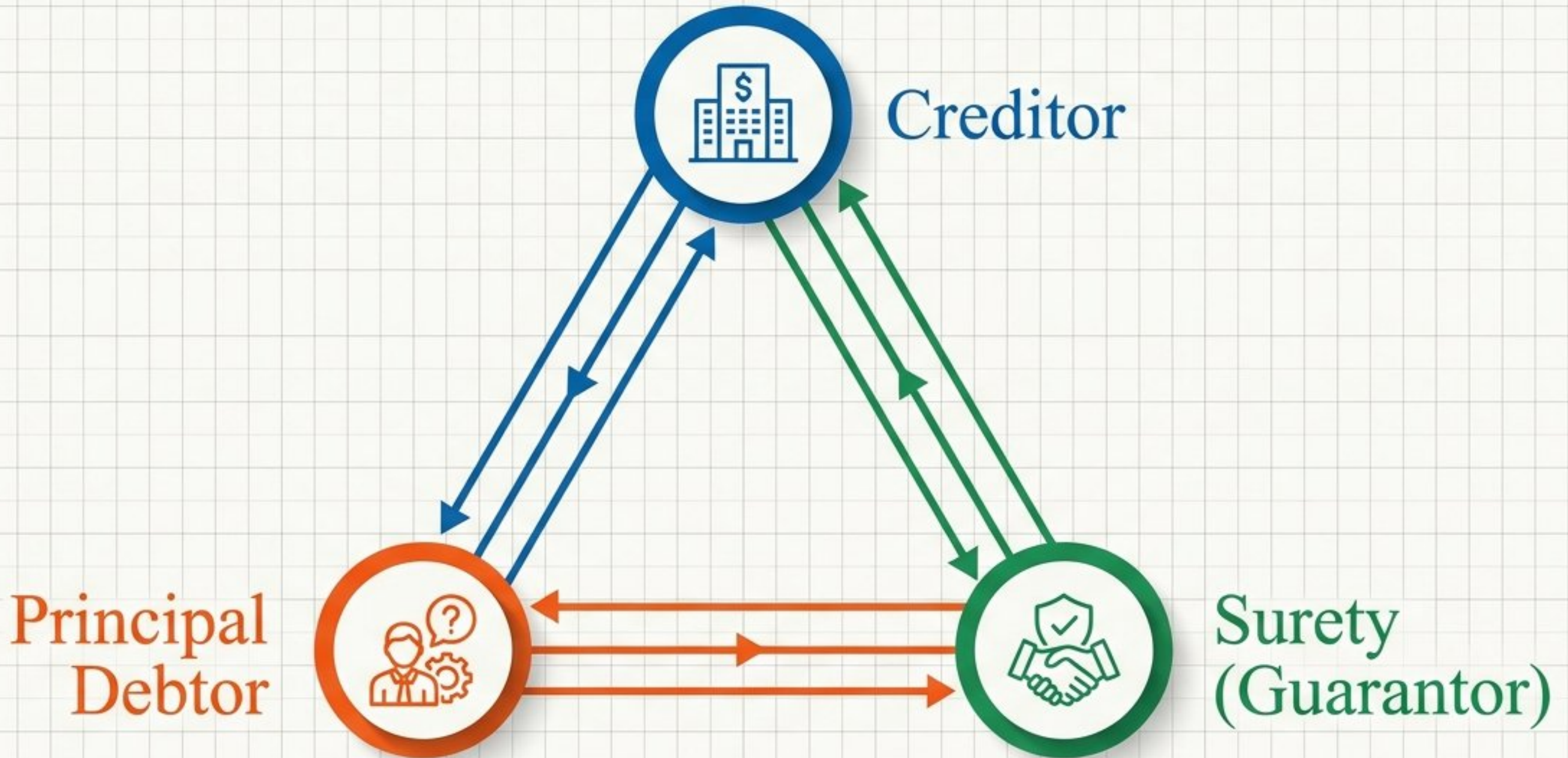
The indemnifier will be liable only after the actual loss has incurred.

View 2 (Calcutta, Madras and Allahabad High Courts)

The indemnity-holder can compel payment from the indemnifier even before he has met his liability.

Conclusion: The latter view, it is submitted appears to be more correct.

CONTRACT OF GUARANTEE



CONTRACT OF GUARANTEE :

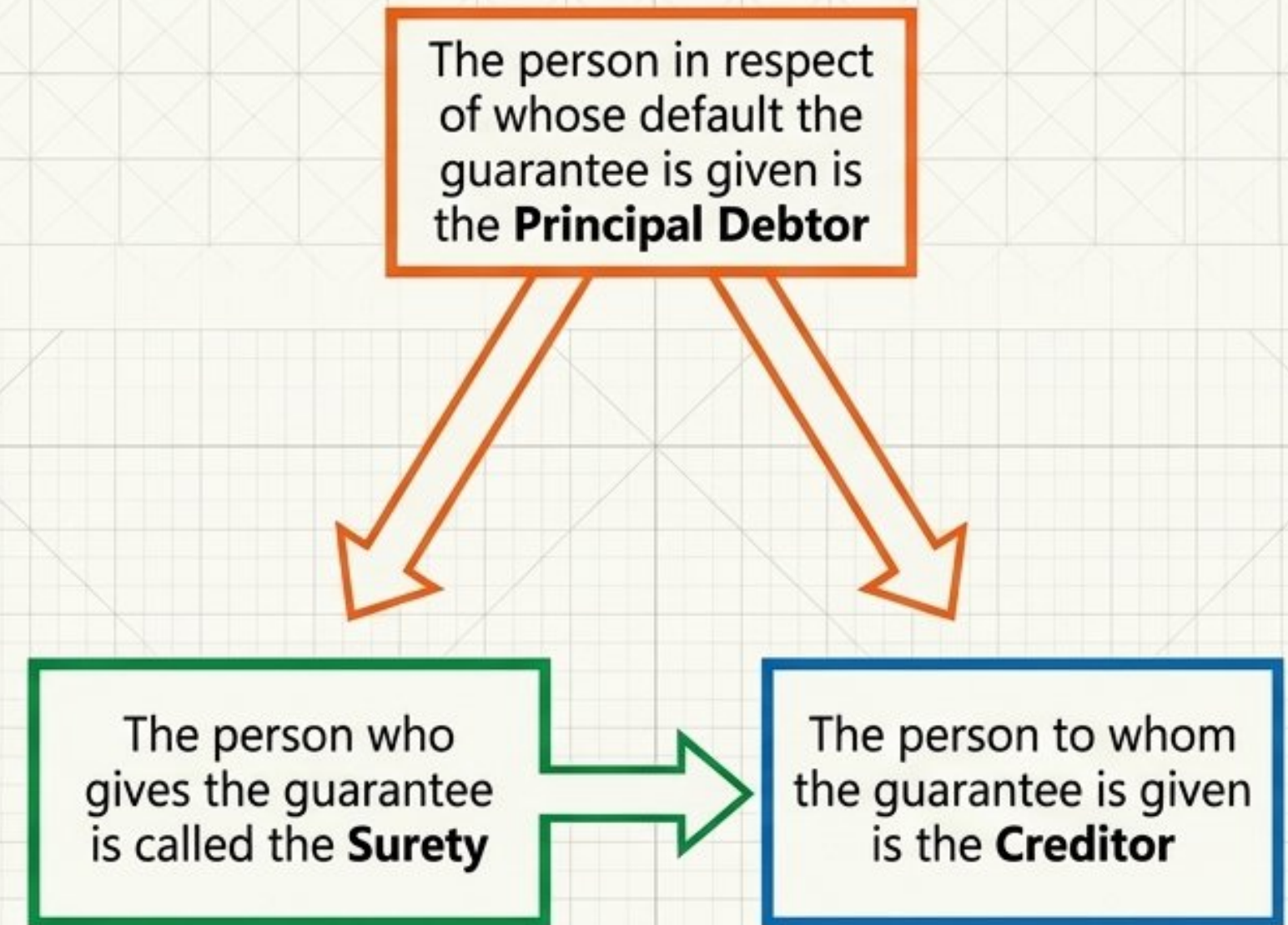
DEFINITION :

A contract to perform the **promise**, or discharge the liability of a **third person** in case of his default. (Sec. 126)

- Rule: A guarantee may be either oral or written.

Simplified Example:

A (Creditor) lends Rs. 1,000 to **B (Principal Debtor)**.
C (Surety) promises **A** that if **B** does not pay the money, **C** will do so.



Purpose :

A guarantee may be given for:



(i) The repayment of a debt.



(ii) The price of goods sold on credit.



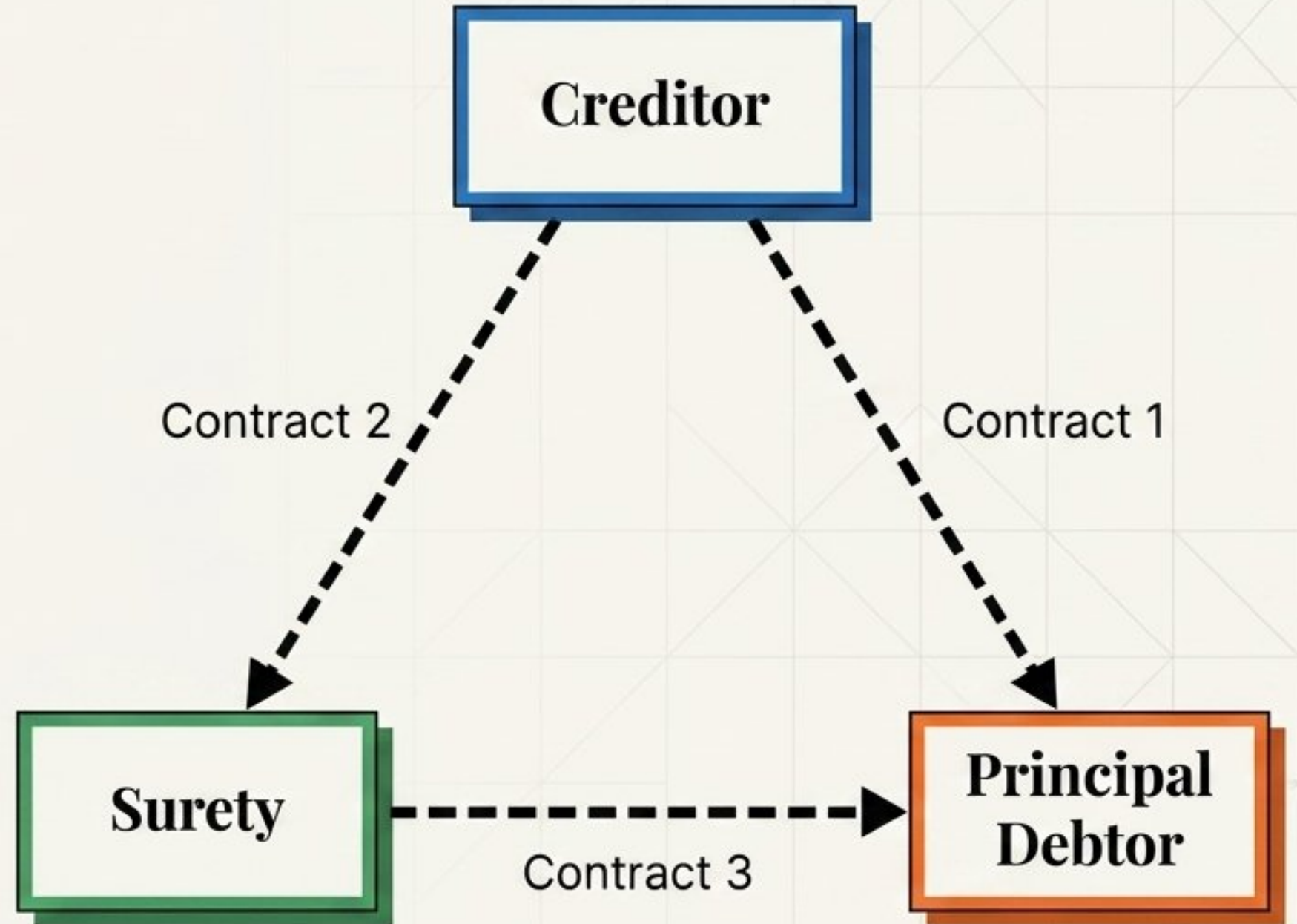
(iii) The good conduct and honesty of a person employed in a particular office (Fidelity guarantee).

Characteristics :

A 'contract of guarantee' is a tri-partite contract.

There is a triangular relationship in which three collateral contracts must exist:

1. Between **Creditor** and **Principal Debtor**
2. Between **Creditor** and **Surety**
3. Between **Surety** and **Principal Debtor**



Characteristics :

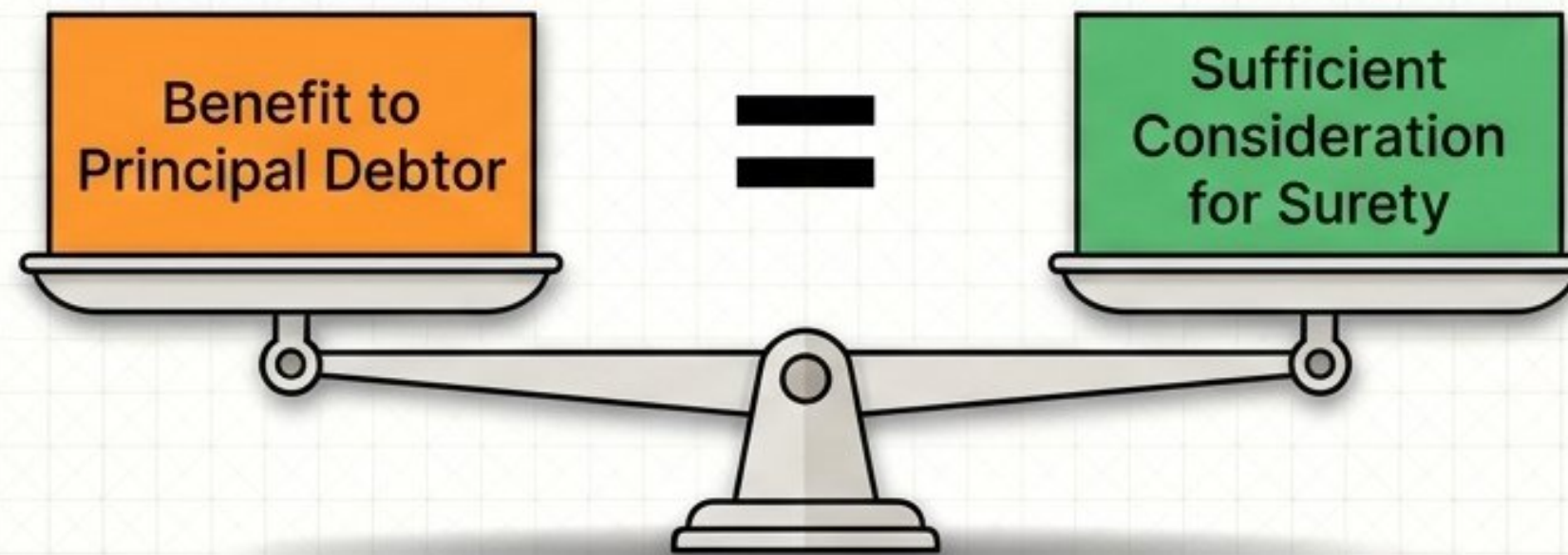
The liability of the surety is secondary or collateral. It comes into existence only in default by the principal debtor.



Characteristics :

The consideration received by the principal debtor is taken to be sufficient consideration from the surety. (Sec. 127)

Rule: Anything done, or any promise made, for the benefit of the principal debtor may be a sufficient consideration to the surety for giving the guarantee.



Simplified Example:

B (Orange) requests **A** (Blue) to sell him goods on credit. **A** agrees provided **C** (Green) will guarantee payment. **C** promises to guarantee in consideration of **A**'s promise to deliver the goods. This is sufficient consideration for **C**'s promise.

Characteristics :



Rule: Not a Contract of Uberrimae Fidei

The contract of guarantee is not a contract of uberrimae fidei (absolute faith).

There is **no obligation** on the part of the creditor to disclose all material facts within his knowledge to the surety.

Exception:

If the guarantee is in the nature of a fidelity guarantee, all material facts must necessarily be disclosed.

Simplified Example:

S (Green) guaranteed the account of **P (Orange)** to the **Bank (Blue)**. P drew from the account to pay off another Bank. The Bank suspected P was trying to defraud but kept silent.

Held: The Bank was under no obligation to communicate this suspicion to S. The guarantee is not discharged.

DIFFERENCE BETWEEN CONTRACT OF INDEMNITY AND CONTRACT OF GUARANTEE

Aspects	Contract of Indemnity	Contract of Guarantee
No. of contract	There is only one contract: between the indemnifier and the indemnified.	There are three contracts between- (i) the principal and the creditor (ii) The surety, and the principal debtor and (iii) The surety and the creditor.
Parties	There are only two parties : The indemnifier and the indemnified.	There are three parties : The creditor, the principal debtor and the surety.
Liability	The liability of the indemnifier to the indemnified is primary and independent.	The liability of the Principal Debtor is primary and that of the surety is only secondary or collateral.

DIFFERENCE BETWEEN CONTRACT OF INDEMNITY AND CONTRACT OF GUARANTEE

Aspects	Contract of Indemnity	Contract of Guarantee
Commencement	The liability of the indemnifier arises only on the happening of a contingency.	There is an existing duty (i.e. the debtor's debt), the performance of which is guaranteed by surety.
Purpose	Such a contract is for the reimbursement of the loss entered into with the object of protecting the promisee against the anticipated loss.	It is for the security of the creditor.

DIFFERENCE BETWEEN CONTRACT OF INDEMNITY AND CONTRACT OF GUARANTEE

Aspects	Contract of Indemnity	Contract of Guarantee
Privity of Contract	An indemnifier cannot sue a third party for loss in his own name because there is no privity of contract. He can do so only if there is an assignment in his favour.	A surety, on discharging the debt due by the principal debtor, steps into the shoes of the creditor. He can proceed against the principal debtor in his own name.
Request	It is not necessary for the indemnifier to act at the request of the debtor.	It is necessary that the surety should give the guarantee at the request of the debtor.
Capacity of parties	The parties must be all capable of contracting.	The principal debtor may be a minor, in which case, the surety will be primarily liable.

KINDS OF GUARANTEE

Time-Based

Retrospective Guarantee

A **guarantee** given for an **existing debt** or **obligation**.

Prospective Guarantee

A guarantee given for a **future debt** or **obligation**.

Debt-Based

Specific guarantee

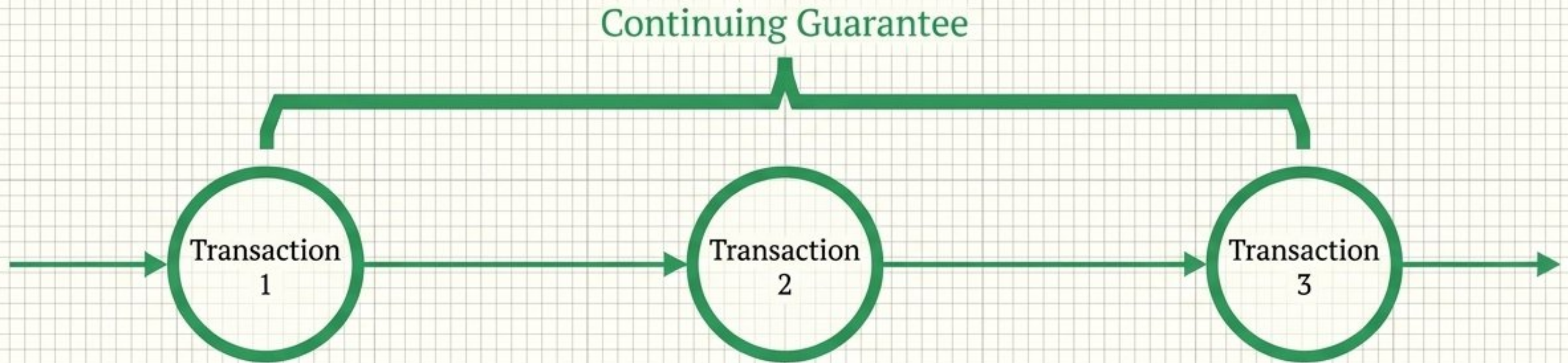
When it extends to a **single transaction** or debt.

Continuing guarantee

When it extends to a **series of transactions**.

CONTINUING GUARANTEE :

Definition: A guarantee which extends to a series of transactions is called a continuing guarantee. (Sec. 129)



Simplified Example:

A (Blue) promises B to be responsible, to the amount of 5,000 rupees, for the due collection and payment of rents by **C** (Orange). This spans a series of future rent collections. This is a continuing guarantee.

