



SYLLABUS

Class – B.Com. I Sem. (Hons.)

Subject – Business Regulatory Framework

UNIT – I	Contract Act 1872 – Definition nature of contract, offer and acceptances capacity of parties to contract, free consent and considerations expressly void agreement.
UNIT – II	Breach of contract, remedies for breach of contract, indemnity and guaranteed contract, special contract – bailment, pledge, agency.
UNIT – III	Indian partnership Act 1932 – Concept, definition, features rights and liabilities of partner deed. Negotiable instrument act 1881 – definition, features, promissory note, bill of exchange and cheque, crossing of cheque, types of crossing, dishonor and discharge of negotiable instrument.
UNIT – IV	Consumer protection act 1986 – main features, definition of consumer, consumer grievance, redressal machinery, district forum, state commission, central forum.
UNIT – V	Foreign exchange management act 2000 (FEMA) – objective and main provision, monopolistic and restrictive trade practices act – objective and main provision. Constitution and power's of MRTP commission.



Class: - B.Com. I Sem.
Subject: Indian Contract Act

The Indian Contract Act 1872

The law of contract in India contained in Indian Contract Act 1872, which is based on English common Law. It extends to whole of India except the state of Jammu and Kashmir. It came into force on the first Sep. 1872. The Act lays down general principles governing all contracts, but not the rights and duties of the parties. The rights and duties are decided by the parties themselves.

Scheme of the Act: - The scheme can be divided into two main groups:

1. General principles of the law of contract.
2. Specific kinds of contracts viz:
 - a. Indemnity and Guarantee
 - b. Contracts of Bailment and Pledge
 - c. Contract of Agency.

Meaning and Definition of an Agreement:

An Agreement consists of an offer by one party and its acceptance by other. In other words, an agreement comes into existence only when one party makes a proposal to the other party and that other party gives acceptance.

Agreement = Proposal + Acceptance of proposal

According to Section 2(e) of Indian Contract Act 1872 "Every promise and every set of promises, forming the consideration for each other is an obligation."

Meaning and Definition of a Contract:

A contract is a promise or set of promises for the breach of which the law gives a remedy or the performance of which the law in some way recognize as duty. In other words, a contract is an agreement the object of which is to create a legal obligation. The contract consists of two elements:

1. An agreement and
2. Legal Obligation i.e. enforceability by law.

Contract = an Agreement + enforceability by law.

According to Section 2(h) of the Indian Contract Act 1872 "An agreement enforceable by law is a contract."

Essential Elements of a valid Contract:

1. **Offer and Acceptance:** There must be a "lawful offer" and a "lawful acceptance" of the offer, thus resulting in an agreement.
2. **Intention to create legal relation:** There must be an intention among the parties that the agreement should be attached by legal consequences and create legal obligations. Social agreements do not contemplate legal relations, and so they do not give rise to a contract.
3. **Lawful Considerations:** An agreement is legally enforceable only when each of the parties to it, give something and get something. This something is the price for the promise and is called "Consideration". Only those considerations are valid which 'Lawful'
4. **Capacity of parties:** The parties to an agreement must be competent to contract, otherwise it cannot be enforced by a court. To be competent, the parties must be on majority age and of sound mind and must not be disqualified from contracting by any law to which they are subject.
5. **Free Consent:** "Consent" means that the parties must have agreed upon the same thing in the same sense. Consent is not enough for making a contract. That to must be free. It is said to be free when it is not caused by-
 1. Coercion, or (i) undue influence, or (iii) fraud, or (IV) misrepresentation, or (v) mistake.



6. **Lawful object:** For the formation of a valid contract, it is also necessary that the parties to an agreement must agree for a lawful object. The object must not be fraud or illegal or immoral or must not imply injury to the person or property of other.
7. **Writing and Registration:** Generally the contracts may be oral or written. But in special cases, it lays down that the agreement must be in writing or registered to be valid.
8. **Certainty:** Any agreement can be enforced if its meaning is certain or capable of being made certain agreements the meaning of which is not certain, are void.
9. **Possibility of performance:** The terms of the agreement must also be capable of performance physically as well as legally.
10. **Not expressly declared void:** The agreement must not have been expressly declared void under the act. There are some types of agreements which have been expressly declared to be void.

Kinds or classification of Contracts

A. On the basis of Enforceability

1. **Valid Contract:** A valid contract is an agreement enforceable by law. An agreement becomes enforceable by law when all the essential elements of a valid contract (as per section 10 of the act) are present.
2. **Voidable Contract:** "An agreement which is enforceable by law at the option of one or more of the parties, but not at the option of one or more of the other, is a voidable contract."
3. **Void Contract:** Void means not binding in law. It is valid at the time of making it but becomes void subsequently due to change in circumstances.
Void Agreement: "An agreement not enforceable by law is said to be void" Thus a void agreement does not give rise to any legal consequences and is void *ab initio*.
4. **Unenforceable contract:** It is one which is valid in it, but is not capable of being enforced in a court of law because of some technical defect such as absence of writing, registration requisite stamp.
5. **Illegal or unlawful contract:** An agreement which is expressly or impliedly prohibited or forbidden by law. It is *void ab initio*.

B. On the basis of Creation:

1. **Express Contract:** It is one in which parties make oral written declaration of the terms and conditions of the contract.
2. **Implied Contract:** It is one in which evidence of contract is gathered from acts and conduct of the parties and not from written or spoken words of parties.
3. **Constructive or Quasi Contract:** It is not a contract made intentionally by the parties by exchange of promises. It is a contract imposed by the law. The basis of this contract is that no one can be allowed to enrich himself at the cost of the other.

On the basis of Execution

1. **Executed Contract:** When both the parties to a contract have completely performed their share of obligations and nothing remains to be done by either party under the contract.
2. **Executory Contract:** When either parties have still to perform their share of obligation in to or there remains something to be done under the contract on both sides.

Capacities of Parties

Meaning of Capacity to Contract

Capacity or competence to contract means legal capacity of parties to enter into a contract. In other words, it is the capacity of parties to enter into a legally binding contract.

Who are Competent to Contract?

Every person is legally competent to contract if he fulfills the following three condition :



- i. He has attained the age of majority;
- ii. He is of sound mind; and.
- iii. He is not disqualified from contracting by any other law to which he is subject.

1) MINORS

Any person, who has not attained the age of majority prescribed by law, is known as minor.

Section 3 of the Indian Majority Act prescribes the age limit for majority and says a minor is a person who has not completed eighteen years of age. But the same Act also mentions that in the following two cases a person attains majority only after he completes his age of twenty one years :

- (i) Where a Court has appointed guardian of a minor's person or property or both (under the Guardians and Wards Act, 1890); or
- (ii) Where the minor's property has been placed under the superintendence of a Court of wards.

2) PERSONS OF UNSOUND MIND

A person is said to be of sound mind for the purpose of making a contract (a) if he is capable of understanding the contract at the time of making it, and (b) if he is capable of making a rational judgment as to the effect upon his interests.

Types of Persons of Unsound Mind and their Contracts:

1. Idiot
2. Lunatic
3. Delirious persons
4. Drunken or intoxicated persons
5. Hypnotized persons
6. Mental decay

3) PERSONS DISQUALIFIED BY OTHER LAWS

There are certain persons who are disqualified from contracting by the other laws of our country. They are as under:

1. Alien enemy
2. Foreign sovereigns, diplomatic staff etc.
3. Corporations and companies
4. Insolvents
5. Convicts

Rules /effects as to or Nature of Minor's Agreements:

1. **Void ab-initio:** - Minor's agreement is absolutely void from very beginning, i.e. void ab- initio. It is nullity in the eye of law. An agreement with minor, therefore, can never be enforced by law.
2. **Minor can be a promise or beneficiary:** - A minor can enforce such agreements in which he is a beneficiary or promise and does not create any obligation on his part.
3. **No ratification:-** A minor cannot be ratify even after attaining the age majority because void agreement cannot be ratified.
4. **Restitution/ Compensation possible:** - If a minor has received benefits under an agreement from the other party, the Court may require the minor to restore the benefit (so far as may be), to the other party at the time of rescission of the agreement. The minor may be asked to restore the benefit to the extent he or his estate has been benefited.
5. **Contract by parent/ guardian/ manager:** - A minor's parent/ guardian/ manager can enter into contract on behalf of the minor provided:
 - i. The parent/ guardian/ manager acts within the scope of his authority; and
 - ii. The contract is for the benefit of the minor.



