CORPORATE LEGAL FRAMEWORK

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IMPORTANCE OF BUSINESS LAW

The business law studies are very important, as it helps the individual in realizing the business ethics, he or she must follow, in order to run a proper and authenticated business. This must be in accordance with the laws and regulations prevailing in the society. The business case law studies are offered to those individuals, who want to setup a proper business, with an authenticated business license and registration. This makes business case laws studies very important. It has been proven, that most clients are comfortable in doing businesses, provided they have a government license in hand, and an approval stamp for their business.

The government policy of issuing a license is not very complex. It is very necessary that the business case law studies are carefully taken into account. The business case law studies are given by professionals who have an expertise in business law consultancy. They devise a course structure that helps the person to realize his business law obligations, and the rules which are applicable to the business trade mechanism.

There are several laws the business must follow. Failure to take business case studies, can be a mistake, as a person might initiate a business which is not in accordance with the government policy, and face severe consequences later.

The business case law study teaches the business, the proper manner in which the business is to be initiated. The business processes have several law issues such as copyright issues, lawful marketing of business, registration fees etc. The business case law studies focuses on each business activity. There are several relief and packages that are offered by the business and only taking business case law studies, would enable a person to learn about methods to get government facilities.

These include tax write-off, tax cuts, getting government loans and funds, and raising a business through franchise. Having taken business case law studies, enable a person to make the most out of the facilities, the government has offered to the business.

Business case law studies are also important for those individuals, who want to run a career in law agencies and consultancy firms. Taking the business case law studies, a person is taught all the major aspects of the business laws and ethics. This provides the individual, a chance to start a career as a legal advisor, or consultant for big budget businesses and trade mechanism.

Business case law studies are equally important for small businesses. Small businesses are run on limited financial resources, since they are a form of self employment. Therefore, the government encourages such small businesses and devises special laws, exclusive to small business. Also the tax cut offs are also more for the small businesses.

UNIT - I

LAW OF CONTRACT :

They should be legally bounded – support from law.

Rules → Law of contract → ICA (Indian contract Act) 1982.

1. General principles of contract
2. Some special contracts.
3. Parties to contract
4. Boundaries of contract act.

Def : A contract is an agreement between two (or) more parties which the law will enforce.

Sec. 2(h) defines Indian contract Act as on contract.

Contract = Agreement +Enforced by law

↓ ↓

A promise to perform / support by law

Social agreement / legal agreement.

Agreement = offer + acceptance

All contracts are agreements but all agreements are not contracts

Types of contract :

1. **Express contract :** The contract which is clearly written in word/ oral.

2. **Implied contract :** Understood by the contract

Void, Valid, Voidable, Illegal

↓ ↓ ↓

Void ab initio later Invalid at the option of the party (free consent)

(from the beginning)

Quasi Contract : Happened by accident.

Executed Contract : The contract which is done (Here both the parties are satisfied)

Executory Contract : Both the parties have to perform partly executed & partly executory.

Partly executed & Partly executory :

Here one person is performed the activity and another party have to perform.

A gives 1 Tonne of oil to B

B payment after two days

Unilateral : One party has performed

Bilateral :

ESSENTIAL ELEMENTS OF A VALID CONTRACT : All agreements are not contracts. Only that agreement which is enforceable at law is a contract. An agreement, which is not enforceable at law, cannot he a contract. Thus, the term agreement is wider in scope than contract. All contracts are agreements bull all agreements are not contracts.

An agreement, to be enforceable by law, must possess the essential elements of a valid contract as contained in Section 10 of the Indian Contract Act. According to Section 10, All agreements are contracts if they are made by the free consent of the parties, competent to contract, for a lawful consideration and with a lawful object and are not expressly declared to be void." As the details of these essentials form the subject matter of our subsequent chapters, it is proposed to discuss them in brief here.

The following are the essential Elements of a Valid Contract

1. Offer and Acceptance
2. intention . to Create Relationship
3. Lawful Consideration
4. Capacity of Parties
5. Free Consent
6. Lawful Object
7. Certainty of Meaning
8. Possibility of Performance
9. Not declared to be Void or Illegal
10. Legal Formalities

1. Offer and Acceptance. In order to create a valid contract, there must be a 'lawful offer' by one party and 'lawful acceptance' of the same by the other party.

2. Intention to Create Legal Relationship: In case, there is no such intention on the part of parties, there is no contract. Agreements of social or domestic nature do not contemplate legal relations.

3. Lawful Consideration. Consideration has been defined in various ways. According to Blackstone, "Consideration is recompense given by the party contracting to another." In the words of Pollock, "Consideration is the price for which the promise of another is

brought." Consideration is known as quid pro-quo or something in return. Consideration is an essential element in a contract. Promises made for nothingare enforceable under the Indian Contract Act. The law enforces only those promises which are made for consideration. An agreement without consideration subject to certain exceptions is void. In the absence of consideration a promise or undertaking is purely gratuitous and, however, sacred and binding in honor, creates no legal obligation. The legal maxim being Ex nudo pacto non oritur action (out of a bare agreement no action arises. Consideration may take the form of money, goods services, a promise to marry, a promise to forbear from suing the promisee etc. Consideration may be past, present or future. But it must be real and lawful.

4. Capacity of Parties. The parties to an agreement must be competent to contract. If either of the parties does not have the capacity to contract, the contract is not valid.

According, to Section 11 "every person is competent to contract, who is of the age of majority according to the law to which he is subject, and who is of sound mind and is not disqualified from contracting by any law to which he is subject."

Accordingly the following persons are incompetent to contract.

(a) minors,

(b) persons of unsound mind, and

(c) persons disqualified by law to which they are subject.

5. Free Consent. : Consent' means the parties must have agreed upon the same thing in the ; sense.

According to Sec. 13, "Two or more person are said to consent when they agree upon same thing in same sense.

According to Section 14, Consent is said to be free when it is not caused by (1) Coercion, or (2) Undue influence, or (3) Fraud, or (4) Mis-representation, or (5)Mistaka.

6. Lawful Object. The object of an agreement must be lawful. Object has nothing to do with consideration. It means the purpose or design of the contract. Thus, when one hires a house for use as a gambling house, the object of the contract is to run a gambling house. The object is said to be unlawful if

it is forbidden by law; it is of such nature that if permitted it would defeat the provisions of any law; it is fraudulent; it involves an injury to the person or property of any other; the court regards it as immoral or opposed to public policy.

7. Certainty of Meaning : According to Section 29, "Agreements the meaning of which is not certain or capable of being made certain are void."

The terms of the contract must be precise and certain. It cannot be left vague. A contract may be void oh the ground of uncertainty. Thus a purported acceptance of an offer to buy a lorry 'on hire-purchase terms' doe'- not constitute a contract if the hire-purchase terms are never agreed. Similarly an agreement 'subject to war clause' is too vague to be enforceable.

8. Possibility of Performance. If the act is impossible in itself, physically or legally, it cannot be enforced at law. For Example, Mr. A agrees with B to discover treasure by magic. Such Agree ment is not enforceable.

9. Not Declared to be Void or Illegal. The agreement though satisfying all the conditions for a valid contract must not have been expressly declared void by any law in force in the country. Agreements mentioned in sections 24 to 30 of the Act have been expressly declared to be void for example agreements in restraint of trade, marriage, legal proceedings etc.

10.**Legal Formalities.** An oral contract is a perfectly valid contract, except in those cases where writing, registration etc. is required by some statute. In India writing is required in cases of sale, mortgage, lease and gift of immovable property, negotiable instruments; memorandum and articles of association of a company, etc. Registration is required in cases of documents coming within the scope of section 17 of the Registration Act.

All the elements-mentioned above must be present in order to make a valid contract. If any one of them is absent the agreement does not become a contract.

CLASSIFICATION OF CONTRACTS :

Contracts are classified on the basis of their

(a) Validity

- Valid contracts
- Void Contracts
- Void agreements
- Voidable contracts
- Unenforceable contracts
- Illegal contracts

(b) Formation

- Express contract
- Implied Contract

- Quasi Contract

(c) Performance

- Executory contracts
- Executory contracts
    - Unilateral contracts
    - Bilateral contracts

A brief discussion follows

1.Valid Contract. An agreement enforceable at law is a valid contract. An agreement becomes a contract when all the essentials of a valid contract as laid down in Section 10 are fulfilled. A offers to sell his house for Rs. 5 lakhs to B. B agrees to buy it for this price. It is a valid contract. A contract to enter into a contract is, however, not a valid contract.

Agreements falling short of legal requirements of section 10 are Invalid Contracts. These are :

2.Void Contract. An agreement which was legally enforceable when entered into but which has become void due to supervening impossibility of performance for example a contract between a citizen of Pakistan and India is a valid contract during peace but if war breaks out between the two countries, the agreement will become void contract.

A void contract is not necessarily unlawful, but is destitute of legal effects. The law will not enforce such a contract, nor can it be made valid by the parties. Definition and Nature of Contract

3.Void Agreement. According to Section 2 (g), "An agreement which is not enforceable by law by either of the parties is void."

No legal rights or obligations can arise out of a void agreement. It is voidab initio i.e. from its very inception, for example an agreement without consideration or with a minor.

Void Contract and Void Agreement: A void contract should be distinguished from void agreement. An agreement not enforceable at law is a void agreement. In the case of a void agreement no contract comes into existence. An agreement with a minor is void. But in the case of void contract, a contract does come into existence but subsequently ceases to be enforceable by law. An agreement which is void never matures into a contract. An agreement which becomes illegal in the course of performance is a case of a void contract, while an agreement which is null and void ab initio is a case of a void agreement.

4.Voidable Contract. According to Section 2 (i), "An agreement which is enforceable by law at the option of one or more of the parties but not at the option of the other or others is a voidable contract." Note that the word used here is 'contract' and not just 'Agreement'. This is so because the rights and duties are created and the contract is valid until the option to avoid it is exercised by the person whose consent to the agreement was not free but was obtained by coercion, undue influence, fraud or misrepresentation. The other party who induced the consent cannot take advantage of his own fraud because "He who comes into Equity (i.e. before law) must come with clean hands."

5.Unenforceable Contracts. It is contract, which is otherwise valid, but cannot be enforced because of some technical defect like absence of a written form or absence of a proper stamp. Such contracts must be sued upon by one or both of the parties. Such contracts cannot be proved in the court. Such contracts will not be enforced by the courts until and unless the defect is rectified. Example : A borrows Rs. 10,000 from B

and makes a promissory note and a one rupee stamp is paste, on the promote. The agreement though complete is unenforceable because of the technical defect i.e., promissory note being under stamped.

6. Illegal Agreement. A contract which is either prohibited by law or otherwise against the polio of law is an illegal agreement. It is void ab initio. Thus, a contract to commit dacoity is an illegal contract and cannot be enforced at law. An illegal contract should be distinguished from a void contract. All illegal agreements are void but all void agreements or contracts are not necessary illegal.

Contracts classified according to formation:

1. Express contract. An express contract is one entered into by words which maybe either spoken or written. Where the proposal and acceptance is made in words, it is an express contract.

2. Implied contract. Where the proposal or acceptance is made otherwise than in words, implied contract. Implied contracts can be smelled out of the surrounding circumstances and the conduct of the panics who made them. So where a person employs another to do some work the law implies that the former agrees to pay for the work.

3. Constructive or quasi-contract. It is a contract in which there is no intention on either side to make a contract, but the law imposes a contract. In such a contract rights and obligations arise no by any agreement between the parties but by operations of law. Thus, a finder of lost goods is under an obligation to find out the true owner and return the goods. Similarly, where certain books are delivered to a wrong addressee, the addressee is under an obligation either to pay for them or return them.

Classification on the basis of Performance: Contracts may be classified on the basis of extent of their performance. Such contracts may be

1. **Executed Contract.** An executed contract is one where both the parties have performed their obligations or carried out the terms of the contracts. In other words, it is a completed contract,

Example : A sells a TV set to B for Rs. 20,000. B pays the price and A hands over TV set to B.

2.**Executory Contract.**Where the contract is yet to be performed either wholly or partially or one or both the parties have yet to perform their obligations, the contract is executory contract.

Example : A agrees to make furniture for B for Rs. 5,000 Mr. A has yet to make furniture and Mr. B has not made the payment. So, both A & B are yet to perform their obligations.

OFFER:

Offer or proposal is the starting point in the formation of a contract. Section 2 (a) defines proposal as "When one person signifies to another his willingness to do or to abstain from doing anything with a view to obtaining the assent of that other to such act or abstinence.

The word proposal is synonymous with the English word 'Offer'. The person making the proposal is called the proposer or offerer and the person to whom the proposal is made is called the offeree. Example : A offers to sell his motor cycle to B for Rs. 3,000. B agrees to pay A Rs. 3,000 for the motor cycle. Here A is called the offerer or promisor and B the offeree or promisee. Thus, a proposal is an expression of will or intention. A person making the proposal expresses that he is willing to contract on the terms stated in it provided the other party to whom the proposal is made will likewise express his assent to the same terms. Section 2 (a) reveals 3 essential elements in an 'offer' :

(a) Expression of willingness to do or not to do something,

(b) made to another person i.e. a person cannot make an offer to himself,

(c). with the object of gaining the consent of the other person to such act or abstinence.

Thus, a casual enquiry, information, a statement of fact or statement of mere intention lacking the above mentioned three essentials are not offers.

Kinds of Offer : Offers or Proposals may be classified on the basis of:

(1) How an offer is made ? (2) To whom an offer is made ?

1. How an offer is made : An offer may be either express or implied from the conduct of the parties. An express offer is one which may be made by words spoken or written

such as letter, telegram Offer and Acceptance 15 telex, fax message, e-mail or through internet. Thus, where A offers to sell his pen to B for Rs. 20 ; it is an express offer. An implied offer is one which may be gathered from the conduct of the party or the circumstances of the case. Thus, where a person goes to a doctor for treatment, his conduct implies an offer that if the treatment is given, the-offer or will pay the usual charges. Similarly, stepping into a local bus, consuming eatables at a restaurant, shining shoes by a shoe shiner, without being asked to do so etc. create implied promises to pay for the benefits enjoyed.

2. To whom an offer is made An offer may be made to

(a) A particular person,

(b) A particular group or body of persons,

(c) The public at large i.e. the whole world.

An offer made to a definite person or body of persons is called a specific offer. A specific offer can usually be accepted only by the person or persons to whom it is made. On the other hand, when an offer is addressed to the whole world, it is called a general offer. A general offer can be accepted by any one. Where A promises to give Rs.100 to B if he brings back his missing dog, this is a specific offer and can only be accepted by B; but if A issues a public advertisement to the effect that he would give Rs. 500 to anyone who brings back his missing dog, such an advertisement amounts to a general offer and any member of the public can accept the said offer by searching for and bringing back A's missing dog.

Offer is different from

1. A Mere statement of intention.

2. An invitation to offer .

3. A mere communication of information .

4. casual Enquiry

5. A. Prospectus

6. Advertisement

Essentials of a valid offer or Rules regarding valid offer

1. Offer must be capable of creating legal relations. The offer or must intend the creation of legal relations. He must intend that if his offer is accepted a legally binding agreement shall result. A accepts an invitation to dine at B's place on a certain date but fails to turn up on the appointed date.

A cannot be sued for breach of a contract, because in contracts regulating social or domestic arrangements the presumption is that parties do not intend legal consequences to follow from the breach of a contract. The essential element is that there must be an express or tacit reference to the legal relations of the consenting parties.

2.Offer must be certain, definite and not vague. No contract can come into existence if the terms of the offer are vague or loose and indefinite. Both the parties should be clear about the legal consequences arising out of contract. A vague offer does not convey what it exactly means. Thus, an offer by A to B to pay the latter a certain sum of money on the latter marrying A's daughter is no offer, because the amount to be paid is not certain. Similarly the words "P to receive a reason able share of the profits" do not constitute a valid offer.

Essential of a valid offer

1. It must be capable of creating legal relations
2. It must be certain, definite and not vague

3. It must be communicated to the offered

4. It must be made with a view to obtaining the assent of the other party

5. It may be conditional

6. Offer should not contain a term the non-compliance of which would amount to acceptance

7. Lapse of an offer

8. An invitation to offer is not an offer

4. Offer must be made with a view to obtaining the assent of the other party. An offer must be distinguished from mere expression of intention. The leading case on this point is : Harris V. Nickerson (1873):N advertised in the newspaper to effect sale of his goods on a particular day at a particular place. H travelled a long distance to bid for the things. On arrival, he found that the sale was cancelled. He sued N for breach of contract. It was held that advertise ment was merely expression of an intention and not an offer which could be accepted by traveling to the place of intended sale.

5. An offer may be conditional. An offer can be made subject to a condition. In that case it can be accepted only subject to that condition. A conditional offer lapses when the condition is not accepted. Thus, a conditional offer by the management of a company to the trade union to pay a certain amount lapses when the condition is not accepted. (Pipraich Sugar Mills Ltd. vs. P.S. Mills Mazdoor Union AIR 1957 SCC 95). If the offer contains certain conditions and the proposer has done what was reasonably sufficient to give the acceptor notice of the conditions, the person accepting the offer its presumed to have accepted it, with the conditions so attached.

Example : T, who could not read, took an excursion ticket on the railway. On the front of the ticket was printed for conditions see back'. One of the conditions was that the railway company would not be liable for personal injuries to passengers. T was injured

by a railway accident. Held T was bound by the conditions and could not recover any damages. [Thomson v. L.M. &, S. Railway. (1930) I.K. B.41].

6. Offer should not contain a term the non-compliance of which would amount to acceptance. One cannot say while making the offer that if the offer is not accepted before a certain date, it will be presumed to have been accepted.