Following are not continuing guarantees :



A guarantee for the faithful discharge of his duties by a person appointed to a place of trust in a bank.

(It is a guarantee of appointment, not continuing).

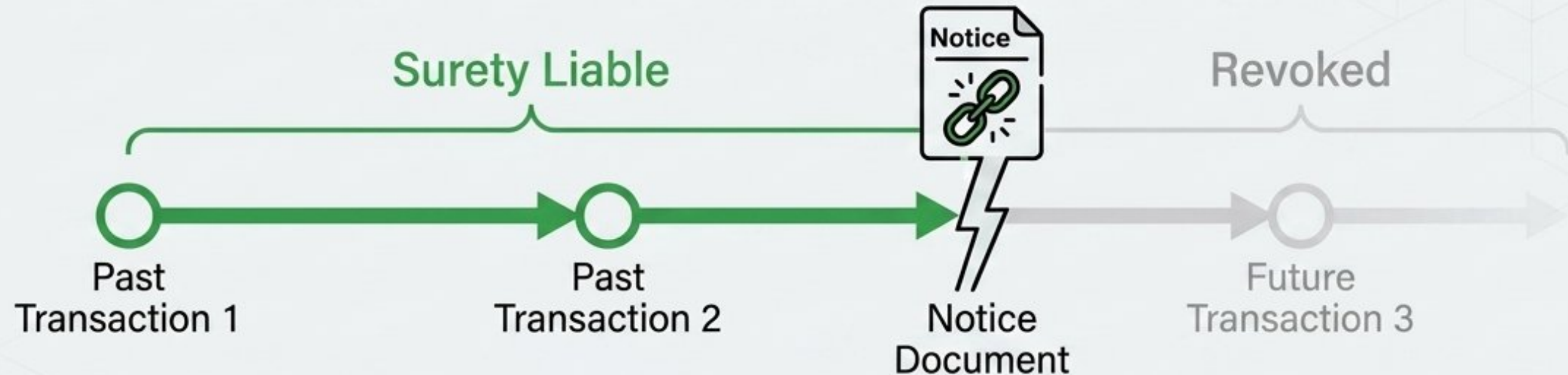


A guarantee for payment of a certain sum by installments within a definite time.

(It is a guarantee of loan, not continuing).

Revocation of a continuing guarantee :

1. **By notice:** A continuing guarantee may at any time be revoked by the surety (**Green**), as to future transactions, by notice to the creditor (**Blue**). (Sec. 130)

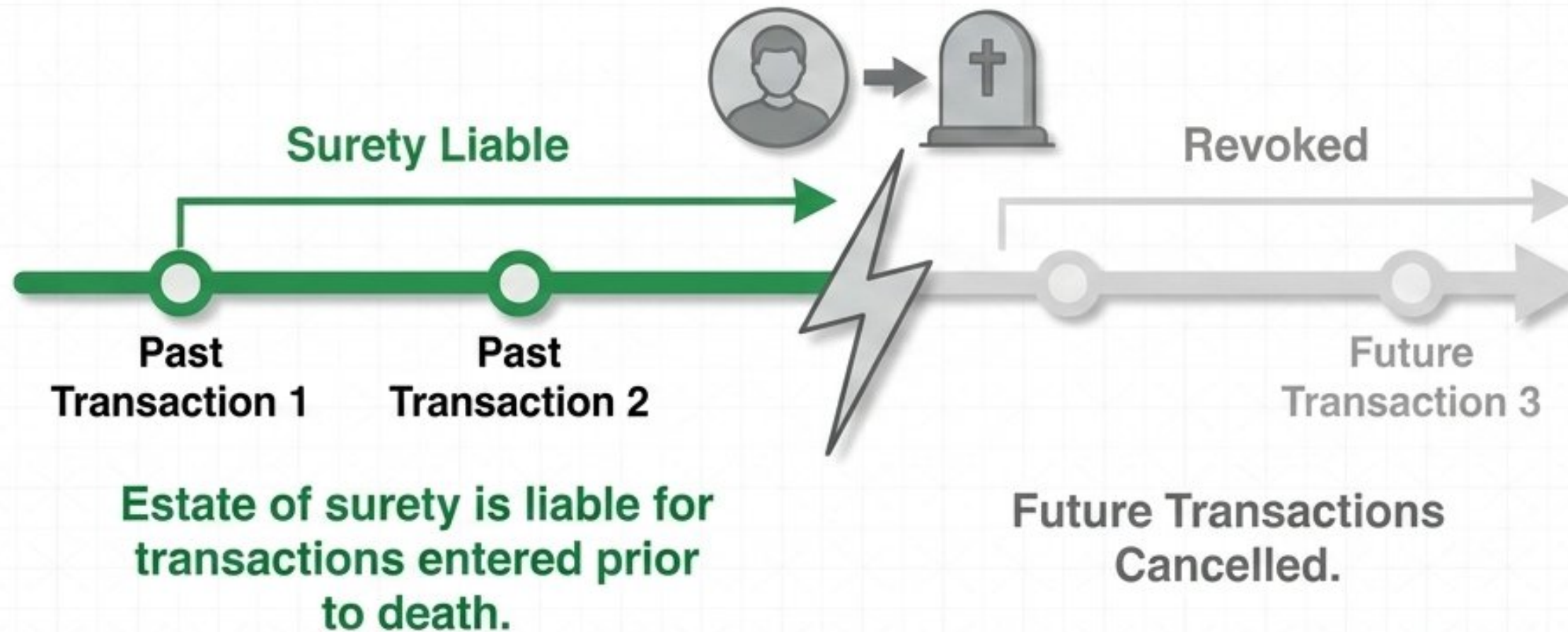


Simplified Example:

A (Green) guarantees **B** (Blue) up to Rs. 10,000 for bills drawn by **C** (Orange). A later revokes the guarantee. **C** then dishonours a bill at maturity. **A** is liable upon his guarantee for the past transaction, but not for future ones.

Revocation of a continuing guarantee :

2. By death of surety: The death of the surety operates, in the absence of any contract to the contrary, as revocation of a continuing guarantee, so far as regards future transactions. (Sec. 131)



Key Distinction:

It is **not necessary** that the **creditor** must have **notice** of the death.

(Unlike English Law where notice of death to the creditor is required).

NATURE OF SURETY'S LIABILITY



The liability of the surety is **co-extensive** with that of the principal debtor, unless it is otherwise provided by the contract. **(Sec. 128)**

Meaning: The surety is liable to the exact same extent as the principal debtor. The liability can neither be more nor less; but never greater.

The surety is made jointly and severally liable with the principal debtor.

NATURE OF SURETY'S LIABILITY

Immediate Action



→ **Immediate Liability:** Liability immediately arises on the default of the principal debtor.

The creditor (rendered in Precision Blue) is not bound to exhaust all his remedies against the principal debtor before suing the surety (rendered in Assured Green).

Exceptions / Voided Liability



When Surety is Not Liable:

1. If the principal debtor is not liable (e.g., if the principal debt is illegal), the surety is also not liable.
2. If the principal debtor is discharged by the creditor's breach, the surety will not be liable.

RIGHTS OF THE SURETY

Rights of the surety can be classified under the following three heads:

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graph TD; A[Rights of the surety can be classified under the following three heads:] --- B["(1) Against the principal debtor"]; A --- C["(2) Against the creditor"]; A --- D["(3) Against the co-sureties"];
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(1) Against the principal debtor

(2) Against the creditor

(3) Against the co-sureties

Against the principal debtor

THE RULES

Right of subrogation (Sec. 140)

Where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety, upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor.

Right of indemnity (Sec. 145)

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.

THE APPLICATION

Example Flowcard

B is indebted to C → A is surety for the debt



C demands payment from A.



A defends the suit, having reasonable grounds, but is compelled to pay debt + costs



A recovers from B the amount paid for costs as well as the principal debt.

Against the creditor

THE RULES

Right to securities (Sec. 141)

A surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not, and if the creditor loses or, without the consent of the surety, parts with security, the surety is discharged to the extent of the value of the security.

Right to set-off:

A surety is entitled to the benefit of principal debtor's set off against the creditor, if it arises out of the same transaction.

THE APPLICATION

Example Flowcard

C advances 2,000 rupees to B → A is surety.



C has further security: A mortgage on B's furniture.



C cancels the mortgage. B becomes insolvent.

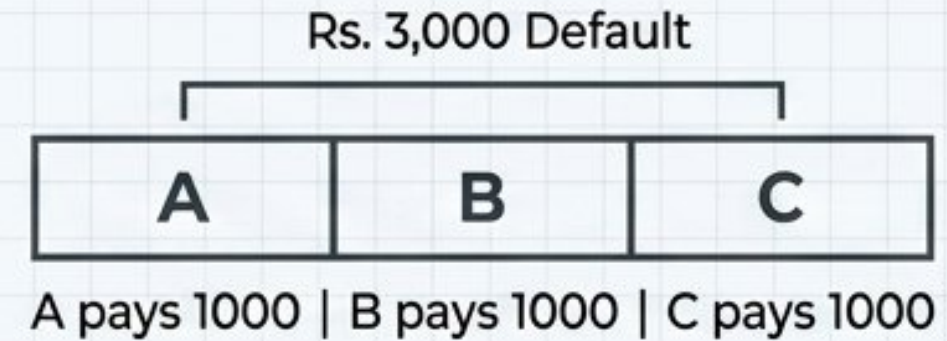


C sues A. Result: A is discharged from liability to the amount of the value of the furniture.

Against the co-sureties

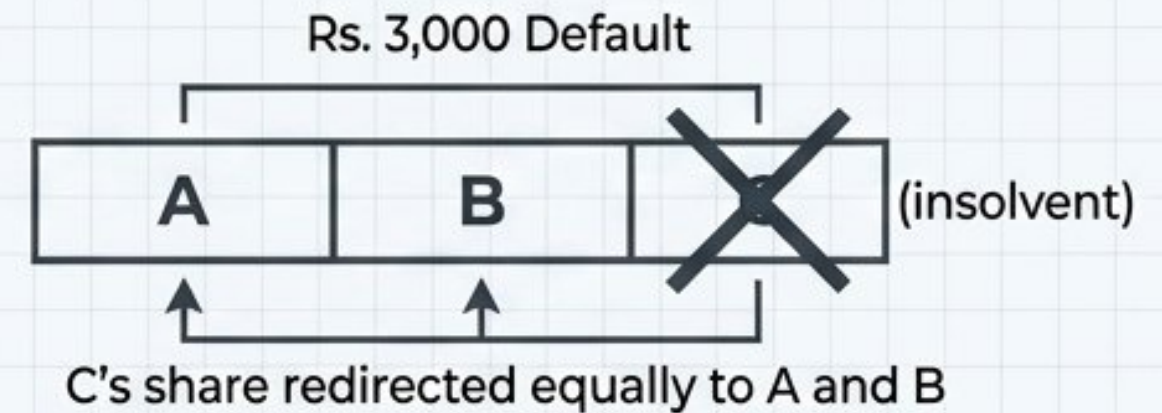
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Co-sureties liable to contribute equally (Sec. 146).
Liable to pay each an equal share of the whole debt.



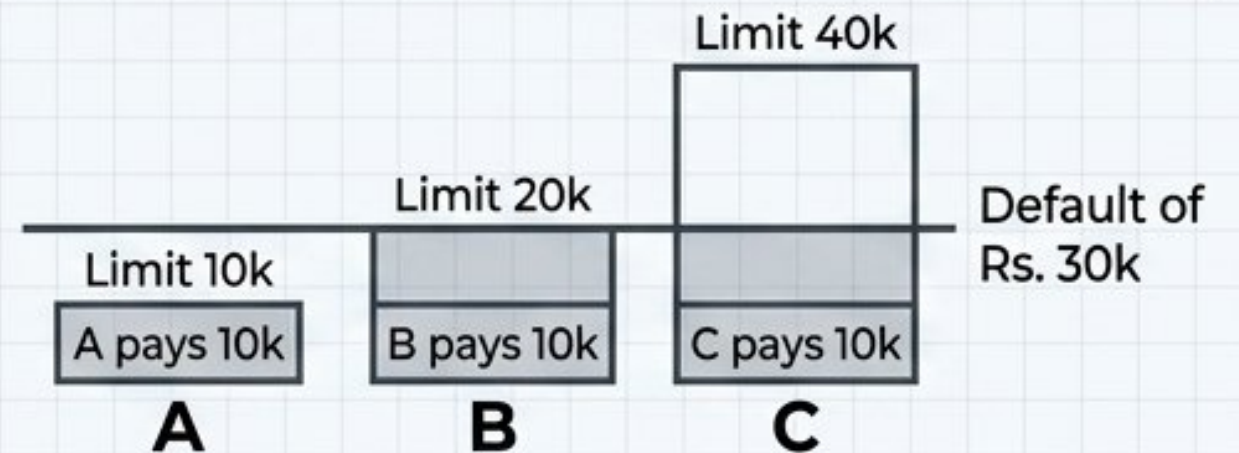
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Insolvency of co-surety. Where one co-surety becomes insolvent, the other sureties must pay the whole amount between them.

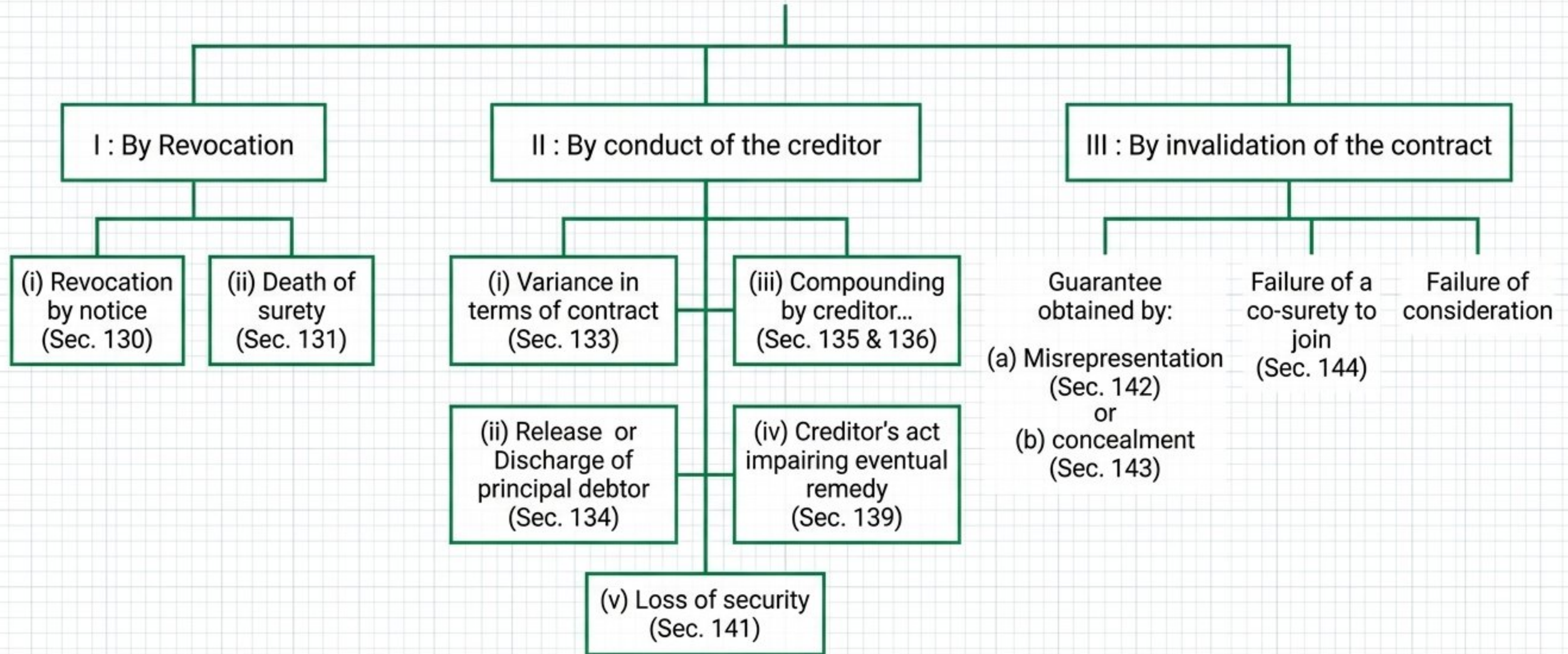


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Co-sureties who are bound for different sums (**Sec. 147**). Liable to pay equally as far as the limits of their respective obligations permit.



DISCHARGE OF SURETY



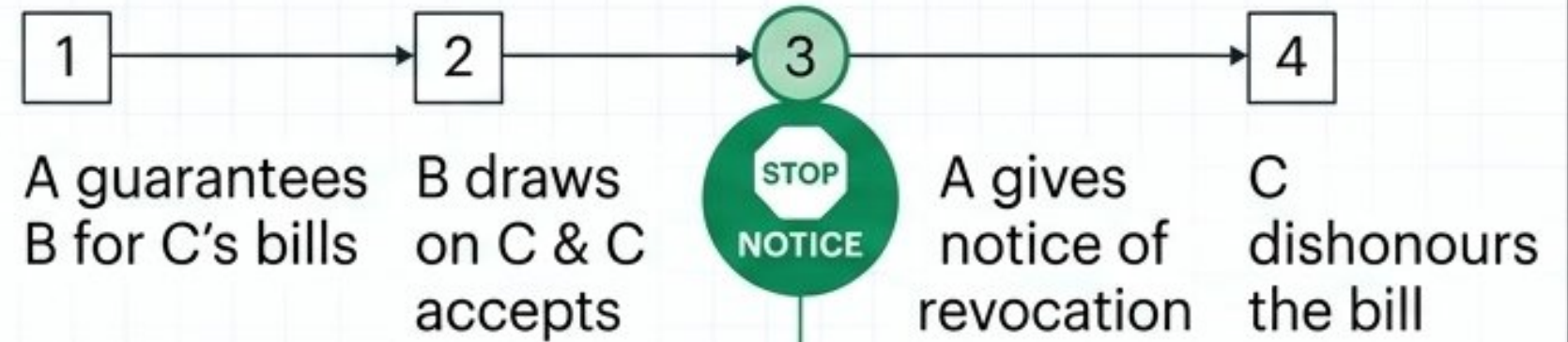
Discharge by revocation

Rule

Notice of revocation (Sec. 130)

A continuing guarantee may at any time be revoked by the surety, as to future transactions, by notice to the creditor.

Example



A is liable upon his guarantee (as transaction occurred before notice).

Death of surety (Sec. 131)

The death of the surety operates, in the absence of any contract to the contrary, as revocation of a continuing guarantee, so far as regards future transactions.

Discharge by conduct of the creditor

Rule

Variance in terms of contract (Sec. 133)

Any variance, made without the surety's consent, in the terms of the contract between the principal debtor and the creditor, discharges the surety as to transactions subsequent to the variance.

Example

A is surety to C for B's conduct as Bank Manager. B and C contract, without A's consent, to raise B's salary and make B liable for 1/4 of losses. Bank loses money. -> A is discharged due to the variance.

Rule

Release or Discharge of Principal Debtor (Sec. 134)

The surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released, or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor.

Discharge by conduct of the creditor

	Compounding by creditor with principal debtor (Sec. 135) A contract between the creditor and the principal debtor, by which the creditor makes a composition with, or promises to give time to, or not to sue, the principal debtor, discharges the surety, unless the surety assents.	
	Creditors act or omission impairing surety's eventual remedy (Sec. 139) If the creditor does any act which is inconsistent with the rights of the surety, or omits to do any act which his duty requires him to do, and the eventual remedy of the surety is impaired, the surety is discharged.	A guarantees M as apprentice to B → B promises to oversee M's cash monthly → B omits this duty → M embezzles → A is NOT liable.
	Loss of security (Sec. 141) If the creditor loses, or without the consent of the surety, parts with security, the surety is discharged to the extent of the value of the security.	

Discharge by invalidation of the contract

Guarantee obtained by misrepresentation (Sec. 142)

Any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid.

Invalidity stems from actively presenting false information to secure the guarantee.

Guarantee obtained by concealment (Sec. 143)

Any guarantee which the creditor has obtained by means of keeping silence as to material circumstances is invalid.

Example Highlight

A engages B. B fails to account properly. A asks B for security. C gives guarantee.  A does not acquaint C with B's previous poor conduct.

Result: The guarantee is invalid due to silence on material facts.

Discharge by invalidation of the contract

Failure of a co-surety to join as a surety (Sec. 144)

Where a person gives guarantee upon a contract that a creditor shall not act upon it until another person has joined in as co-surety, the guarantee is not valid if that other person does not join.