6. **No liability of parents:** - The parents (guardian) of a minor are not liable for agreements made by their minor ward. However, they can be held liable if the minor makes agreement as their authorized.
7. **Minor as an agent:** - A minor is not entitled to employ an agent; he can be an agent himself for someone else. As an agent he can represent the principal, and bind him for his acts done in the course of agency. But the minor is not responsible to the principal for his acts.
8. **Minor and insolvency:** - A minor cannot be declared insolvent because he is not competent to contract.
9. **Minor as joint Promisor:** - A minor can be a joint promisor with a major, but the minor cannot be held liable under the promise to the promises as well as to his co-promisor. But the major promise cannot escape liability. The major joint promisor can be forced to perform the promise.
10. **Minor shareholder:** - A minor can become a shareholder or member of a company if (a) the shares are fully paid up and (b) the articles of association do not prohibit so.
11. **Liability for necessities of life:** - A minor is incompetent to contract. A minor, therefore, is not personally liable for the payment of price of necessities of life supplied to him or to his legal dependents. However, the person who has furnished such supplies is entitled to be reimbursed from the property of the minor.
12. **Minor Partner:** - According to the Partnership Act, 1932, a minor cannot make a contract of partnership though he may be admitted to its benefits with the consent of all the partners. A minor partner cannot be made personally liable for any obligation of the firm, but his share in the firm's property can be made liable.
13. **No estoppels against minor:** - The term 'estoppels' means prevention of a claim. When a minor enter into contract, representing that he is a major, but in reality he is not, then later on he can plead his minority as a defence and cannot be estopped (prevent) from doing so.

Definition of Consideration

Consideration is one of the essential element of a valid contract. The term "Consideration" means something in return i.e. quid –pro-quo. Consideration must result in a benefit to the promiser, & a detriment or loss to the promisee or a detriment to both. Without consideration a contract is void or nude i.e. nudum pactum

Section 2(d) of the Indian Contract act, 1872 defines Consideration as follows:

" When, at the desire of the promiser ,the promisee or any other person has done or abstained from doing, or does or abstains from doing ,or promises to do or abstain from doing something, such act or abstinence or promise is called a consideration for the promise."

ESSENTIAL ELEMENTS OF A VALID CONSIDERATION

- **It must move at the desire of the promisor:** Consideration must have been done at the desire or request of the promisor & not at the desire of a third party or without the desire of the promisor.
- **It may move from the promise or any other person:** An act constituting consideration may be done by the promise himself or any other person. Thus, it is immaterial who furnishes the consideration & therefore may move from the promisee or any other person. This means that **even a stranger to the consideration can sue on a contract, provided he is a party to the contract (Case Chinayya V/s Ramayya)**
- **It may be Past , Present or Future:**
 - Past Consideration: The consideration which has already move before the formation of agreement.
 - Present consideration: The consideration which moves simultaneously with the promise.
 - Future Consideration: The consideration which is to be moved after the formation of agreement.



- **It must be of some value:** The consideration need not be adequate to the promise but it must be of some value in the eye of the law.
- **It must be real & not illusory:** Ex. A promise to put life into the B's dead wife & B promises to pay Rs 10,000. This agreement is void because consideration is physically impossible to perform.
- **Must be Something other than the promisor's Existing obligation:** Consideration must be something which the promisor is not already bound to do because a promise to do what a promisor is already bound to do adds nothing to the existing obligation.
- **It must not be illegal, immoral or opposed to public policy.**

A CONTRACT WITHOUT CONSIDERATION IS VOID

The general rule is "An Agreement made without consideration is void". Sec 25 & 185 deals with the **Exceptions** to this rule. These cases are:

1) Love & Affection: A written & registered agreement based on natural love & affection between near relatives is enforceable even if it is without consideration.

Ex: X, for natural love & affection, promises to give his son, Y, Rs 1000. X puts his promise to Y in writing & registers it. This is a contract.

2) Compensation for voluntary services: A promise to compensate wholly or partly, a person who has already voluntarily done something for the promisor, is enforceable even without consideration.

Ex: A finds B's purse & gives it to him. B promises to give Rs 50 to A. This is a contract.

3) Promise to pay a Time barred debt: A promise by a Debtor to pay a time-barred debt if it is made in writing & is signed by the debtor or by his agent is enforceable.

4) Completed gifts: There need not be consideration in case of completed gifts.

5) Agency: No consideration is necessary to create an Agency.

6) Contribution to Charity

STRANGER TO A CONTRACT

Though a stranger to consideration can use because the consideration can be furnished or supplied by any person whether he is the promises or not, but a stranger to a contract cannot sue because of the absence of privity of contract (i.e. relationship subsisting between the parties to a contract).

Topic : Free Consent

MEANING OF CONSENT

Two or more persons are said to consent when they agree upon the same thing in the same sense at the same time.

MEANING OF FREE CONSENT

Sec. 14 describes the cases when the consent is not free. It lays down that consent is not free if it is caused by coercion, undue influence, fraud, misrepresentation, etc. if the consent is not free, the agreement is avoidable at the option of the party whose consent was not free.

1) COERCION

Coercion simply means forcing a person to enter in to a contract. Sec. 15 defines coercion as, "Committing or threatening to commit, any act forbidden by the Indian Penal Code, or unlawful detaining or threatening to detain, any property, to the prejudice of any person whatever with the intention of causing any person to enter into an agreement".

The essential elements of coercion are

- (1) Committing or threatening to commit any act forbidden by Indian Penal Code.
- (2) Unlawful detaining or threatening to detain any property.
- (3) The act of coercion may be directed at any person and not necessarily at the other party to the agreement.
- (4) The act of coercion must be done with the object of inducing or compelling any person to enter into an agreement.



2) **UNDUE INFLUENCE** : It is kind of moral coercion.

Sec. 16(1) defines undue influence as, "A contract is said to be induced by undue influence where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of other and uses that position to obtain an unfair advantage over the other".

(a) Where he holds a real or apparent authority over the other e.g., in the relationship between master and servant.

(b) Where he stands in fiduciary relation to the other. It implies a relationship of mutual trust and confidence.

(c) Where a contract is made with a person whose mental capacity is affected by reason of age, illness, or mental or bodily distress.

Any innocent or unintentional false statement or assertion of fact made by one party to the other during the course of negotiation of a contract is called a misrepresentation.

3) **MISREPRESENTATION**

As per Sec. 18, misrepresentation is a wrong statement of fact made innocently, i.e., without any intention to deceive the other party. It may be caused.

(1) By positive statement.

(2) By breach of duty.

(3) By mistake regarding the subject matter of the agreement.

Essential of misrepresentation

(1) There must be a representation or omission of a material fact.

(2) The representation or omission of duty must be made with a view to inducing the other party to enter into contract.

(3) The representation or omission of duty must have induced the party to enter into contract.

(4) The representation must be wrong but the party making the representation should not know that it is wrong.

4) **FRAUD**

Fraud is the intentional misrepresentation or concealment of material facts of an agreement by a party to or by his agent with an intention to deceive and induce the other party to enter into an agreement.

Sec. 17 defines fraud as, any of the following acts committed by a party to a contract (or with his convenience or by his agent) with intention to deceive another party thereto (or his agent) or to induce him to enter into the contract.

(1) The suggestion that a fact is true when it is not true by a person who does not believe it be true.

(2) The active concealment of the fact by a person having knowledge or belief of the fact.

(3) A promise made with out any intention to perform it.

(4) Any other act fitted to deceive.

(5) Any such act or omission as the law specifically declares to be fraudulent.