Example : A writes to B, "I offer to sell my house for Rs. 40,000. If 1 do not receive a reply by Monday next, I shall assume that you have accepted the offer." There will be no contract if B does not reply.

7. Lapse of an offer . An offer lapses .

(a) If either offerer or offeree dies before acceptance.

(b) If it is not accepted within (i) the specified time, or (ii) a reasonable time, if not time is specified. What is a reasonable time ? It depends on the circumstances. Five months has been held to be an unreasonable delay in accepting an offer to buy shares in a company.

(c) If the offeree does not make a valid acceptance, for example makes a counter offer or conditional acceptance or if a particular manner of acceptance has been requested, he accepts in some other manner for example by sending a letter by mail when a reply by hand was requested.

(d) An offer can also lapse by revocation. A person who makes an offer can withdraw it at any time before acceptance. A proposal may be made for a fixed period. The offer will automatically expire if it has not been accepted till then. Where no time limit has been specified, the offer will lapse after a reasonable time.

8. An invitation to offer is not an offer. An offer must be distinguished from an invitation to offer. In the case of an "invitation to offer" the aim is merely to circulate information of readiness to negotiate business with anybody who on such information

comes to the person sending it. Such invitations are not offers in the eyes of law and do not become promises on acceptance.

ACCEPTANCE:

When the person to whom the proposal is made signifies his assent, it is an acceptance of the proposal. An accepted proposal is called a promise or an agreement. [Section 2 (b)] An application for the shares in s company is in the nature of offer while the allotment of the shares by the company is an acceptance resulting into a contract. An acceptance must be communicated to the offer or in order to complete the acceptance. The acceptor should do something to signify his intention to accept A common example of an act amounting to acceptance is the fall of the hammer in the case of an auction sale. Mental acceptance is no acceptance. Except where a proposal prescribes a particular mode of acceptance, the acceptance may be made hi several different ways.

Example : A offers to set his horse to B for Rs. 500. B accepts the offer to purchase the horse for B_s. 500. This is acceptance.

Acceptance may be express or implied. When acceptance is made by words, spoken or written, it is an express acceptance. If it is accepted by conduct, it is an implied acceptance. Thus, where a person boards a train or bus, he impliedly accepts to pay the usual fare. Similarly, when a person goes to a hotel and cats some food, he impliedly accepts to pay for it.

Example : A company informed the proposer that if he submitted the proposal and the half-yearly premium his proposal would be accepted. He did the same. The company encashed the cheque but had not yet replied to him their acceptance of the proposal. In the meantime the proposer died. The encashment of the cheque was held to be an implied acceptance. [Hindustan Insurance Society v. Shyam Sunder AIR 1952, Cal, 691].

Who may accept '.' An offer can be accepted only by the person to whom it is made. It means that the person to whom the offer is made can alone accept it. It cannot be accepted by another without the consent of the person making it. Thus, where offer is made by A to B,.the acceptance by C would be inoperative. The leading case on the point is

Essentials of Valid Acceptance

1. Acceptance must be absolute and unconditional

2. Acceptance must be communicated to the offerer

3. Acceptance must be made within a reasonable time

4. It must be according to the mode prescribed or usual or reasonable mode

5. The acceptor must be aware of the proposal at the time of the offer

6. Acceptance must be given before the offer lapses or before the offer is revoked

7. Acceptance cannot be implied from silence

1. Acceptance must be Absolute and unconditional.: In order that an acceptance of a proposal is valid, it must be unconditional and unqualified. For a qualified and conditional acceptance amounts to a counter offer and rejection of the original offer. The acceptor must comply with the terms of the offer. A variation or alteration, however, small of the offer, will make the acceptance invalid, Examples : (a) A wrote 10 B offering to buy his mare if he "warranted her sound and quiet in harness". B wrote back that he accepted the offer and warranted her sound and quite in double harness, as he had not tried her in single harness. It was held that A was not bound by his offer as B's reply was, in effect, in counter offer and not an unqualified acceptance of A's offer. [Jordan v. Norton (1838) 4Mand V 155].

2. **Acceptance must be communicated to the offerer.** If the offeree remains silent and does nothing to show that he has accepted the offer, no contract is formed. The acceptor should do something to signify his intention to accept. Thus, where a person accepts an offer but fails to post the letter of acceptance, it is no acceptance.

3.**Acceptance must be made within a reasonable time.** Acceptance to Be valid must be made within the time allowed by the offerer and if no time is specified, it must be made within a reasonable time. What is a reasonable time is a question of fact depending on the particular circumstances, Acceptance may be made at any time till the offer is alive. Acceptance made after the offer has been withdrawn is invalid.

4. **It must be according to the mode prescribed or usual or reasonable mode.** Acceptance has to be made in the manner prescribed or indicated by the offerer. Section 7(2) states that if the acceptance; is not made in the manner prescribed, the proposer may within a reasonable time after the acceptance is communicated to him, insist that the acceptance must be made in the manner prescribed. Failure on the part of the offerer to do so, will imply that he has accepted the acceptance although it is not in the desired manner.

5. **The acceptor must be aware of the proposal at the time of the offer.** Acceptance follows offer. It the acceptor is not aware of the existence of the offer and conveys his acceptance, no contract comes into being. There must be knowledge of the offer before anyone could consent to it. An act done in ignorance of the offer of a reward cannot be called an acceptance.

6. **Acceptance must be given before the offer lapses or before the offer is revoked.** It means that acceptance must be made while the offer is in force i.e. before the offer has been revoked or offer has lapsed.

7. **Acceptance cannot be implied from silence.** No contract is formed if the offeree remains silent and does nothing to show that he has accepted the offer.

REVOCATION OF OFFER AND ACCEPTANCE

Revocation of offer arises only if there has been no acceptance of the offer by the time of revocation. An offer may come to an end by revocation or lapse or rejection.

According to Section 6 of the Act, a proposal may be revoked in any of the following ways.

Modes of revocation of offer Modes of revocation of offer

1. By notice of revocation
2. By lapse of time
3. By non-fulfillment of condition precedent
4. By death or insanity
5. By Counteroffer
6. By the non-acceptance of the offer according to the prescribed or usual mode
7 .By subsequent Illegality

1. By notice of revocation: Offer may be revoked by a communication of a notice of revocation by the offerer to the other party. An offer made in writing may be revoked by words of mouth. The notice of revocation may not always be express. A notice of revocation to be effective must be communicated to the offeree. The revocation will be effective only if the offeree has actual knowledge of the revocation and it is not enough for the offerer to say that the offeree was in a position to learn of the revocation, though in fact he did not have actual knowledge of it.

2. By lapse of time : A proposal will come to an end by the lapse of tune prescribed in such proposal for its acceptance or, if no time is so prescribed by the lapse of reasonable time. What is a reasonable time is a question of fact depending upon the circumstances of each case. Where the subject matter of the contract is a article, like gold, the prices of

which fluctuate daily in the market, very short period will be regarded as reasonable. But where a person applied for shares of a company in June he cannot be bound by a allotment made late in November.

Example : D offered to sell wool to H on Thrusday and agreed to give him three days time to accept H accepted the offer on Monday, but by that time D had sold the wool. It was held that the offer had lapsed. [Head v. Diggen {1828) 3 M & R 97],

3.By **non-fulfilment of condition precedent:** A proposal is revoked when the acceptor fails to fulfil a condition precedent to the acceptance of the proposal. Thus, X may offer to sell certain goods to Y on a condition that Y pays a certain amount before a certain date. The proposal is revoked if Y fails to pay the requested amount within given time.

4.By **death or insanity :**A proposal is revoked by the death or insanity of the propose if the fact of his death or insane comes to the knowledge of the acceptor before acceptance. Under English law death of the propose revokes an offer even if acceptance is made in ignorance of the death.

In addition to the four modes of revocation given above, an offer will also be revoked in the following cases.

5. **By Counter offer :** An offer comes to an end when the offered makes a counter offer or rejects the offer. Where an offer is accepted with some modification in the terms of the offer or with some other condition not for mining part of the offer, such qualified acceptance amounts to a counter offer. An offer once rejected cannot be revived.

6.By the non-acceptance of the offer according to the prescribed or usual mode

The offer will also stand revoked if it has not been accepted according to the mode prescribed.

7.**By subsequent illegality;** An offer lapses if it becomes illegal after it is made and before it is accepted. Thus, where an offer is made to sell 10 bags of wheat for Rs. 2500

and before it is accepted, a law prohibiting the sale of wheat by private individuals is enacted, the offer comes to an end.

CONSIDERATION

Consideration is the foundation of every contract. The law enforces only those promises which are made for consideration. Where one party promises to do something, it must get something in exchange. This something in return" is called consideration. Consideration is the very life is the blood of every contract. In the absence of consideration a promise or undertaking is purely gratuitous. However, sacred and binding in honour, it creates no legal obligation.

Definition. Consideration has been defined in many ways. According to Pollock "Consideration is the price for which the promise of other is bought and the promise thus given for value is enforceable.

Section 2 (d) of the Indian Contract Act defines consideration as

(a) when at the desire of the promisor,

(b) the promisee or any other person,

(c) has done or abstained from doing, or does or abstains from doing, or promises to do or abstain from doing,

(d) something, such act or abstinence or promise is called a consideration f

ESSENTIALS OF VALID CONSIDERATION

1. At the desire of the promisor : The first essential characteristic of consideration is that the act or abstinence must have been done at the desire of the promisor. It follows that any act performed at the desire of a third party cannot be a consideration. The desire of the promisor may be expressed or implied. A gratuitous service rendered by

the promisee without any request of the promisor is not a consideration enforceable at law. But it is not necessary that what is done by the promisee by way of consideration should benefit the promisor. Any benefit conferred by B or C at the request of A would be good consideration for A's promise.

Example : A sees B drowning and saves his life. A cannot demand payment for his services as it is a voluntary act on his part and B never asked him to do so.

Essentials of valid consideration

1. It must move at the desire of the promisor

2. It must move from the promisee or any other person

3. It must be past, present or future

4. It need not be adequate

5. It must be real

6. It must be lawful.

7. It must be something which the promisor is not already bound to do

Consideration may be past, present or future. The words, '-'has done or abstained from doing; or docs or abstains from doing : or promises to do or to abstain from doing" indicate that consideration may be past, present or future.

Past consideration. When the consideration for a present promise was given before the date of the promise, it is said to be past consideration. A past consideration, if given at the request of the promissory will support a subsequent promise. A past consideration is as good as present or future consideration. .

Future consideration. A future or executor consideration is a promise to do or give something in future for the promise then made. It is also called a promise for the promise. Mutual promises to marry, a promise to do work in return for promise of payment are examples of future-consideration.

Consideration must be real. Though consideration need not be adequate, yet it must be real and not 'illusory'. Thus, a promise to do that which a person is by law bound to do, does not amount to consideration. Consideration has also to be competent. If it is physically impossible, vague or legally impossible, the contract cannot be enforced. Thus, a promise by a man to make two parallel lines meet is no good consideration.

A promise not to sue for a reasonable time is a good consideration. Similarly if a person compromises and agrees to accept a smaller sum in settlement of his claim, this would be sufficient: Consideration for the opposite party's promise to pay sum.

6. Consideration must be lawful. The consideration for an agreement must be lawful. An agreement is void, if it is based on unlawful consideration. The consideration of an agreement is lawful unless

(i) it is forbidden by law, or

(ii)is of such a nature that if permitted it would defeat the provisions of any law; or

(iii) is fradulent; or

(iv) involves or implies injury to the person or property of another; or

(v) the court regards it as immoral or opposed to public policy.

7. It must be something which the promisor is not already bound to do. A promise to do what one is already bound to do, either by general law or under an existing contract, is not a good consideration for a new promise. There will be no deteriment to the promisee or benefit to the promisor over and above their existing rights or obligations.

CAPACITY OF CONTRACT

The essentials of a valid agreement is that the parties to the contract must be competent to contract (Section 10).

Section 11 provides that "Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject." Thus, incapacity to contract may arise from: (i) minority, (ii) mental incompetence, and (iii) status.

MINORITY : According to Sections of the Indian Majority Act, 1875, a minor is a person who has not completed 18 years of age. However, in the following two cases, a minor attains majority after 21 years of age:

(1) Where a guardian of minor's person or property has been appointed under the Guardians and Wards Act, 1890, or

(2) Where the superintendence of minor's property is assumed by a Court of Wards.

MINOR'S CONTRACTS : The position of minor's contracts is summed up as follows:

(1) A contract with or by a minor is void and a minor, therefore, cannot, bind himself by a contract. A minor is not competent to contract. In English Law, a minor's contract, subject to certain exceptions, is only voidable at the option of the minor. In 1903 the Privy Council in the leading case of Mohiri Bibi v. Dharmodas Chose (190, 30 Ca. 539) held that in India minor's contracts are absolutely void and not merely voidable. The facts of the case were:

(2) A minor can be a promisee or a beneficiary. During his minority, a minor cannot bind himself by a contract, but there is nothing in the Contract Act which prevents him from making the other party to the contract to be bound to the minor) Thus, a minor is incapable of making a mortgage, or a promissory note, but he is not incapable of becoming a mortgagee, a payee or endorsee. He can derive benefit under the contract. .

(3) A minor's agreement cannot be ratified by the minor on his attaining majority. A minor cannot ratify the agreement on attaining the age of ninjoi ny u therefore, validity cannot be given to it later on.

(5) A minor is always allowed to plead minority, and is not c'.tuppiM to i'm mi rven where he had procured a loan or entered into some other contract by falsely represent me, ilnii he was of full agej Thus, a minor who has deceived the other party to the agreement by rcpi rscniing himself as of full age is not prevented, from later asserting that he was a minor ;u ihe innc lie entered into agreement.

(6) A minor cannot be a partner in a partnership firm. However, a minor may, with the consent of all the partners for the time being, be admitted to the benefits of partnership (Section 30, the Indian Partnership Act, 1.932).

(7) A minor's estate is liable to a person who supplies necessaries of life to a minor, or to one whom the minor is legally bound to support according to his station in life. This obligation is cast on the minor not on the basis of any contract but on the basis of an obligation resembling a contract (Section 68). However, there is no personal liability on a minor for the necessaries of life supplied.

(i) the goods are 'necessaries', for that particular minor having regard to his station in life (or status or standard of living) and thus purchase or hire of a car may be a necessity for a particular minor, and

(ii) the minor needs the goods both at the time of sale and delivery. What is necessary to see is the minor's 'actual requirements' at the time of sale and at the time of delivery, where these times are different

Consent Defined (Section 13).

It is essential to the creation of a contract that both parties agree to the same thing in the same sense. When two or more persons agree upon the same thing in the same sense, they are said to consent. Examples

1. A agrees to sell his Fiat Car 1983 model for Rs. 80,000. B agrees to buy the same. There is a valid contract since A and B have consented to the same subject matter.

2. A, who owns three Fiat Cars, offers to sell one, say, 'car_x' to B for Rs. 80,000. B agrees to buy the car for the price thinking that A is selling 'car y'. There is no consent and hence no contract. A and B have agreed not to the same thing but to different things.

3. In Foster v. Mackinnon (1869) L.R. 4 C.P. 704, the defendant had purported to endorse a bill of exchange which he was told was a guarantee. The Court held that his signature, not being intended as an endorsement of a bill of exchange, there was no consent and consequently no agreement entered into by him, and therefore he was not liable on the Bill. Free Consent Defined (Section 14). Consent is said to be free when it is not caused by

(a) Coercion.

(b) Undue influence.

(c) Fraud.

(d) Misrepresentation.

(e) Mistake.

For a contract to be valid it is not only necessary that parties consent but also that they consent freely. Where there is a consent, but no free consent, there is generally a contract voidable at the option of the party whose consent was not free.

LEGALITY OF OBJECT.

An agreement will not be enforceable if its object or the consideration is unlawful. According to Section 23 of the Act, the consideration and the object of an agreement are unlawful in the following cases:

1. If it is forbidden by law. If the object or the consideration of an agreement is the doing of an act forbidden by law, the agreement is void. An act or an undertaking is forbidden by law when it is punishable by the criminal law of the country or when it is prohibited by special legislation derived from the legislature. Examples

- A loan granted to the guardian of a minor to enable him to celebrate the minor's marriage in contravention of the Child Marriage Restraint Act is illegal and cannot be recovered [Srinivas v. Raja Ram Mohan (1951) 2 M.LJ.264].

- 2. A partnership entered into for the purpose of doing business in arrack on a licence granted only to one of the partners, is void ab-initio whether the partnership was entered into before the licence was granted or afterwards as it involved a transfer of licence, which is forbidden and penalised by the Akbari Act and the rules thereunder [Velu Payaychi v. Siva Sooriam, A.1.R.{ 1950) Mad. 987].

2. If it is of such a nature that if permitted, it would defeat the provisions of any law. If the object or the consideration of an agreement is of such a nature that, though not directly forbidden by law. it would defeat the provisions of the law, the agreement is void. Examples

- A's estate is sold for arrears of revenue under the provisions of an Act of the Legislature, by which the defaulter is prohibited from purchasing the estate. B, upon an understanding with A, becomes the purchaser and agrees to convey the estate to A upon receiving from him the price which B has paid. The agreement

is void, as it renders the transaction, in effect, a purchase by the defaulter, and would so defeat the object of the law [Illustration (i) to Section 23].

- A let a flat to B at a rent of £1200 a year. With a view to reduce the municipal tax A made two agreements with B. One, by which the rent was stated to be £450 only and the other, by which B agreed to pay £750 for services in connection with the flat. Held, A could not recover £750 since the agreement was made to defraud the municipal authority and thus void [Alexander y.Rayson (193ft) 1 K.B. 169].