Failure of consideration

A surety will be discharged on the failure of consideration as between the creditor and the principal debtor. Such a failure of consideration must be a substantial one which may operate so as to discharge the surety.

SURETY, WHEN NOT DISCHARGED

Agreement
made with
third person
to give **time**
to principal
debtor
(Sec. 136)

Mere
forbearance
to sue
(Sec. 137)

Release of
one co-surety
(Sec. 138)

SURETY, WHEN NOT DISCHARGED

(Sec. 136 Map)

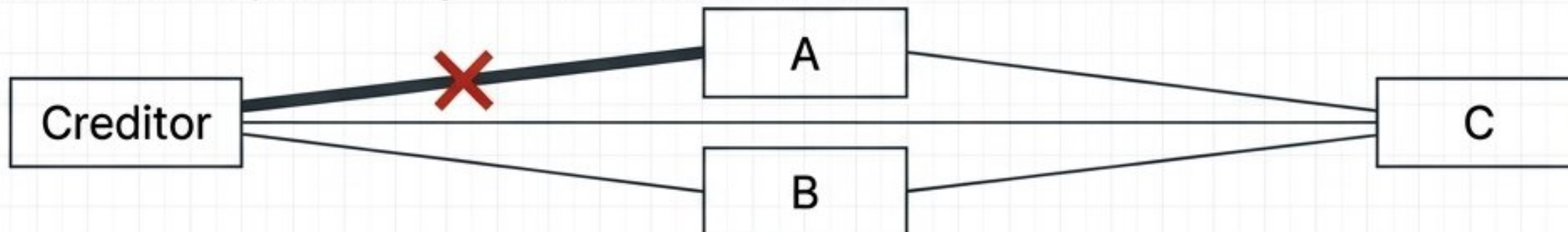
C holds overdue bill drawn by A (surety) & accepted by B → C contracts with M (third person) to give time to B → A is NOT discharged.

(Sec. 137 Map)

B owes C → Debt becomes payable → C merely refrains from suing B for a year → A is NOT discharged.

(Sec. 138 Map)

Release by creditor of one co-surety does not discharge the others, neither does it free the so released from his responsibility to the other sureties.



SUMMARY CHART

INDEMNITY

Contract of indemnity : Definition :

"A promise to save the other from loss to him by the conduct of the promisor himself, or by the conduct of any other person."

Rights of the indemnity - holder :

When sued, the indemnity holder may recover – (a) damages compelled to pay (b) costs in defending and (c) sums paid by way of compromise.

GUARANTEE

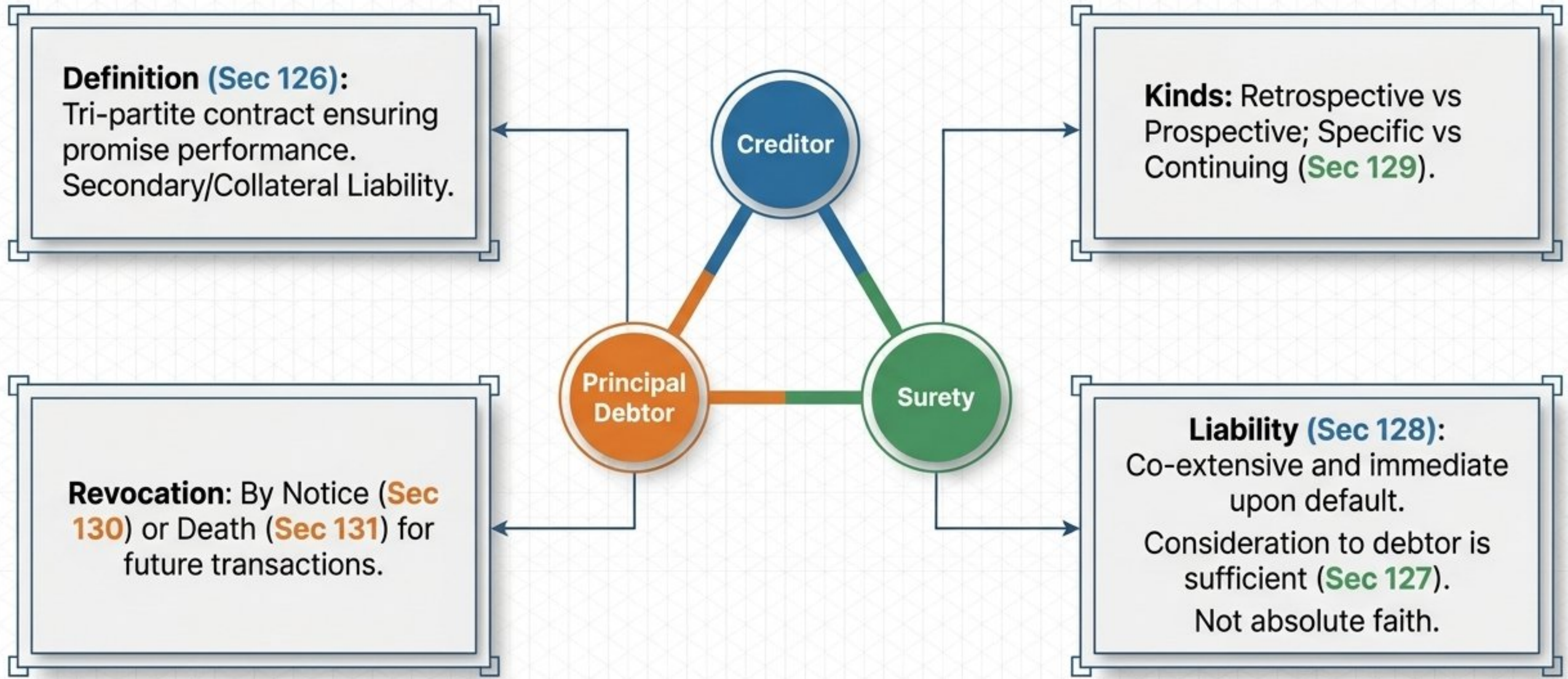
Contract of guarantee : Definition :

A contract to perform the promise or discharge the liability of a third person in case of his default. (S:126)

Purpose :

May be given for : (i) the repayment of a debt, or (ii) the price of goods sold on credit, and (iii) the good conduct or honesty of a person employed.

SUMMARY CHART



NATURE OF SURETY'S LIABILITY



The surety's liability
co-extensive (Sec. 128)

The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract.

- Liability arises immediately upon default of the principal debtor.
- The creditor is not bound to exhaust all remedies against the principal debtor before suing the surety.



BAILMENT

INTRODUCTION

Governed by Sections 148 to 181 of the Indian Contract Act.



Hand over goods for a special purpose



Purpose is carried out



Return the goods

EXAMPLES



Gold given to a goldsmith



Cloth given to a tailor



Motor car given to a garage

DEFINITION OF BAILMENT

Derived from the French word 'bailleur' which means 'to deliver'.

Indian definition [Section 148]: A bailment is the delivery of goods by 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.



EXAMPLES



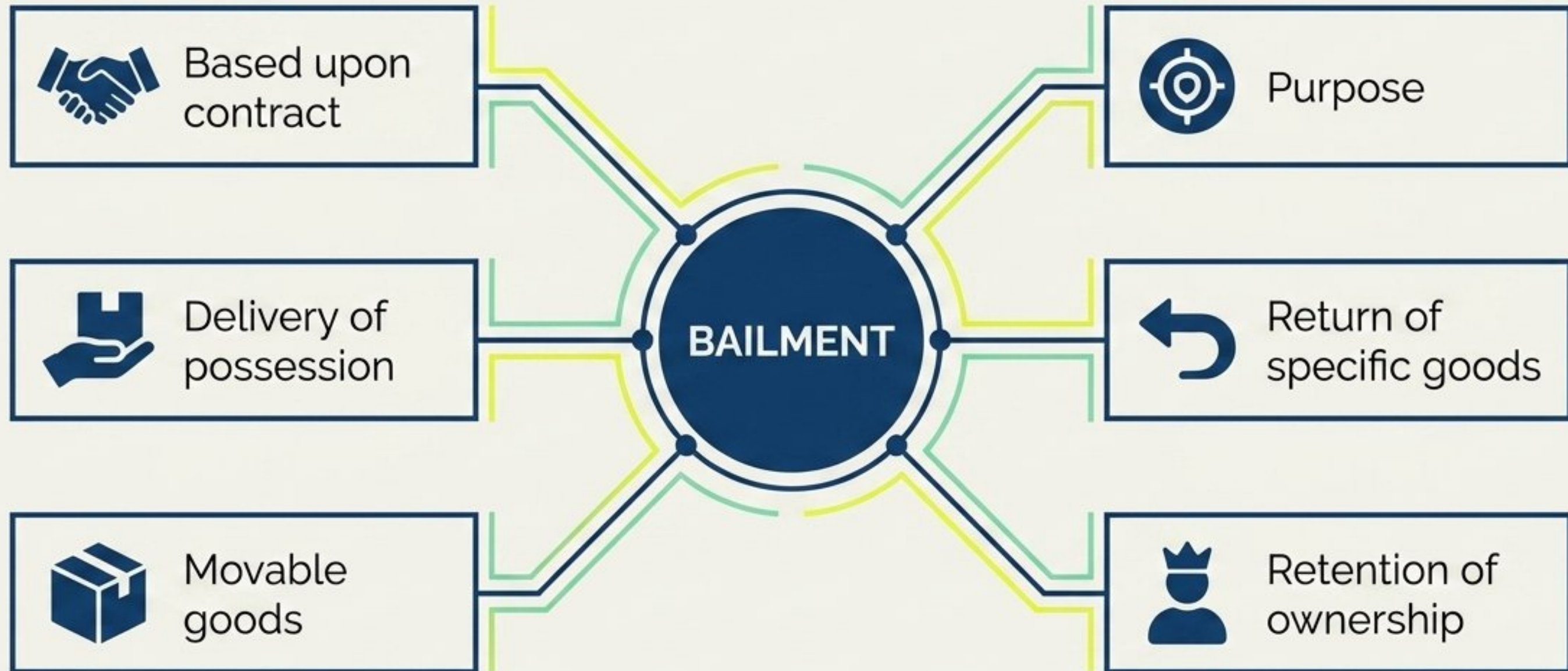
A delivers the radio to B for certain repairs.



A gives certain gold to B for making certain ornaments.

In both illustrations, A is the bailor and B is the bailee.

CHARACTERISTIC FEATURES OF BAILMENT



Based upon contract



Express Agreement



Normally created by agreement between the bailor and the bailee.

Implied by Law



In exceptional circumstances, the bailment is implied by law (e.g., finder of goods).

Delivery of possession

A bailment necessarily involves delivery of possession of goods (actual or constructive).

Possession vs. Mere Presence



The mere leaving of a box containing jewels in a room under the supervision of the owner, where the keys were taken away, is not sufficient to constitute delivery.

Movable goods / Purpose

Movable goods

Only 'goods' i.e. movable can be bailed.

✓		Goods
✗		Money
✗		Immovable Property (Land or building)

Purpose

Goods must be delivered for a specific purpose.



Lent



Hired



Deposited for safe custody



Security of debts

Return of specific goods

As soon as purpose is accomplished, goods shall be returned or disposed of according to directions.

Bank Deposit = NOT Bailment



- Relationship between customer and banker is that of creditor and debtor.
- The bank is not bound to return the specific same notes.

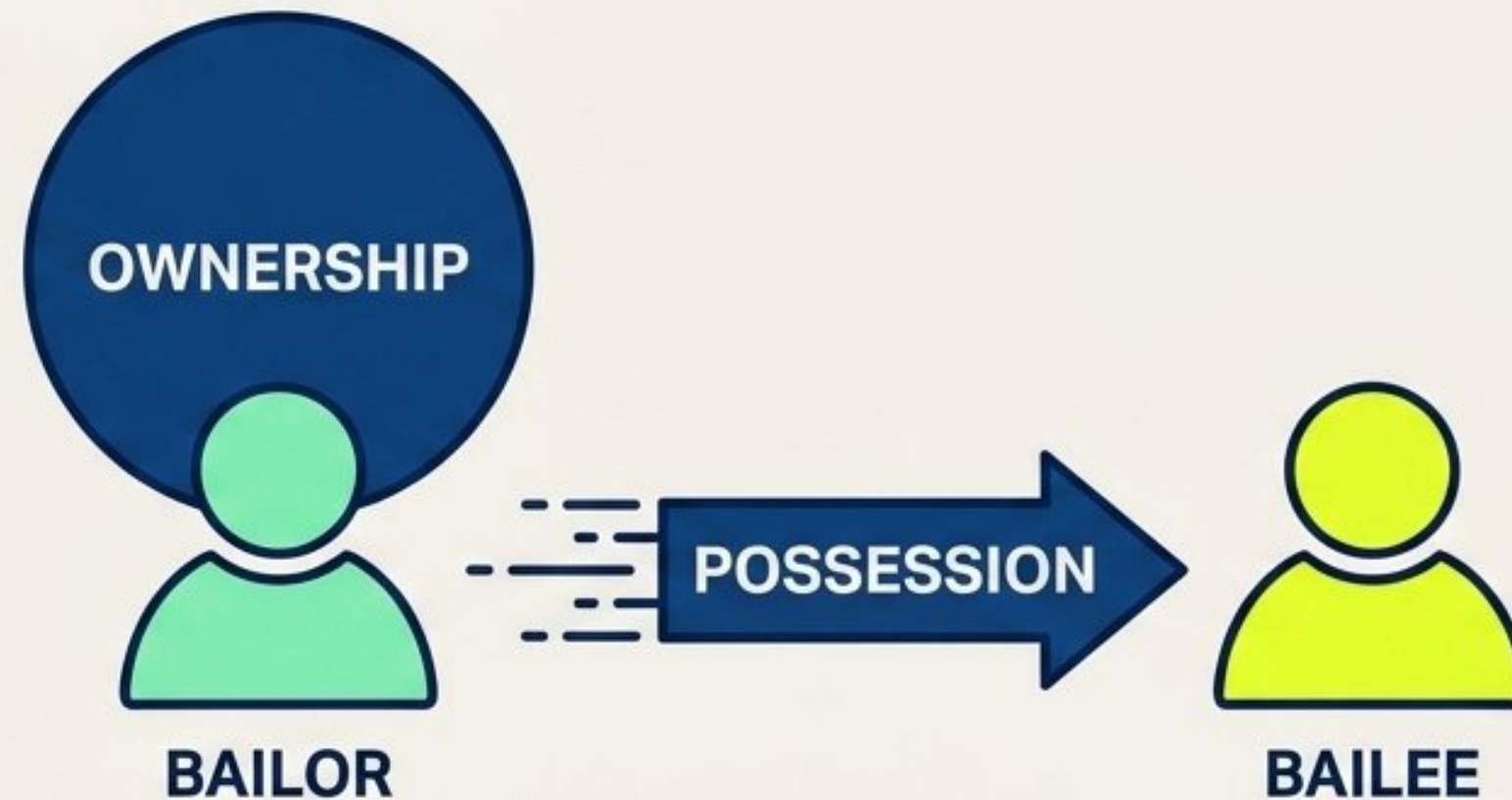
Bank Locker = NOT Bailment



Effective control (possession) is not given to the Bank because the keys of the locker are with the customer.

Retention of ownership

Bailor continues to be the owner of the goods. There is a transfer of possession from bailor to bailee, but not ownership.



Consideration:

The detriment suffered by the bailor in parting with the possession of the goods is sufficient consideration to support a contract of bailment.

CLASSIFICATION OF BAILMENT

Bailments may be classified into:



**Gratuitous
Bailment**



**Non-gratuitous
Bailment**

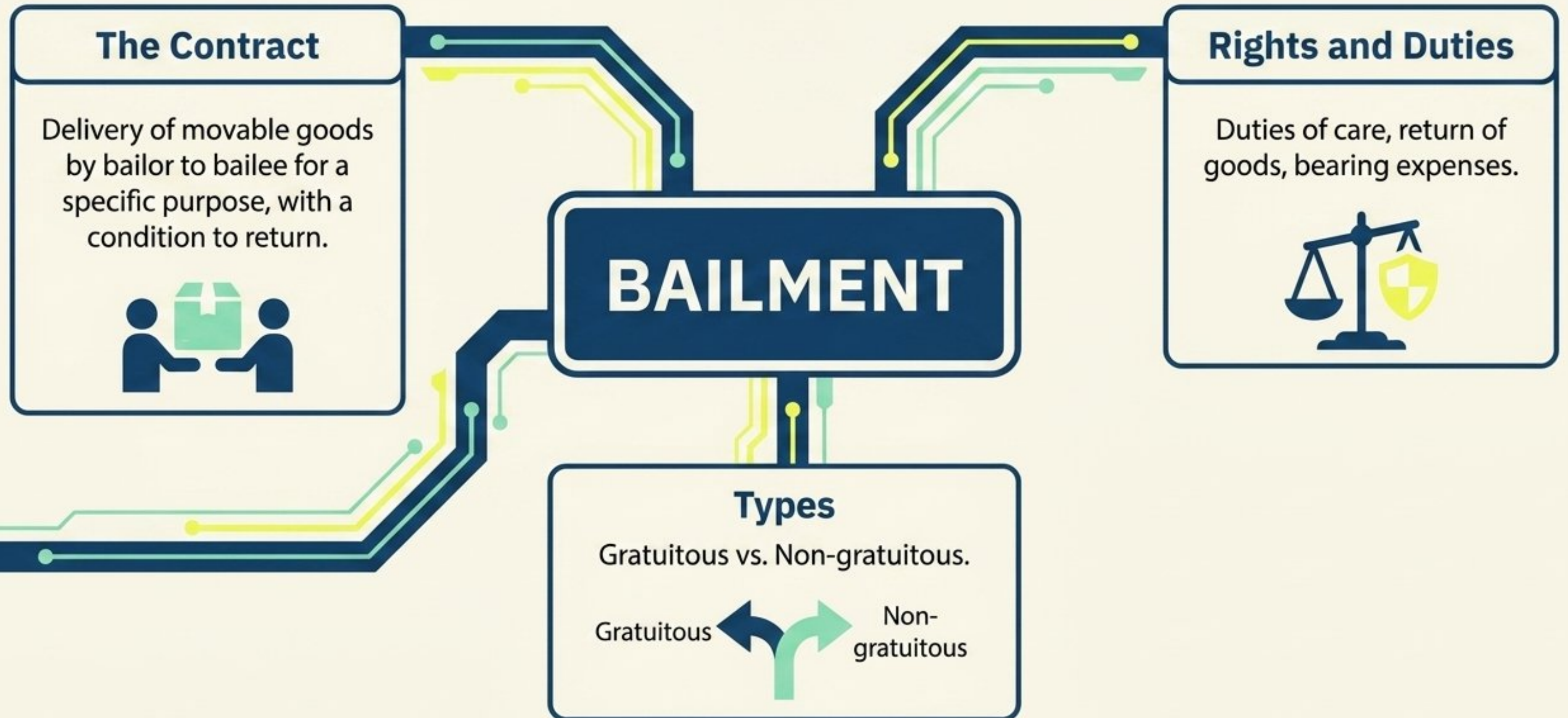
Distinction

Aspect	Gratuitous Bailment	Non-gratuitous Bailment
1. Consideration	No consideration is necessary	Consideration is essential
2. Benefit	Exclusive benefit either to the bailor or bailee	For the mutual benefit of both
3. Unknown defects	Bailor is not liable for those defects in the goods, not known to him	Liable for all defects—whether known to the bailor or not

Distinction

Aspect	Gratuitous Bailment	Non-gratuitous Bailment
4. Expenses	Bailor must repay to bailee, all necessary expenses	Bailor must repay only extra-ordinary expenses
5. Time-limit	It can be terminated before the specified before the specified time	It cannot be terminated before the specified time
6. Death of the party	It is terminated by the death of either bailor or bailee	It is not so terminated

SUMMARY CHART



RIGHTS & DUTIES OF BAILOR & BAILEE

(A) DUTIES OF
THE BAILEE



(B) DUTIES OF
THE BAILOR

(A) DUTIES OF THE BAILEE : 1. Duty of taking care :

Rule

- In all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a **man of ordinary prudence** would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed. (Sec. 151)
- The bailee, in the absence of any special contract, is not responsible for the loss, destruction or deterioration of the thing bailed, if he has taken the amount of care of it described in Section 151. (Sec. 152)

Example

- Goods were booked for delivery at dock railway station.
- Kept at jetty at the post instead of keeping them in railway godown.
- Goods were destroyed by fire.
- Railway authorities were held responsible for the loss.

2. Compensation for Unauthorised use of goods :



Rule

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 (Sec 154).