5) **MISTAKE**

Acc. To Sec. 20 mistake means erroneous belief concerning some fact. The parties are said to consent when they agree upon the same thing in the same sense. If they do not agree upon the agreement in the same sense, there will be no contract.

When the consent of one or both the parties to a contract is caused by misconception or erroneous belief, the contract is said to be induced by mistake.

Mistake may be of following types:

(1) Mistake of law,

(a) Mistake of law of the country.

(b) Mistake of foreign law.

(c) Mistake of private rights of the parties



- (2) **Mistake of fact,**
- (A) Bilateral Mistake :
- (1) Mistake as to subject mater :
 - (a) Mistake regarding existence
 - (b) Mistake regarding identity
 - (c) Mistake regarding title.
 - (d) Mistake regarding price
 - (e) Mistake regarding quality
 - (f) Mistake regarding quantity
 - (2) Mistake as to the possibility of performance
 - (a) Physical impossibility
 - (b) Legal impossibility
- (B) **Unilateral Mistake :**
- (1) Mistake as to identify of the person contracted with.
 - (2) Mistake as to the nature of contract.

Distinction between an Agreement and a Contract

Basis of distinction	Agreement	Contract
1. Definition	Every promise and every set of promises forming consideration for each other is an agreement	An agreement enforceable by law is a contract.
2. Creation	An agreement is created by acceptance of an offer.	Agreement and its enforceability together create a contract.
3. legal rights and obligations	An agreement may not create legal rights and obligations of the parties	A contract creates legal rights and obligation between the parties.
4. Necessity	No contract is required to make an agreement.	Valid agreement is necessary for making a contract.
5. Legally binding	An agreement is not a concluding or legally binding contract.	A contract is a concluding or legally binding on the parties.
6. Concept	Agreement is a wider concept and includes contracts.	Contract is a narrow concept and it is only a specific of agreement.

DISTINCTION BETWEEN VOID AGREEMENT AND VOID CONTRACT

Basis of distinction	Void Agreement	Void Contract
1. Definition	An agreement not enforceable by law is said to be void. [Sec. 2(g)]	A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable [Sec. 2(j)]
2. Time when becomes void	It is void from very beginning.	It becomes void subsequently due to change in law or change in circumstances.
3. Restitution	Generally no restitution is granted, however, the Court may on equitable grounds grant restitution in case of fraud or misrepresentation by minors.	Restitution may be granted when the contract is discovered to be void or becomes void.
4. Description in the Act	Such agreement have been mentioned as void in the Act. Agreements without consideration, agreements with lawful object or consideration	There is no mention of cases of void contracts in the Act. They are created by circumstances and law Courts decide whether they have become void or not.



	and some other agreements have expressly been declared to be void.	
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DISTINCTION BETWEEN VOID AGREEMENT AND VOIDABLE CONTRACT

Basis of distinction	Void Agreement	Voidable Contract
1. Definition	An agreement not enforceable by law is said to be void.	A contract enforceable by law at the option of the aggrieved party, is a voidable contract.
2. Period of validity	It is void from the beginning i.e. void ab initio	It is valid till it is avoided by the aggrieved party to the contract.
3. Legal existence	It is nullity, hence, does not exist in the eye of law.	It has its existence in the eye of law till it is repudiated.
4. Change in status	Status of void agreement does not change with the change in circumstances.	Status of such contract change when the aggrieved party elects to avoid it within a reasonable time. It becomes void when the aggrieved party elects to rescind it.
5. Causes	Any agreement is void when it is made with incompetent parties or for unlawful objects and consideration, or without consideration, or without consideration or it is expressly declared to be void under the law.	A contract is voidable when the consent of the party is caused by coercion or undue influence or fraud or misrepresentation.
6. Transfer of title	The party obtaining goods under void agreement cannot transfer a good title to the third party.	The party obtaining goods under voidable agreement can transfer a good title to the third party if the third party obtains it in good faith and for consideration and the aggrieved party has not avoided the contract before such transfer.
7. Restitution	Parties do not have right to restore the benefits passed on to the other unless the parties were unaware of the impossibility of performance at the time of agreement or the party to the agreement was minor.	Generally, right restitution is available if the party elects to avoid the contract.
8. Damages	No party as a right to get compensation for damages because such agreement has no legal effect.	If a party rightfully rescinds (i.e. puts and end) the contract, he can claim compensation, he can claim compensation of damages sustained by him due to non-fulfilment of the promise.

DISTINCTION BETWEEN VOID AND VOIDABLE CONTRACT

Basis of distinction	Void Contract	Voidable Contract
1. Definition	A contract which ceases to be enforceable by law become void, when it ceases to be enforceable.	A contract which is enforceable by law at the option of the aggrieved party is a voidable contract.
2. Period of validity	It remains valid till it does not cease to be enforceable.	It remains valid if the aggrieved party does not elect to avoid it within a reasonable time.
3. Will of the	Its validity is not affected by	Its validity is affected by the will of the aggrieved



party	the will of any party. It is decided by the Law Court.	party. Aggrieved party has option to treat it either binding or repudiate it.
4. Causes	Contracts become void due to change in circumstances or in the law of land.	Contract is voidable when the consent of the party is caused by coercion, undue influence, fraud or misrepresentation. Sometimes, it may be voidable under the provisions of the Secs. 39, 53 and 55.

DISTINCTION BETWEEN VOID AND ILLEGAL AGREEMENT

Basis of distinction	Void Agreement	Illegal Agreement
1. Definition	An agreement not enforceable by law is void.	An agreement which is expressly or impliedly prohibited by law, is illegal.
2. Effect on collateral agreement	The agreement collateral to the void agreement is not necessarily void.	The agreement collateral to an illegal agreement is always void.
3. Scope	All void agreements need not necessarily be illegal agreements. Hence, the scope is wider than that of the illegal agreements.	All ill agreements are void.
4. Restitution	The Court may grant restitution of money advanced if is minor or if the parties were unaware of the impossibility of performance of the agreement.	Restitution of money is not granted in case of an illegal agreement.

DIFFERENCE BETWEEN COERCION AND UNDUE INFLUENCE

Basis of distinction	Coercion	Undue influence
1. Definition	Coercions the committing or threatening to commit, any act forbidden by the I.P.C. or unlawful detaining or threatening to detain any property with the intention of causing any person to enter into an agreement.	Undue influence is an influence which arises where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.
2. Relations	In case of coercion, relation between the parities is immaterial.	In case of undue influence, in the relation between the parties the parties must be such that one of them is in a position to dominate the will of other.
3. Intention	Coercion is applied with the intention of causing any person to enter into an agreement.	It is exerted with the intention to obtain an unfair advantage over the other party.
4. Nature of force	It involves physical force.	It involves moral force.
5. Kind of act	It involves criminal act.	It does not involve criminal act.
6. Direction	The coercion may be directed against any person including a stranger.	Under influence is used against the weaker party only.
7. Who exercise	It can be exercised by any person. Even a stranger to contract can exercise it.	It is employed by the person who is in a position to dominate the will of the other.
8.	A contract caused by coercion, may be	In case of undue influence, the aggrieved



Remedies	avoided by the aggrieved party's contract. [Sec. 19]	party may avoided the contract or the Court, may set aside the contract absolutely or conditionally. [Sec. 19 A]
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DISTINCTION BETWEEN FRAUD AND MISREPRESENTATION

Basis of distinction	Fraud	Misrepresentation
1. Meaning	A fraud is an intentional misrepresentation or concealment of material fact to induce the other party to enter into a contract.	An innocent or unintentional misrepresentation of material facts by one party to induce the other party to enter into a contract.
2. Intention	Fraud is committed with an intention to deceive	There is no such intention.
3. Belief in the facts	The person committing of a fraudulent act does not believe it to be true.	The person making misrepresentation believes in its facts to be true.
4. Suit for damage	The aggrieved party has right to sue the other party for damages.	The aggrieved party cannot sue for damages.
5. Defence	A party cannot set up a defence that the aggrieved party had means of discovering the truth except in case of fraud by concealment or by silence.	In case of misrepresentation the other party always set up a defence that the aggrieved party had means of discovering the truth.