3. If it is fraudulent. An agreement with a view to defraud other is void.

Examples

- 1. A, B and C enter into an agreement for the division among them of gains acquired or to be acquired, by them by fraud. The agreement is void as its object is unlawful.

- A, being an agent for a landed proprietor, agrees, for money, without the knowledge of his principal, to obtain for B a lease of land belonging to his principal. The agreement between A and B'is void as it implies a fraud by concealment by A, on his principal [Illustration (g) to Section 23].

4. If it involves or implies injury to the person or property of another.

If the object of an agreement is to injure the person or property' of another it is void.

Examples

- A borrowed Rs. 100 from B. He (A) executed a bond promising to work for B without pay for 2 years and in case of default agreed to pay interest at a very exhorbitant rate and the principal amount at once. Held, the contract was void [Ram Saroop v. Bansi 42 Cal. 742].

- An agreement between some persons to purchase shares in a company with a view to induce other persons to believe, contrary to the fact, that there is a bona fide market for the shares is void [Gherulal Parekh v. Mahadeo. A.I.R. (1956) S.E. 781].

5. If the Court regards it as immoral or opposed to public policy. An agreement whose object or consideration is Immoral or is opposed to the public policy, is void. Examples

- A let a cab on hire to B, a prostitute, knowing that it would be used for immoral purposes. The agreement is void [Pearce v. Brooks (1886) L.R. 1 Ex.213].

- A, who is B's mukhtar, promises to exercise his influence, as such, with B in favour of C and C promises to pay 1,000 rupees to A. The agreement is void, because it is immoral.

CONTINGENT CONTRACTS (Sections 31-36)

Contingent Contract Defined (Section 31). A contingent contract, is a contract to do or not to do something, if some event, collateral to such contract does or does not happen. Example : A contracts to pay B Rs. 10,000 if B's house is burnt. This is a contingent contract.

Essentials of a Contingent Contract: (1) The performance of a contingent contract is made dependent upon the happening or non-happening of some event. (2) The event on which the performance is made to depend, is an event collateral to the contract, i.e. it does not form part of the reciprocal promises which constitute the contract.

Examples: A agrees to deliver 100 bags of wheat and B agrees to pay the price only afterwards, the contract is a conditional contract and not contingent, because the event on which B's obligation is made to depend is a part of the promise itself and not a collateral event.

2. A promises to pay B Rs. 10,000 if he marries C, it is not a contingent contract. (3) The contingent event should not be the mere will of the promisor.

PERFORMANCE OF CONTRACTS

PERFORMANCE OF CONTRACTS (Sections 37-67):A contract creates oblige ions. 'Performance of a Contract' means the carrying out of these obligations. Section 37 requires hat the parties to a contract must either perform or offer to perform their respective promises, unless such performance is dispensed with or excused under the provisions of the Contract Act, or of any other law.

Offer to Perform or Tender of Performance: It may happen that the promisor offers performance of his obligation under the contract at the proper time und place but the promisee refuses to accept the performance. This is called as 'Tender' or 'attempted performance'. According to Section 38, if a valid tender is made and is not accepted by the promisee, the promisor shall be responsible for non-performance nor shall he lose his rights under the contract. A tender or offer performance to be valid must satisfy the following conditions:

1. It must be unconditional. A conditional offer of performance is not valid and the promisor shall not be relieved thereby. A 'tender' is conditional where it is not in accordance with the terms of the contract.

Examples

(1) X offers to Y the principal amount of the loan. This is not a valid tender since the whole amount of principal and interest is not offered.

(2) X a debtor, offers to pay Y the debt due by instalments and tenders the first instalment. This is not a valid tender [Behari Lai v. RamGhulam, 24 All. 461].

2. It must be made at proper time and place, and under such circumstances that the person to whom it is made may have a reasonable opportunity of ascertaining that the

person offering to perform is able and willing there and then to do the whole of what he is bound by his promise to do.

Examples

1. X offers by post to pay Y the amount he owes. This is not a valid tender, as X is not able 'there and then' to pay.

2. X offers the goods contracted to Y at 1 A.M. This is not a valid tender unless it was so agreed.

As to what is proper time and place, depends upon the intention of the parties and the provisions of Section 46 to 50 which are discussed on p. 86.

3. Since the tender is an offer to deliver anything to the promisee, the promisee must have a reasonable opportunity to see that the thing offered is the thing contracted for.

Example: A contracts to deliver B at his warehouse, on 1 st March 1989,100 bales of cotton of a particular quality. A must bring the cotton to B's warehouse on the appointed day, under such circumstances that B may have a reasonable opportunity of satisfying himself that the thing offered is cotton of the quality contracted for, and that there are 100 bales.

DISCHARGE OF CONTRACT

The gases in which a contract is discharged may be classified as follows: A. By performance or tender. B. By mutual consent. C. By subsequent impossibility. D. By operation of law. E. By breach.

A. **By Performance:** The obvious mode of discharge of a contract is by performan.ee, that is, where the parties have done whatever was contemplated under the contract, the contract comes to an end. Thus where 'A' contracts to sell his car to 'B'

for Rs. 85,000 as soon as the car is delivered to 'B' and 'B1 pays the agreed price for it, the contract comes to an end by performance.

Tender: The offer of performance or tender has the same effect as performance. If a promisor tenders performance of his promise but the other party refuses to accept, the promisor stands discharged of his obligations."

B. By mutual consent (Section 62): If the parties to a contract agree to substitute a new contract for it, or to rescind it or alter it, the original contract is discharged. A contract may terminate by mutual consent in any of the followings ways:

1. Novation. : 'Novation1 means substitution of a new contract for the original one. The new contract may be substituted either between the same parties or between different parties.

Examples

(1) A who owes B Rs. 20,000 enters into an arrangement with him thereby giving B a mortgage of his estate for Rs. 15,000. This arrangement constitutes a new contract and terminates the old.

2. Rescission. Rescission means cancellation of all or some of the terms of the contract. Where parties mutually decide to cancel the terms of the contract, the obligations of the parties there under terminate.

3. Alteration. If the parties mutually agree to change certain terms of the contract, it has the effect of terminating the original contract. There is, however, no change in the parties.

4. Remission (Section 63). Remission is the acceptance of a lesser sum than what was contracted for or a lesser fulfilment of the promise made.

Examples

(1) A owes B Rs. 5,000. A pays to B who accepts in satisfaction of the whole debt Rs. 2,000 paid at the time and place at which the Rs. 5,000 were payable. The whole debt is discharged.

Thus, in India promisee may remit or give-up a part of his claim and promise to do so is binding even though there is no consideration for doing

5. Waiver. Waiver means relinquishment or abandonment of a right. Where a party waives his rights under the contract, the other party is released of his obligations.

Example: A promises to paint a picture for B. B afterwards forbids him to do so. A is no longer bound to perform the promise where an inferior right possessed by a person coincides with a superior right of the same person.

C. By subsequent impossibility (Section 56):Impossibility in a contract may either be inherent in the transaction or it may be introduced later by the change of certain circumstances material to the contract.

Examples of Inherent Impossibility. (1) A promises to pay B Rs. 50,000 if B rides on horse to the moon. The agreement is void.

(2) A agrees with B to discover treasure by magic. The agreement is void.

Where a contract originates as one capable of performance but later due to change of circumstances its performance becomes impossible, it is known to have become void by subsequent or supervening impossibility.

2. Commercial impossibility. It means that if the contract is performed, it will result in a loss in the promisor. Commercial impossibility to perform a contract does not discharge the contract.

Example: A contract to lay gas mains is not discharged because the outbreak of war makes it expensive to procure the necessary materials [M/s. Alopi Pd, v. Union of India (1960) S.C. 589].

However, the Madras High Court in Easun Engineering Co. Ltd. v. The Fertilisers and Chemicals Travancore Ltd. and Another (AIR 1991 Mad. 158) has held that the abnormal increase in price due to war conditions was an untoward event or change of circumstances which 'totally upset the very foundation upon which parties rested their bargain.' Therefore, in a contract for supply of transformers, an increase of 400 percent in the price of transformer oil due to war was held to be an impossibility of performance and the supplier not held liable for breach.

3. The promisor is not exonerated from his liability if the third person, on whose work the promisor relied, fails to perform. Thus, a wholesaler's contract to deliver goods is not discharged because a manufacturer has not produced the goods concerned.

4. **Strikes, lockouts and Civil Disturbances.** Events like these do not terminate contracts unless there is a clause in the contract to that effect.

Example:A agreed to supply B certain goods to be produced in Algeria. The goods could not be produced because of riots and civil disturbances in that country. Held there was no excuse for non-performance of the contract. [Jacobs v. Credit Lyonnais (1884) 12 Q.B.D. 589.].

5. **Failure of one of the objects.** If the contract is made for several purposes, the failure of one of them does not terminate the contract.

Example : A agreed to let a boat to H to (i) view the naval review at the coronation and (ii) to cruise round fleet. Owing to the king's illness, the naval review was cancelled, but the fleet was assembled arid the boat could have been used to cruise round the fleet. Held the contract was not discharged. [Heme Bay Steamboat Co. v. Mutton K.B. 740].

SUBSEQUENT IMPOSSIBILITY : (When does Contract Become Void?) 1.By Destruction of subject matter of the contract. 2. By the death or disablement of the parties. 3.By subsequent illegality. 4. By declaration of war. 5. By non-existence occurrence of a particular state of things. 6. Difficulty of performance does not amount to impossibility. 7. Commercial impossibility does not render a contract void. 8.Strikes, lock-outs and civil disturbances do not terminate contracts unless provided for in the contract. 9.Failure of one of the objects docs not terminate the contract. 10.Non-performance by the third party does not exonerate the promisor from his liability.

D. By Operation Of Law :Discharge under this head may take place as follows:

1. **By death.** Death of the promisor results in termination of the contract in cases involving personal skill or ability.

2. **By Insolvency.** The Insolvency Acts provide for discharge of contracts under certain circum stances. So, where Insolvency Court passes an order of discharge, the insolvent stands discharged of liabilities of all debts incurred previous to his adjudication.

3. **By merger.** When between the same parties, a new contract is entered into, and a security of a higher degree, or a higher kind is taken, the previous contract merges in the higher security, for example, a right of action on .an ordinary debt which would be merged in the right of suing on a mortgage for the same debt.

4. **By the unauthorised alteration of terms of a written document.** Where any of the parties alters any of the terms of the contract without seeking the consent of the other party to it, the contract terminates.

E. By Breach Of Contract: A contract terminates by breach of contract. Breach of contract may arise in two ways: (a) Anticipatory breach, and (b) Actual breach. Anticipatory Broach of Contract: Anticipatory breach of contract occurs, when a party

repudiates it before the time fixed for performance has arrived or when a party by his own act disables himself from performing the contract. Examples

(1) A contracts to marry B. Before the agreed date of marriage he married C. B is entitled to sue A for breach of promise.

(2) A promised to marry B as soon as his (As) father should die. During the father's life time, A absolutely refused to marry B. Although the time for performance had not arrived, B was held entitled to sue for breach of promise [Frost v. Knight L.R.. 7 Ex. 111.]

(3) A contracts to supply B with certain articles on 1 st of August. On 20th July, he informs B that he will not be able to supply the goods. B is entitled to sue A for breach of promise.

REMEDIES FOR BREACH OF CONTRACT (Sections 73-75): As soon as eitherparty commits a breach of the contract, the other party becomes entitled to any of the following reliefs:

1. Rescission of the Contract.
2. Damages for the loss sustained or suffered.
3. A decree for specific performance.
4. An injunction.
5. Suit on Quantum Meruit.

1. Rescission of the Contract. When a breach of Contract is committed by one party, the other party may sue to treat the contract as rescinded. In such a case, the aggrieved party is freed from all his obligations under the contract.

Example: A promises B to supply 100 bags of rice on a certain date and B promises to pay the price on receipt of the goods. A does not deliver the goods on the appointed day, B need not pay the price.

Party rightfully rescinding contract entitled to compensation (Section 75). A person who rightfully rescinds the contract is entitled to compensation for any damage which he has sustained through the non-fulfilment of the contract.

Example: A, a singer, contracts with B, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and B engages to pay her Rs. 100 for each night's performance. On the sixth night, A willfully absents herself from the theatre, and B in consequence, rescinds the contract. B is entitled to claim compensation for the damage which he has sustained through the non-fulfilment of the contract.

2. **Damages.** Damages, generally speaking, are of four kinds: A. Ordinary Damages, B. Special Damages, C. Vindictive, or Punitive or Exemplary Damages, and D. Nominal Damages.

A. Ordinary Damages (Sec, 73). Ordinary damages are those which naturally arose in the usual course of things from'such breach. The measure of ordinary damages is the difference between the contract price and the market price at the date of the breach. If the seller retains the goods after the breach, he cannot recover from the buyer any further loss if the market falls, nor is he liable to have the damages reduced if the market rises.

'Examples: (.1) A contracts to deliver 100 bags of rice at Rs. 100 a bag on a future date. On the due date he refuses to deliver. The price on that day is Rs. 110 per bag. The measure of damages is the difference between the market price on the date of the breach and the contract pries, viz., Rs. 1,000.

(2) A contracts to buy B's ship for Rs. 60,000 but breaks his promise. A must pay to B, by way of compensation, the excess, if any, of the contract price over the price which B can obtain for the ship at the time of the breach of promise.

Notice that ordinary damages shall be available for any loss or damage which arises naturally in the usual course of things from the breach and as such compensation cannot be claimed for any remote or indirect loss or damage by reason of the breach (Sec. 73).

Example: A railway passenger's wife caught cold and fell ill due to her being asked to get down at a place other than the Railway Station. In a suit by the plaintiff against the railway company, held that damages for the personal inconvenience of the plaintiff alone could be granted, but not for the sickness of the plaintiffs wife, because it was a very remote consequence.

B.Special Damages (Sec. 73). Special damages are claimed in case of loss of profit, etc. When there are certain special or extraordinary circumstances present and their existence is communicated to the promisor, the non-performance of the promise entitles the promisee to not only claim the ordinary damages but also damages that may result there from.

Examples

(1) A, a builder, contracts to erect and finish a house by the first of January, in order that B may give possession of it at that time to C, to whom B has contracted to let it. A is informed of the contract between B and C. A. builds the house so badly that, before the first of January, it falls down and has to be rebuilt by B, who, in consequence, loses the rent which he was to have received from C, and is obliged to make compensation to C for the breach of his contract. A must make compensation to B for the cost of rebuilding the house, for the rent lost, and for the compensation made to C.

(2) A delivers to B, a common carrier, a machine to be conveyed, without delay, to A's mill, informing B that his mill is stopped for want of the machine. B unreasonably delays the delivery of the machine, and A in consequence, loses a profitable contract with the Government. A is entitled to receive from B, by way of compensation, the average amount of profit which would have been made by the working of the mill during the time that delivery of it was delayed. But, however, the loss sustained through the loss of the Government contract cannot he claimed. Notice that thr communication of the special circumstances is a pre-requi-site to the claim for special damages. Examples

- Where A contracts to sell and deliver to B, on the first of January, certain cloth which B intends to manufacture into caps of a particular kind, for which there is no demand, except at that season. The cloth is not delivered till after the appointed time and too late to be used that year in making caps. B is entitled to receive from A only ordinary damages, i.e., the difference between ihu -contract price of the cloth and its market price at the time of delivery but not the profits which he expected to obtain by making caps, nor the expenses which he has put in making preparation for the manufacture,

C. **Vindictive Damages.** Vindictive damages are awarded with a view to punish the defendant, and not solely with the idea of awarding compensation to the plaintiff. These have been awarded (a) for a breach of promise to marry; (b) for wrongful dishonour of a cheque by a banker possessing adequate funds of the customer. The measure of damages in case of (a) is dependent upon tin: severity of the shock to the sentiments of the promisee. In case of (b) the rule is smaller the amount

of the cheque dishonoured, larger will be the amount of damages awarded.

D.Nominal Damages. Nominal damages are awarded in cases of breach of contract where there is only a technical violation of the legal right, but no substantial loss is caused thereby. The damages granted in such cases are called nominal because they are

very small, for example, a rupee or a shilling. Duty to mitigate damages suffered. It is the dvity of the injured party to minimise damages. [British Westinghouse & Co. v. Underground Electric etc. Co., (1915) A.C. 673.]. He cannot claim to be compensated by the party in default for loss which is really not due to the breach but due to his own neglect to minimise loss after the breach.

Liquidated Damages and Penalty: Sometimes parties themselves at the time of entering into a contract agree that a particular sum will be payable by a party in case of breach of the contract by him. Such a sum may either be by way of liquidated damages, or it may be by way of penalty.

Liquidated Damages. The essence of liquidated damages is a genuine covenanted pre-estimate of damages. Thus, the stipulated sum payable in case of breach is to be regarded as liquidated damages, if it be found that parties to the contract conscientiously tried to make a pre-estimate of the loss which might happen to them in case the contract was broken by any of them.

Penalty. The essence of a penalty is a payment of money stipulated as it terem of the offending party. In other words, if it is found that the parities made no attempt to estimate the loss that mi happen to them on breach of the contract but still stipulated a sum to be paid in case of a breach of it with the object of coercing the offending party to perform the contract, it is a case of penalty. Thus, a term in a contract amounts to a penalty where a sum of money, which is out of all proportion to the loss, is stipulated as payable in case of its breach.