Example

A lends a horse to B for his own riding only. → B allows C, a member of his family, to ride the horse. → C rides with care, but the horse accidentally falls and is injured. → B is liable to make compensation to A for injury done to the horse.

3. Mixture of bailor's goods with bailee's :

(i) Effect of mixture, with bailor's consent :

If the **bailee with the consent of the bailor**, mixes the goods of the bailor with his own goods, the **bailor and the bailee**, shall have an **interest**, in proportion to their respective shares, in the mixture thus produced. (Section : 155)

(ii) Effect of mixture without bailor's consent, when the goods can be separated :

The property in the goods **remains in the parties respectively**; but the bailee is bound to **bear the expenses of separation or division**, and any **damage** arising from the mixture. (Section : 156)

Example :

- A bails 100 bales of cotton marked with a particular mark to B.
- B, without A's consent, mixes the 100 bales with other bales of his own bearing a different mark.
- A is entitled to have his 100 bales returned, and B is bound to bear all the expenses incurred in the separation of the bales, and any other incidental damage.

3. Mixture of bailor's goods with bailee's : (continued)



(iii) Effect of mixtures without bailor's consent, when the goods cannot be separated :

If the bailee, without the consent of the bailor mixes the goods of the bailor with his own goods, in such a manner that it is **impossible** to separate the goods bailed from the other goods and deliver them back, the bailor is entitled to be compensated by the bailee for the loss of the goods. (Section : 157)

Example

- A bails a barrel of Cape flour worth Rs. 45 to B.
- Without A's consent, B mixes the flour with country flour of his own, worth only Rs. 25 a barrel.
- B must compensate A for the loss of his flour.

4. Duty of returning goods :

Core Duty

It is duty of the **bailee** to return, or deliver according to the **bailor's direction**, 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. (Sec. 160).

(i) Effect, when not returned :

If, by the default of the **bailee**, the goods are **not returned**, delivered or tendered at the proper time, he is responsible to the **bailor** for any **loss, destruction or deterioration** of the goods from that time (Sec. 161).

Example

- The driver of the van which was carrying the goods, left the van unattended for one hour for lunch.
- The goods, were stolen.
- The carrier has duty viz. to **deliver** the goods or **return** them.
- Damages were awarded.

5. Accretion to the goods bailed :



Rule

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. (Sec. 163).

Example

- A leaves a cow in the custody of B to be taken care of.
- The cow has a calf.
- B is bound to deliver the calf as well as the cow to A.

6. Not to set up an adverse title :



As a rule, bailee is estopped from denying the bailor's title or setting up against the bailor, his own title or the right of a third party.

(B) DUTIES OF THE BAILOR : (1) Duty to disclose fault in goods bailed :

General Duty

The bailor is **bound to disclose** to the bailee faults in the goods bailed, of which **bailor is aware**, and which **materially interfere** with the use of them, or **expose the bailee to extraordinary risks**; and if he does not make such disclosure, he is **responsible for damage** arising to the **bailee** directly from such faults.

Goods Bailed for Hire

If the goods are **bailed for hire**, the bailor is **responsible for such damage, whether he was or was not aware** of existence of such faults in the goods bailed. (Sec. 150).

(1) Duty to disclose fault in goods bailed : Examples

Example 1: Aware of Fault

- A lends a horse, which he knows to be vicious, (violent) to B.
- He does not disclose the fact that the horse is vicious.
- The horse runs away. B is thrown and injured.
- A is responsible to B for damage sustained.

Example 2: Unaware of Fault (Bailed for Hire)

- A hires a carriage of B.
- The carriage is unsafe, though B is not aware of it, and A is injured.
- B is responsible to A for the injury.

(2) To bear extraordinary expenses of bailment :

Rule

Where, by the **conditions** of the bailment the goods are to be kept or to be carried, or to have work done upon them by bailee for the bailor, and the bailee is to receive no **remuneration**, the bailor shall **repay to the bailee** the **necessary expenses** incurred by him for the purpose of the bailment. (Sec. 158)

Example

- If a horse is lent for a journey, the expenses of feeding the horse (i.e. **ordinary and reasonable expenses**) would be payable by the bailee.
- But, if the horse becomes sick and the expenses have to be incurred or if the horse is stolen and the expenses are incurred for recovery (i.e. for **extraordinary expenses** by the bailee), the bailor should pay those expenses.

(3) To indemnify the Bailee :



Rule

The **bailor is responsible to the bailee for any loss which the bailee may sustain by reason that the bailor was not entitled to make the bailment, or to receive back the goods, or to give directions respecting them.** (Sec. 164).

Example

- A gives B's car to C for the use without B's knowledge or permission.
- B sues C and receives compensation.
- C is entitled to recover his losses from A.

Bailee's Rights: Duties of bailor are rights of bailee

Duties of
Bailor

Rights of
Bailee

The **liabilities** or duties of the bailor are the bailee's rights and the **bailee can enforce** such rights by suit.

Bailee's Rights: Delivery and Title



Bailment by several joint owners (Sec. 165)

If several joint owners of goods bail them, the bailee may deliver them back to, or according to the directions of, one joint owner without the consent of all, in the absence of any agreement to the contrary.



Delivery of goods to bailor without title (Sec. 166)

If the bailor has no title to the goods, and the bailee in good faith, delivers them back to, or according to the directions of, the bailor, the bailee is not responsible to the owner in respect of such delivery.

Bailee's Rights: Bailee's Lien (Sec. 170)



The bailee has a right to retain such goods until he receives due remuneration for the services he has rendered in respect of them.

Bailor's Rights: Duties of bailee are rights of bailor

Liabilities or duties of Bailee	Rights of Bailor
Duty to take reasonable care	Right to claim damages for negligence
Duty not to make unauthorized use of bailed goods	Right to terminate bailment for unauthorized use
Duty to return goods	Right to receive back goods
Duty to return increase or profit	Right to receive increase or profit

The liabilities or duties of the bailee are the rights of bailor and the bailor can enforce such rights by suit.

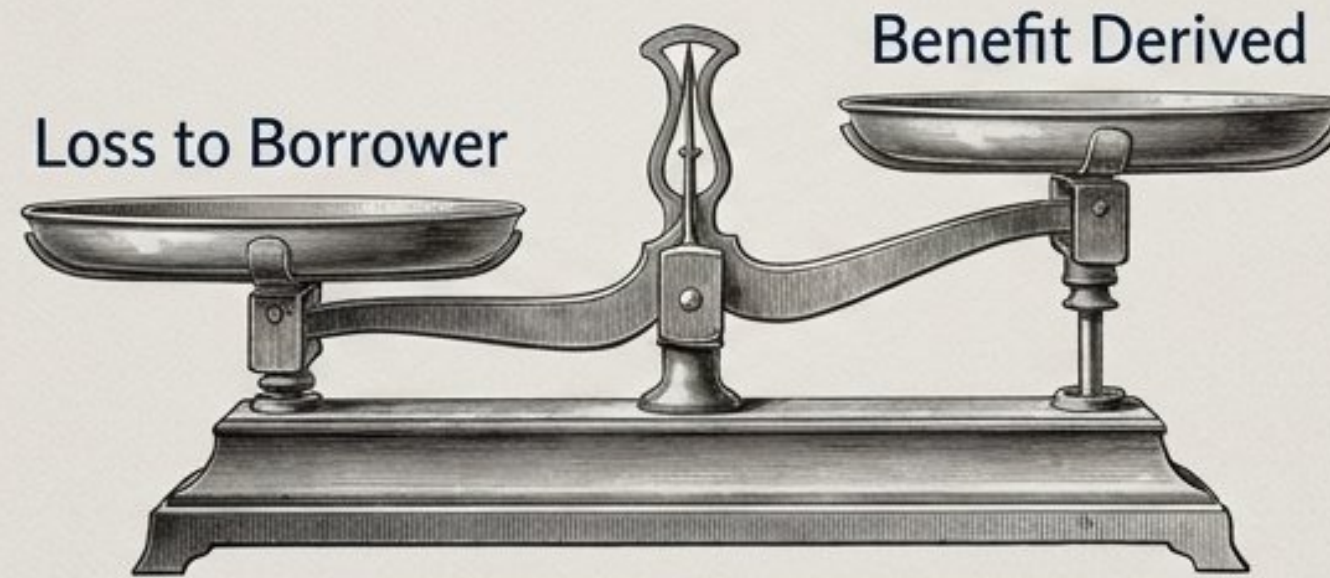
Bailor's Rights: Act inconsistent with conditions (Sec. 153)

A contract of bailment is voidable at the option of the bailor, if the bailee does any act with regard to the goods bailed, inconsistent with the conditions of the bailment.

Example: A lets to B for hire a horse for his own riding only. B drives the horse in his carriage. This is, at the option of A, a termination of the bailment.

Bailor's Rights: Restoration of goods lent gratuitously (Sec. 159)

The lender of a thing for use may at any time require its return, if the loan was gratuitous, even though he lent it for a specified time or purpose.



But if, on the faith of such loan, the borrower has acted in such a manner that the return of the thing lent before the time agreed upon would cause him loss exceeding the benefit actually derived by him from the loan, the lender must indemnify the borrower for the amount in which the loss so occasioned exceeds the benefit so derived.

Law Relating to Lien: What is Lien?

“The **right** of one to retain that which is in his possession, belonging to another till certain demands of him, the **person in possession, are satisfied.**”
(Hammond Vs. Barclay)

[Possession] + [Rightful] + [Continuous] = Valid Lien

Example: A company agreed to garage motor for H for an annual charge. H could take the car as she liked. The company tried to detain the car for arrears.

Held: Company had no lien because possession was not continuous.

Types of Lien: Particular Lien (Sec. 170)



When the bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill in respect of the goods bailed, he has, in the absence of a contract to the contrary, a right to retain such goods until he receives due remuneration for the services he has rendered in respect of them.

Example: A delivers a rough diamond to B, a jeweller, to be cut and polished. B is entitled to retain the stone till he is paid for the services rendered.

Particular Lien: Limitations (Part 1)



(i) The bailee must have acted in accordance with the purpose of the bailment.

Example: A bailee undertook repair to a musical instrument for a fixed sum. He claimed a lien not in respect of that sum, but for some other repair work *done to the instrument*. Court held: No lien for the unauthorized work.



(ii) The service rendered by the bailee is one involving the exercise of labour or skill in respect of goods bailed.



(iii) It cannot be exercised until the service has been performed in full.

Particular Lien: Limitations (Part 2) & Other Liens



(iv) There must be no contract to the contrary.



(v) If possession is lost for any reason the lien is also lost.



(vi) The right is only to retain the particular goods. The right does not extend to a right to sell the goods.

Statutory Index

Other particular liens:

- Finder of goods (Sec. 168)
- Bailee's lien (Sec. 170)
- Pawnee's lien (Sec. 173)
- Agent's lien (Sec. 221)
- Unpaid seller's lien (Sec. 47, Sale of Goods Act)
- A partner's lien (Sec. 52 of the Partnership Act)

Types of Lien: General Lien (Sec. 171)

Bankers, factors, wharfingers, attorneys of a High Court, and policy-brokers may retain any goods bailed to them as a security for a general balance of account.

No other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to that effect.



Banker



Factor



Wharfinger



Attorney



Policy-broker

Distinction between Particular Lien and General Lien

Aspect	Particular Lien	General Lien
1. Availability of right	The right is available to the bailee only against those goods bailed to him in respect of which skill or labour have been employed by him.	This is a right available to a bailee to detain any goods bailed to him for any amount due to him in respect of those goods or any other goods in his possession.
2. Purpose	This is a right to retain the goods only for a charge for labour or expenses incurred upon the goods.	The right of general lien can be exercised by the bailee against the bailor for a general balance of account which must include only lawful claims.
3. Against whom	This right is available to all bailees for charges against the goods in their possession in respect of which some labour or skill have been employed.	This right is available only to a certain class of persons e.g. Bankers, Factors, Wharfingers etc.

Loss of Lien

A lien is extinguished in the following ways:

(1) By abandonment or waiver.

(2) By payment or tender of the amount due.

(3) By loss or surrender of possession of the goods.

(4) By agreement of the parties.



**FINDER OF GOODS ;
SUITS BY BAILEES OR
BAILORS AGAINST
WRONG-DOERS**

8. FINDER OF GOODS

(1) Meaning :

Section 71 of the Act clearly lays down that "A person who finds goods belonging to another and takes them into his custody, is subject to the same responsibility as a bailee."

But...

But strictly speaking, he is not a bailee. For, although he acquire possession of the 'thing' there is no specific delivery and mandate by the owner, which are two essentials in a bailment.

(3) Obligations (Responsibilities / Liabilities) :

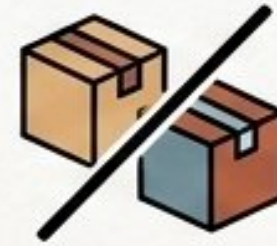
A finder of goods is subject to the same responsibilities as a bailee. His obligations thus, are as follows :



(1) He must take reasonable care of goods. In spite of this care, if the goods are destroyed, he is not responsible for any loss.



(2) He must not use the goods for his own purpose.



(3) He must not mix them up with his own goods.



(4) He must try to find out the true owner of the goods. If he fails to do so he shall be liable as trespasser.



(5) Ordinarily the finder, being a bailee in respect of the goods found, has no power to sell them; for it will be an act of conversion.

(2) Rights :



Compensation & Lien

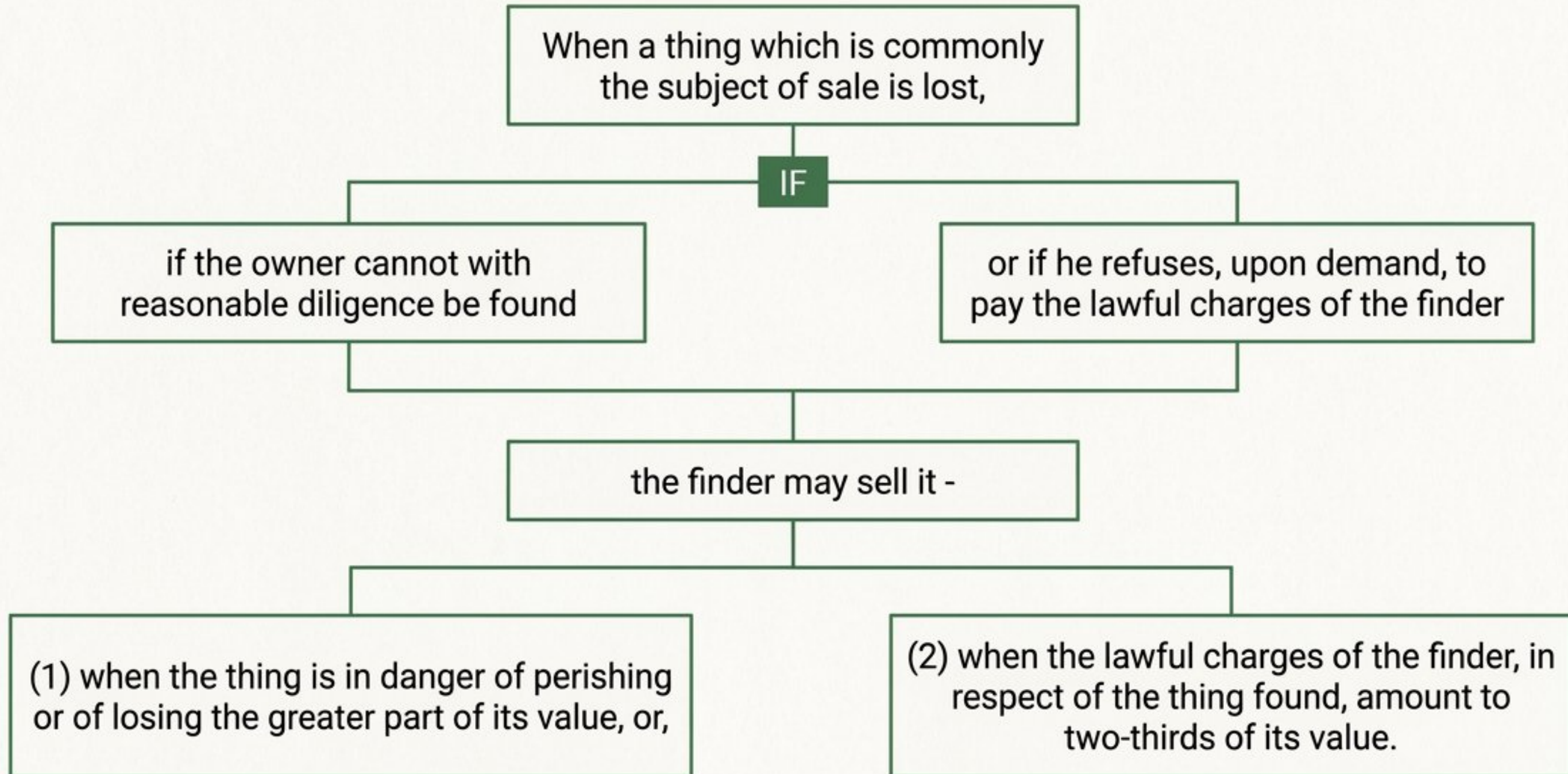
"The finder of goods has no right to sue the owner for compensation for trouble and expenses voluntarily incurred by him to preserve the goods and to find out the owner; but he may retain the goods against the owner until he receives such compensation;" (Sec. 168).



Specific Reward

and where the owner has offered a specific reward for the return of goods lost, the finder may sue for such reward, and may retain the goods until he receives it.

Right of finder of goods to sell (Sec. 169)



The right of finder of goods according to previous sections may be summarised thus :

1

1. Possession : He is entitled to possession against everybody except the true owner.

2

2. Compensation : He is entitled to be compensated for the trouble and expenses incurred by him to preserve the goods and to find out the owner.

The right of finder of goods according to previous sections may be summarised thus :

3

3. Lien : He has a lien upon the goods for the payment of these sums. i.e., he can refuse to return the goods until they are paid for.

4

4. Reward : He cannot file a suit for the expenses he has incurred though the finder can sue for any specific reward which the owner has offered for the return of the goods.

The right of finder of goods according to previous sections may be summarised thus :

5. Sale : Under the circumstances and conditions described in this section, the finder is authorised to sell the goods.

Conditions are :

(i) If the goods found are commonly the subject-matter of the sale, and

(ii) If the owner cannot with reasonable diligence be found or if he refuses to pay the lawful charges of the finder, the goods can be sold, and

(iii)

(a) When the thing is in danger of perishing or losing the greater part of its value, or

(b) When the lawful charges of the finder in respect of the thing found amount to two-thirds of its value.

9. SUITS BY BAILEES OR BAILORS AGAINST WRONG-DOERS

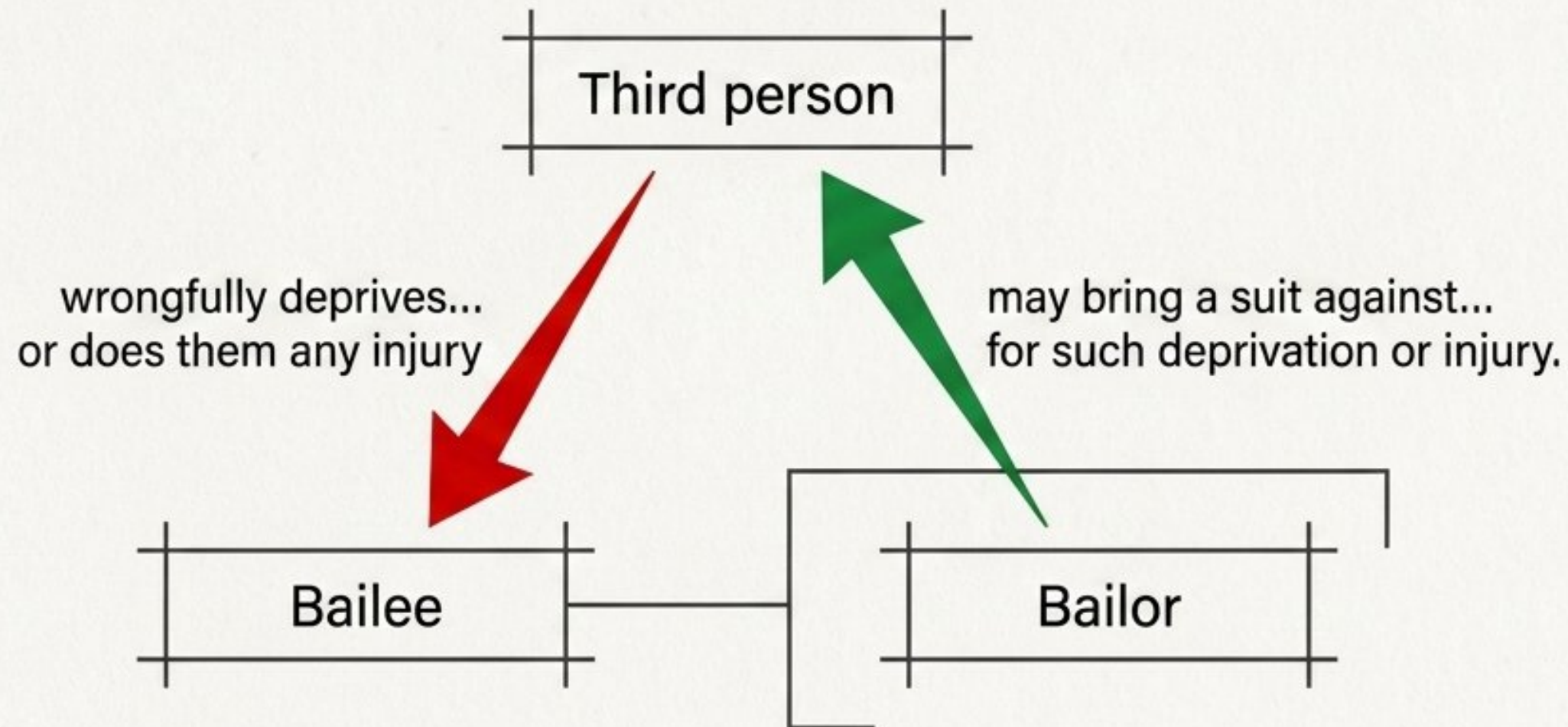
(1) Right to interplead :

"If a person, other than the bailor, claims goods bailed he may apply to the Court to stop the delivery of the goods to the bailor, and to decide the title to the goods." (Sec. 167).