DISTINCTION BETWEEN CONTINGENT CONTRACT AND WAGERING AGREEMENT

Basis of distinction	Contingent contract	Wagering agreement
1. Meaning	A contingent contract is contract in which the promisor undertakes to perform the contract upon the happening or non-happening of an event, which is collateral to the contract.	A wagering agreement is one in which one person agrees to pay certain amount of money to the other on happening or non-happening of a specific event.
2. Nature of event	The event is collateral to the contract, i.e. not a part of promise or consideration of the contract.	Event is the sole determining factor.
3. Reciprocal promise	There is no reciprocal promise in a contingent contract.	The wagering agreement consist of reciprocal promise.
4. Interest in the subject matter	The parties are interested in the subject-matter of such contracts. Therefore, the happening or non-happening of the event is material for them.	The parties to wagering agreement have no other interest in the subject matter of the agreement except the winning or losing the money at stake.
5. Validity	A contingent contract is valid contract.	A wagering agreement void agreement. In the State of Maharashtra and Gujarat it is illegal.
6. Nature of contract	All contingent contracts are not wagering agreements because all contingent contracts are not void.	All wagering agreements are contingent agreements because their performance is dependent upon uncertain future events.



UNIT-II DISCHARGE OF CONTRACT

When the rights and obligations arising out of a contract are extinguished, the contract is said to be discharged or terminated. A contract may be discharged by any of the following ways:

1. By performance – Actual or Attempted.
2. By mutual consent or agreement.
3. By subsequent or supervening impossibility or illegality.
4. By lapse of time.
5. By operation of law.
6. By breach of contract.

Discharge by Performance-

Performance of a contract is the most popular manner of discharge of a contract. The performance may be either Actual performance or Attempted performance.

A. Actual performance:-When each party fulfils his obligations arising out of the contract within the time and in a manner prescribed, it is called the actual performance and the contract comes to an end.

B. Attempted performance or Tender:-When the promisor offers to perform his obligation, but is unable to do so because the promisee does not accept the performance, it is called " **Attempted Performance**" or "**tender**". Thus tender is not actual performance but is only an offer to perform the obligation under the contract. **A valid tender of performance is equivalent to performance.**

Essentials of a valid tender:-if it fulfils the following conditions:-

1. It must be unconditional. If A who is a debtor of company B, offers to pay if shares are allotted to him at par. IT is not a tender.
2. It must be made at proper time and place:- A is tenant of B. H offers him rent at a marriage party. B is not bound to accept as tender is not made at a proper place.
3. It must be of the whole obligation contracted for and not only of the part:- e.g. deciding of his own to pay in the installments and offering the first installment was held invalid tender as it was not of the whole amount due.
4. If the tender related to the delivery of goods, it must give a reasonable opportunity to the promisee for inspection of goods so that he may be sure that the goods tendered are of contract description.
5. It must be made by a person who is in a position and is willing to perform the promise.
6. It must be made to the proper person i.e. the promisee or his authorized person.
7. If there are several joint promisees, an offer to any one of them is a valid tender (but the actual payment must be made to all joint promisees, and not to any one of them.)
8. In case of tender of money, exact amount should be tendered in the legal tender money.

Effect of refusal to accept a valid tender: The effect of refusal to accept a properly made "**offer of performance**" is that the contract is deemed to have been performed by the promisor. And the promisee can be sued for breach of contract. Thus we can say that "**a valid tender discharges the contract.**"

2. Discharge by Mutual Consent or Agreement: A contract is created by means of an agreement, it may also be discharged by another agreement between the same parties.

A. Novation: "Novation occurs when a new contract is substituted for an existing contract, either between the same parties or between different parties, the consideration mutually being the discharge of the old contract." If the parties are same, then small changes in the in the terms of contract is called "alteration" and not "Novation". For being "Novation", the changes must be of significant nature. Novation cannot be compulsory, it can only be with the mutual consent of all the parties.

B. Alteration:-It means that change of one or more of the material terms of a contract. A material alteration is one which alters the legal effect of the contract. e.g. change in the amount of money, change in the rate of interest etc.



Note that a material alteration made in a contract by one party without the consent of the other will make the whole contract void and no person can maintain an action upon it.

C. Rescission. A contract may be discharged before the date of performance, by agreement between the parties to the effect that it shall no longer bind them. Such an agreement amounts to “**Rescission**” or cancellation of the contract, the consideration being the abandonment by the respective parties of their rights under the contract. Example A promises to deliver some goods to B on say 14th Nov. 2006. But before the date of performance i.e. 14th Nov. 2006, A and B mutually agree that the contract will not be performed. The contract stand discharged by rescission.

If there is non performance of a contract by both the parties for a long time without complaint, it amounts to an implied rescission.

Note: In rescission, the existing contract is cancelled by mutual consent without substituting a new contract in its place.

D. Remission. It is defined as “Acceptance of lesser amount than what was contracted for or a lesser fulfillment of the promise made”

E. Waiver. It means deliberate giving up of a right which a party is entitled to under a contract whereupon the other party to the contract is released from his obligation. Example A promises to stitch a Shirt for B if B sings a song in A’s party and accepting it B sings a song in A’s party. Then later on B says there is no need to stitch shirt for me, to which A gives his consent. Thus the contract is terminated.

3. Discharge by Subsequent or Supervening Impossibility or Illegality.

Impossibility at the time of contract. If you contract for something impossible, the agreement is void *ab initio* the promisor knows about the impossibility after using reasonable efforts, the promisor is bound to compensate the promisee for any loss he may suffer because of non performance of the promise, even if the agreement being void *ab initio*

Subsequent impossibility. Impossibility is found out after the contract is made, “ A contract to do an act which, after making the contract, becomes impossible or unlawful, becomes void when the act becomes impossible or unlawful.”

Conditions for It...

- (i) the act should have become impossible.
- (ii) The impossibility should be by reason of some event which the promisor could not prevent.
- (iii) the impossibility should not be self induced by the promisor or due to negligence.

To be impossible, it is sufficient that it becomes impracticable or extremely hazardous or useless from the point of view of the object and purpose which the parties had in view,

If the performance of a contract becomes impossible by reason of supervening impossibility or illegality of the act, it is logical to absolve the parties from further performance of it as they never did promise to perform an impossibility.

4. DISCHARGE BY LAPSE OF TIME. In some circumstances, the laps of time may also discharge a contracts, e.g. the period of limitation for simple contracts is three years the under limitation Act and therefore on default by a debtor, if the creditor does not file a suit of recovery against him within three years of default, the debt becomes time barred and the creditor will not get the help of the law. This in effect discharges the contract. ‘Where times is of essence’, if the contract is not performed on time, the contract comes to an end, and the party not at fault need not perform his obligation and may sue the other party for damages.

5. DISCHARGE BY OPERATION OF LAW: - A contract is discharged by operation of law in the following cases:-

(A) Death: Sometimes a contract is of a person nature and involves personal skills, of promiser, of promisor, In such cases the contract is discharged on the death of the promisor. In such cases the contract is discharged on the death of the promisor.



(B) Insolvency: When a person is adjudged insolvent he is released from his all liabilities in current order of adjudication. His rights (Assets) and liabilities are transferred to the official assignee or official receiver, on the case may be.

(C) Merger of rights: Sometimes, inferior right of a person under the some or other contract, in such a case the inferior, right is vanished and is not required to be enforced, For example an ordinary debt can be merged. In to rights, of ownership in such case the inferior right need not to be enforced because this right have merge in to a superior right of mortgage or ownership.

(D) Loss of evidence of contract:-

There the evidence of the existence of the contract is lost or vanished. The contract is discharged for example document of contract is lost or destroyed and not other evidence is available the contract is discharged.

6.DISCHARGE BY BREACH OF CONTRACT:- A contract is sometimes discharged, by its breach generally, Breach of contract means refused. Or future of any one party to perform his contractual obligation under the contract specifically a breach of contract occurs when a party to a contract does any of the other following things.