English law recognises a distinction between liquidated damages and penalty whereas liquidated damages are enforceable but penalty cannot be claimed. In India, there is no such distinction recognised between penalty and liquidated damages. Section 74 which contains law in this regard states "When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the

breach is entitled (whether or not actual damage or loss is proved to have been caused thereby), to receive from the party who has broken the contract reasonable compensation not exceeding the amount as named or, as the case may be, the penalty stipulated for." Thus, where the amount payable in case of breach is fixed in advance whether by way of liquidated damages or penalty, the party may claim only a reasonable compensation for the breach, subject to the amount so fixed. Examples

(1) A contracts with B to pay B Rs. 1,000, if he fails to pay B Rs. 500 on a given day. A foils to pay B Rs. 500 on that day. B is entitled to recover from A such compensation, not exceeding Rs. 1,000, as the Court considers reasonable.

(2) A con tracts, with B that if A practices as a surgeon within Calcutta, he will pay B Rs. 5,000. A practices as a surgeon in Calcutta. B is entitled to such compensation, not exceeding Rs. 5,000 as the Court considers reasonable.

Payment of interest. Whether payment of interest at a higher rate amounts to penalty shall depend upon the circumstances of the case. However, the following rules may be helpful in understanding the legal position in this regard.

3. Specific Performance. Where damages are not an adequate remedy, the court may direct the party in breach to carry out his promise according to the terms of the contract. This is called "specific performance' of the contract. Some of the instances where Court may direct specific performance ace: a contract fur the sale of a particular house or some rate article or any other thing for which monetary compensation is not enough because the injured party will not be able to get an exact substitute in the market. Specific performance will not be granted where:

(a) Monetary compensation is an adequate relief.

(b) The contract is of a personal nature, e.g.. a contract to marry.

(c) Where it is not possible for the Court to supervise the performance of the contract, e.g., a building contract.

(d) The contract is made by a company beyond its objects i\s laid down in its Memorandum of Association.

4. Injunction, Injunction means an order of the Court. Where a party is in breach of a negative term of contract (i.e. where he does something which ha promised not to do), the Court may, by issuing an order, prohibit him from doing so.

Examples

(1) G agreed to buy the whole of the electric energy required for his house from a certain company. He was, therefore, restrained by an injunction from buying electricity from 'any other person. [Metropolitan Electric Supply Company Ginder].

5. Quantum Meruit. The phrase 'Quantum Meruit' means as much as-is merited' (earned). The normal rule of law is that unless a party has performed his promise in its entirely, it cannot claim performance from the other. To this rule, however, there are certain exceptions on the basis of 'Quantum Meruit'. A right to sue on a 'quantum meruit' arises where a contract, partly performed by the party, has become discharged by the breach of the other party. This has already been discussed under 'Quasi Contracts' (Part 1-10). 7.

UNIT - II

SALE OF GOODS.

The law relating to sale of goods is contained in the Sale of Goods Act, 1930,' which came into force on 1 st July 1930. The Act contains sixty-six Sections and extends to the whole of India except the State of Jammu and Kashmir. A few minor amendments in the Act were made by Sale of Goods (Amendment) Act, 1963.

The general provisions of the Indian Contract Act continue to be applicable to the contract of sale of goods in so far as they are not inconsistent with the express provisions of Sale of Goods Act (Sec. 3). Thus, for example, the provisions of the Contract Act relating to capacity of the parties, free consent, agreements in restraint of trade, wagering agreements and measure of damages continue to be applicable to a contract of sale of goods. But the definition of consideration stands modified to the extent that in a contract of sale of goods consideration must be by way of 'price,' i.e., only money consideration [Sees. 2(10) and 4].

A contract of sale of goods results, like any other contract, by an offer by one party and its acceptance by the other. Thus, it is a consensual transaction. The parties to the contract enjoy unfettered discretion to agree to any terms they like relating to delivery and payment of price, etc. The Sale of Goods Act does not seek to fetter this discretion. It simply lays down certain positive rules of general application for those cases where the parties have failed to contemplate expressly for contingencies which may interrupt the smooth performance of a contract of sale, such as the destruction of the thing sold, before it is delivered or the insolvency of the buyer, etc. The Act leaves the parties free to modify the provisions of the law by express stipulations. Definition and Essentials of a Contract of Sale: Section 4(1) of the Sale of Goods Act defines a contract of sale of 'Throughout Part II of this book (i.e., Chapters 16-20), which deals with the Law of Sale of Goods, the references to Sections, unless otherwise specifically stated, are-references

to Sections of the Sale of Goods Act, S930. The word 'Act' wherever used means the Sale of Goods Act, 1930.

Goods as-"a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price."

This definition reveals the following essential characteristics of a contract of sale of goods:

1. Two parties. The first essential is that there must be two distinct parties to a contract of sale, viz., a buyer and a seller, as a person cannot buy his own goods. Thus, for example, when students of a hostel take meals with a mess run by themselves on cooperative lines, there is no contract of sale. The students are 'undivided joint owners' of the meals they are consuming. As a matter of fact every member of the mess is consuming his own goods on the basis of understanding that he must restore to the mess what he consumed so that the mess continue to provide meals for its members. An 'undivided joint owner' must be distinguished from a 'part-owner' who is a joint owner with divisible share. According to Section 4(1), there may be a contract of sale between one part-owner and another,-e:g., if A and B jointly own a typewriter, A may sell his ownership in the typewriter to B, thereby making B sole owner of the goods. Similarly, a partner may buy the goods from the firm in which he is a partner and vice-versa. There is, however, one exceptional when a person may buy his own goods. Where a person's goods are sold in execution of a decree he may himself buy them, so as to save them from a transfer of ownership to some one else.

2. **Transfer of property.** 'Property' here means 'ownership'. Transfer of property in the goods is another essential of a contract of sale of goods. A mere transfer of possession of the goods cannot be termed as sale. To constitute a contract' of sale the seller must either transfer or agree to transfer the property in the goods to the buyer. Further, the term 'property,' as used in the Sale of Goods Act, means 'general property' in goods as

distinguished from 'special' property' [Sec. 2(H)]. If P who owns certain goods pledges them to R, he has general property in the goods, whereas R (the Pawnee) has special property or interest in the goods to the extent of the amount of advance he has made to the paw nor. Similarly, in the case of bailment of goods for the purpose of repair, the bailee has special interest in goods bailed to the extent of his labour charges.

3. **Goods.** The subject-matter of the contract of sale must be 'goods', According to Section 2(7), goods means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming pan of the land which are\agreed to be severed before sale or under the contract of sale." Thus Very kind of movable property except actionable claim and money is regarded as 'goods'. Goodwill, trade marks, copyrights, patents right, water, gas, electricity,3 decree of a court of law,4 are all regarded as goods. Shares and stock are also included in goods. With regard to growing crops, grass and things attached to or forming part of the land, such things are regarded as goods as soon as they are agreed to be separated from the land. Thus where trees were sold so that they could be cut out and - separated from the land and then taken away by the buyer, it was held that there was a contractfor sale of movable property or goods (Kursell vs Timber Operators & Contractors Ltd. But contracts for sale of things 'forming part of the land itself are not contracts for sale of 'goods. For example, a contract for the sale of coal mine or building- stone quarry is not a contract of sale of goods.

'Actionable claims' means claims which can be enforced by a legal action or a suit, e.g.. a book debt (i.e., a debt evidenced by an entry by the creditor in his Account Book or Bahi). A book debt is not goods because it can only be assigned as per the Transfer of Property Act but cannot be sold. Similarly, a bill of exchange or a promissory note represents a debt, i.e., an actionable claim and implies the right of the creditor'.to recover its amount from the debtor. But since these can be transferred under Negotiable instruments Act by mere delivery or endorsement and delivery, such instruments cannot be sold.

'Money' means current money. It is not regarded goods because it is the medium of exchange through which goods can be bought. Old and rare coins, however, may be treated as goods and sold as such.

It may be mentioned that sale of immovable property is governed by the Transfer of Property Act, 1882.

4. **Price.** The consideration for a contract of sale must be money consideration called the 'price.' If goods are sold or exchanged for other goods, the transaction is barter, governed by the Transfer of Property Act and not a sale of goods under this Act. But if goods are sold partly for goods and partly for money, the contract is one of sale (Aldridge vs Johnson6).

5. **Includes both a 'sale' and 'an agreement to sell.'.** The term 'contract of sale' is a generic term and includes both a 'sale' and an 'agreement to sell' [as is clear from the definition of the term as per Section 4(1) given earlier].

SALE. Where under a contract of sale the property in the goods is immediately transferred at the time of making the contract from the seller .to the buyer, the contract is called a 'sale' [Sec. 4(3)]. It refers to an 'absolute sale', e.g., an outright sale on a counter in a shop. There is immediate conveyance of the ownership and mostly of the subject-matter of the sale as well (delivery may also be given in future). It is an executed contract.

AN AGREEMENT TO SELL. Where under a contract of sale the transfer of property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called 'an agreement to sell' [Sec. 4(3)]. It is an executor contract and refers to a conditional sale.

UNPAID SELLER

Unpaid Seller Defined : The.seller of goods i; deemed to be an 'unpaid seller1 (a) when the whole of the price has not been paid or tendered; or (b) where a bill of exchange or other negotiable instrument has been received as a conditional payment, i.e., subject to the realization thereof, and the same has been 'ishonoured.

The term 'seller' here includes any person who is in the position of a seller, as, for instance, an agent of the seller to whom the bill of lading had been endorsed, or a consignor or agent who has himself paid, or is directly responsible for, the price. (Sec. 45)

This definition emphasizes the following characteristics of an 'unpaid seller':

1. He must sell goods on cash terms and not on credit, and he must be unpaid.
2. He must be unpaid either wholly or partly. Even if only a portion of the price, however small, remains unpaid, he is deemed to be an unpaid seller. Where the price is paid through a bill of exchange or other negotiable instrument, the same must be dishonored.
2. He must not refuse to accept payment when tendered. If the price has been tendered by the buyer but the seller wrongfully refuses to take the same, he ceases to be an unpaid seller.

Rights of an Unpaid Seller: An unpaid seller has two-fold rights, viz.,:

I. Rights of unpaid seller against the goods, and

II. Rights of unpaid seller against the buyer personally. We shall now examine these rights in detail.

I. Rights of Unpaid Seller against the Goods: An unpaid seller has the following rights against the goods not with

"Where the property in goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and coextensive with his rights of lien and stoppage in transit where the property has passed to the buyer."

This right of lien can be exercised only for the non-payment of the price and not for any other charges, e.g., maintenance or custody charges, which .the seller may have to incur for storing the goods in exercise of his lien for the price.4 This right of lien extends to the whole of the goods in his possession even though part payment for those goods has already been made. In other words the buyer is not entitled to claim delivery of a portion of the goods on payment of a proportionate price. Further, where an unpaid seller has made part delivery of the goods, he may exercise his right to lien on the remainder, unless such part delivery has been made under such circumstances as to show an agreement to waive the lien (Sec.48). Also, the lien can be exercised even though the seller has obtained a 'decree' for the price of the goods [Sec. 49(2)].

When lien is lost? As already observed, lien depends on physical possession of goods. Once the possession is lost, the lien is also lost. Section 49 accordingly provides that the unpaid seller of goods loses his lien thereon in the following cases:

(a) when he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods; or

(b) when the buyer or his agent lawfully obtains possession of the goods; or

(c) when the seller expressly or impliedly waives his right of lien. An implied waiver takes place when the seller grants fresh term of credit or allows the buyer to accept a bill of exchange payable at a future date or assents to a sub-sale5 which the buyer may have made.

It may be noted that right of lien, if once lost, will not revive if the buyer redelivers the goods to the seller for any particular purpose. Thus, where a refrigerator after being sold was delivered to the buyer and since it was not functioning properly, the buyer delivered back the same to the seller for repairs, it was held that the seller could not exercise his lien over the refrigerator

2. Right of Stoppage of Goods in Transit : The right of stoppage in transit means the right of stopping further transit of the goods while they are with a carrier for the purpose of transmission to the buyer, resuming possession of them and retaining possession until payment or tender of the price. Thus, in a sense this right is an extension of the right of lien because it entitles the seller to regain possession even when the seller has parted with the possession of the goods.

An unpaid seller can exercise this right only when:

- The buyer Incomes insolvent. The buyer is said to be insolvent when he has ceased to pay his debts in the ordinary course of business, or cannot pay his debts as they become due whether he is declared an insolvent or not [Sec. 2(8)]: and

- the property has passed to the buyer. If property has not passed to the buyer then this right is termed as the "right of withholding delivery"[Sec. 46(2)]; and

- the goods are in the course of transit. This means that goods 'must be neither with the seller nor with the buyer nor with their agent. They should be in the custody of a carrier as an independent middleman in his own right as a carrier) e.g., railways and common carriers whose business is to transport goods of others. The carrier must not be either seller's agent or buyer's agent. Became if he is seller's agent, the goods are still in the hands of seller in the eye of law and hence there is no transit, and if he is buyer's agent, the buyer gets delivery in the eye of law and hence question of stoppage does not arise.

Conditions & Warranties :

Condition :

A condition is a stipulat8ion which is essential to the main purpose of the contract. Ito goes to the root of the contract. Its non-fulfillment upsets the very basis of the contract.

Warranty :

A warranty is a stipulation which is collateral to the main purpose of the contract. It is not a such vital importance as a condition is

Distinction between a condition & Warranty :

1. Difference as to value
2. Difference as to breach
3. Difference as to treatment.

When conditions to be treated as warranty : [Sec.13]

1. Voluntary waiver of condition [Sec.13(1)]
2. Acceptances of goods by buyer [Sec.13(2)]

Types of conditions & Warranties :

1. Implied conditions & warranties – stated by law.
2. Express conditions & warranties – clearly defined in contract of sale.

1. Implied conditions & Warranties :

a) Conditions has to titled [Sec.14(a)]

b) Sale by description [Sec.15]: include following situations

i) Where buyer has not seeing goods & relay on sellers description.

ii) Where the buyer sees the goods but relies on seller's description.

iii) Packing of goods.

c) Conditions as to quality (or) fitness [Sec.16(1)] The following points should however be noted in this regard.

i) Where the buyer, expressly (or) by implication

ii) The goods are of such nature of the dealer sells in normal course.

iii) Where buyers make known to seller about purpose.

iv) Goods used for no. of purposes.

v) The buyer should feel the purpose.

d) Conditions as to mercantalality [Sec.16(2)].

e) Conditions implied by customs [Sec.16(3)]

f) Sale by sample [Sec.17]

g) Conditions as to wholesomeness.

Implied warranties :

a) Warranty of quite possession [Sec.14(b)]

b) Warranty of freedom from encumbrances [Sec.14(c)]

c) Warranty as to quality (or) fitness by usage of trade [Sec.16(d)]

d) Warranty to disclose dangerous nature of goods.

Exclusion of implied conditions & Warranties :

Implied conditions & warranties in a contract of sale may be negative (or) varied by

a) Express agreement between the parties.

b) The course of dealing between them.

c) The custom (or) usage of trade.

CAVEAT EMPTOR :

The means "let the buyer beware" i.e. in a contract of sale of goods the seller is under no duty to reveal.

Exceptions : 1. Fitness for buyers purpose [Sec.16(1)]

2. Sale under patent (or) trade name [Sec.16(1)]

3. Merchantable quality [Sec.16(2)]

4. Use of trade.

5. Consent by fraud.

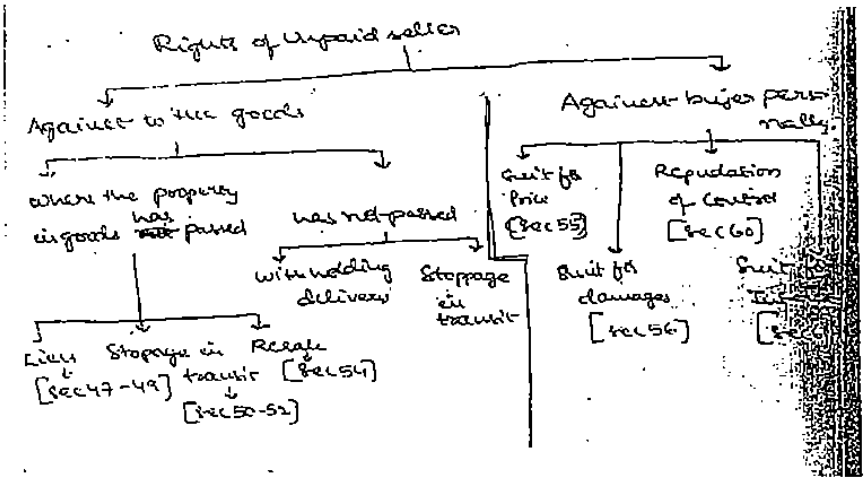
PERFORMANCE OF CONTRACT OF SALE :

Right of an Unpaid seller :

Unpaid seller - If not paid the price of goods.

- If condition for negotiable instrument is not fulfilled.

Seller - A person who has sell his goods (or) any person in the position of agent is called seller [Sec.45(2)].



Against the Good :

Where the property in goods has passed :

Right of Lieu : [Sec. 47-49]

Lieu is the right to retain the possession of goods until the price is paid.

It can be exercised in three conditions

i) If the goods are sold without any stipulation of credit.

ii) When the terms of expiry of credit.

iii) When the buyer becomes insolvent.

How you will tolerate your lieu [sec 49]

i) When buyer paying price

ii) He waves right of lieu on goods either expressly (or) impliedly

Stoppage in Transit [Sec.50-52):

The goods are stopped when the goods are in carriage (Transport)

Right of stoppage of goods in transit can be exercised after the unpaid seller parted with the goods.

He can retain the possession until the price is paid.

Even this one can arise when the buyer becomes insolvent.

Duration of transit is starting and ends with taking by the buyer.

Rules Regarding Lieu :

i) He should take the possession of goods if he losses he will loose the right of lieu.
ii) He should have actual possession not title.
iii) Contract of sale must not exclude expressly the right of lieu.
iv) Lieu can be exercised only for price but not for the ware house charges.
v) If part delivery of goods is made lieu can be exercised on remaining goods.