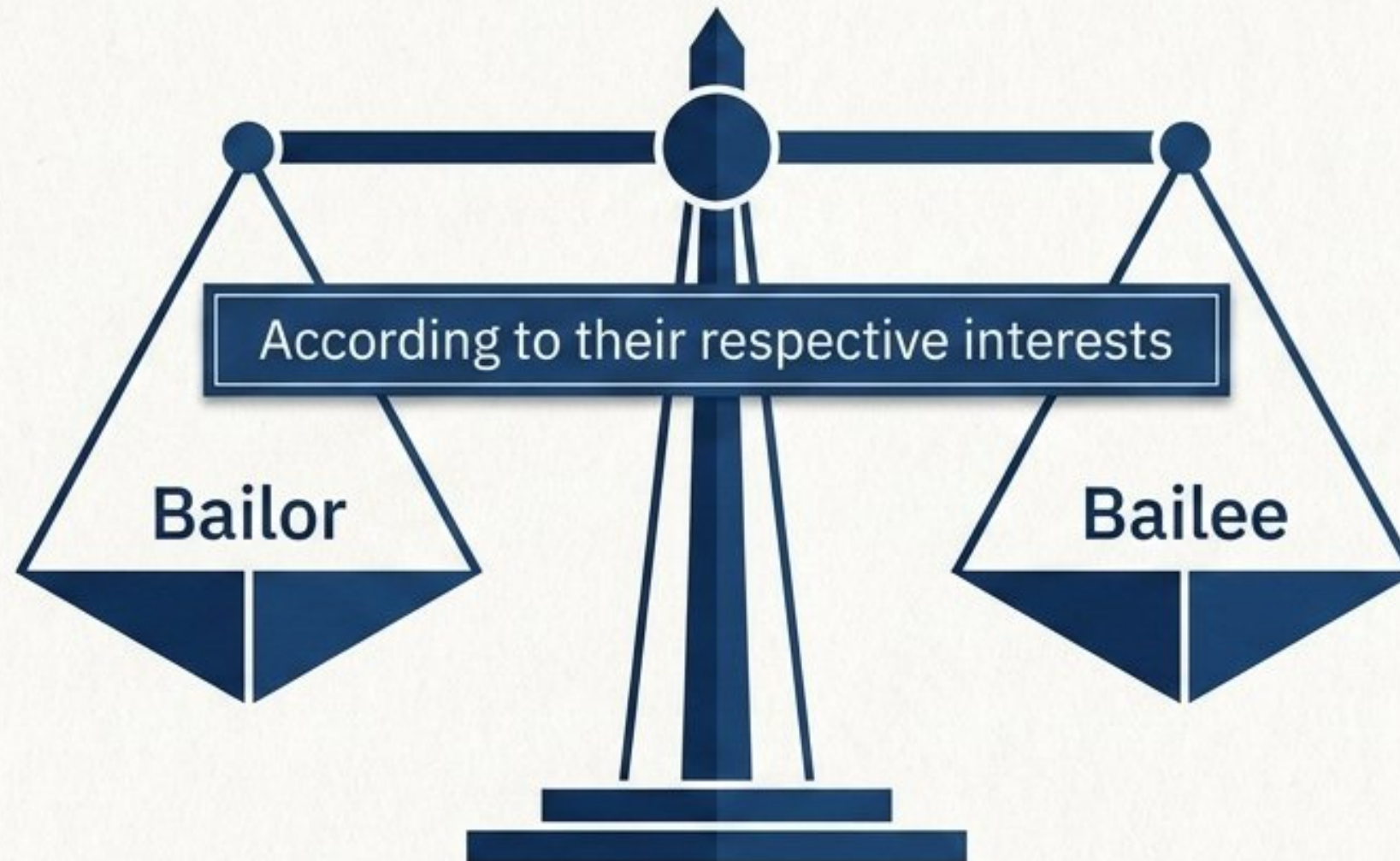
(2) Suits by bailors against wrong-doers :

"If a third person wrongfully deprives the bailee of the use or possession of the goods bailed, or does them any injury, the bailee is entitled to use such remedies as the owner might have used in the like case if no bailment had been made; and either the bailor or the bailee may bring a suit against a third person for such deprivation or injury." (Sec. 180).



(3) Apportionment of relief or compensation

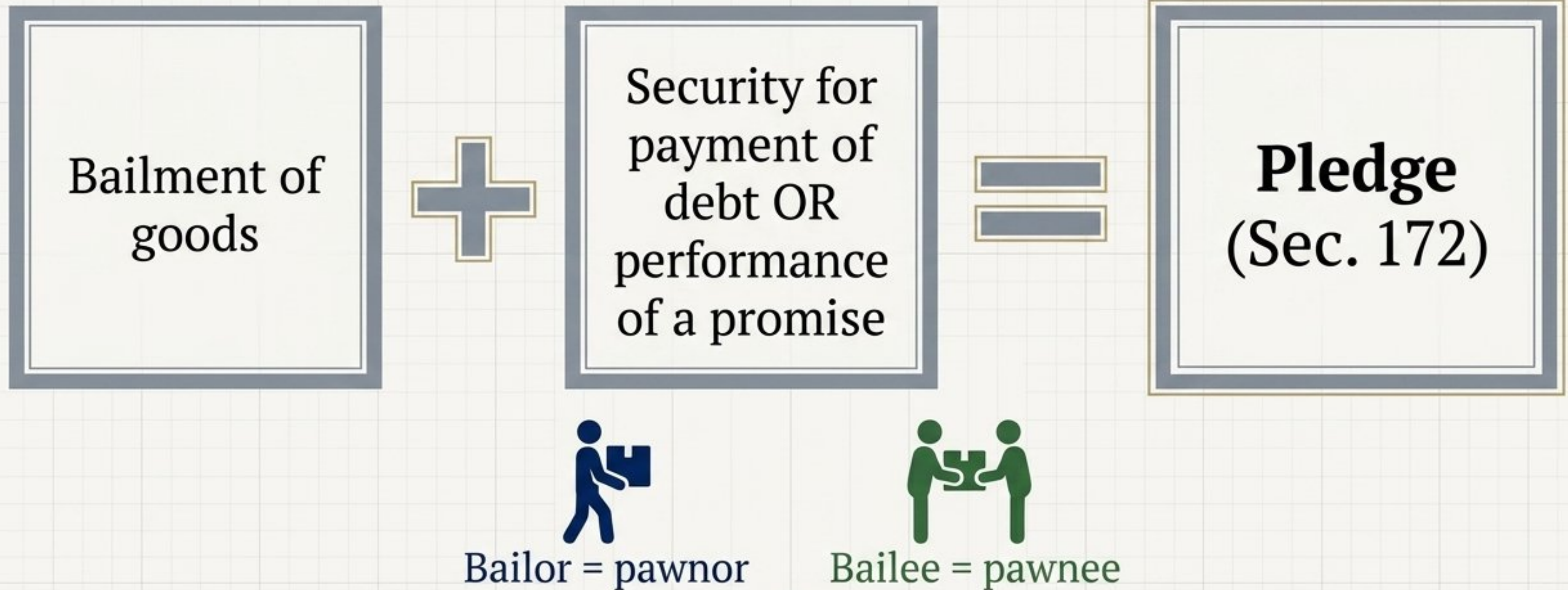
"Whatever is obtained by way of relief or compensation in any such suit shall, as between the bailor and the bailee, be dealt with according to their respective interests." (Sec. 181).





10. PLEDGE :

10. PLEDGE :



It is a special kind of bailment, i.e. a pledge is one species of bailment.

The Blueprint of Law

(1) Definition :

The bailment of goods as security for payment of a debt or performance of a promise is called 'pledge'. (Sec. 172)



Ingredients :

(1)

It is a special kind of bailment, i.e. a pledge is one species of bailment.



(2)

It is a bailment of goods as a security:

- ✓ (a) for the payment of a debt, or
- ✓ (b) for the performance of a promise.

Ingredients :

(3) There must be actual delivery of goods. A mere licence to take possession or an agreement to give possession will not constitute a pledge.

(4) Delivery of possession, however, may be, actual or constructive.

Goods in
custody of
Railway

Endorsing
Railway Receipt

Pledged in
favour of the
pawnee

Similarity :

As regard similarity between bailment and pledge :



(i) both are created by agreement between the parties,



(ii) both involve transfer of possession of goods.



(iii) both have movable properties as the subject-matter of the contract,



(iv) in both goods are to be returned on the accomplishment of the purpose or the expiry of time.

Distinction :

(a) Pledge and Bailment :

Aspect	Pledge	Bailment
1. Purpose	Bailment of goods for a specific purpose -repayment of loan of a debt or performance of a duty	Bailment is for a purpose of any kind
2. User	Pawnee cannot use the goods pledged.	Bailee can use the goods as per the terms of the contract.
3. Right to sell.	Pawnee can sell the goods pledged after giving notice to the pawnor in case of default.	Bailee can either retain the good or sue the bailor for his dues.

Who can make a valid pledge?

The Strict Principle

Only an owner according to the strict principle is able to pledge his goods.



Business Reality



However, to facilitate trade and commerce, under the following circumstances, one who is not an owner of the goods, can make a valid pledge.

1. Mercantile Agent

2. Voidable Contract

3. Limited Interest

4. Post-Sale Possession

5. Co-owners

(1) Mercantile Agent :

(Sec. 178)



With the consent of the owner, in possession of goods or the documents of title to goods.



Acting in the ordinary course of business of a mercantile agent.



The pawnee acts in good faith.



The pawnee has not at the time of the pledge notice that the pawnor has no authority to pledge.

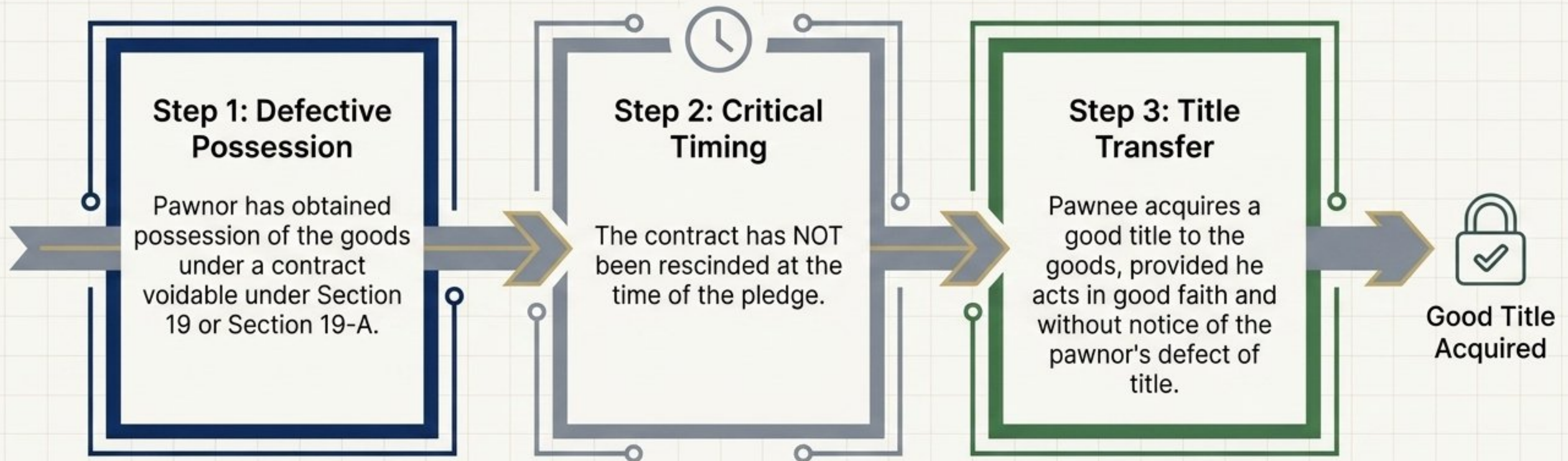


Invalidation Warning

If the plaintiff has notice or want of authority on the part of the mercantile agent and is aware that he is not acting in good faith, then the pledge under these circumstances is invalid.

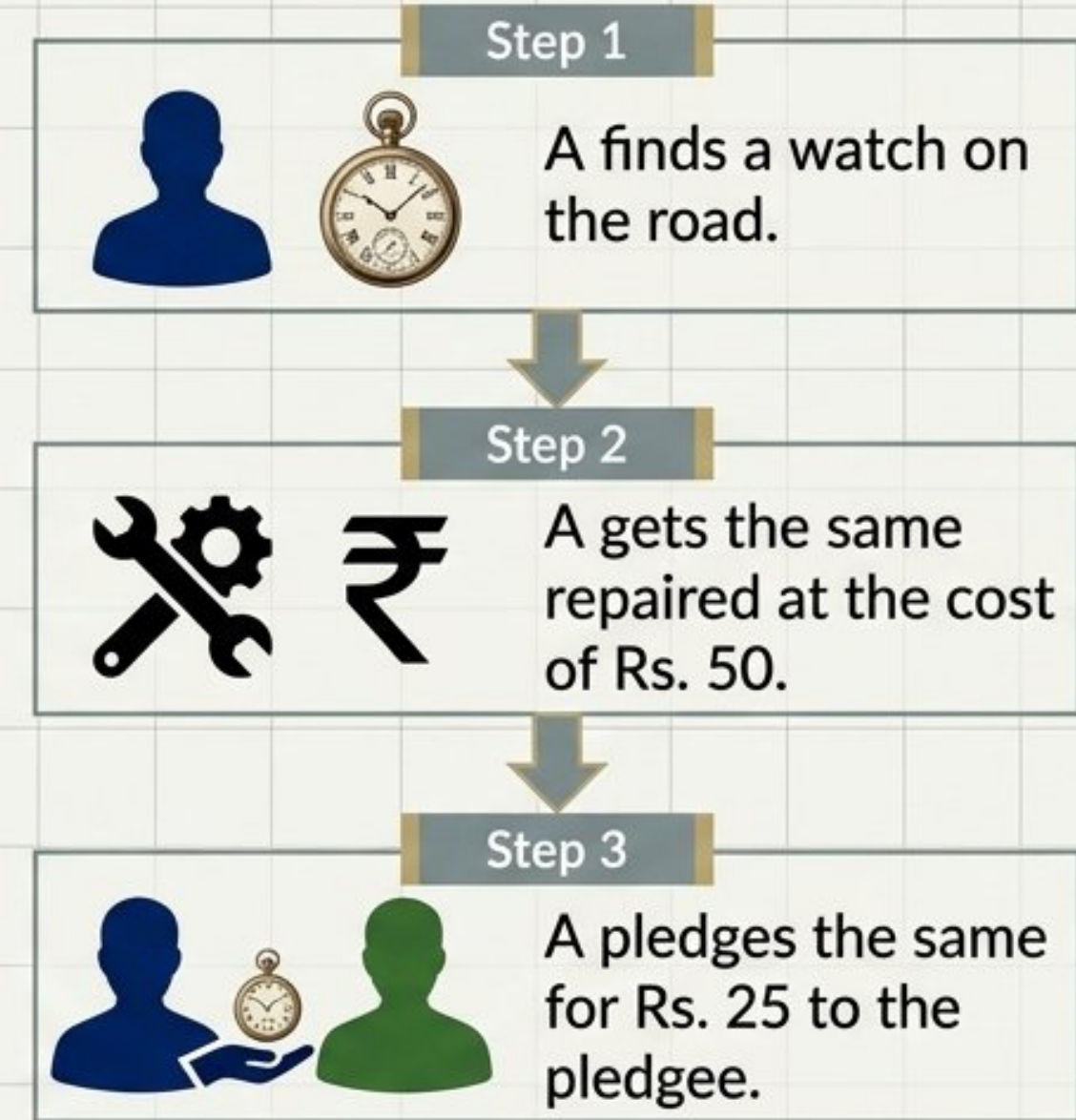
(2) Possession under voidable contract :

(Sec. 178-A)



(3) Pawnor with limited interest :

Where a person pledges goods in which he has only a limited interest, the pledge is valid to the extent of that interest.
(Sec. 179)



Result

The true owner can recover the watch ONLY by paying Rs. 25 to the pledgee.

- (4) Seller or buyer in possession after sale : &
(5) Possession with co-owners :

(Sec. 30 : Sale of Goods Act)

Rule

A seller left in possession of goods after sale *AND* buyer who obtains possession of goods **with consent of the seller**, before sale, can create a valid pledge.

Conditional

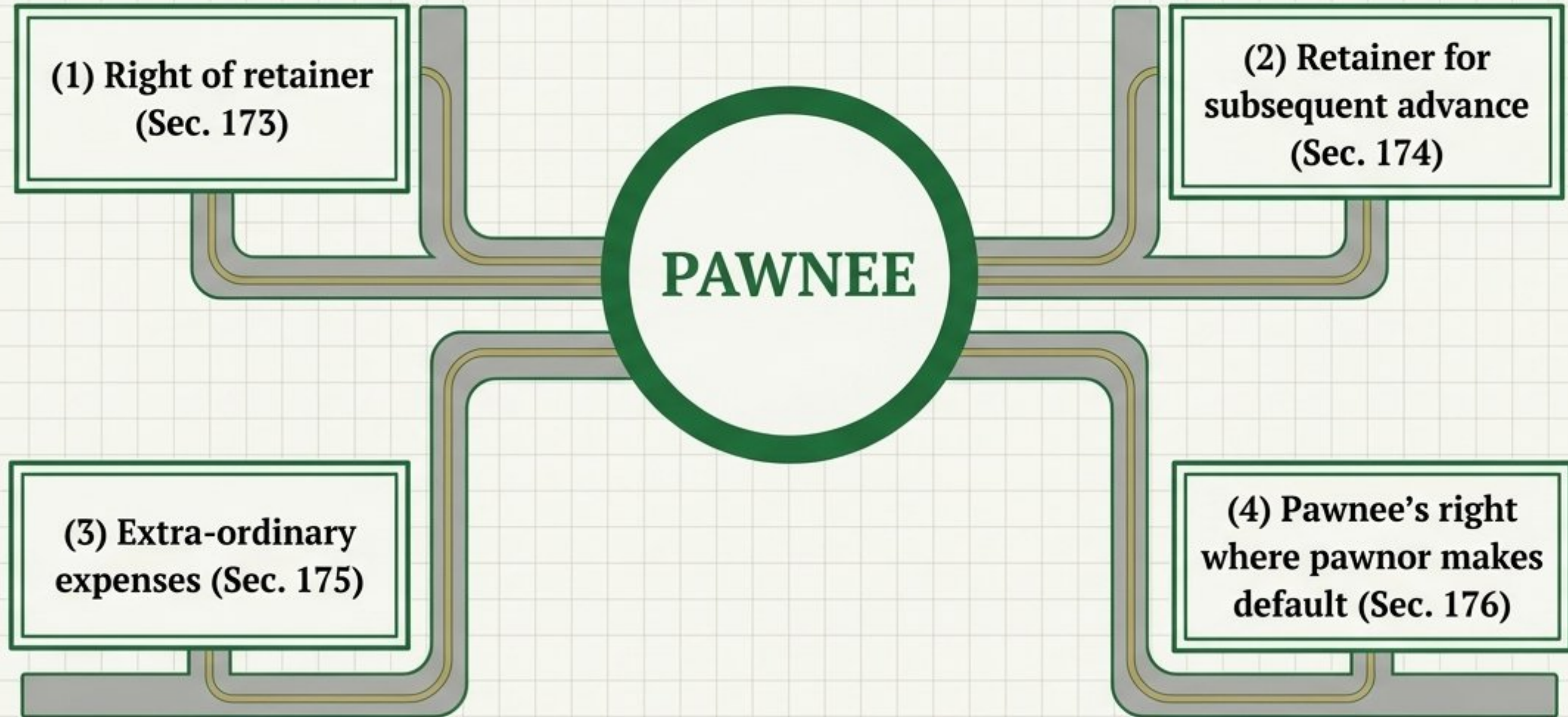
Provided the pawnee acts in good faith and has **no notice of the previous sale** of goods to the buyer or of the lien of the seller over the goods.