- (1) Fails or refuses to perform his obligation under the contract.
- (2) Disable himself from performing his part of the contract.
- (3) Make the performance of contract impossible by his own acts.

INDEMNITY AND GUARANTEE CONTRACT

The contract of indemnity and guarantee are special kinds of contracts. These contract are therefore also required to fulfill all the essential of a valid contract.

Indemnity Contract: Indemnity contract is a type of contingent contract. The term 'Indemnity' Simply means 'Making Somebody Safe' or 'Paying Somebody back'.

Section 124 of contract Act defines that "A contract by which one party. Promises to save the other from loss caused to him by the conduct of the promise himself by the conduct of any other person, is called a contract of indemnity".

The party who gives indemnity or who promises to compensate for or to make good the loss, is called. Indemnifier and the party for whose protection or safety the indemnity is given or the party whose loss is made good is called 'Indemnified' or 'indemnity holder'.

Important features of an indemnity contract –

1. Two party.
2. Promises for pay compensation of loss/damage.
3. Loss/damage may be the own or other person.
4. Creation of liabilities.
5. It must be faith.
6. All essential features of valid contract.
7. Compensation for actual loss/damage.
8. It may be express or implied.

Loss/damage may be caused by some event, or accident, or some natural phenomenon or disaster.

Rights of Indemnified (Indemnity-Holder) –

1. Rights to claim for all damages/losses.
2. Rights to claim for all costs which is related to contract.
3. Rights to claim for all sums which he may have paid for contract.

Liabilities/Duties of Indemnified –

1. Liabilities to pay all damages/losses.
2. Liabilities to pay all costs related to contract.
3. Liabilities to pay all sum which is received by sell for contract from indemnified.



Guarantee Contract

The object of the contract of guarantee is to enable. A person to obtain an employment, or a loan, or some goods or service on credit,

According to section 126 of the contract Act “A contract of guarantee is a contract to perform the promise, or discharge the liability, of a third person in case of his default.”

The person who gives the guarantee is called the ‘**Surety**’ or ‘**guarantor**’ & the person in respect of whose default the guarantee is given is called the **principal debtor** or he is the party on whose behalf. Guarantee is given and the person to whom the guarantee is given is called the ‘**Creditor**’.

Essential features of a Guarantee Contract –

1. Three parties
2. Three agreement
3. Concurrence of the three parties
4. Control may be experts or implies
5. It may be oral or written
6. Liability of surety is secondary is dependent on principal debtor’s default.
7. Guarantee must be in the knowledge of debtor.
8. All essential of a valid contract.
9. Guarantee must not be obtained by means of misrepresentation.
10. Existence of a primary liability.

DISTINCTION BETWEEN A CONTRACT OF INDEMNITY AND GUARANTEE

S.No.	Different Basis	Indemnity Contract	Guarantee Contract
1.	Nature of Contract	Promises to save the other from loss.	One party promises to discharge the liability of the third party in case of his default.
2.	No. of Parties	Only two parties are there	There are three parties.
3.	No. of contracts	There is only one contract	There are three contract between debtors, creditors and surety.
4.	Nature of Liability	The liability of the indemnifier is primary and independent.	The liability of the surely is secondary and dependent.
5.	Arising of Liability	Indemnifier’s liability arises only on the happening of a contingency.	Arises only after the default of debtor in payment.
6.	Existence of debt or duty	There is no existence debt or duty in this contract.	There is always some existing debt or duty in this contract.
7.	Request by the debtor	It is not necessary for the indemnifier to act at the request indemnified.	The surely generally gives guarantee to the request of the debtor.
8.	Right to sue	The indemnifier cannot sue the third party for loss in his own name.	It surely has discharged. The debt after the default of the principal debtor, he becomes entitled to sue the debtor in his own name.



Kinds of Guarantee –

1. **Specific or Simple Guarantee:** When a guarantee is given in respect to a single debt or specific transaction is to come to an end when the guarantee debt is paid or the promise is duly performed. It is called a specific or simple guarantee.
2. **Continuing guarantee:** Section 129, of the contract Act defines a guarantee which towards to a series of transaction, is called a continuing guarantee, thus, a continuing guarantee is not confined to a single transaction but keeps on moving to several transaction continuously.

Revocation of Guarantee – Revocation of guarantee means cancellation of guarantee already accrued, it may be noted that the specific guarantee cannot be revoked if the liability has already secured. However a continuing guarantee can be revoked and on the revocation of such a guarantee. The liability of the surety or guarantor comes to an end for the future transaction. The surety continues to be liable for the transactions which have taken place up to the time of revocation. A continuing guarantee may be revoked in any of the following ways-

A Guarantee may be revoked in any of the following ways-

1. By notice of revocation.
2. By death of surety.
3. By discharge of surety in various circumstances
 - A. By novation (Sec.62)
 - B. By variance in terms (Sec. 133)
 - C. By release/discharge of principal Debtor (Sec.-134)
 - D. When the creditor events in to an agreement with the principal debtors (Sec.13..)
 - E. By creditor act or omission impairing surety's eventual remedy (Sec. 139)
 - F. By loss of security "(Sec. 141)
 - G. By invalidation of contract (Sec.142,143,144)

Nature and Extent of Surety's Liability –

1. The liability of surety is co- extensive.
2. The liability of surety arises the same moment when default is made by the principal debtor.
3. The surety is free to restrict limit his liability.
4. Sometimes the surety is liable though the principal debtors is not liable.
5. If there is a condition precedent for the surety's liability; the surety will be liable, only when that condition is fulfilled first.
6. In a continuing guarantee liability of surety extends to a series of transaction over a period of time.
7. The surety will not be liable if the creditor has obtained guarantee either by misrepresenting a material fact regarding the transaction or by keeping silence to material circumstances.
8. A discharge of principal debtor by operation of law does not discharge the surety from liability.

Discharge of surety from liability –

The following are the modes or circumstances under which a surety is discharge from his liability –

1. By revocation
 - a) Notice by surety
 - b) Death of surety
 - c) Notation.
2. By conduct of the creditor
 - a) Variance (change) in terms of the contract
 - b) Release or discharge of the principal debtor.
 - c) Certain arrangements made by the creditors with the principal debtors without the consent of surety,
 - d) Creditors act or omission impairing surety's eventual (ultimate) remedy.
 - e) Loss of security.



3. By invalidation of conduct of guarantee
 - a) Guarantee obtained by misrepresentations
 - b) Guarantee obtained by concealment
 - c) Failure of co-surety to join a surety

RIGHT THE SURETY

I. Right against the Principal debtor

1. Right of subrogation
2. Right of indemnity

II. Right against the Creditor

1. Right to security
2. Right to claim set off

III. Right against the Co-Sureties

1. Equal contribution
2. Liability of co-securities bond in different sums
3. Right to share benefits of securities.

Bailment and pledge

Bailment

the word 'bailment' is derived from the French word the French word 'baillier' which means 'to deliver Etymologically, it means any kind of handling over'. In legal sense, it involves change of possession of goods from one person to another for some specific purpose.

Definition of Bailment

Sec. 184 defines Bailment as the delivery of goods by one person to another for some purpose, upon a contract, that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the 'bailor' and the person to whom they are delivered is called the 'bailee'.

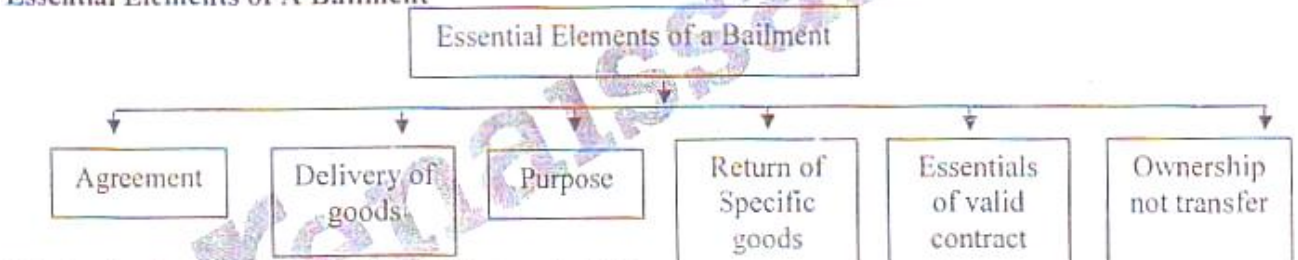
Examples

- (a) A delivers a piece of cloth to B, a bailor, to be stitched into a suit. There is a contract or bailment between A and B.
- (b) A sells certain goods to B who leaves them in the possession of A. The relationship between B and A is that of bailor and bailee.