How you will terminate your lieu : [Sec.49]

i) When buyer paying price.
ii) He waves right of lieu on goods either expressly (or) impliedly.

Stoppage in transit : [Sec.50-52]:

The goods are stopped when the goods are in carriage (Transport)

Right of stoppage of goods in transit can be exercised after the unpaid seller parted with the goods.

He can return the possession until the price is paid.

Even this one cane arise when the buyer becomes insolvent.

Duration of transit is starting and ends with taking by the buyer.

When the transit comes to an end :

- When it is received by the buyer (or) by his agent.
- Before they arrive the appointed designation.
- If carriers acknowledgement is given to buyer that he holds goods on his benefit.
- When the carriers wrongfully rides to delivery the goods.

Stoppage can be affected in the following ways :

- Taking the actual possession of goods.
- By giving notice.

Rights of Resale [Sec.54] :

Under the following conditions the unpair seller can resale the goods.

- When the goods are of perishable nature.
- When notice is given regarding and the original buyer didn't, respond.
- Where seller expressly reserves the right of resale.

If Profit ⇒ Surplus ⇒ Taken by seller

Loss ⇒ Deficit ⇒ given by buyer & seller.

When the property o goods not passed :

Withholding delivery ⇒ Keeping it with seller.

Stoppage in transit ⇒ Stoppage in the traveling.

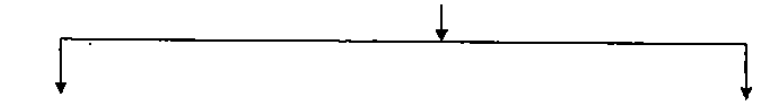
Rights against the buyer personally :

1) Suit for price : He will ask for price. This case even when the goods are not passed and are also passed to the buyer he can suit for the price.

2) Suit for damages for non-acceptance [Sec.73]

Breach of contract.

3) Reputation of contracts



He can treat the contract in subsiding and wit for payment

He can treat the contract are rescinded and suit for damage

4) Suit for interest :

Duties of Buyer :

1. Duty to accept good and pay for them in exchange of possession [Sec.31-32].
2. Duty to apply for delivery [Sec.35].
3. Duty to demand delivery at reasonable time [Sec.36(4)].
4. Duty to accept installment delivery and pay for it [Sec.38(2)].
5. Duty to take risk of deterioration in the course of transit [Sec.40].
6. Duty to intimate the seller where he reject goods.
7. Duty to take delivery eventhough there is some delay.
8. Duty to pay price [Sec.55].
9. Duty to pay damages for non-acceptance [Sec.56].

Auctions :

Auction Sale :

- It is an offer to sales for the public.
- Misleading the auction.
- Auctioner - Agent of seller.

Rules of Auctions : Sec.64 of Sale of Goods Act 1950 stated under

- Goods put up for sale in lots [Sec.64(1)]
- Completion of sale [Sec.64(2)]
- Right of seller to bid [Sec.64(3)]
- Sale not notified subject to a right to bid [Sec.64(4)]
- Reverse price [Sec.64(5)]
- Use of presented bidding [Sec.64(6)].

Consumer Protection Act 1986 :

Consumer : He is a person who has paid part (or) full values as agreed [Sec.2(i) (d)].

- Uses the product.
- It does not include a person who purchase goods for resale.

Essential Commodities Act :

- Fixes price for certain commodities.
- Goods of hazardous nature sold with taking sufficient care (or) without disclosing the essential facts.

Unfair Trade Practice – Sec. 2(1) (r)

- If the trader uses unfair methods (or) making some statements regarding the goods which are not true.
- Falsely represent the quality of good as superior.
- Falsely represent the services are of high standards.
- Selling second hand (or) renovative goods as new goods.

- Giving impression that the goods have sponsorship (or) approval from a big company.
- Stating more uses than actually are
- Giving more guarantee period.

Rights of Consumer :

1. Right to be protected – He should be protected regarding some dangerous effects of a product from a company.

2. Right to be informed – The necessary informed about the product are to be informed such at quality, quantity, price contents, mft. Date, place, exp. Date etc.

3. Right to be assured.

4. Right to be heard.

5. Right to seek redressed against unpaired trade practices.

6. Right to consumer education.

Objects of Consumer Act :

- To protect the interest of consumers
- Protection of right of consumers.
- Consumer protection counsels.
- District level.

- State level
- Country level
- Quasi judicial machinery for speedy redressal of consumer disputes.
- Consumer disputes.
- Consumer disputes redressed forum

1. District forum [Sec.10-15]
2. State Commission
3. Central Commission.

District (Sec.10-15) :

Composition [Sec.10]: A person who is qualified as district judge is called Chairman/President will take over the case.

Two members having knowledge, commerce, law, economic, industry, public relations.

Act of these one should be women.

Appointment [Sec.10]:

Appointment on the recommendation of the selection committee.

Selection committee consists of president secretary related law department and secretary relied to consumer affair.

Term of Office : 5 year (or) 65 years.

A president can work for 5 years (or) beyond the 65 years which is earlier.

Registration : They can resign at any time to the selection committee (or) State Govt.

Jurisdiction Sec.11 :

- The opposition party carried business within the limit of district forum at the time complaint procedure on receipt of complaint.
- Version of case within 30 days.
- Reference of sample to laboratory where the complaint alleges defect in goods which cannot be determined without proper analysis.
- Deposit of firm.
- Remission of fee to laboratory and forum roling of report.
- Objections by any party.
- Reasonable opportunity to parties o being hard and issue of order.

Sec.12 - Manner in which the complaint is made.

Sec.13 - Procedure on report of complaint.

Sec.14 - Finding district forum.

Sec.15 - Appeal

In which manner the complaint is made.

Complaint may be filed in district forum by

1. Consumer to whom the goods are sold(or) agreed to be sold.
2. Any recognized consumer association (or) member of the association to whom the goods are sold.
3. Where there are numerous consumers having same interest.
4. Central (or) State Govts.

Procedure on receipt of complaint : Sending for testing the product and take necessary action.

CONSUMER'S DISPUTES REDRESSAL COMMISSION: (Sec.16-19)

Composition (Sec.16):

A person who has been judge of high court appointed by State Government. He is called as president.

Two other members who have known economic, law, commerce are should be woman.

All appointments of members are made by State Govt.

Salary of Members :

It should be decided by the State Govt.

Term of Office :

5 years (or) before 67 years old of a person.

Jurisdiction (Sec.17]:

- Cases between 5 lakhs and 20 lakhs
- Which against to district forum.

Procedure [Sec.18]:

Provision of Sec.12, 13, 14 will be applied with any modifications required.

Appeal :

The parties which are dissatisfied faith the Judgement of state commission then they can appeal to National commission within 30 days.

National Consumer redressal commission [Sec.20-23]:

1) Composition [Sec.20]:

A person who has been judge in supreme court and appointed by Central Govt. and also known as President.

4 persons who had knowledge in the industry economics, law, commerce, accounts etc. are of the four member one should be woman.

Selection committee constitutes a person who is a judge in Supreme Court maintained Chief justice of India. He is called as Chairman.

Secretary should be from department of Legal affairs in the Govt. of India and related to consumers Dept. of India.

Salary : Fixed by the Central Govt. terms of office.

Place of National Commission : Delhi.

2. Jurisdiction [Sec.21]:

- More than 20 L.
- Appeal against the judgement of state commission.

3. Procedure [Sec.22]:

- It will have the power of civil court as specified in section 13.
- Power to issue an order to opposite party directing him to do things referred in Sec.14 any modifications if necessary.
- National commission shall follow procedure prescribed by Central Govt.

4. Appeal [Sec.23]:

- Party dissatisfied with the judgement of the national commission they can appeal to supreme court within 30 days of judgement.
- Additional 30 days time is given of the case is justified

UNIT - III

CONTRACT OF AGENCY

Definitions of Agent and PrincipahThe two terms-'agent' and 'principal'- have been defined in Section 182 of the Contract Act as follows:

"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 done, or who is represented, is called the principal."

The contract which creates the relationship of'principal' and 'agent' is called an 'agency. Thus where A appoints B to buy ten bags of sugar on his behalf, A is the 'principal,' B is the 'agent' and the contract between the two is 'agency.' If, in pursuance of the contract of agency, the 'agent' purchases the bags of sugar from C, a wholesale dealer in sugar, on credit, then in the eye of law the 'principal' and the wholesale dealer are brought into direct contractual relations and the contract of purchase is enforceable both by and against the 'principal.'

It will be seen that under a contract of agency the agent is authorized to establish privity of contract between the principal (him employer) and a third party. As such the function of an agent is essetnailly to bring about contractual relations between the principal and third parties. In a way , therefore, an agent is merely a connecting link. After entering into a contract on behavl of the principal with a third party, the agent drops out the ceases to be a party to the contract and the contract binds the principal and the third party sa if they have made it themselves.

There are two important general rules regarding agency, viz.,

1. Whatever a person competent to contract may do by himself, he may do through an agent, except for acts involving personal skill and qualifications. In fact, where the work to be done is obviously personal, no agent can be employed. For

example, a person cannot marry through an agncy, L-;ninot paint a picture through an agent, and so on.

2. "He who does through another, does by himself." In other words, '(he acts of the agent are, for all legal purposes, the acts of the principal.'

Section 226 provides to the same effect. " In other words" the acts of the agent, and will have the same legal consequence, as if the contracts had been entered into and the acts done by the principal in person.

An agency may be created in any one of the following ways :

1. **Agency by express agreement :** Normally agency is created by an express agreement, specifying the scope of the authoriyt of agent. The agent may, in such a case, be appointed either by word of mouth or by an agremnet in wirign (sec 187).

2. **Agency by Implied Agreement:** Implied agency arise, appointing a person as an agent, but instead the existence of agency is inferred from the circumstances of the case, or from the conduct of the parties on a particular occasion, or from thi relationship between parties (Sec. 187). Such an agency may take the following forms:

    (a) Agency by estoppel;

    (b) Agency by holding out;

    (c) Agency by necessity.

    we shall deal with each of these in turn

a. Agency by estoppel. Such an agency is based on the ' doctorine of estopped' which may briefly may briefly be stated, " which a person by his words or conduct has

wilfully Id another to believe that certain set of circumstances or facts exists, and that other parson has acted on that belief, he is estopped or precluded from denying the truth of such statements, although such a state of things did not in fact exist.

Section 237 of the Contract Act, which deals with agency by estoppel, also effect. The Section lays down that "when an agent has, without authority, done acts or incurred obligations to third nersons on behalf of his principal, the principal isbount same effect. The Section lays down that : wnen <m a.&. incurred obligations to third persons on behalf of his principal is bound by such acts or obligations, if he has by his words or conduct induced such third person to bilieve that such acts and obligations, were within the scope of agent's authority.

We muy sum up thus, an agency by estoppel is created when the alleged pruxipai by his conduct or by words spoken or written, leads wilfully the other contracting party into an honest belief that the supposed agent had authority to act as such and bind the principal. Such a principal will be estopped from denying subsequently his agent's authority, although the agent did not in fact possess any authority whatever.

(b) Agency by holding out. Such an agency isbasod ontiio "doctorine of holding" which is a part of the law of estoppel. In this case also the alleged principal is bound by the act's of the supposed agent, if he has induced third persons to believe that they are done with his authority. But, unlike an 'agency by estoppel', an 'agency by holding out' requires some affirmative or positive act or conduct by the principal to establish agency subsequently. Thus, where an employer has been accustomed to pay for goods bought on his behalf by his employee from P, the employer may be liable for a purchase made in the customary manner, even though it is made by the employes fraudulently after he has left the employment. The employer's conduct in 'holding out' his employee to be his agent (paying for purchases made by the employee on previous occasions) estop; him from denying that his authority was not still in existence.

(c) **Agency by necessity.** In certain circumstances the law confers an authority on one person to act as agent for another without any regard to the consent of the principal. Such an agency is called an agency of necessity. Bowstead has rightly observed: "An agency by necessity is conferred by law in certain cases, where a person is faced with an emergency in which the property or interests of another are in imminent danger, and it becomes necessary in order to preserve the property or interests, to act before the instructions of the owner can be obtained. The law assumes the consent of the owner to the creation of the relationship of principal and agent." Thus, the conditions which enable a person to act as an agent of necessity of another are as follows:

(i) There should be a real necessity for acting on the half of the principal,

(ii) It should be impossible to communicate with the principal within the time available,

(iii) The alleged agent should actbonafide in the interests of the principal.

Generally the 'agency by necessity' arises in the following cases:

(i) Where the agent exceeds his authority, bonafide, in an emergency. For example, where A consigns fruits to B at Allahabad with directions to send them immediately to C at Varanasi, and B, finding that the fruits are perishing rapidly, sells them at Allahabad itself for the best price obtainable, the sale will bind the principal and the agent cannot be held liable for exceeding his authority as, under the circumstances of the case mere arises agency of necessity

(ii) Where the carrier of goods acting as a bailee, does any thing to protect or preserve the good, in :m emergency, although there is no express authority in that regard. Thus a master of a ship is entitled in cases of accident and emergency, to sell or pledge the goods in order to save their value and the sale or pledge will bind the cargo owners. Similarly, a land carrier of goods, in case of accident or emergency, becomes in agent of necessity, for example, if a public carrier develops an engine trouble, the driver can pledge a part of the goods loaded thereon in order to raise the money necessary for

repairs and the pledge will be binding on the owner of goods. Notice mat in these cases it is not practicable to communicate with the principal.

(iii) Where a husband improperly leaves his wife without providing proper means for her sustenance. In a special circumstance the case of Husband and wife also provides an instance of agency by necessity. When the wife has been deserted by the husband and thus forced to live separate from him, the wife is regarded as the agent of necessity of the husband and she has the authority of pledging her husband Vcxedit for necessaries even against her husband's wishes. However, tlnn rule does not apply whcit: liic wilt; improperly leaves tin; husband.

It is relevant to state that in the ordinary, course of things there is an implied agency between the husband and wife and the wife is presumed to have implied authority tn p^dge lui husband's credit for necessaries suiting to the couple's joint style of living. But a husband enjoys no corresponding right to pledge his wife's credit for necessaries.

3. Agency by Ratification : Ratification means the subsequent adoption and acceptance of an act originally done without instructions or authority. Thus where a principal affirms or adopts the unauthorized act of his agent, he Is said to have ratified that act and there comes into existence an agency by ratification retrospectively.

Section 196 deals with the effect of'ratification.' It provides that "where acts are done bv one person on behalf of another, but without his knowledge or authority, he may elect to ratify or to disown such acts. If he ratifies them, the same effects will follow as if his authority had performed them of his late principal, all reasonable steps for the protection and preservation of the interests entrusted to him.

RIGHTS OF AGENT

An agent has the following rights against the principal:

1. Right to receive remuneration (Sees. 219 and 220). The agent is entitled to receive his agreed remuneration, or if nothing is agreed, to a reasonable remuneration, unless he agrees to act gratitously. In the absence of any special contract, the right to claim remuneration arises only when the agent has done what he had undertaken to do. It is important that the agent can claim remuneration once he has completed his work even though the contract is never executed on account of breach either by the principal or the third party. For example, where an agent is appointed to secure orders for the manufacturer, he can claim commission on orders actually obtained by him although the manufacturer is unable to execute them owing to a strike by the workmen. Effect of misconduct. An agent who is guilty of misconduct in the business of the agency is not entitled to any remuneration in respect of that part of the business which he has misconducted. In addition, he is liable to compensate the principal for any loss caused by the misconduct.

2. Right of retainer (Sec. 217). An agent has the riziit to retain, , out of any sums received on account of the account of the principal, all moneys due to himsel f in respect of his remuneration, or advances made or expenses properly incurred by him in conduct: :a the business of agency

3. Right of lien (Sec. 221). An agent h;is the right to retain goods, papers ;md s^her property, whether movable or immovable, of the principal received by him, until ihe amount due to himself for commission, disbursements and services in respect of the same has been paid or accounted for to him. This right is, however, subject to a contract to the contrary. Again, this lien of the agent is a "particular lien." 15 But by a special conuact an agent may have a general lien also. It may be recalled that by virtue of

Section 171 factors, bankers, attorneys of High Court and policy brokers have a "general Hen,"15 in tbe absence of a contract to the contrary.

It is to be noted that this right of lien of the agent is subject to all rights and equities of third parties against the principal, that is, if the agent has sold the goods, he will have to give delivery to the buyer (London and Joint Stock Bank vs Simmons 16).

4.Right to be indemnified against consequences of lawful acts. (Sec. 222). An agent has also the right to be indemnified against the consequences of all lawful acts done by him in exercise of the authority conferred upon him.

5.Right to be indemnified against consequences of acts done in good faith (Sec. 223). An agent has a right to be indemnified against the consequences of an. act done in good faith though it turns out to be injurious

6.Right to compensation. (Sec. 225). The agent has a right to be compensated for injuries sustained by him due to the principal's neglect or wantof skill.

7.Right of stoppage of goods in transit. An agent has a right to stop the goods in transit to the principal (just like an unpaid seller), if (i) he has Kmghi goods either with his own money or by-incurring a personal liability for the price and (ill the principal has become insolvent.

TERMINATION OF AN AGENCY

An agency may be terminated in any of the following ways:

A. By act.of the parties, or B. By operation of law.

A. Termination by Act of the Parties

An agency conies to an end by act of the parties in the following cases:

1. Agreement. An agency, like any other contract, can be terminated at any time by the mutual agreement between the principal and the agent.