(Sec. 28 Sale of Goods Act)

If one of several co-owners is in sole possession of the goods with the consent of the other co-owners, he can make the valid pledge of the goods.



(4) RIGHTS OF PAWNEE :



(1) Right of retainer : & (2) Retainer for subsequent advance :

Right of retainer (Sec. 173)



The Pawnee may retain the goods pledged, not only for payment of the debt or the performance of the promise, but for the interest of the debt, and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged.

Retainer for subsequent advance (Sec. 174)



The pawnee shall not, in the absence of a contract to that effect, retain the goods pledged for any debt or promise other than the debt or promise for which they are pledged; but such contract, in the absence of anything to the contrary, shall be presumed in regard to subsequent advances made by the pawnee.

(3) Extra-ordinary expenses :

The pawnee is entitled to receive from the pawnor extra-ordinary expenses incurred by him for the preservation of the goods pledged.

Necessary Expenses (Sec. 173)



Mechanism: Right of Retainer

Pawnee CAN hold the goods until these expenses are paid.

Extra-ordinary Expenses (Sec. 175)

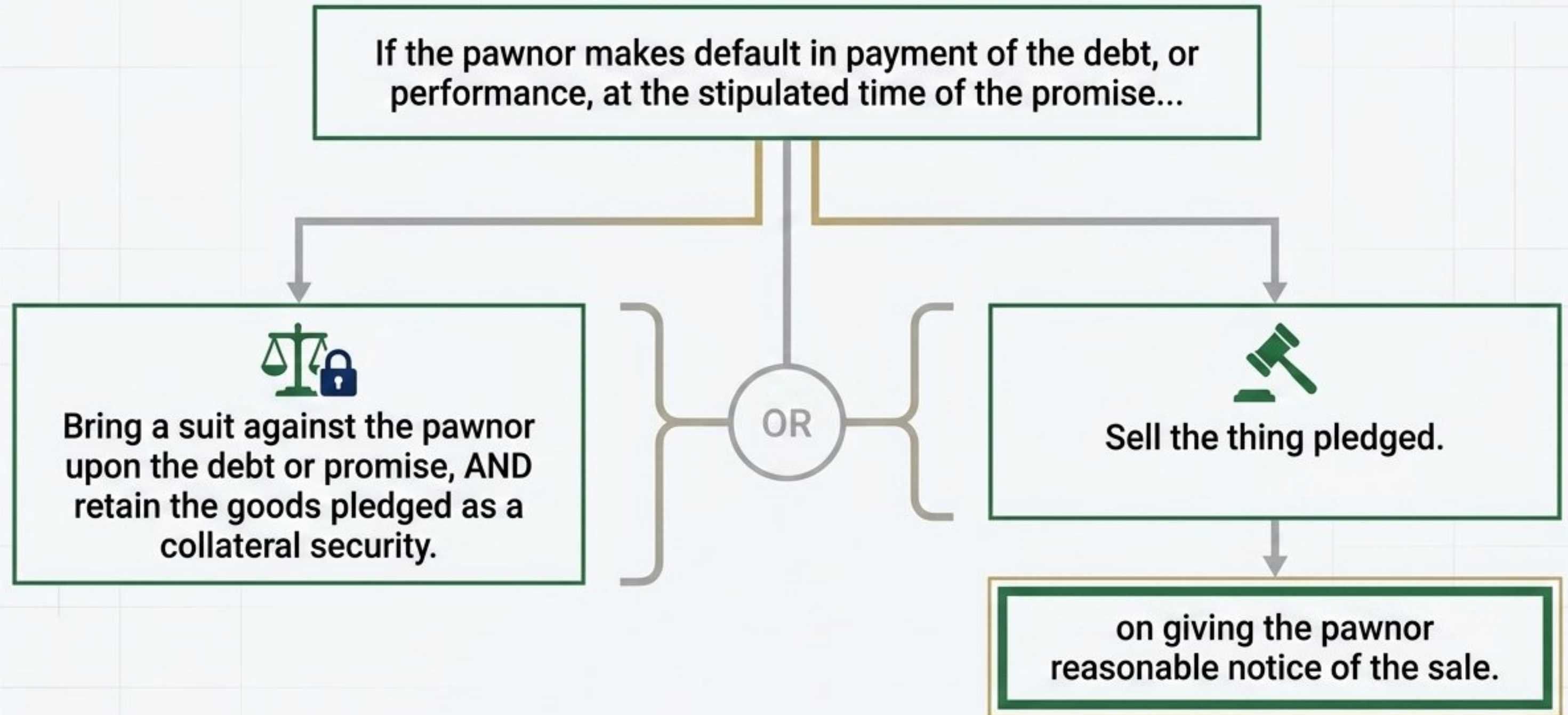


Mechanism: ONLY a Right of Action

Pawnee CANNOT retain the goods, must sue to recover these expenses.

It will be noticed that only a right of action is provided. There is no right of retainer...

(4) Pawnee's right where pawnor makes default :



(4) Pawnee's right where pawnor makes default : (Financial Aftermath)

Scenario 1 - Deficit

[Proceeds Box]

<

[Amount Due Box]

If proceeds of such sale are **less than the amount due** in respect of the debt or promise, the pawnor is still liable to pay the balance.

Scenario 2 - Surplus

[Proceeds Box]

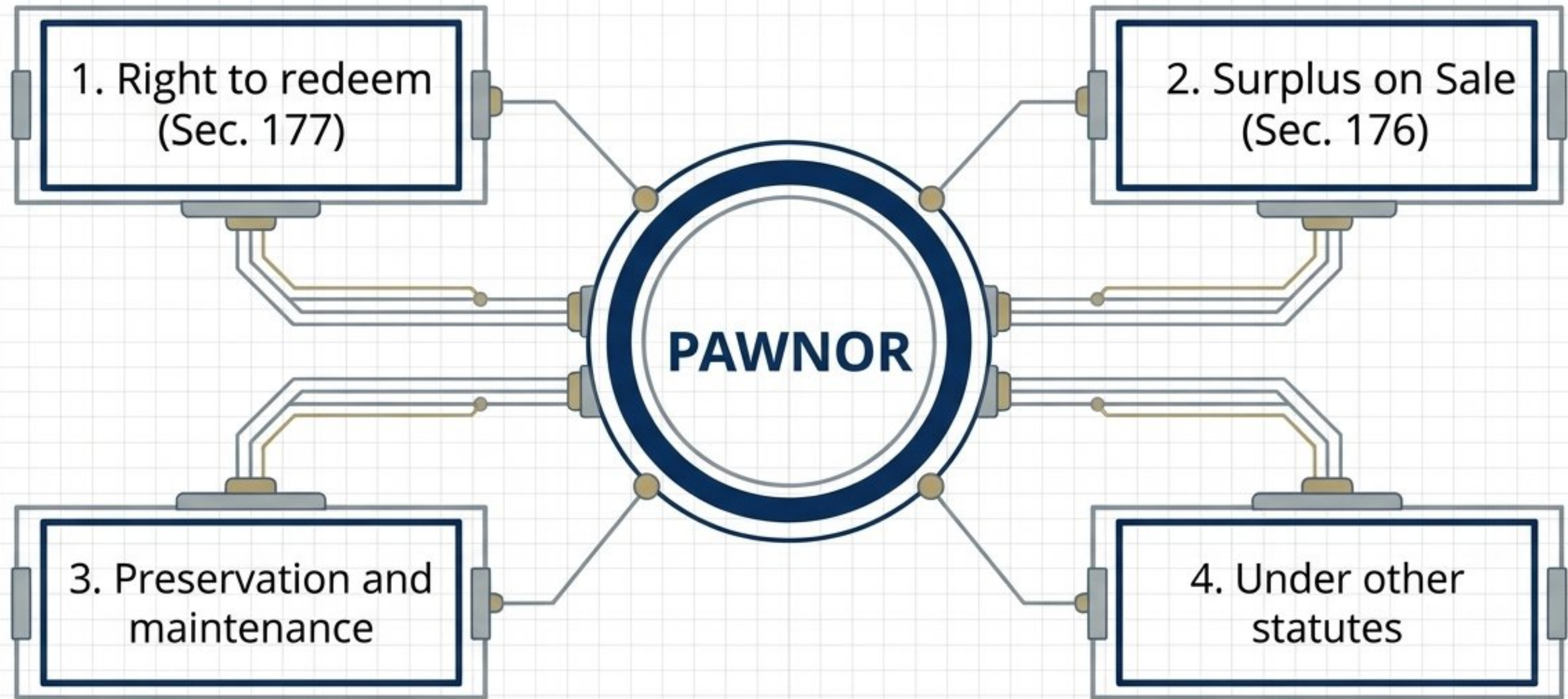
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[Amount Due Box]

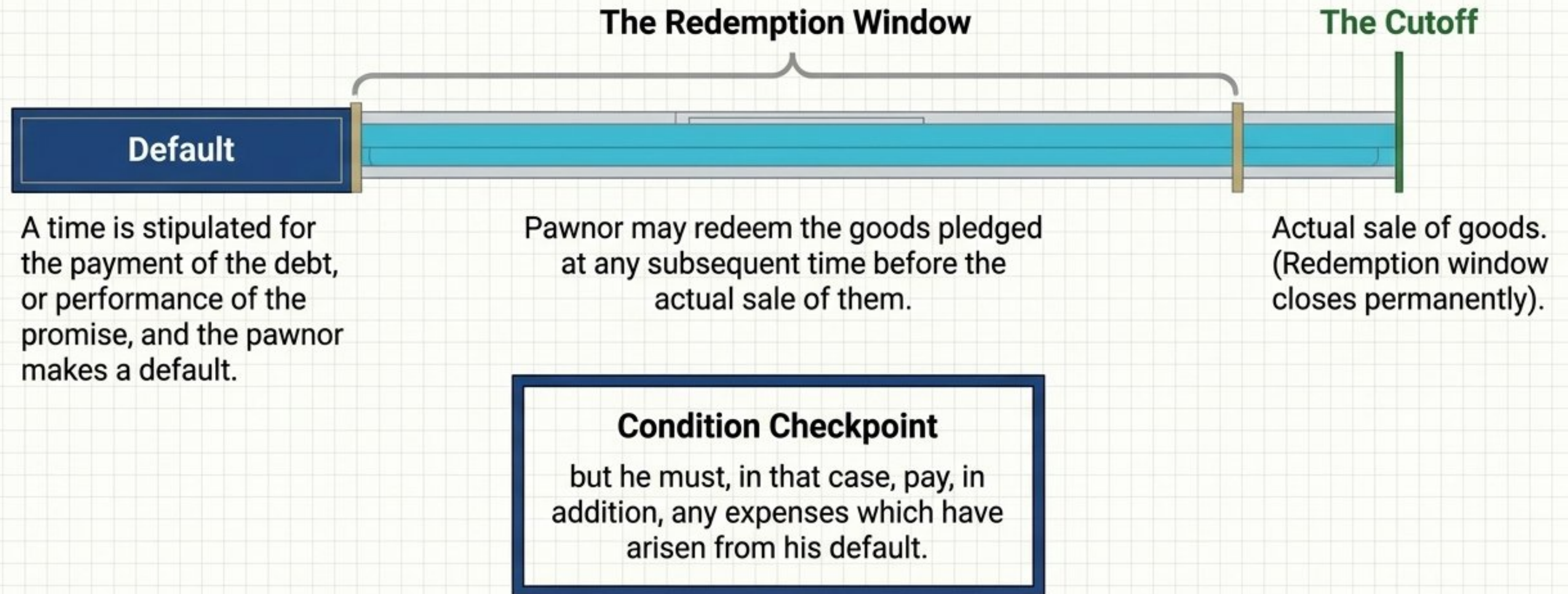
If the proceeds of the sale are **greater** than the amount so due, the pawnee shall pay over the surplus to the pawnor.

Please remember, that the present section provides for a notice before sale. In otherwords, it is a statutory duty and there is no room for the contract to the contrary.

(5) RIGHTS OF PAWNOR :



1. Right to redeem



Surplus on Sale & Preservation and maintenance



Surplus on Sale

In the case of sale of pawned goods, if the proceeds of the sale are greater than the full amount due, the pawnor is entitled to the surplus (Sec. 176).



Preservation and maintenance

Since the pawnee as bailee is bound not to be negligent, in preserving and maintaining the pledged goods, the pawnor can enforce this right.

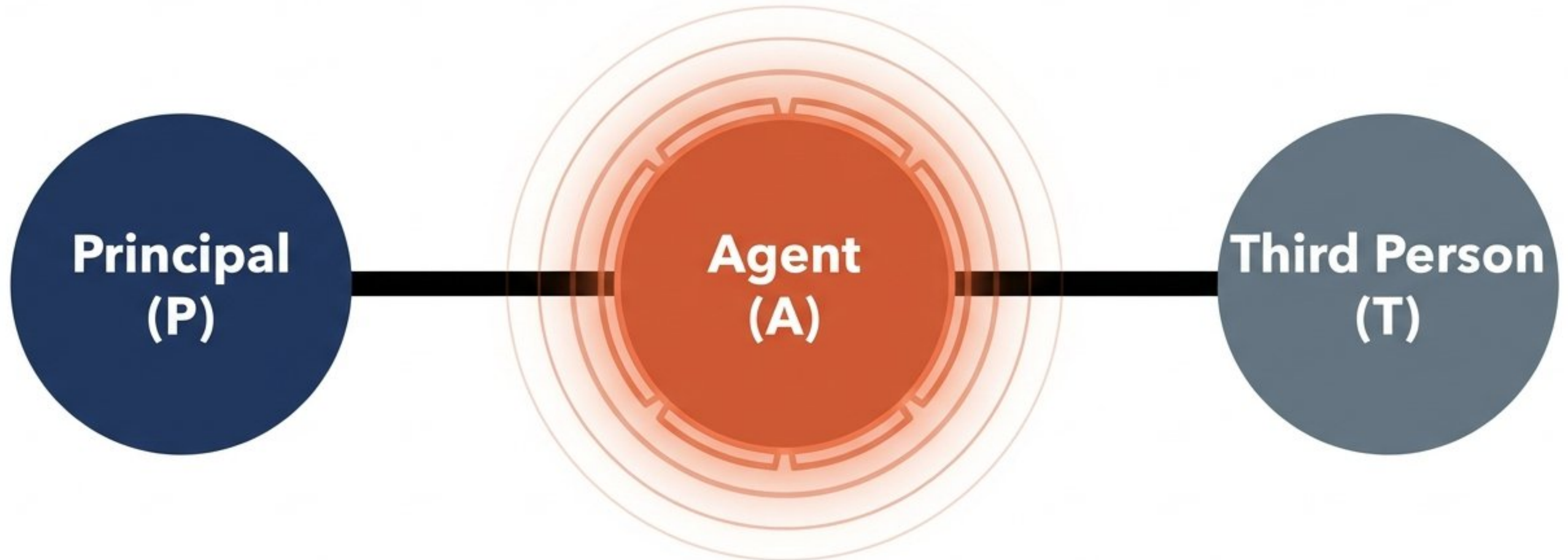


Under other statutes

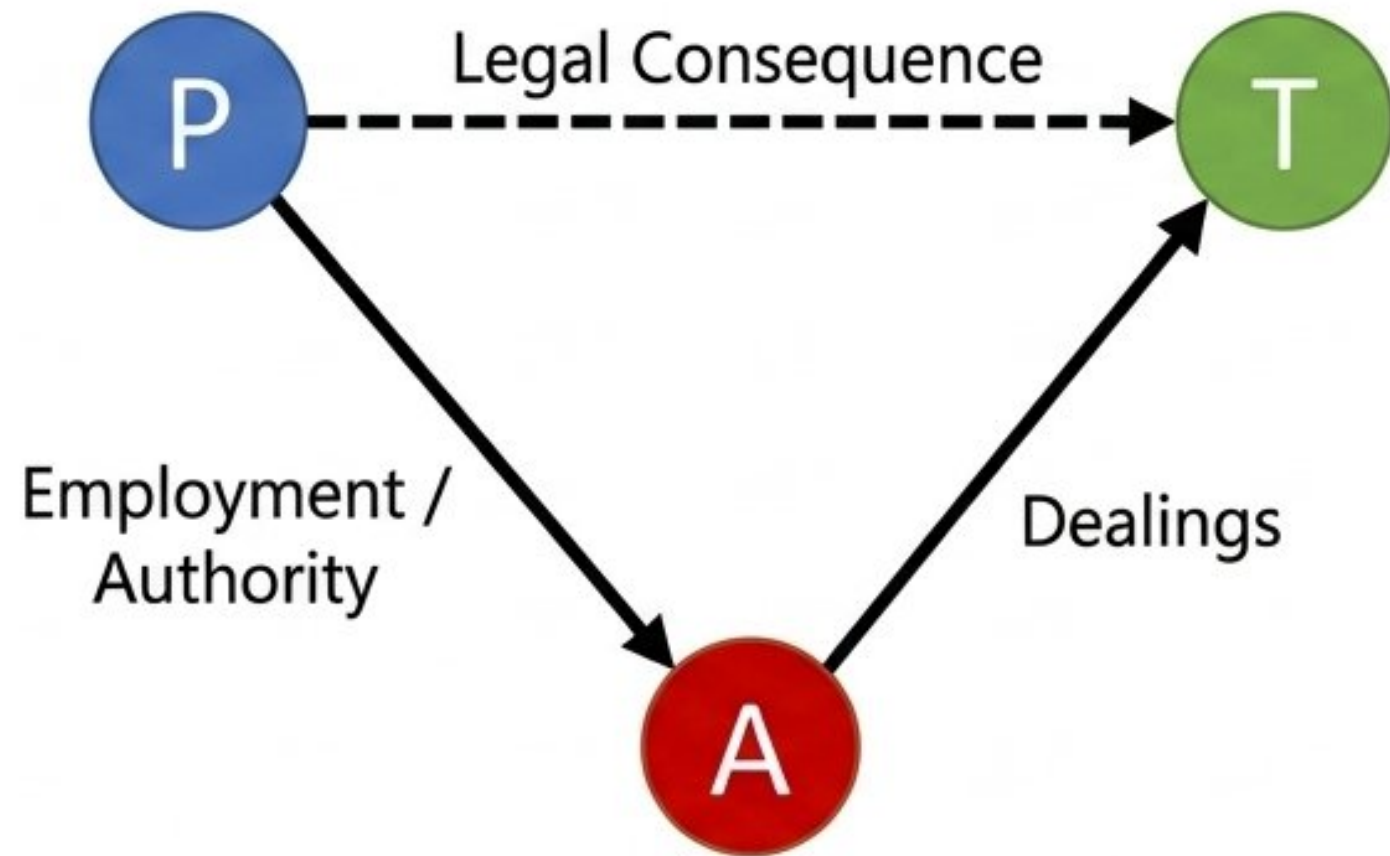
The pawnor, being a debtor has all the rights available to a debtor for his protection even under other statutes, i.e. the Money Lender's Act, etc.



LAW OF AGENCY



DEFINITION AND EXPLANATION



Agent (Sec. 182): A person employed to do any act for another or to represent another in dealings with third person.

Principal (Sec. 182): The person for whom such act is done, or who is so represented.

Example: P appoints A to buy a car on his behalf. P is the principal and A is the agent. The relationship between P and A is called 'agency'.

BASIS AND ESSENTIALS OF AGENCY

1. Whatever a person can do personally, he can do through an agent.

2. He who does an act through another does it by himself. Consequently, the acts of the agent are the acts of the principal.