Consideration in a contract of bailment

In a contract of bailment, the consideration is generally in the form money payment either by the bailor or the bailee, as for example, when A gives his bicycle to B for repair, or when A gives his car to B on hire. Such consideration in money form, however, is not necessary to support the promise on the part of the bailee to return to goods. The detrainment suffered by the bailor, in parting with possession of the goods, is a sufficient consideration to support the contract of bailment.

Essential Elements of A Bailment





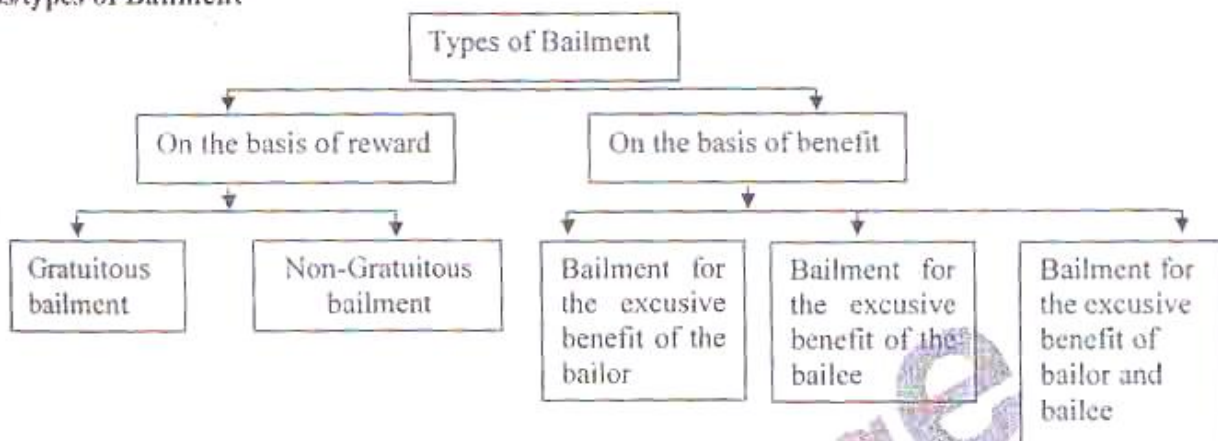
Distinction between Bailment and Contract of sale

A contract of bailment differs from a contract of sale in the following respects:

S. No.	Basics of distinction	Bailment	Contract of sale
1	Transfers of ownership/possession	There is only a transfer of possession of goods from the bailor to the bailee.	There is a transfer of ownership of goods from the seller to the buyer.
2	Consideration not to be passed	The consideration need not be passed between bailor and bailee.	The consideration in terms of price must be passed between seller and buyer.
3	Return of goods	The bailee must return the goods to the bailor on the fulfillment of the purpose for which the bailment is made.	There is no question of such return of goods in contract of sale.

Kinds/types of Bailment

Kinds/types of Bailment



DUTIES OF A BAILOR

- Duty to disclose defects [Section 151]
- Duty to bear expenses [Section 158]
- Duty to indemnify the bailee in case of premature termination of gratuitous bailment [Section 159]
- Duty to indemnify the bailee against the defective title of bailor [Section 164]
- Duty to receive back the goods [Section 164]
- Duty to bear the risk of loss [Section 152]

DUTIES OF A BAILEE

- Duty to take care of the goods bailed [Section 151&152]
- Duty not to make any unauthorised use of goods [Section 154]
- Duty not to mix bailor's goods with his own goods [Section 155 to 157]
- Duty to return the goods [Section 160 & 161]
- Duty to return accretion to the goods [Section 163]

Rights of a Bailor

- Right to claim damage in case of negligence [Section 152]
- Right to terminate the contract in case of unauthorised use [Section 153]
- Right to claim compensation in case of unauthorised use [Section 154]



- Right to claim the separation of goods in case of unauthorized mixture of goods which cannot be separated [Section 157]
- Right to demand return of goods [Section 160]
- Right to claim compensation in case of unauthorized retention of goods [Section 161]
- Right to demand accretions to goods [Section 163]

RIGHTS OF A BAILEE

- Right to claim damage [Section 150]
- Right to claim reimbursement of expenses [Section 158]
- Right to be indemnified in case of premature termination of gratuitous bailment [Section 159]
- Right to recover loss in case of bailor's defective title [Section 164]
- Right to recover loss in case of bailor's refusal to take the goods back [Section 164]
- Right to deliver goods to any one of the joint bailors [Section 165]
- Right to deliver goods to bailor in case of bailor's defective title [Section 166]
- Right to particulars lien [Section 170]

RIGHTS OF BAILOR AND BAILEE AGAINST WRONGDOERS

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

Apportionment of Relief or Compensation Obtained by Such Suits [Section 181] Whatever is obtained by way of relief or compensation in any such suit shall, as between the bailor and the bailee, be dealt with according to their respective interests.

Example X delivered a TV to Y for repairs. Z forcefully takes possession of TV from Y's shop. In this case, either X or Y may sue Z. If Y files the suit, he shall hand over the amount received after deducting his repairs charges to X.

TERMINATION OF BAILMENT

I. Termination of every Contract of Bailment (whether Gratuitous or not)

Every contract of bailment comes to end under the following circumstances:

- (a) On the Expiry of Fixed Period
- (b) On fulfillment of the Purpose
- (c) Inconsistent Use of Goods
- (d) Destruction of the subject Matter of Bailment

II. Termination of Gratuitous Bailment

A contract of gratuitous bailment is terminated in the following circumstances also.

- (a) Before the Expiry of fixed Period
- (b) On Death of Bailor/Bailee

Meaning of Lien

Lien means the right of a person having possession of goods belonging to another to retain those goods until the satisfaction of sum claimed by the person in possession of the goods. It may be noted that the possession of goods must be lawful and continuous. For example, X took Y's godown on rent of Rs.5,000 p.m on an agreement that X can at any time deposit or take out his goods from the godown. After six months, X stopped paying the rent. Y auctioned X's goods and claimed lien. Y cannot claim lien because it was agreed that X can take out his goods whenever he wanted.



Type of Lien

(a) Particular Lien [Section 170] A particular lien is right to retain only those goods in respect of which some charges are due.

Example:- X gives a piece of cloth to Y, a tailor, to make a coat. Y promises X to deliver the coat as soon as it is finished. Y is entitled to retain the coat till he is paid for (if he has not allowed any credit period) but is not entitled to retain the coat (if he has allow one month's credit for the payment.)

(b) General Lien [Section 171] A general lien is a right to retain all the goods as a security for the general balance of account until the full satisfaction of the claims due whether in respect of those goods or other goods. The general lien is available to other person only when there is an express contract to that effect.

Example: - X deposited US 64 units and shares of Reliance Industries Ltd. as security with Citi Bank and took a loan against the shares of Reliance Industries Ltd. Citi Bank may retain both the securities until its claim are fully satisfied.

S. No.	Basic of distinction	Particular lien	General lien
1	Goods in respect of which lien available	It is available against those goods in respect of which some charges are due.	It is available against all goods whether in respect of which claims are due or not.
2	Purpose	It is available only for non-payment of remuneration for the service.	It is available for a general balance of account.
3	To whom available in the absence of contract to contrary	It is available to every bailee to whom the goods have been bailed.	It is available only to specific bailees like bankers, factors, Wharfingers, attorneys of High Court policy brokers.
4	Rendering of service	It is available only when some service involving the exercise of labour of skill has been rendered.	It is available even when no such service has been rendered.
5	Purpose of delivery of goods	The purpose of delivery of goods is to confer an additional value as the goods bailed.	The purpose of delivery of goods is to deposit the goods as security.