2. Revocation by the principal (Sees. 203-207). Section 203 empowers the principal to revoke the authority of the agent at any time before the agent has exercised his authority so as to bind the principal, unless the agency is irrevocable.21 Further, revocation may be expressed or implied in the conduct of the principal (Sec. 207). Thus where A empowers B to let A's house and afterv, aids lets the house himself, it is an implied revocation of authority. Revocation of authority By the principal is, however, subject to the following conditions:

   - In the case of a continuous agency, the principal may revoke it for the future. It cannot be revoked with regard to acts already done in vhe agency. Again, before revoking the authority for the future, reasonable notice of the same should be given to the agent and also to third parties. If reasonable notice is not given, the principal wjll be liable to compensate the agent for damage resulting thereby (i.e, for the agent's loss of salary if no immediate job is available), and he bound by the acts of the agent with respect to ihird parties. (Sees. 204 and 206).

   - Where an agency has been created for a fixed period and the principal revokes the authority of the agent before the expiry of the period, without sufficient cause, the principal is bound to pay compensation to the agent for the resulting loss, even if the authority is revoked after reasonable notice. (Sec. 205)

3. Renunciation by the agent. An agency may also be terminated by an express renunciation by the agent because a person cannot be compelled to continue as agent against his will. But he mus give a reasonable notice of renunciation to the principal, otherwise he will be liable to compensate the principal for any damage resulting thereby (Sec. 206). If the agency is for a fixed period and the agent

renounces it without sufficient cause before the expiry of the period, he shall have to compensate the principal for the resulting loss, if any (Sec. 205).

B. Termination by Operation of Law

An agency comes to an end automatically by operation of law in the following cases:

1. **Completion of the business of agency.** An agency automatically comes to an end when the business of agency is completed (Sec. 201). Thus, for example, an agency for the sale ofaparticular property terminates on j the completion of the sale. Similarly, where a lawyer is appointed to plead in a suit, his authority comes to an end with the judgment.

2. **Expiry of time.** If the agent is appointed for a fixed terra, the expiration of the term puts an end to the agency, even though the business of the agency may not have been completed.

3. **Death of the principal or the agent.** An agency is terminated automatically on the death ofthe principal or the agent (S,v. 20!). After coming to know about principal's death although the agency terminates Abut the agent must take all reasonable steps for the protection of the interests of the late principal entrusted to him (Sec. 209).

4. **Insanity of the principal or the agent.** An agency also stands terminated when the principal becomes of an unsound mind (Sec. 203). Here also it is the duty of an agent to protect the interests of the former principal by taking all reasonable steps (Sec. 209). Likewise when the agent be comes insane during the agency, his authority terminates at once and the agency comes to an end (Sec. 201). It is interesting to mention that a person I of unsound mind can be initially appointed as an agent.

5. **Insolvency of the principal.** An agency is also terminated by the insolvency of the principal (Sec. 201). Whether the insolvency of an agent puts an end to the agency or not is.a disputed question, Section 201 is silent f on this point.

6. **Destruction of the subject-matter.** An agency which is created to deal with certain subject-matter will be terminated by the destruction of that subject-matter. For example, where the agency was created for the sale of a house and the house is destroyed by fire, the agency ends.

7. **Dissolution of a company.** If the principal or agent is an incorporated company, the agency automatically ceases to exist on dissolution of the company.

8. **Principal or agent becomes alien enemy.** If the principal and agent are nationals of two different countries and a war breaks out between the two countries; the contract of agency is terminated. The outbreak of war renders the continuance of the principal and agent relationship unlawful because now the principal or agent becomes an alien enemy

UNIT – IV

NEGOTIABLE INSTRUMENT ACT

The negotiable instrumnet is a document by which rights vested in a person pan be transferred to another person in accordance with the provisions of the Negotiable Instruments Act, 1881,

In simple terms, A negotiable instrument is a method of transferring debt from one person to another.

Definition Of A Negotiable Instrument [Sec 13] The term 'negotiable instrument' is defined by Sec 13 as follows:" A "negotiable instrument' means a promissory note, bill of exchange or cheque payable either to order or to bearer."

Charactersstics of Negotiable Instrument

An instrument is to be called 'negotiable' if it possesses the following characteristic features:

1. **Freely transferable.** Transferability may be by (i) delivery, or (ii) by endorsement and delivery.
2. Holder's title free from defects: The term 'negotiability' means that not only is the instrument transferable by endorsement and/or delivery, but that its holder in due course acquires a good title notwithstanding any defect in a previous holder's title. A holder in due course is one who receives the instrument for value and without any notice as to the defect in title of the transferor,
3. The Holder can sue in his own Name. Another characteristic feature of a negotiable instrument, as pointed out by Sheldon, is that its holder in due course, can sue on the instrument in his own name.

TYPES O NEGOTIABLE INSTRUMENTS :

1. Negotiable by Statue :

The NI Act mentions only three kinds of negotiable instruments (Sec.13). These are promissory note. Bills of Exchange & Cheques – These instruments are negotiable by statue.

2. Negotiable by custom (or) Usage :

These are certain other instruments which have acquired the character of negotiability by the usage (or) custom of trade. In India Govt. promissory notes, banker's drafts and pay order, hundis, delivery orders and railway receipts for goods, have been held to be negotiable by usage (or) custom.

1. PROMISSORY NOTES
2. BILLS OF EXCHANGE
3. CHEQUES

1. Promissory Notes :

It is an instruments in writing promissory to pay the amount on a particular date to a particular person at a particular place are mentioned and signed by the maker.

Maker: The person who makes the promissory notes and promise to pay is called the maker.

Payee: The person to whom the payment is to be made is called the payee.

Essentials:

1. It should be writing.
2. It must contain an express promise to pay.
3. Definite & Unconditional.
4. Sign by maker.
5. The maker & payee should be certain.
6. The sum payable should be certain.
7. Promise to pay money only.
8. Bank note (or) currency note is not a promissory note.
9. It cannot be made payable to bearer on demand.

2. Bills of Exchange:

These bills are generally drawn for 3 months (or) 6 months.

It is an instrument in written containing an unconditional order signed by the maker directing a certain person to pay certain sum of money.

Drawer: The person who gives the order to pay (or) who makes the bills is called drawer.

Drawee: The person who is directed to pay is called drawee.

Acceptor: When the drawee accepts the bill, he is called as acceptor.

Essentials:

1. It should be in writing.
2. It is an order to pay.
3. It should be unconditional.
4. It consists of three parties.
5. The parties should be certain.
6. Signed by drawee – Giving acceptance.
7. Certain provisions like
   a) Presentment for acceptance [Sec.61]
   b) Acceptance [Sec.75]
   c) Acceptance for honour [Sec.108]
   d) Bill in sets [Sec.132] apply to bills but not to notes.
8. Foreign bills must be protested for dishonour.

3. Cheques :

A cheque is a bill of exchange drawn upon a specified banker and payable on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form.

A cheque is a species of a bill of exchange, but it has the following two additional qualification viz.

1. It is always drawn on a specified banker &
2. It is always payable on demand.

Marking of cheques :

Cheques may be marked as good by the drawee banker at the instance of

i) The drawer (or)

ii) The holder (or)

iii) The collecting banker.

Crossing of Cheques :

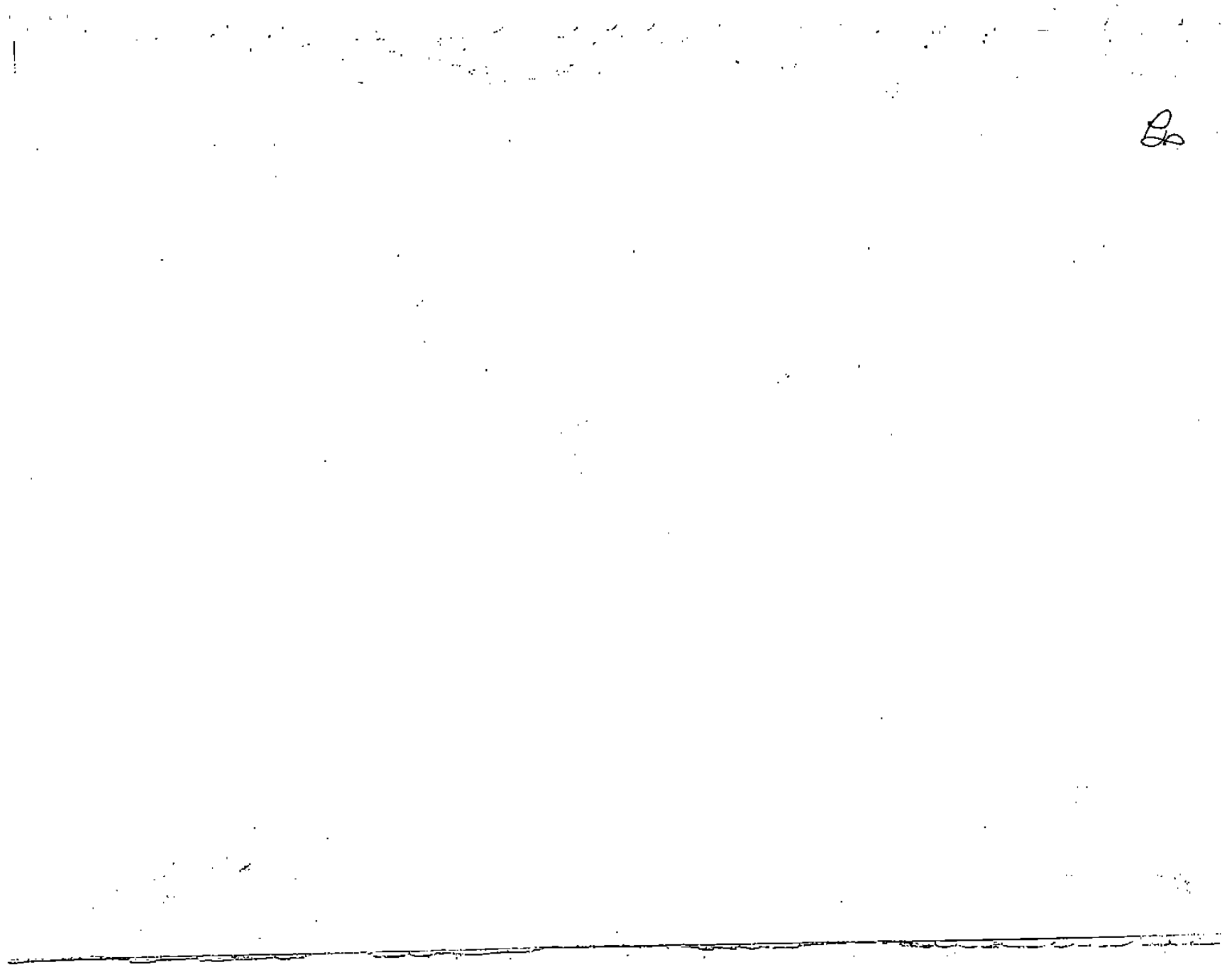
There are two types of cheques, open cheques and crossed cheques.

Open Cheque :

A cheque which is payable in case, a cross the counter of a bank is called a open cheque.

Crossed Cheque :

A crossed cheque is one which two parallel transverse lines with (or) without the words & co. are drawn. The payment of such a cheque can be obtained only through a banker.



INDIAN PARTNESHIP ACT

PARTNERSHIP DEED : The document in which the respective rights and obligations of the members of a partnership are set forth is called a 'partnership deed." It should be drafted with care and be signed by all the partners. It must be stamped in accordance with the Indian Stamp Act. Each partner should have a copy of the Deed. The firm should be registered and copy of the Deed should be filed at the time of registration with the Registrar of Firms because in the absence of such registration partners cannot enforce the conditions laid down in the Deed through a court of law. The Deed should cover the following points:

- The name of the firm and the names and addresses of partners who compose it.
- Nature of business and the town and place where it will be carried on.
- Date of commencement of partnership,
- The duration of partnership.
- The amount of capital to be contributed by each partner and the methods of raising finance in future if so required,
- The ratio of sharing profits and losses.
- Interest on partners' capital, partners loan, and interest, if any, to be charged on drawings. salaries, commissions etc., if any, payable to partners.
- The method of preparing accounts and arrangement for audit and safe custody of cash etc.
- Division of task and responsibility, i.e., the duties, powers and obligations of all the partners.
- Rules to be followed in case of retirement, death and admission of a partner.
- Expulsion of partners in case of gross breach of duty or fraud.
- Can a partner carry on a competing business or any other business whether competing or not.
- Section 11(2) clearly provides that the Deed may provide that a partner shall not

carry on any business other than that of the firm while he is partner, notwithstanding anything contained in Section 27 of the Indian Contract Act where agreements in restraint of trade are void.

- The circumstances under which the partnership will stand dissolved.
- Arbitration in case of dispute among the partners. The terms laid down in the Deed may be varied by consent of all the partners, and such consent may be expressed or may be implied by a course of dealing.

KINDS OF PARTNERS: There may be various types of partners in a partnership firm which are as follows;

1. **Active or actual partners.** Partners who take an active part in the conduct of the partnership business are called 'actual' or 'ostensible' partners. They are full-fledged partners in the real sense of the term. Such a partner must-give public notice of his retirement from the firm-in order to free himself from liability for acts after retirement.
2. **Sleeping or dormant partners.** Sometimes, however, there are persons who merely put in their capital (or even without capital they may become partners) and do not take active part in the conduct of the partnership business. They are known as 'sleeping' or 'dormant' partners. They do share profits and losses (usually less than proportionately), have a voice in management, but their relationship with the firm is not disclosed to the general public. They are liable to the third parties tor all acts of the firm just like an undisclosed principal. They are, however, not required to give public notice of their retirement from the firm.
3. **Silent partners;** Those who by agreement with other partners have no voice in the management of the partnership business are called 'silent' partners, They share pro fits and losses, are fully liable for the debts of the firm and may take active part in the conduct of the business.

4. **Partner in profits only.** A partner who has stipulated with other partners that he will be entitled to a certain share of profits,-without being liable for the losses, is known as a 'partner in profits only.' As a rule such a partner has no voice in the management of the business. However, his liability vis-a-vis third parties will be unlimited because in India we cannot have 'limited partner ship'.

5. **Sub-partner.** When a partner agrees to share his share of profits in a partnership firm with an outsider, such an outsider is called a sub-partner. Such a sub-partner has no rights against the firm nor he is liable for the debts of the firm.

6. **Partner by estoppels or holding out (Sec. 28).** If a person represents to the outside world by words spoken or written or by his conduct or by lending his name, that he is a partner in a certain partnership firm, he is then stopped from denying his being a partner, and is liable as a partner in that firm to any one who has on the faith of such representation granted credit to the firm. Actually such a person is not a partner in that firm-no agreement, no sharing in profits and losses, no say inthe management, may not be knowing exact place of business, but as he holds himself out to be a partner, he becomes responsible to outsiders as a partner on the principle of estoppels or holding out. It is for this reason that such a person is called as 'partner by estoppel' or 'partner by holding out.' He may also be called as 'quasi partner'.for he is not a partner in the full implications of the term; only in the eyes of outside world he is considered a partner. He may also be known as nominal partner.

PROCESS OF REGISTRATION OF PARTNERSHIP FIRM

Registration of Firms : Prior to the passing of the Indian Partnership Act, 1932, there was no provision for the registration of partnership firms in India. As a result it was difficult for a third person to prove the existence of partnership and make his claim against all the members of the firm. Whenever the question of partners' liability arose, they did not hesitate to deny their membership of the partnership in question. As such

there was a demand for compulsory registration, as prevalent in England, so that necessary particulars regarding the constitution of the firm could be made available to those who may be dealing with the firm.

In view of the very large number of small partnership firms working in India, where registration may not produce much public benefit, the present Act has made the registration optional entirely at the discretion of partners. Under the Partnership Act it is not compulsory for every partnership firm to get itself registered, but an unregistered firm suffers from a number of disabilities.

Time of registration. Registration may take place at any time during the continuance of the partnership firm. Where the firm intent's to institute a suit in a court of law to enforce rights arising from any contract, registration must be effected before the suit is instituted otherwise the court shall not entertain the suit. Registration may also be effected even after a suit has been filed by the firm but in that disc it is necessary to withdraw the suit, yet the firm registered and then file a fresh suit. Registration of the firm subsequent to the institution of the suit cannot by itself cure the defect.

Procedure of registration: The procedure of registration is very simple. An application in the prescribed form along with the prescribed fee has to be submitted to the Registrar of Firms of the State in which any place of business of the firm is situated or proposed to be situated. The application or statement must be signed by all the partners, or by their agents specially authorized in this behalf, and must contain the following particulars-

1.The name of the firm.

2.The place or principal place of business of the firm.

3.The names of any other places where the firm carries on business.

4.The date when each partner joined the firm.

5.The names in full and permanent addresses of the partners.

6.The duration of the firm.

When the Registrar is satisfied that the abo\ c provisions have been duly complied with, he shall record an entry of the statement in a register called the Register of Firms, and shall file the statement (Sec. 59). This completes the procedure of registration.

Change of particulars. With a view to keep the Registrar of Firms posted with up-to-date information regarding the firm, if any change takes place in any of the particulars given above, it should be notified to the Registrar, who shall thereupon incorporate the necessary change in the Register of Firms. Further, the Registrar should also be informed when any partner ceases to be a partner by retirement, expulsion, insolvency or death, or when a new partner is admitted or a minor, having been admitted, elects to become or not to become a partner, or when the firm is dissolved. (Sees. 60-63).

Penalty for false particulars If any person knowingly or without belief in its truth signs any statement, amending statement, notice or intimation containing false or incomplete information to be supplied to the Registrar, he shall be punishable with imprisonment which may extend to three months, or with fine, or with both.