Consequence (Sec. 226): Contracts entered into through an agent, and obligations arising from acts done by an agent, may be enforced in the same manner, and will have the same legal consequence, as if the contracts had been entered into and the acts done by the principal in person.

No consideration is necessary to create an agency (Sec. 185)

WHO CAN EMPLOY & WHO MAY BE AGENT

Who can employ - Sec. 183



Age of majority



Sound mind

Who may be agent - Sec. 184



Any person may become an agent.

Agent Liability Warning: No person who is not of the age of majority and of sound mind can become an agent, so as to be responsible to his principal according to the provisions in that behalf herein contained.

AGENT DIFFERS FROM

Agent differs from servant	
Agent	Servant
Agent has authority to bind his Principal.	Servant does not have such authority.
Agent creates contractual relations between principal and third party.	No such authority.
Agent is not under direct control of his principal.	Servant works under the direct control of his master.
Agent is paid commission for the services he renders.	Servant is paid in the form of salary.
Principal is liable for wrongs of agents if done within 'scope of authority'.	Master is liable for wrongs of servant if committed in ordinary course of employment.
Agent may work for several principals at the same time.	Servant usually serves only one master.

AGENT DIFFERS FROM

Agent differs from independent contractor	
Agent	Independent Contractor
An agent acts according to the instructions of the principal.	Independent contractor is to exercise his own discretion as to the mode and time of doing work for which he is engaged.
An agent represents his principal in dealings with third person.	An independent contractor does not represent his employer in dealings with other persons.
He is not personally liable provided he works within his authority.	He is personally liable for all acts done by him.
He usually gets commission.	He usually gets the fixed contracted amount.

DIFFERENT KINDS OF AGENTS

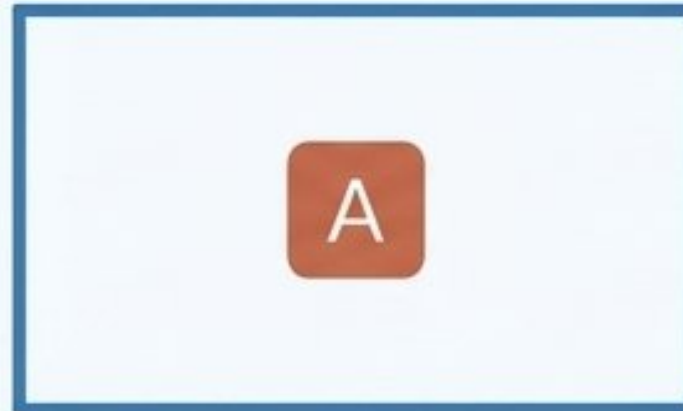
Particular Agent



Example: Sell a particular house.

Authority is limited to a particular act or represents principal in some particular transaction.

General Agent



Has authority to do all acts connected with particular trade, business or employment.

Universal Agent



Authority is unlimited. Authority to do all acts principal can lawfully do.

MERCANTILE AGENT

Mercantile Agent: Authority either to sell goods, or to consign goods for purpose of sale, or to buy goods, or to raise money on the security of the goods.



Factor

Entrusted with possession of goods. Sells in his own name. Has a general lien on the goods.



Broker

Employed for buying or selling goods. Not entrusted with possession. Establishes privity of contract between parties. No right of lien.



Auctioneer

Authorised to sell goods by auction. Has possession.

Example: If owner directs auctioneer not to sell below a reserved price and the auctioneer sells much below the price, the sale is binding on the owner except in case where the buyer knew there was limitation on authority.



Del Credere Agent

Guarantees the solvency of the parties with whom he brings the principal into contractual relations. Brings extra remuneration.

METHODS OF CREATING AGENCY

Agreement

Agency by express agreement. Expressly given by words spoken or written (e.g., Power of Attorney).

Agency by implied agreement. Arises from conduct, situation, or relationship of parties.

Agency by estoppel or holding out (Sec. 237)



When an agent has, **without authority**, done acts or incurred obligations to third persons, principal is bound if he has by words or conduct induced third persons to believe acts were within scope of authority.

Example: Younger brother managed property for 7 years and executed documents affirming acts done by elder brother. The sale was held not open to challenge.

AGENCY OF NECESSITY



Conditions (Arises because of the exigencies of the circumstances):

1. Agent not in a position to communicate with principal.
2. He had taken all reasonable steps which were necessary to protect interest of principal.
3. Action was genuine and actual necessity; acted bonafide.

Special Case: Husband and Wife

A **wife** is an **agent of necessity** having power to pledge her husband's credit for necessaries of life when not properly provided for, or if deserted.

Example:

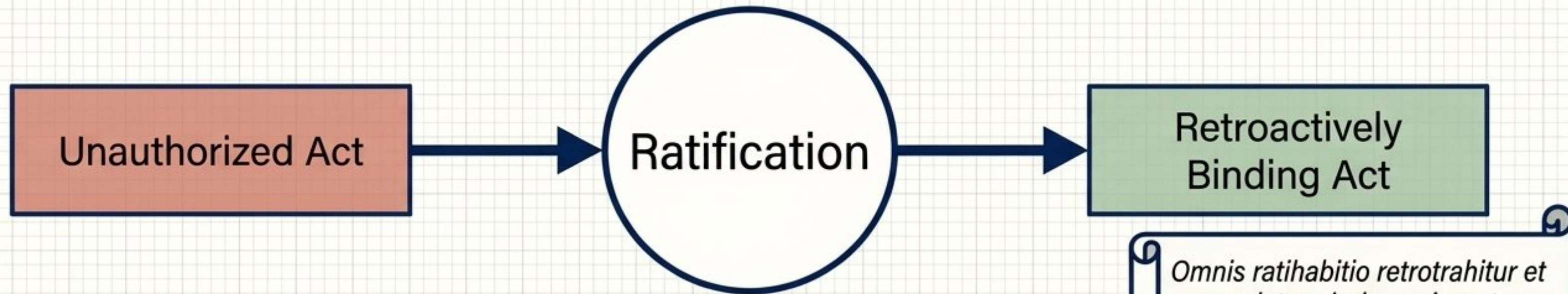
A consigns provisions to B at Calcutta with instruction to consign immediately to Cuttack. A may sell the provisions at Calcutta if they will not bear the journey to Cuttack without spoiling.



LAW OF AGENCY



AGENCY BY RATIFICATION



It is open to the principal, when he finds that the agent has exceeded his authority or has acted without authority to disown the act, in which case, it will not be binding upon the principal, but if he chooses to confirm and ratify the act, then the same consequences would follow, as if it had been previously authorised by the principal. (Sec. 196)

Omnis ratihabitio retrotrahitur et mandato priori aequiparatur

(Every ratification relates back to and is to a previous command or authority).

Ratification may be express or implied in the conduct of the person on whose behalf the acts are done. (Sec. 197)

Example

Scenario: A, without B's authority lends B's money to C. Afterwards B accepts interest on the money from C.

Result: B's conduct implies a ratification of the loan.

Requisites of valid ratification

Express Contract

The agent must expressly contract as agent. A person must purport to act as agent for a principal who is in contemplation and identifiable.

Principal's Existence

The principal must be in existence at the time of the contract.

Example

A company cannot ratify the contracts entered into by the promoters on its behalf before its incorporation.

Contractual Capacity

The principal must have contractual capacity both both at the time of the contract and at the time of ratification. (e.g., A minor is incompetent to ratify).

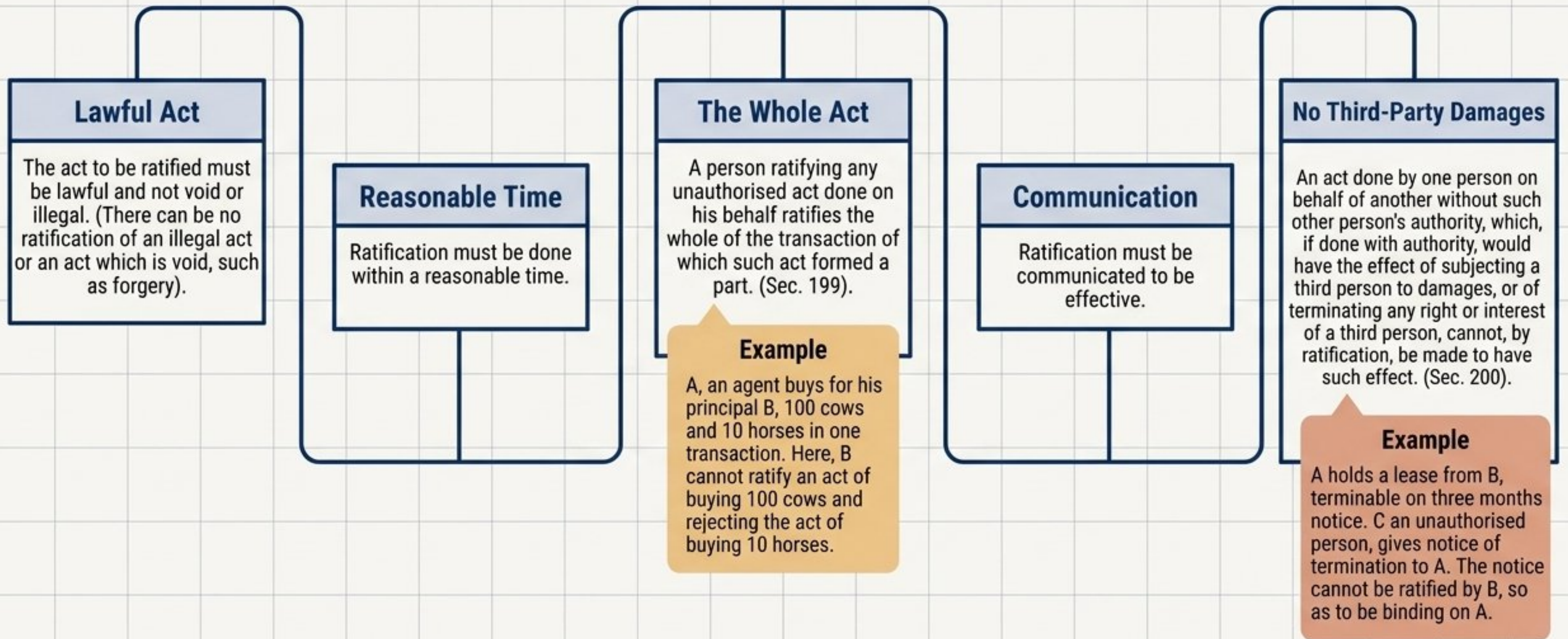
Full Knowledge of Facts

No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective. (Sec. 198).

Example

A has an authority from B to buy a particular model of car at the market rate. He buys at a higher rate but B accepts the purchase. Afterwards B comes to know that the car purchased by A for B belonged to A himself. The ratification is not binding on B.

Requisites of valid ratification



EXTENT OF AGENT'S AUTHORITY



Actual authority

Actual authority means that authority which has been really delegated to the agent. Authority of an agent may be expressed or implied. (Sec. 186). Includes incidental authority to do every lawful thing necessary for conducting such business. (Sec. 188).

Example

A constitutes B, his agent, to carry on his business of a shipbuilder. B may purchase timber and other materials and hire workmen for the purposes of carrying on the business.



Ostensible or apparent authority

When an agent is employed for a particular business, persons dealing with him can presume that he has authority to do all such acts as are necessary for such a business.

Example

An estate agent was appointed to find a purchaser for certain property. He accepted a deposit from a prospective customer and misappropriated it. Held, the principal was liable because an estate agent who was not given authority to accept deposits had an ostensible authority to do so.



Authority in emergency

An agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances. (Sec. 189).

Example

A consigns provisions to B at Calcutta, with direction to send them immediately to Cuttack. B may sell the provisions at Calcutta, if they will not bear the journey to Cuttack without spoiling.

WHEN THE AGENT EXCEEDS HIS AUTHORITY

Principal how far bound (Separable)

So much only of what he does as is within his authority, is binding as between agent and his principal. (Sec. 227).

Example

A, being owner of a ship and cargo, authorises B to procure an insurance for 4,000 rupees, on the ship. B procures a policy for 4,000 rupees on the ship, and another for the like sum on the cargo. A is bound to pay the premium for the policy on the ship, but not the premium for the policy on the cargo.

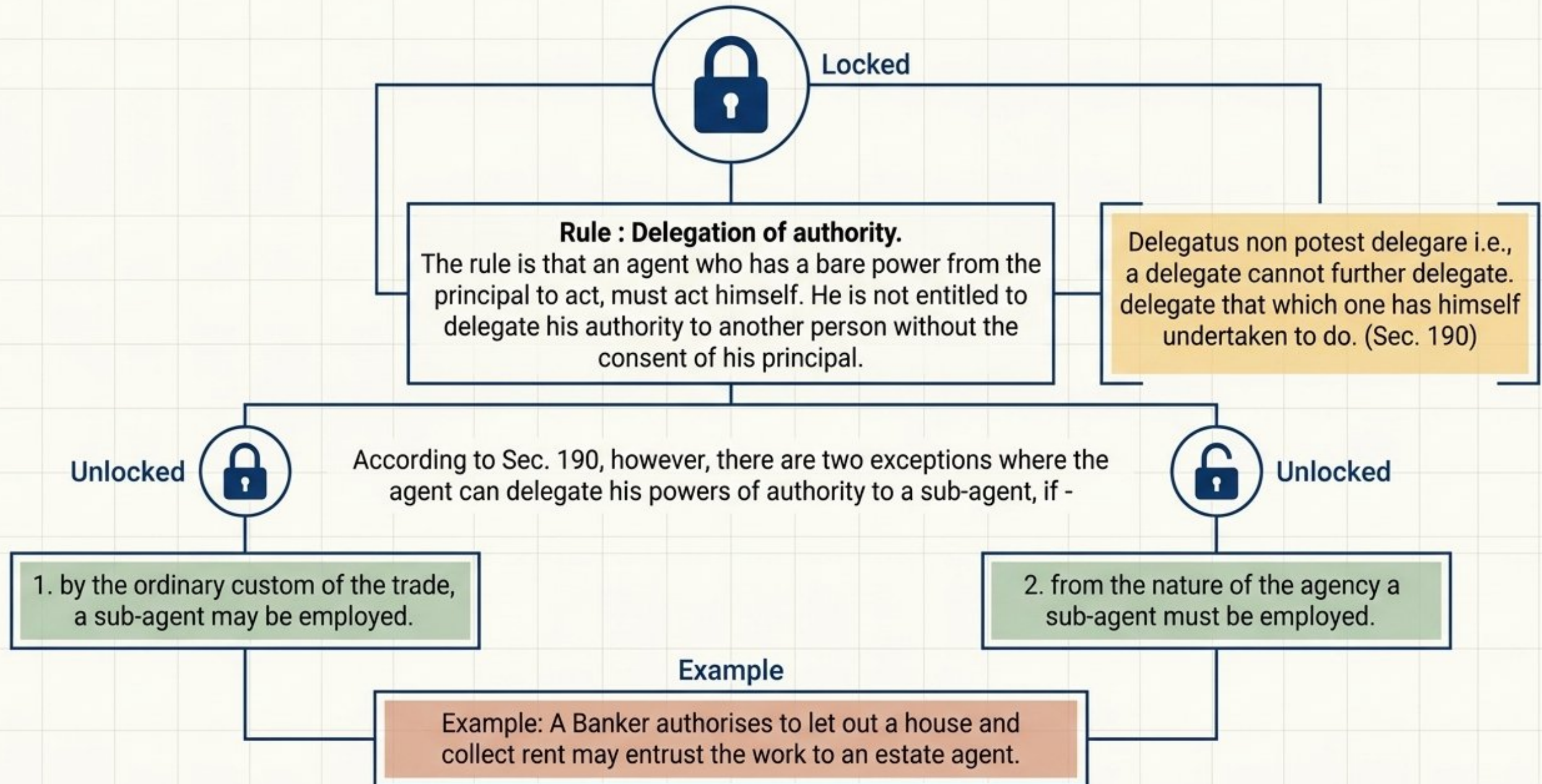
Principal when not bound (Not separable)

Where an agent does more than he is authorised to do, and what he does beyond the scope of his authority cannot be separated from what is within it, the principal is not bound to recognise the transaction. (Sec. 228)

Example

A authorises B to buy 500 sheep for him. B buys 500 sheep and 200 lambs for one sum of 6,000 rupees. A may repudiate the whole transaction.