FINDER OF GOODS

Finder of goods is the person whom finds some goods which do not belong to him.

Example if X finds a purse or a diamond ring or a watch, which does not belong to him, he will be called as a finder of goods.

Rights of a Finder of Goods

- Right to lien [Section 168]
- Right to sue for reward [Section 168]
- Right to sell [Section 169]

Duties of a Finder of Goods [Section 171]

Finder of goods is subject to the same responsibility as a bailee. The duties of a finder of goods are as follows:-

- Duty to take reasonable care
- Duty not use for personal purpose
- Duty not to mix with his own goods
- Duty to find the owner



PLEDGE

Meaning of pledge (or pawn) [Section 172]

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

Example X borrows of Rs. 1,00,000 from Citi Bank and keeps his shares as security for payment of a debt. It is a contract of pledge.

Meaning of A pawner (or pledgor) [Section 172]

The person who delivers the goods as security for payment of a debt or performance of promise is called the pawner or pledgor. In aforesaid example X is pawner

Meaning of Pawnee (or pledgee) [Section 172]

The person to whom the goods are delivered as security for payment of a debt or performance of promise is called the Pawnee or Pledgee. In the aforesaid example. Citi Bank is the Pawnee.

Rights of Pawnee

- **Right** of retainer [Section 173]
- **Right** to claim reimbursement of extraordinary expenses [Section 173]
- **Right** to sue pawnor [Section 176]
- **Right** to sell [Section 176]
- **Right** against true owner [Section 176]

Rights of a Pawnee

- **Duty** to take reasonable care of the goods pledged
- **Duty** not to make unauthorized use of goods
- **Duty** not to mix pawnor’s goods with his own goods
- **Duty** to return goods
- **Duty** to return accretion to the goods

Rights of Pawnor

- Right to get pawnee’s duties duly enforced
- Right to redeem [Section 177]

Duties of Pawnor

- Duty to comply with the terms of pledge
- Duty to compensate the Pawnee for extraordinary expenses [Section 185]

Distinction between Pledge and Bailment

Basic of distinction	Pledge	Bailment
1.Purpose	Pledge is bailment of goods for a specific purpose i.e. repayment of a debt or performance of a duty.	Bailment is for a purpose of any kind
2.Right to use	Pawnee cannot use the goods pledged	Bailee can use the goods as per terms of bailment
3.Right to sell	Pawnee can sell the goods pledge after giving notice to the pawnor in case of default by the pawnor.	Bailment can either retain the goods or sue the bailor for his dues.

Distinction between pledges and Hypothecation

Hypothecation is also one of the modes of providing security. However, it is different from pledge in the following respects:

Basic of distinction	Pledge	Hypothecation
1. possession of goods	Borrower transfer the possession of goods.	Borrower is not transfer the possession of goods.
2. Right to deal with the	Borrower has no right to deal with	Borrower has a right to deal



goods.	the goods pledged.	with the hypothecated.
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AGENCY

Meaning of Agency: Agency is relation between an agent his principal created by an agreement.

Section 182 of the Contract Act defines an Agent as “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 whom is so represented is called the principal”.

Essential Features of Agency

1. The principal
2. The agent
3. An agreement
4. Consideration not necessary
5. Representative capacity
6. Good faith
7. The competence of the principal

Modes or Methods or Creation of Agency

1. **Agency by express agreement:** A contract of agency may be made by express words, whether written or oral.
2. **Agency by implied agreement:** “An authority is said to be implied when it is to be inferred from the circumstances of the case.
 - (a) **Agency by estoppels :** When a principal by his conduct or act cause a third person to believe that a certain person is his authorized agent the agency is aid to be an agency by estoppels.
 - (b) **Agency by necessity :** It mean the agency which comes into existence when certain circumstances compel a person to act as an agent for an other without his express authority.
 - (c) **Agency by holding out :** When a principal by his active conduct or act and without any objection permits another to act as his agent, the agency is the result of principal’s conduct as to the agent.
3. **Agency by ratification :** Ratification means confirmation of an act which has already been done. Sometimes, an act is done by a person on behalf of another person but without another person’s knowledge and authority. If he accepts and confirm the act, he is said to have ratified it.
4. **Agency by operation of law :** In certain circumstances the law treats a person as an agent of another person. For example, (a) when a partnership is formed, every partner automatically becomes agent o another partner. (b) when a company is formed its promoters are treated as its agents by operation of law.

RIGHTS AND DUTIES OF AGENT

Rights of an Agent

1. Right to retain money received on principal’s account.
2. Right to receive remuneration.
3. Right of lien on principal’s property.
4. Right to be indemnified.
5. Right to compensation for injury caused by principal’s neglet.

Duties of an Agent

1. To follow the direction of the principal.
2. To conduct the business of agency with reasonable skill and diligence.
3. To render accounts on demand
4. To communicate with the principal.
5. Not to deal on his own account



6. To pay the amounts received for the principal
7. Not to delegate his authority
8. Not to act in excess of authority
9. Duty on termination of agency by principal's death or insanity.
- 10.

TERMINATION OF AGENCY

Termination of agency means revocation (cancellation) of authority of the agent the modes of termination of agency may be classified as :

(a) Termination of Agency by the act of the Parties.

1. By revocation of authority by the principal
2. By renunciation (giving up) of business of agency by the agency
3. By mutual agreement

(b) Termination of agency by Operation of Law

1. Completion of business of agency
2. Death or insanity of principal or agent
3. Insolvency of the principal
4. Destruction of subject matter
5. Expiry of time
6. Agency subsequently becoming unlawful.
7. Termination of sub agent's authority

revocable agency

when the authority of agent cannot be revoked by the principal it is said to be an irrevocable agency. An agency is irrevocable in the following cases :

1. If the agency is coupled with interest : when an agent himself has a special interest in the property which forms the subject matter of the agency, such agency is said to be coupled with interest.
2. Where the agent has partly exercised his authority
3. When the agent has incurred a personal liability.

DISTINCTION BETWEEN SUB-AGENT AND SUBSTITUTED AGENT

Basic of distinction	Sub-agent	Substituted Agent
1. Appointment	A sub-agent is appointed by the agent, i.e. original agent.	A substituted agent is named by the agent and appointed by the principal.
2. Delegation of Authority	Original agent delegates some of his authority to the sub-agent	Original agent does not delegate his authority to the substituted agent.
3. Control	A sub-agent acts under the control of the agent.	A substituted agent acts under the direction and control of the principal.
4. Privity of contract with principal	There is no privity of contract between sub-agent and the principal. Therefore, both of them cannot directly sue on each other.	There is a privity of contract between substituted agent and the principal. Therefore, both of them can sue each other directly.
5. Liability of the agent	Agent is liable to the principal for the acts of the sub-agent.	Agent is not responsible to the principal for the acts of the substituted agent.
6. Accountability	The sub-agent may be held accountable to the principal only for his wrongful acts or fraud.	A substituted agent is accountable to the principal for each and every act.
7. Claim for remuneration	A sub-agent has no right to claim remuneration from the principal.	A substituted agent can claim remuneration from the principal.
8. Improper appointment	A sub-agent may be improperly appointed.	A substituted agent can never be improperly appointed.



UNIT-III
THE INDIAN PARTNERSHIP ACT,1932

INTRODUCTION:- Partnership is one of the specific contracts which was a part of the Indian contract Act, 1872. Later on the provisions relating to partnership contract were repealed and a separate Act called the Indian partnership Act, 1932 was passed which in force till today. It is a central Act and extends to the whole of India except the state of J&K. It has come into force on the 1st day of October, 1932 except section 69, which came into force on the 1st day of October, 1933. The provisions of the Indian contract Act, 1872 also apply to firms except where the Indian partnership Act, 1932, specifically provides to the contrary (section 3).