RIGHTS, DUTIES AND LIABILITIES OF PARTNERS Rights of a PartnenSubject to contract between the partners every partner:

1. has a right to take part in the conduct of business
2. has a right to express his opinion on any matter, but in case of difference of opinion regarding ordinary matters of the business, he is bound byjhernajority decision. However, no change can be made in t:he nature of the business without the consent of all the partners [Section 12 (C)];

3. has a right to have access to and inspect and copy any of the books, of the firm [Section 12(d)];

4. is entit led to share equally in the profits [Section 13 (b)"];

5. is a joint owner of the property of the firm. The property of the firm includes all property and rights and interest in property originally brought into stock of the firm, or acquired by purchase or otherwise, by or for the firm or for the purposes and in the course of the business of the firm, and includes also the goodwill of the business;

6. has *a* right to do, in an emergency, all such acts as are reasonably necessary to protect the firm from loss;

7. is entitled to claim interest @6 per cent per annum on any amount advanced by him beyond the amount of capital that he agreed to subscribe. [Section 13(c)];

8. is entitled to be indemnified by the firm in respect of liabilities incurred by him in the ordinary course of business [Section 13 (e)];

9. has a right not to be expelled. A partner may, however, be expelled (1) if a power to expel is conferred upon the partners; and (2) the power is exercised bonfire by a majority of partners [Section 33(1)];

10. has a right to resist the introduction of a new partner. No new partner can be introduced into the firm unless all the partners consent thereto [Section 31(1)3;

11. has a right to retire. A partner may retire: (a) with the consent of all the other partners; (b) in accordance with an express agreement by the partners; or (c) where the partnership is at will, by giving notice in writing to all the partners of his intention toretire [Section 32 (1)];

12. has a right to carry on a competing business. Every outgoing partner has a right to carry on a competing business, but, without using the firm name or soliciting

8b

the firm's customers or in any way representing himself as carrying on the business of the firm, unless he has been restrained by a reasonable agreement from carrying on a similar business for a specified period of time within specified local limits [Section 36(1)]; and

13. has a right as an outgoing partner, in certain cases to share subsequent profit. Where any member of a firm has died or otherwise ceased to be a partner, and the surviving or continuing partners carry on the business of the firm with the property of the firm without any final settlement of accounts as between them and the outgoing partner or his estate, then, in the absence of a contract to the contrary, the outgoing partner or his estate is entitled at the option of himself or his representatives to such share of the profits made since he ceased to be a partner as may be attributable to the use of his share of the property of the firm, or interest @ 6 per cent p.a. on that share from the date on which it ought to have been paid-up, to the date of payment, whichever is higher (Section 37).

RIGHTS OF A PARTNER

1. Right to take part in the conduct of business.
2. Right to express his opinion on any matter.
3. Right to have access to and inspect and copy any books of the firm.
4. Right to share equality (in the absence of an agreement to the contrary) the profit of the firm.
5. A partner is a joint owner of firm's property.
6. In emergency, a partner has a right to do all such acts as are reasonably necessary to protect the firm from loss.
7. He has a right to claim interest @ 6 per cent on advances made by him to the firm.
8. He has a right to be indemnified for liabilities incurred by him during the ordinary course of business.

9. Not to be expelled.
10. Right to resist the introdjction of a new partner.
11. Right to retire.
12. Right to carry on competing business after ceasing to be a partner.
13. In certain cases right of outgoing partner to share subsequent profit.

Duties of a Partner

1. General Duties of Partners (Section 9). Partners are bound (a) to carry on the business of the firm to the greatest common advantage, (b) to be just and faithful to each other, (c) and to render true accounts and full information of all things affecting the firm to any partner or his legal repre sentative.
2. Duty to Indemnify for loss caused by fraud (Section 10). Bvcry partner shall indemnify the firm for loss caused to it by his fraud in the conduct of the business of the firm.
3. To attend diligently to his duties in the conduct of the firm's business without any remuneration [Section 13 (a)].
4. If restrained by an agreement with other partners, a partner has a duty not to carry on any business other than that of the firm while he is a partner [Section 11 (2)].
5. If a partner carries on any business competing with that of the firm, he shall account for and pay to the firm all profits made by him in that business [Section 16(b)].
6. To account for any profit, including secret profit, derived by a partner from any transaction of the firm, or from the use of the property, or business connection of the firm or the firm name [Section 16 (a)].
7. Not to assign his share. Where a partner makes such an assignment the partnership may be dissolved.
8. Unless otherwise agreed, to contribute equally to the tosses of the firm.
9. To indemnify the firm for any loss caused to it by his wilful neglect in the

conduct of the business of the firm (Section 13).

DUTIES OF PARTNERS

1. l.To carry on the business of the firm to the greatest common advantage.
2. 2.To be just and faithful to each other.
3. 3.To render true accounts and full information of all things affecting the firm.
4. To indemnify for loss caused by his fraud.
5. To attend diligently to firm's business without remuneration.
6. To account for pro tits of a compering business.
7. To account for secret profits.
8. Not to assign his share.
9. Unless otherwise agreed, to contribute equally to the losses of the firm.
10. o indemnify the firm for any loss caused by his wilful neglect.

LIABILITIES OF PARTNER: Liabilities of a partner stern from not complying with his duties under the F'artnership Act. Thus, in view of Sec. 9, a partner shall be liable (il for not carrying on the business of the firm to the greatest common advantage; (ii) for not being just and faithful to other partners andfiii) for failure to render true accounts and full information of a 11 things affecting the firm to any partner or his legal representative.

Similarly, every partner shall be liable to indemnify the firm for any loss caused to it by his fraud in the conduct of the business of the firm [Sec. 10]. If a partner carries on any business competing with that of the firm, he shall account for and pay to the firm all profits made by him in that business [Sec. 16 (b)].

A partner also is liaDle to account tor any profit, including secret profit, derived by a partner from any transaction of the firm, or from the use of the ; property or business connection of the firm or the firm name [Sec. 16 (a)].

A partner shall be liable, in the absence of an agreement to the contrary, to Contribute equally towards the losses of the firm.

A partner is also liable to indemnify the firm for any loss caused to it by his wilful neglect in the conduct of the business of the firm (Set:. 13).

It should be noted that Section 25 makes every partner liablejointly with all other partners and also severally for all acts of the firm done while he is a partner. An act of the firm is defined by Section 2 (a) as "any act or omission by all the partners, or by any partner or agent of the firm, which gives rise to a right enforceable by or against the firm." In England, however, the liability of a partner for the debts and obligations of the firm is only joint and not joint and several except where:

1. any wrongs have been committed by a partner in the ordinary course of business of the firm or with the authority of the co-partners causing loss or injury to third persons, and
2. a partner is guilty of misapplication of money or property received by him while acting within the scope of his authority, or while they are in the custody of the firm in the ordinary course of its business.

DISSOLUTION OF PARTNERSHIP [Sections 39-44]

The dissolution of a firm means the discontinuance of the junilly relation between all the partners of the firm (Section 39). Thus, dissolution of a firm amounts to the break-up of the relation of partnership between all the partners. Dissolution should, however, be distinguished from reconslitution of the firm, in the event of retirement, death, or insolvency of a partner, if the partnership deed so provides the partnership firm may continue The firm in such a case is called a reconstituted firm.

Reconstitution of a firm involves a change in the relation of partners whereas in case of dissolution there is complete severance of relationship between all partners. Admission of a new partner also amounts to reconstitution of a firm.

Example:A, B and C are partners of a firm AB and Co. C retires or dies and the partnership deed provides that in the event of such a happening, the firm shall continue. Then, the firm with, A and B as partners, will be called a reconstituted firm. The relation between A and B does not remain the same

Similarly, if D is introduced as a new partner, the relation between A, B, C and D will be different from the relation between A, B and C. Thus, the firm of A, B, C and D is a reconstituted firm. How Partnership can be Dissolved? A firm may be dissolved;

1.by mutual agreement;
2.by notice of dissolution;
3.by operation of law;
4.by the happening of certain contingencies; and
5.Dissolution by Court

1. **By Mutual Agreement (Section 40).** A firm may at any time be dissolved with the consent of all the partners, or in accordance with a contract between the partners.
2. **By Notice (Section 43).** Where the partnership is at will, it may be dissolved by giving notice in writing to the other partners of his intention to dissrlve the firm. The notice must (1) state the intention to dissolve the firm, and (2) be in writing.
3. **Dissolution By Operation of Law (Section 41).** Dissolution of partnership by operation of law, also called as compulsory dissolution of firm, results (1) if ail or all but one of the partners are adjudicated as insolvent, or (2) by the happening of an event which makes the carrying on of the partnership business or the continued existence of the partnership, unlawful.

4. **By the Happening of Certain Contingencies (also called Optional Dissolution) (Sec tion -42).** Unless otherwise agreed, partnership will stand dissolved on the happening of any of the following events:
    - if the firm is constituted for a fixed term; on the expiry of that term;
    - if constituted to carry out one or more adventures or undertakings; on the completion thereof;
    - on the death of a partner;
    - on the adjudication of a partner as an insolvent.
5. **Dissolution by Court (Section 44).** At the suit of a partner, the court may dissolve a firm on any of the following grounds:
    - If a partner has become of unsound mind. The application in this case may be made by any of the partners or by the next friend of the insane partner. In the case of insanity of a dormant partner, the Court will not order dissolution, unless a very special case is made out for dissolution.
    - Permanent incapacity of a partner. The Court may order for dissolution of partnership, if apartner becomes permanently incapable of performing his duties as a partner. Thus, where a part ner was attacked with paralysis, which on evidence was found to be curable, dissolution was not granted.
    - The application in such a case may be made by any of the other partners, and not by the incapacitated partner.

UNIT - V

THE COMPANIES ACT : 1956

Passed in 1913 from [English companies Act 1908]

↓

First taken from English companies Act exactly

↓

But our companies are and that much developing

↓

In 1913 the companies are not in Govt. contract.

Lindley's Definition :

An association of many persons who containing money (or) money's worth to a common stock etc in some common trade (or) business and who share the profits (or) losses arising their from.

Nature of Companies Act

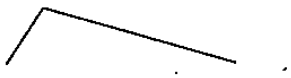
1. Separate legal Entity : A company is an entity separate from its members. So much can enter into the contract by the company. He commonly held liable for the acts of the company.

The property of the company is of the company and not of the share holders.

COMPANY DISTINGUISHED FROM PARTNERSHIP

The principal difference between a company & a partnership are as follows:

1. Regulating Act
2. Mode of creation.
3. Legal status.
4. Liability of members.
5. Management
6. Transferability of increase.
7. Authority of members.
8. Powers.
9. Restrictions on powers.
10. Insolvency of firm & winding up of company
11. Debts.
12. Dissolution. — Min no of partners –2
13. No. of members — Min no of members in private and public
14. Maintenance of books.
2. **Limited Liability :**



Limited to the Value of the shares

Limited by Guarantee

3. Perpetual succession :
4. Commonseal :
5. Transferability of shares :
6. Capacity to she : (Filing a case in court)

KIND OF COMPANIES :

1. **On the basis of incorporation :**

a) Statutory Companies : These are the companies which created by a special Act of the legislature.

Eg: RBI, SBI, LIC, IFC, UTI

These are mostly concerned win the public utilities.

Eg: Railways, transways, gas & electricity companies.

b) Registered companies : These companies are the companies which are formed & registered under the companies Act 1956, or were registered under any of earlier companies Acts.

2. **On the basis of liability :**

On the basis of liability companies may be classified into.

a) Companies with limited liability.

b) Companies with unlimited liability.

a) Companies with limited liability :

i) Companies limited by shares

ii) Companies limited by guarantee.

3. **On the basis of no. of members :**

From the point of view of the general public on the basis of the no. of members, a company

a) A private company

b) A public company

a) **A private company :**

According to Sec 3(i) (iii), a private means a company which has a minimum paid capital of Rs.1,00,000 (or) such higher paid up capital as may be prescribed, and by its articles.

a) Restricts the right to transfer its shares.

b) Prohibits invitation to public for subscription.

c) Limits the number of its members to 50 not including its employee –

members (Min 2 max 50) > Mar 50 → called public company.

d) Minimum paid up capital not < 1,00,000.

b) **A Public Company :**

A public company means a company which

a) has a minimum paid up capital of Rs.5,00,000 (or) such high paid-up capital as may be prescribed.

b) is a private company which is a subsidiary of a company which is not a private company.

4. **On the basis of control :**

a) Holding companies : A company is known as the holding company of another company if it has control over the other company [Sec 4(4)].

b) Subsidiary companies : A company is known as a subsidiary of another company when control is exercised by the station over the farmer called a subsidiary company. According to [Sec. 4(1)], a company is deceased top be a subsidiary of another company in the following these cases.

i) Company controlling composition of BOD

ii) Holding of majority of shares.

iii) subsidiary of another subsidiary.

5. **On the basis of Ownership :**

The company may be a

a) **Government company :** The company is a Government means any company is which not less than 51% of paid-up share capital is held by.

i) The Central Government (or)

ii) Any State Government (or) Govt's (or)

iii) Partly by the Central Govt. and party by one is more state Govt's.

b) **Foreign Company :** It means any company incorporated outside India which has an established place of business in India.

Where a min of 50% of paid up share capital of a foreign company is held by one (or) more citizen of India or/and by one (or) more bodies corporate in corporate in India, wheather singly (or) jointly, such comply shall comply with such provisions as may be prescribed as if it were an India company.

FORMATION OF COMPANY :

Incorporation of Company :

Any 7 (or) more persons associated for any lawful purpose may form an incorporated company with or without liability. They shall subscribe their names to a memorandum of association and also with other formalities in respect of registration. Company formed may be

1) a company limited by shares (or)
2) a company limited by guarantee (or)
3) an unlimited company.

Documents to be filed with the registrar :

1. MOA – It is the primary document of a company.
2. AOA – Public companies limited by shares, Table A in schedule I.
3. Agreement – Any agreement if the company outer for appointment of managing director.
4. List of directors.
5. A declaration stating that all the requirements of companies Act are complied (Informed).
   a) The advocate should be of High Court, Supreme Court.
   b) An attorney (or) a pleader entitled to appear before a High Court.
   c) A secretary (or) a chartered a/c in whole-time practice in India, who is engaged in the formation of the company (or)
   d) A person named in the Articles as a director, manager (or) secretary of the company.

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CERTIFICATION OF INCORPORATION :

Necessary to start the business

COI – Certificate of Incorporation (Legal Assistance)

Effects of Registration :

1. The company becomes a distinct legal entity.
2. The company acquires a perpetual successor.
3. The company's property is not the property of the share holders.

PROMOTER :

Promoter is a person who does the necessary preliminary work incidental to the formation of the company. He is responsible fulfilling the requirements of formation of company as per the company's Act 1956. He will generally become the first director of the company.

Function of Promoter :

1. Keeping name of the company.
2. MOA
3. Name of Directors.
4. Name of the solicitors (Lawyers)
5. Name of Banker.
6. Name of Auditors.
7. Secretary of the company.
8. Registrar office of the company.

Legal status of the promoter :

Although not an agent for the company, nor a trustee for it before its formation, the old familiar principles of the law of agency and of trusteeship have been extended and very properly extended to meet such cases.

Quasi-trustee

Fiduciary Position of Promoter :

1. Not to make any profit at the expense of the company.
2. To give benefit of negotiation to the company.
3. To make full disclosure of profit.
4. Not to make unfair use of position.

Remuneration of Promoter :

→ Not right to claim compensation unless it is mentioned in the contract.

1. He can sell his property at profit to the company.
2. Option to buy certain no. of shares.
3. Commission of shares sold.

Preliminary Contract :

Contract formed with other parties before the formation of the company – Incurred & entered by promoter.

Position of promoter in case of preliminary contract :

1. Company not bounded by preliminary contract.
2. Company cannot enforce preliminary contracts.
3. Promoter personally liable.

Provisional Contract :

Contracts intered into by a public company after its incorporation but before it is issued the certificate to commence business (CCB).

MEMORANDUM OF ASSOCIATION :

It is a fundamental document. It is a document of great importance in relation to the proposed company.

Purpose of Memorandum :

The purpose of the Memorandum is two-fold.

1) The prospective share holders shall know the field in or the purpose for which their money is going to be used by the company and what risk they are undertaking in making investment.

2) The outsiders dealing with the company shall know with certainty as to what the objects of company are and as to whether contractual rule into which they contemplate to enter with the company is within the objects of the company.

Printing & Signing of Memorandum : [Sec.14]

The MOA of a company shall be in such one of the forms of table B,C,D and E and schedule 1 to the companies Act, 1956, as may be applicable to the case of the company, or in a Forms as near there to as circumstances admit.

CONTENTS OF MEMORANDUM: [Sec.13]

The Memorandum of every company shall contain the following clauses.

a) The name of the company

b) The state in which the registered office of the company is to be situated.

c) The objects of the company

   i) Main objects

   ii) Other Objects.

d) In case of companies with objects not confined to one state, the states to whose territories the objects extended.

e) Limited liability

f) Share capital.

The memorandum shall conclude with an "association clause" which states that the subscribers desire to form a company and agree to take shares in it.

These clauses are now considered in detail.

1. **The Name clause** [Sec.20] : The name of company establishes its identity and is the symbol of its existence.

a) Undesirable name to be avoided.
   i) To similar to the name of another company
   ii) Misleading.
b) Injunction of identical name adopted.
c) Limited (or) private limited as the last word (or) words of the name.
d) Prohibition of use of certain names.
e) use of some keywords according to authorized capital.

2. **The Registered Office clause** [Sec.146] :

Every company shall name a regd office from the day on which it begins to carry on business, or as from the 30th day after the date of its incorporation.