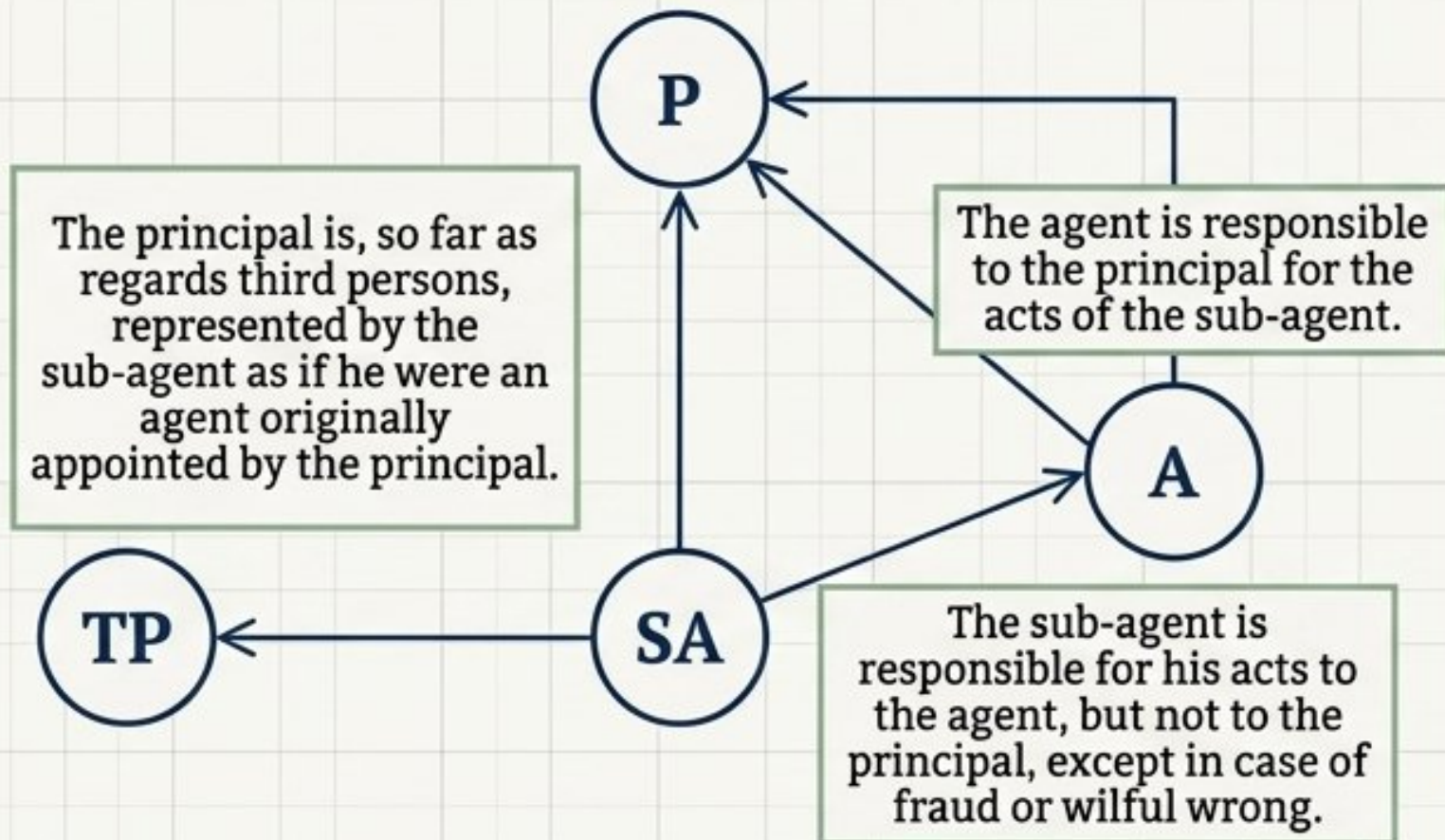
SUB-AGENT & SUBSTITUTED AGENT



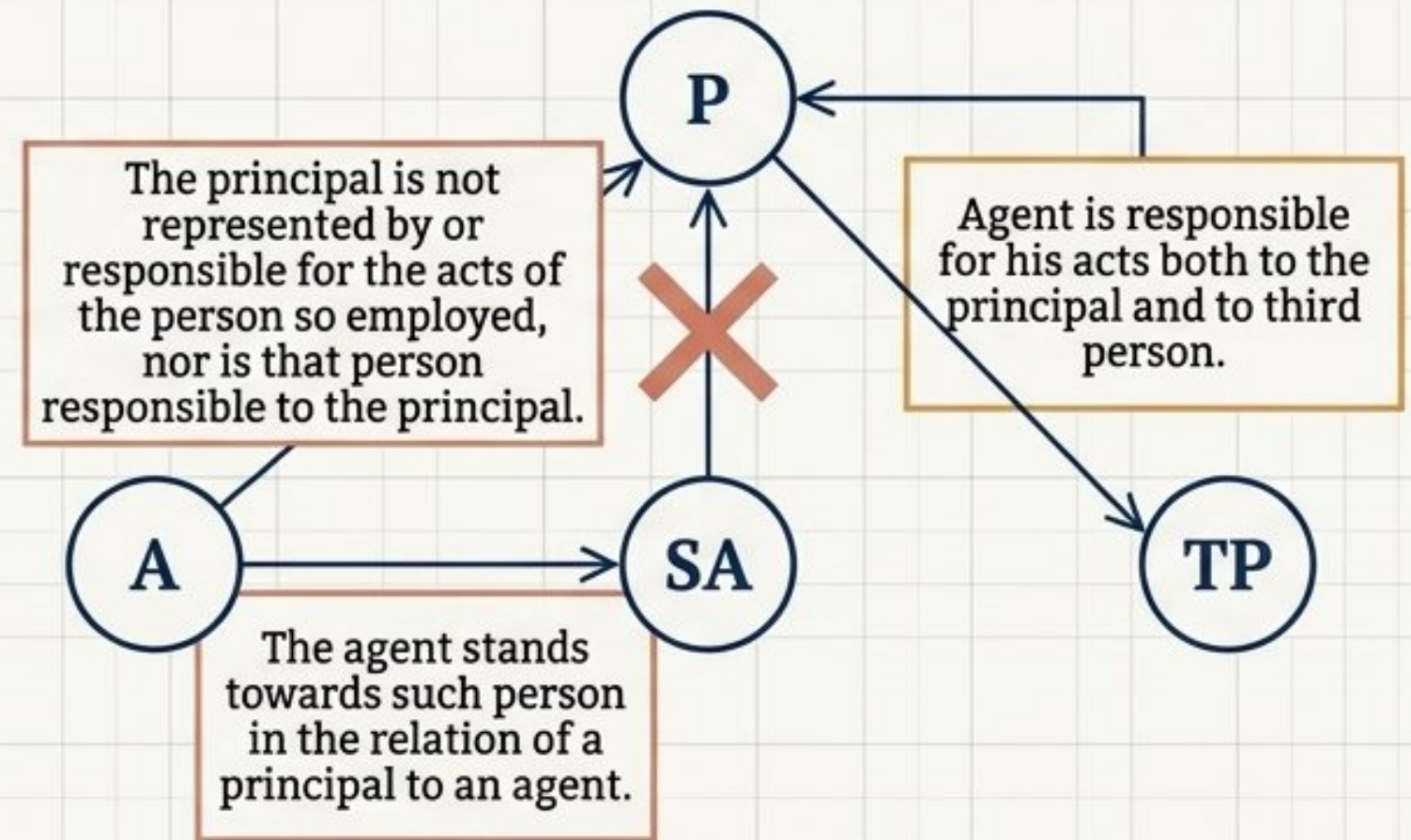
Sub-Agent

A sub-agent is a person employed by, and acting under the control of, the original agent in the business of the agency. (Sec. 191).

Where a sub-agent is properly appointed (Sec. 192)

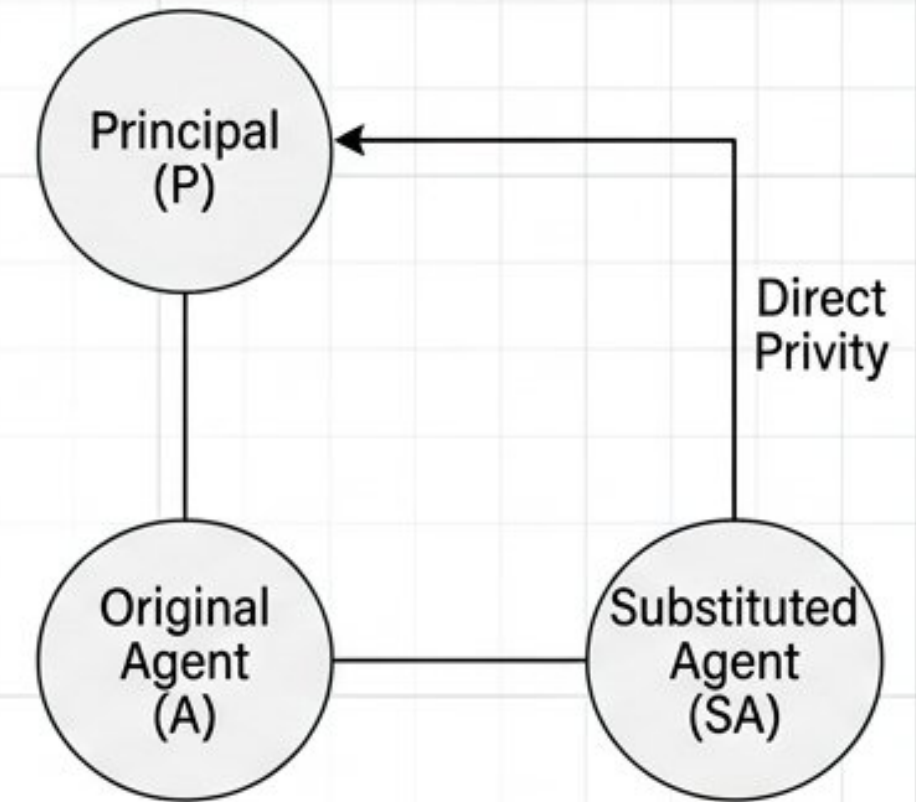


Where a sub-agent is not properly appointed (Sec. 193)



Substituted agent or co-agent

Where an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is not a **sub-agent**, but an agent of the principal for such part of the business of the agency as is entrusted to him. (Sec. 194).



Example:

A directs B, his solicitor, to sell his estate by auction, and to employ an auctioneer for the purpose. B names C, auctioneer, to conduct the sale. C is not a sub-agent, but is A's agent for the conduct of the sale.

Agent's duty in naming such person (Sec. 195)

Rule: In selecting such agent for his principal, an agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case.

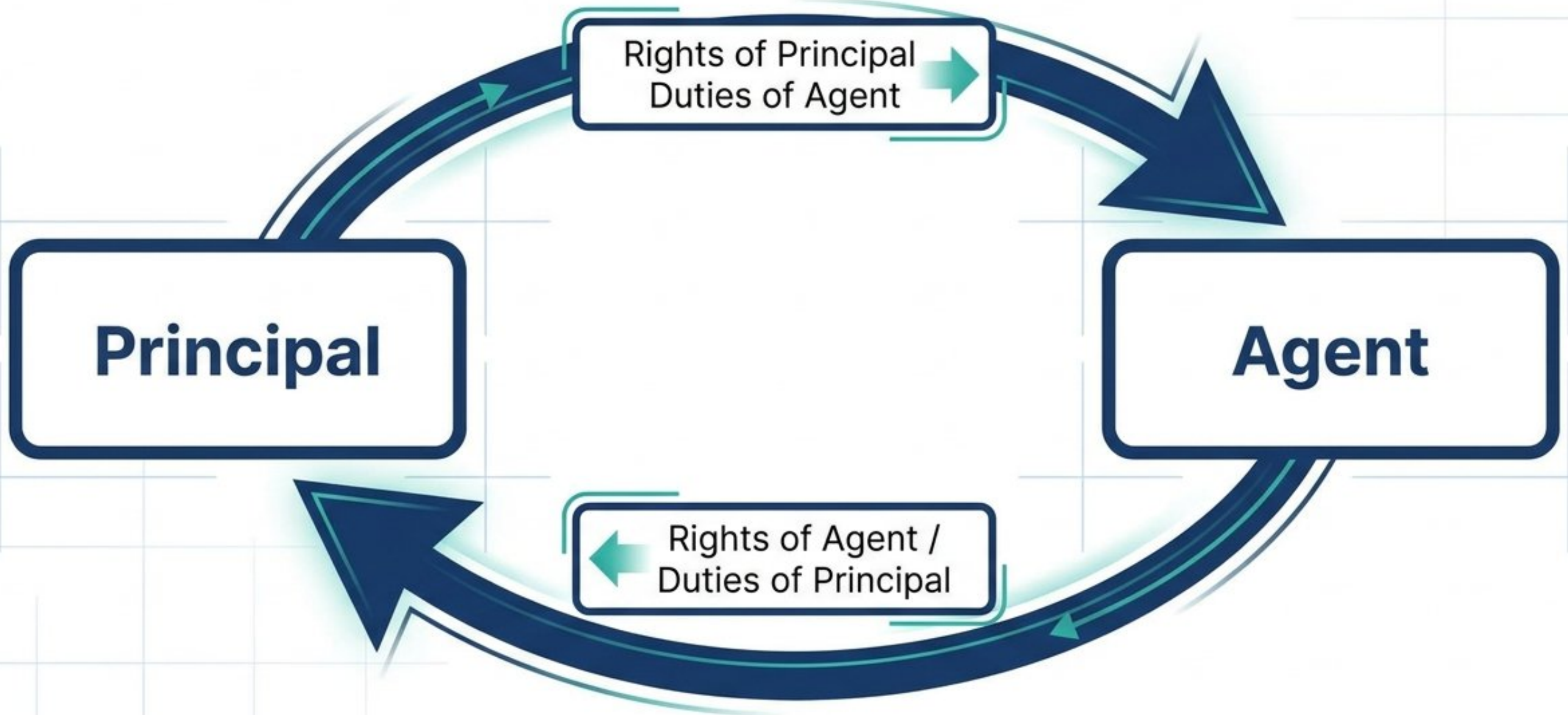


And if he does this he is not responsible to the principal for the acts or negligence of the agent so selected.

Difference between Sub-Agent and Substituted Agent

Aspect	Sub-agent	Substituted agent
1. Appointment	Appointed by Agent & not principal	Appointed by principal & not agent.
2. Control	He works under the control of the Agent	He works under the control of principal.
3. Privity of contract	(a) There is privity of contract with the Agent. (b) There is no privity of contract with the principal.	(a) There is privity of contract with the principal. (b) There is no privity of contract with the agent.
4. Answerable	He is answerable to Agent and not principal	He is answerable only to the principal and not agent.
5. Responsibility	His responsibility is towards Agent & not principal	His responsibility is towards principal and not agent.
6. Direction	Principal cannot give direction to him - only Agent can	Principal can give direction to him but not Agent.
7. Remuneration	He can recover it from Agent	He can recover it from Principal.
8. Original Agent	Original Agent is responsible for the acts of sub-agent	Original Agent is not responsible for the acts of the substituted Agent.

RELATION OF PRINCIPAL AND AGENT



DUTIES OF AGENT

Conduct business according to directions or custom.

Example: A broker sells goods on credit against trade custom. The buyer goes insolvent. The broker must make good the loss.

Skill and diligence required.

Example: An agent sells goods on credit without making proper inquiries about the buyer's solvency. The buyer is insolvent. The agent must compensate the principal.

To render accounts to the principal.

Absolute obligation to render proper accounts on demand.

To communicate with the principal in case of difficulty.

Example: An agent neglects to telegraph the principal about a ship's state. The insurance becomes void. The agent is held liable.

DUTIES OF AGENT

Agent not to deal on his own account.

Example: An agent secretly buys the principal's estate for himself. The principal may repudiate the sale.

Principal to get benefit of agent's dealings.

Example: An agent buys a house for himself instead of the principal. The principal can compel the agent to sell it to him at the paid price.

Agent's duty to pay sums received for principal.

To protect and preserve the interests of the principal in case of his death or insolvency.

Not to make secret profits from agency.

Example: An auctioneer receives a secret extra commission from a buyer. He is bound to hand it over to the principal.

RIGHTS OF AN AGENT



Right to Retainer.

May retain out of sums received all moneys due for advances made or expenses incurred in conducting business.



Right to receive remuneration.

Example: Agent introduces a customer, but the sale fails due to the customer's inability to pay. The agent is still entitled to commission.

Agent not entitled to remuneration for business misconducted.



Right of lien.

Can retain goods, papers, and property of the principal until commission, disbursements, and services are paid.

DUTIES OF A PRINCIPAL

Agent to be indemnified against consequences of lawful acts.

Agent to be indemnified against acts done in good faith.

Example: Agent seizes goods believing they belong to the debtor on principal's orders. Principal must indemnify the agent against lawsuits.

Compensation to agent for injury caused by principal's neglect.

Example: A bricklayer is injured by scaffolding unskillfully put up by the principal. The principal must compensate.



Non-liability of employer of agent to do a criminal act.

Example: A employs B to beat C. A is not liable to indemnify B for damages.

RIGHTS OF A PRINCIPAL

Compensation or damages.

(The principal is entitled to compensation for any breach of duty by the agent).

Right of accounting of secret profits.

(The principal has a right to obtain an account of secret profits and resist claim for remuneration).

Resisting the claim of an agent.

(Right to resist liability where the agent can show that the person has acted as principal himself).

POSITION OF PRINCIPAL & AGENT IN RELATION TO THIRD PARTIES

Named principal	Unnamed principal	Undisclosed Principal
• Acts of the agents are the acts of the principal: Legal consequence is as if contracts entered into and acts done by principal in person. (Sec. 226) • When agent exceeds authority: – Separable: What is within authority is binding. (Sec. 227) – Not separable: Principal not bound to recognise transaction. (Sec. 228) • Consequences of notice given to agent: Same legal consequences as if given to or obtained by principal. (Sec. 229) • Liability of principal inducing belief: Bound by unauthorized acts if words or conduct induced third persons to believe acts were within authority. (Sec. 237) • Effect of misrepresentation or fraud by agent: Same effect on agreements as if made by principals.	• Agent is liable unless there is a trade custom, or term express or implied making agent personally liable. • If third party contracts knowing there is a principal, cannot sue agent. • If agent declines to disclose identity of principal, he will become personally liable. Case Study: Example: A entrusts B with blank endorsed negotiable instruments. B sells to C violating A's private orders. Sale is good.	• Principal may required performance of the contract: Principal may require performance; other party has same rights against principal as he would have had against agent. (Sec. 231) • Other party may refuse to fulfil the contract: If principal discloses himself, other party may refuse if he can show he would not have entered contract if he had known agent was not principal. (Sec. 231) • Performance is subject to rights and obligations: Principal can only obtain performance subject to rights and obligations subsisting between agent and other party. (Sec. 232)

PERSONAL LIABILITY OF AGENT

In the absence of any contract to that effect, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them.

Such a contract shall be presumed to exist in the following cases:



(1) Where the contract is made by an agent for sale or purchase of goods for a merchant resident abroad.

(2) Where the agent does not disclose the name of his principal.

(3) Where the principal, though disclosed, cannot be sued. (Sec. 230).

PERSONAL LIABILITY OF AGENT

Agent is personally responsible in the following cases



When the agent acts for a foreign principal:

Foreign principal cannot sue or be sued. Presumption may be rebutted where the foreign principal is made the actual contracting party and the contract is made directly in his name.



When the agent acts for an undisclosed principal:

Personally liable, though principal, on being discovered by the third party is also liable.



When principal cannot be sued:

If principal is incompetent (e.g., minor) or foreign sovereign, credit is presumed to have been given to the agent and not to the principal.



When the contract expressly provides:

If agent agrees to do so, he becomes personally responsible.



When the agent acts for a principal not in existence:

Promoters of a company enter into contract on behalf of such 'would be company'. In such cases, the company i.e. the principal is not in existence till it is finally incorporated.



When the agent signs a contract in his own name:

Signs without qualifications, taken to contract personally. Agent therefore, must indicate the words like 'For and on behalf of' so as to bind the principal. Otherwise, agent will be personally liable.

PERSONAL LIABILITY OF AGENT

Agent is personally responsible in the following cases (Continued)



When the agent acts beyond his authority:

Exceeds authority and principal does not ratify, agent is personally responsible to third parties. (Sec. 227 and 228)



Where there is a misrepresentation or fraud by agent:

Personally responsible if acting in the course of business of the principal. (Sec. 238)



Where authority is coupled with interest:

Agent has locus standi to sue in his own name where he has interest in the subject-matter.



Where the trade, usage or custom makes the agent personally liable:

Personally liable unless there is a contract to the contrary.

Right of Person dealing with agent personally liable (Creditor's election):

In cases where the agent is personally liable, a person dealing with him may hold either him or his principal, or both of them, liable. (Sec. 233)

Case Study Example:

A enters contract with B to sell 100 bales of cotton. Later discovers B was agent for C. A may sue B or C, or both, for price of cotton.

PERSONAL LIABILITY OF AGENT

Pretended agent

A person who untruly represents himself to be **the authorised agent of another** and induces a third person to enter into a contract or otherwise deals with him, is called a pretended agent.

1. Liability of pretended agent:

A person untruly representing himself to be the authorised agent of another and thereby inducing a third person to deal with him as such agent, is liable, if his alleged employer does not ratify his acts, to make compensation to the other in respect of any loss or damage which he has incurred by so dealing. (Sec. 235)



2. Agent not entitled to performance:

A person with whom a contract has been entered into in the character of agent is **not entitled to require the performance of it, if he was in reality acting, not as agent, but on his own account.** (Sec. 236)

TERMINATION OF AGENCY

Termination of Agency by act of the parties

(1) Agreement

Just as the relationship of agency is established by an agreement it may be terminated in the same way i.e. by agreement.

(2) Revocation by the principal

May revoke authority at any time before authority has been exercised so as to bind the principal.

The principal cannot revoke the authority given to his agent after the authority has been partly exercised, so far as regards such acts and obligations as arise from acts already done in the agency. (Sec. 204).



Case Study Example:

A authorises B to buy 1,000 bales of cotton with A's money. B buys in his own name, making himself personally liable. A cannot revoke B's authority as regards payment.

(3) Revocation by the Agent

Agency can equally be revoked by the agent after serving proper and reasonable notice.



- **Compensation for revocation:** If express or implied contract agency should be continued, principal must make compensation to agent, or agent to principal, for revocation without sufficient cause. (Sec. 205).



- **Reasonable Notice:** Must be given; otherwise damage thereby must be made good to the one by the other. (Sec. 206).

TERMINATION OF AGENCY

Termination of agency by operation of law



Performance of the contract

When the transaction is completed, the agency also terminates.



Efflux of Time

Where agency is for a fixed period of time, it terminates on **expiry** of that time, even if work is not completed.

Case Study Example: Agent appointed to sell a house within six months. Agency ends at six months, even if sale is not effected.



Death and Insanity

Death or insanity of the principal or the agent terminates the agency.



Insolvency

Insolvency of the principal puts an end to agency. But insolvency of the agent does not terminate agency.

TERMINATION OF AGENCY

Termination of agency by operation of law (Continued)



Destruction of the subject-matter

Where agency is for sale of a horse or house, if horse dies or house is destroyed, agency is terminated.



Principal becoming an alien enemy

If principal and agent belong to different countries and war breaks out, contract of agency is terminated.



Dissolution of a company

In case of a company, the agency comes to an end as soon as the company is dissolved.



Termination of sub-agent's authority

As soon as the agent's authority is terminated, the sub-agent's authority is automatically terminated. (Sec. 210).

When termination of agent's authority takes effect:

The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to them. (Section 208).



Example: A directs B to sell goods for 5% commission. A revokes authority by letter. Before B receives it, B sells goods for 100 rupees. Sale binds A, and B gets 5% commission.



IRREVOCABLE AGENCY

In case when the agency cannot be terminated or put an end to, the agency is said to be irrevocable.
The agency is irrevocable in the following instances:

(1) Where the agency is coupled with interest

Where the agent has himself an interest in the property which forms the subject-matter of the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest. (Sec. 202).



Example: A gives B authority to sell A's land, and to pay himself out of the proceeds the debts due to him from A. A cannot revoke this authority, nor can it be terminated by his insanity or death.

(2) When the agent has incurred a personal liability

The principal may, save as is otherwise provided by the last preceding section, revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principal. (Sec. 203).

(3) Where the agent has partly exercised the authority

It follows that where the authority has been partly exercised by the agent, it becomes irrevocable. The principal cannot revoke the authority given to his agent after the authority has been partly exercised, so far as regards such acts and obligations as arise from acts already done in the agency (Sec. 204).



Example: A authorised B to buy 1000 bales of cotton and pay out of A's money. B buys 1000 bales in his own name, making himself personally liable. A cannot revoke B's authority to pay for the cotton.