3. **The Objects clause** [Sec.13(1)] :

The objects of a company shall be clear set forth in the Memorandum, for a company can do what is within, or incidental to, the objects started in the Memorandum. The purpose of the objects clause is

i) To enable subscribers to the memorandum to know the uses to which their money may be put.

ii) To enable creditors & persons dealing with the company to know that its permitted range of enterprises are activities.

a) Main objects.

b) Other objects.

4. **The Capital Clause** [Sec.13(4)]:

The memorandum of a company, having a share capital, shall state the amount of share capital with which the comp is to be registered and the division thereof into shares of a fixed amount.

5. **The Liability Clause** [Sec.13(2)]:

The memorandum of a company limited by shares or by guarantee, shall also state that the liability of its members is limited.

6. **The Association clause** [Sec.13(4)]:

It states : We, the several persons whose names and addresses are subscribed, are desirous of the formed into a company in pursuance of this MOA and we respectively agree to take the no. of shares in the capital of the company set opposite our respective names. Each subscriber has to take at least one share.

ALTERATION OF MEMORANDUM :

Alteration of conditions :

1. Change of Name a) May change its name ordinary resolution.
   b) Shall change its name if the Central Govt. directs within 12 months of registration.
   c) Fresh certificate of incorporation.

2. Change of Regd.office : a) Change of Regd. Office from one place to another place within the state.
   b) Change of Regd.office from one state to another state.

Procedure for alteration

i) Special Resolution.

ii) Confirmation by the Central Govt.

iii) Notice to affected parties.

iv) Notice to Registrar.

v) Power of Central Govt. to confirm change discretion

vi) Rights & interests of members and creditors to be taken are of.

vii) Copy of a special resolution and the order of the court to be fixed with the Registrar.

3: Alteration of objects : It has two limits

a) Substantive (or) physical limit

b) Procedural limit

Procedure for alteration :

i) Special resolution

ii) Copy of special resolution to be filed.

iii) Certificate of Registration.

Doctrine of Ultra Virus :

Ultra virus is nothing but anact beyond powers. The company has power to do all such things as are

i) Authorised to be done by companies Act.

ii) Essential to the attainment of objects, specified in memorandum.

CASE:

Ashbury railway carriage & Iron company ltd.

Vs

Riche

A company is incorporated to make sell (or) send on hire, railway carriages and wagons, to carry on the business of mechanical engineers and general construction to purchase lease work ad sell mines, minerals and building. The company entered into a contract with Richie for financing the construction of railway line in Belgium. The question arised wheather the contract comes under general contracts. Held the court declared the act as Ultravirus.

Ultra virus of Directors :

If the act is the ultra virus of director but within the power of the company share holding can ratify.

Ultra virus of Articles :

If the act is ultra virus of articles of the company can ratify by altering the articles.

Effect of ultra virus act :

1) Injection by port.

2) Personal liability of directors.

Ultra virus contracts :

1. Void abinitio.
2. Ultra virus acquired property.

ARTICLES OF ASSOCIATION :

Articles of Association is the secondary document of the company. It contains the rules, regulations and by-laws for the internal management of the affairs of the company. It is to carry on the object of the company. It is to carry on the objects of the company. While preparing AOA care should be taken that they will not go beyond MOA & companies Act.

→ **Contents of Articles :**

1. Share capital
2. Lein on shares.
3. Calls on shares.
4. Transfer of shares.
5. Transmission of shares.
6. Forfeiture of shares.
7. Conversion of shares into stock
8. Share warrants.
9. Alteration of capital.

10. General meetings.
11. Voting rights members.
12. Directors their appointment, remuneration, qualification of BOD
13. Manager
14. Secretary
15. Dividends & Reserver.
16. A/c's, Audit & borrowing powers.
17. Capitalisation of profits.
18. Winding up.

Companies which must have their own articles [Sec.20]

1. Unlimited Companies.
2. Companies limited by guarantee.
3. Private companies limited by shares.

Alteration of Articles :

Procedure for alteration : A company may, by passing a special resolution alter its articles any time. Again any articles may be adopted which could have been lawfully included originally. A copy of every special resolution shall be filed with Registrar with in the 10 days of its passing

Limitations of Alteration :

1. Must not be inconsistent with the act.
2. Must not conflict with memorandum.
3. Must not sanction anything illegal.

4. Must be for the benefit of the company.
5. Must not increase the liability of members.
6. Alteration by special reduction.
7. Approval of Central Govt. when public company converted into private company.
8. Breach of contract.
9. Must not result in expulsion of a member.
10. No power of the court to amend articles.
11. Alteration may be with retrospective effect.

Constructive Notice of Memorandum & Articles :

Every outsider dealing with a company is deemed to have notice of the contents of the Memorandum & the Articles of the Association. These documents, on registration with the Registrar, assume the character of public documents. This is known as constructive notice of memorandum & Articles.

Doctrine of Indoor Management :

The persons dealing with limited liability companies are not bound to acquire into the regularity of the internal proceedings & will not be affected by irregularities of which they had no notice.

Exceptions to the doctrine of Indoor management :

i) Knowledge of irregularity
ii) Negligence
iii) Forgery.
iv) Acts outside the scope of appearent authority.

SHARE CAPITAL :

Types of share capital :

1. Authorised capital (or) Nominal capital.
2. Issued and subscribed capital : S.C ≤ A.C
3. Called up capital : Sc > A.C
4. Paid up capital : Paid from the public after the call is made.
5. Uncalled capital : Not called from the public.
6. Reserve Capital : For the purpose of windup.

Alteration of Capital :

We can alter the share capital in 5 ways.

1. Increase the share capital
2. Consolidate & Divide all (or) part of shares capital into shares of larger amount.
3. Convert fully paid up shares into stock (or) vice versa.
4. Subdivide its shares into shares of smaller @@
5. Cancel shares which house not been taken up and diminish its authorized capital.

Procedure :

1. Ordinary resolution in general meeting
2. Within 30 days notice should be given to the registrar.

Reduction of capital :

a) With the consent of court.

b) Without the consent of court.

a) **With the consent of court :** [Sec.100] supports

i) It may extinguish (or) reduce the liability any of its shares in respect of share capital not paid up.

ii) It may either with (or) without reducing liability on shares cancel any paid up share capital which @@ lost.

iii) It may either with (or) without extinguish its reduce liability by paying off any paid up share capital which is in excess of wants of the company.

b) **Without the consent of the court :**

i) Forfeiture shares.
ii) Surrender of shares.
iii) Cancellation of shares.
iv) Purchase of shares.
v) Redemption of redeemable preference shares
vi) Buy back of shares under [Sec. 79-A]

Reduction of share capital procedure: [Sec.100 to 103]

1. Special Resolution [Sec.100]
2. Application to the Tribunal [Sec.101]
3. Registration of order of Tribunal with registrar [Sec.103].

Further issue of capital :

1. By allotment of new shares [known as rights shares].
2. By conversion of debentures (or) loans into shares.

MEMBERSHIP IN A COMPANY :

Who is eligible for Sec.11 of Indian contract Act 1872 :

i) Partnership firm

ii) Foreigner

iii) A company can become a member of another company if the articles permit.

How to become a member?

A person may become a member of a company in the following ways.

1. Membership by subscription
2. Membership by application & registration.
   a) By application & allotment
   b) By transfer
   c) By succession.
   d) Agreement to be in writing.
3. Membership by beneficial ownership.
4. Membership by qualification shares.

Cessation of Membership :

(Removal as a member)

A person may lease to be the member of a company by

1. Act of the parties, or
2. Operation of law.

1. Cessation of Membership by Act of parties :

i) If he transfers his shares to another person.

ii) If his shares are forfeited.

iii) If the company sells his shares under provision in its articles.

iv) Shares obtained by misrepresentation.

2. Cessation of Membership by operation of law :

i) Insolvency

ii) Death

iii) Sale of shares in execution of a decree of court.

iv) Winding up of the composes.

COMPANY MANAGEMENT :

No. of Directors :

For Public company - 3 min

Private company - 2 min

- 12 max.

However a public company having

a) a paid up capital of Rs.5 crore (or) more

b) one thousand (or) more small share holders. Shall have atleast one director elected by such small share holders in the manner as may be prescribed. "Small share holders" means a share holder holding of nominal value of Rs.20,000 (or) less in a public court.

APPOINTMENT OF DIRECTORS :

1) First directors [Sec.254]

Rules:

a) AOA usually name the first director by their respective names.

b) AOA is silent, those who have subscribed for memorandum, consider as 1st director.

c) Who signed in the MOA.

2) **Appointment of Directors by the Company :**

[Sec.255-257 & Sec.263 & Sec.264].

Ascertainment of director retiring by rotation & filling of vacancies.

a) At the Annual general meeting 1/3 of rotatime directors retire by rotation.

b) Those who are for the longest term in office.

c) At AGM new directors should be accepted.

3. **Appointment of Directors by the Directors :**

[Sec.260, Sec.262 & Sec.313]

The directors may appoint directors.

a) As additional directors [Sec.260]

b) In a casual vacancy [Sec.262]

c) As alternate director [Sec.313]

4. **Appointment of directors by third party :**

The articles under contain circumstances give power to the debenture holders (or) the creditors.

5. **Appointment by proportional representation :**

The articles of the company may provide the appointment of not less than 2/3rd of the total no. of directors of a public company (or) of a private company which is a subsidiary of public company according to the principles of proportional representation.

6. **Appointment of Directors by the Central Govt. [Sec.403].**

Sec.403 empowers the Central Govt. to appoint such no. of directors on the Board of company as the Tribunal may, by order in writing, specify as necessary.

Restrictions on appointment of Director : [Sec.266]

i) Disqualified by [Sec.11]
ii) Disqualified AOA

Disqualifications of Directors [Sec.274]:

A director must be

a) An individual
b) Competent to contract and
c) Hold a share qualification.

The following persons are disqualified for appointment as directors of a company.

a) A person of unsound mind.

b) An undischarged insolvent.

c) Convicted by court.

d) Who is already a director of a public company

e) Disqualified for appointment as director by a order of the court.

Vacation of office by Directors: [Sec.273]

The office of a director shall become vacant if

a) he fails to obtain within 2 months of his appointment

b) he is adjudged to be of unsound mind.

c) he applied to be adjudicated an insolvent.

d) he is adjudged an insolvent.

e) he is convicted by court.

f) he fails to pay any call.

g) he absents himself from 3 consecutive meetings of BOD.

h) he fails to make disclosures of BOD.

i) Accepts any benefit.

Removal of Directors :

Directors may be removed by

1.	Share holders	:	By passing an ordinary resolution in general meeting.
2.	Central Govt.	:	Any company's performance is based on company Law Board. Cases where Central Govt. can remove the directors.

i) If he is found guilty

ii) Not as per sound business principles.

iii) Causing damage to the interest of trade

iv) With an interest of to defraud creditors.

3. By company's law board :

i) Removal of oppression & mis management.

Meetings of Directors :

1. No. of meetings - once in every 3 months, every board should meet & they should meet 4 times in one year.

2. Notice of meetings – It should be given to all directors.

3. Quoram of meeting : 1/3 of the director (or) two directors.

Powers of Directors :

1. General powers [Sec.291]

   He can do any act other than

   a) Act to be done by company in General meeting.

   b) As per the provisions of the company's Act.

2. Powers to be exercised by Board Meetings [Sec.292]

   a) Make calls

   b) Issue debentures.

   c) Borrow money (or) loan.

   d) Invest funds of the company.

Duties of Directors :

1. Fiduciary Duties :

   a) Exercise power honesty and bonafied for benefit of the company.

   b) Not to place themselves in possession where they will have conflict between duties of the complete personal interest.

2. Duties of care, skill and deligance :

   a) should carry duties with reasonable care & use his skills.

3. Other duties :

   a) Attend the board meetings.

   b) Be within the authorized powers.

   c) To disclose interest.

Liabilities of Directors :

Liability to third parties.

i) Under the act :

   a) In connection with issue of prospective beyond company's Act.

   b) On irregular allotment of shares.

   c) On failure by the company to pay a bill of exchange, promissory notes, cheque.

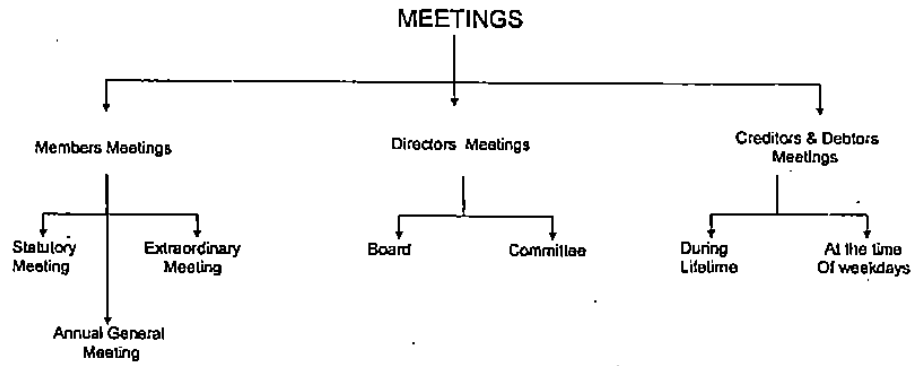
ii) Independently to the act :

2. Liability to the company

i) Ultra virus acts.
ii) Negligence
iii) Breach of trust
iv) Misfeasence

3) Liability for breach of statutory duties.
4) Liability for acts of his co-directors.

MEETINGS :



Statutory Meeting [Sec.165] :

- First meeting after the formation of the company.
- To make aware the share holders what is the capital obtained from the public.
- Funds utilized to achieve the objectives.
- Any alternations to made.

Rules of Statutory Meeting :

- Held only once in the life time of a company
- Held between 1 month & 6 months after the commencement of business.
- Have to give the statutory report.

Contents of Statutory Report :

1. Total shares allotted.
2. Cash received.
3. Abstract of receipts and payments.
4. Directors & auditors share allotment.
5. Contracts.
6. Under waiting contracts.
7. Arrears of calls.
8. Commission & Brokerage.

Annual General Meeting [Sec.166] :

- Conducted every year.
- Max time gap is 15 months.
- Notice should be given 21 days before the meeting
- He should state the date, time, venue - Regd. Office.

Objects of AGM:

1. The members will exercise control
2. Discuss affairs of the company.
3. Re-elect director.
4. Appointment of Auditor.
5. Check annual accounts.
6. Dividends declaration.

Extraordinary Meeting [Sec.169] :

Any meeting other than statutory, annual general meeting are called as extraordinary meeting.

EGM —— by the direct / Director / Member

- Director – call meeting within 21 days from the date of deposit.
- Meeting shall be held within 45 days from the date of the deposit of the requisition.

AUDITORS :

- Public company have more than score share capital should appoint auditor.
- Remuneration
- Renovates going at the time of AGM
- Auditors report is only for share holders.
- They should give the true & fair views of the affairs of the company.
- A report on his observations is to be made to members regarding accounts.
- A/c – Balance sheet & P & L a/c and other documents annexured to balance sheet.
- All information to the best of his knowledge.
- All books as per law are maintained (or) not should be checked.
- True & fair view of the affairs of the company.

Rights & Powers of Auditors :

a) Right of access to books, accounts & vouchers [Sec.227]
b) Right to obtain information & explanations [Sec.227]
c) Right to visit branch offices & right of access of books etc. [Sec.228].
d) Right to receive notice of AGM & attend [Sec.231]
e) Right to receive remuneration.

Duties of Auditors :

a) Duty to have knowledge of Articles of the company.
b) Report to members.
c) Duty of care & equation.

PREVENTION OF OPPRESSION & MIS MANAGEMENT

Oppression :

Deviation from the standards (or) violation of conditions which effects the share holders.

Mismanagement :

Improper management regarding the affairs of the company.

Principles of Rule of Majority :

It states that democratic rule will be considered. As per democratic setup the majority interest will prevail, and bind the minority. It was established in the case of Foss Vs Harbottle.

Two minority share holders in a company alleged that the directors were guilty for buying their own land for company's use at higher prices. The share holders in general meeting by majority resolved not to take action & held, court stated that majority's will be followed.

Minority share holders :

- Apply to court for wind up.
- Approach CLB for appropriate relief.
- Approach to Govt. for appropriate relief.

Prevention of Oppression [Sec.397]:

It states the no. of members required of the company to complain.

Relief of CLB:

1. If states the no. of company are conducted properly.
2. For public interest.

Prevention of Mismanagement [Sec.398]:

It states the no. of members required of the company to complain (100 members should be there to complain)

Powers of CLB:

1. Regulation.
2. Purchase of shares.
3. Termination.
4. It will give 3 months time.

Appointments of Director by Central Govt. :

WINDING UP :

Models of Windup :

1. Winding up by the tribunal (Sec.433 to 483)
2. Voluntary winding up (Sec.484 to 521). This may be
   a) Member's voluntary winding up.
   b) Creditor's voluntary.

Winding up by court [Sec.433 – 483] (Compulsory) :

1. Special resolution of company [Sec.433(a)]
2. Default in delivering the statutory report to the registrar [Sec.433 (b)].
3. Failure to commence (or) suspension of business [Sec.433 (c)]
4. Reduction in membership [Sec.433 (d)]
5. Inability to pay its debts [Sec.433 (e)].

Winding up Voluntary winding up [Sec.484 to 521]:

1. Memorandum Voluntary winding up.
2. Share holders & company should be solvent.

Provisions applicable :

a) Appointment & Remuneration of liquidator.
b) Board power to seize on appointment of liquidator.
c) Notice to registrar.
d) Right of liquidator to accept shares.

e) Duty to call for creditors meeting.

f) Final meeting & dissolution.

g) Creditors voluntary winding up.

Provisions related to winding up of companies by creditors :

a) Meeting of creditors.

b) Notice of resolution to registrar.

c) Appointment of liquidator.

d) Deciding liquidators remuneration.