Partnership is one of the type of business entity, where two or more persons joins together to form the partnership and run the business. The Act was enacted in order to govern and guide partnership. The Act determines the rights and duties of a partner in relation to the partnership business but also against other partners. It clearly establishes the position of a partner as well as partnership firm and vice a versa with third parties, in legal and contractual relationship arising out of and in the course of business of the firm

Meaning and Definition of the term partnership:-

According to section 4 of the Act—partnership is the relation between two or more persons who have agreed to share the profits of a business carried on by all or any one of them acting for all.

Table with 5 columns: Two or more, Agreement, Sharing of profit, Business, Mutual agency. Title: Essential elements of partnership are as follows

4

(a) Two or more persons: - There must be at least two or more persons to form a partnership and all such persons must be competent to contract (As per section 11 of the Indian contract Act).The Act is silent about the maximum number of members that a partnership may have. It is the section 11 of the companies Act which gives us the maximum limit. As per this any association having a membership of more than 10 in case of Banking business or 20 in case of non banking business must be registered as a cooperative body failing which it would become an illegal association.

(b) Agreement: -- There must be an agreement to form a partnership. This agreement may be express (written or oral) or implied. Section 5 of the Act provides that the relation of a partnership arises from contract and not from status.

Ex. HUF coparceners acquire interest in the business because of their status (i.e. birth)

Business: - There must exist a business. According to section 2(b), the term 'Business' includes every trade, occupation and profession.

For ex. When two or more persons agrees to share the income of a joint property (rent from a building) it does not amount to a partnership because there does not exist any business. Similarly, an association created for social, charitable and religious purpose cannot be regarded as a partnership because there does not exist any business.

© Sharing of profit: -- There must be sharing of profit. Unless otherwise agreed, sharing of profits implies sharing of losses as well. Sharing of profit is 'prima facie' evidence and not a conclusive evidence of partnership. So everyone who shares the profits of business need not necessarily be a partner.

For example: - Joint owners (co-owners) of some property, sharing profits or gross returns arising from the property.

Persons sharing profits but not having mutual agency

A lender of the firm, a widow or child of a deceased partner, a servant or agent etc.

Mutual Agency: - There must exist a mutual agency relationship among the partners. 'Mutual Agency' relationship means that each partner is both an agent and a principal. Each partner is an agent in the sense that



he has the capacity to bind other partners by his acts done. Each partner is a principal in the sense that he is bound by the acts of other partners

The mutual relationship of an agency is emphasized in section 4 and section 18 of the Act respectively.

It is worth noting that the mutual agency relationship distinguishes a partnership from co-ownership and simple agreement for sharing profit.

Meaning of partner', 'Firm', And; Firm Name'(section 4)

Persons who have entered into partnership with one another are called individually 'partners' and collectively 'a firm; and the name under which their business is carried on is called the 'firm name'. On the duration of partnership it can be either partnership at will or particular partnership or fixed partnership.

Partnership at will(section7):- when there is no provision in partnership agreement for duration of the partnership, the partnership is called 'partnership at will'. It can be dissolved by any partner by giving a Notice in writing to all other partners of his intention to dissolve the firm.

Particular partnership(section 8) :when a partnership is formed for a specific venture or for a particular period, the partnership is called a ' particular partnership'. Such partnership comes to an end on the completion of the venture or on the expiry of the

period. If such partnership is continued after the expiry of term or completion of the venture, it is deemed to be a partnership at will. It can be dissolved before the completion of the term or venture only by the mutual consent of all the partners.

Partnership for a fixed term:- Where the partners fix the definite period or duration of partnership, it is called a partnership for a fixed period.

Types of partners:- Types of partners are as follows

1. Actual or ostensible partner
2. Sleeping or dormant partner.
3. Nominal partner.
4. Partner in profit only.
5. Sub-partner.

Partner by holding out(section 28):- partnership by holding out is also known as partnership by estoppel.

A person is held liable as a partner by holding out if the following two conditions are fulfilled:-

1. He must have represented himself to be a partner by words spoken or written or by his conduct (it is called as active representation), or

He must have knowingly permitted himself to be presented as a partner (it is called as tacit representation), and

2. The other person acting on the faith of such representation must have given credit to the firm. It is immaterial whether the person so represented to be a partner, is aware or not that the representation has reached the other person.

Even in cases where after the retirement of a partner the firm uses the name of the partner who has not given public notice of his retirement, is held liable on grounds of holding out to third parties who give credit to the firm on the faith that he is still a partner.

Mutual rights and Duties of partners

Section 9 to 17 of the Indian partnership Act, 1932 lays down the provisions governing the mutual relations of the partners. The mutual relations of the partners of the firm come into existence by an agreement between the partners, giving rise to mutual rights and duties of the partners. Subject to a contract between the partners the mutual rights and duties are as follows:--

Rights

Right to take part in the conduct of the business.

Right to be consulted.

Right of access to books .

Right to remuneration.



Right to share profit.
Interest on capital.
Interest on advances.
Right to be Indemnified.
Right to stop admission of a new partner.
Right to retire.
Right not to be expelled.
Right of out going partner to carry on competing business.

Right of outgoing partner to share subsequent profits

Right to dissolve the firm.

Test of partnership:- In determining whether a partnership exists or not, or, whether a person is a partner or not, the real relation between the parties as shown by all relevant facts, must be taken into consideration.

The joint use of property, commonly in business, for sharing of profits is evidence that a partnership exists. But this is not conclusive evidence to show that a partnership exists. Likewise, an active participation in the conduct of business is evident that a partnership exists. But again, it is not conclusive evidence to establish the fact of existence of partnership. For example, a servant may manage the affairs of a firm. Yet he is not a partner. In the same way, a joint venture having no object of profit sharing is not a partnership, while sharing of profits is evidence, though not conclusive, that a partnership exists. So, section 6 lays down that the receipt of a share of profit, or a payment contingent or varying with the profits does not itself make the recipient a partner. Therefore, the true test of partnership is not sharing of profit, but whether the relationship of agency exists or not.

Registration of Firms:- The partnership Act does not provide for the compulsory registration of firms. It has left it to the option of the firms to get themselves registered. But indirectly, by creating certain disabilities from which an unregistered firm suffers, it has made the registration of firms compulsory.

Procedure for registration:- The registration of the firm may be made at any time by filing an application in the form of a statement, giving the necessary information to the Registrar of Firms of the area. The application for registration of a firm shall be accompanied by the prescribed fee. It shall state:-

- The name of the firm;
- The place or the principal place of business of the firm;
- The names of other places where the firm carries on business;
- The date when each partner joined the firm;
- The names in full and permanent addresses of the partners;
- The duration of the firm.

The statement shall be signed by all the partners or by their agents specially authorized on their behalf (section 58(1)). It shall also be verified by them in the prescribed manner.

When the Registrar is satisfied that the above provisions have been duly complied with, he shall record an entry of the same in the Register of Firms. He shall then issue under his hand a certificate of registration. It is effective from the date of issue.

Effects of Non-registration(section 69):-

- Suits between partners and firms- A partner of a unregistered firm cannot sue the firm or any partners of the firm to enforce a right arising from a contract or conferred by the partnership act.
- Suits between firms and third parties- An unregistered firm cannot sue a third party to enforce a right arising from a contract until—
- The firm is registered and the names of the persons suing appear as partners in the Register of firms.



- Claims of set off- An unregistered firm or any partner thereof cannot claim a set-off in a proceeding instituted against the firm by a third party to enforce a right arising from a contract, until the registration of the firm is effected(section 69(3)).

Implied authority of a partner— The authority of a partner means the capacity of a partner to bind the firm by his act. This authority may be express or implied. Where the authority to a partner to act is expressly conferred by an agreement, it is called express authority. But where there is no partnership agreement or where the agreement is silent, “the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm”. This authority of the partner to bind the firm is called implied authority of a partner. It flows from the legal relations of the partners and is founded on the principle of agency. It is subject to the following conditions:-

- The act done by the partner must relate to the normal or usual business of the firm.
- The act must be such as is done within the scope of the business of the firm in the usual way.
- The act must be done in the name of the firm, or in any other manner expressing or implying an intention to bind the firm.

Acts within the implied authority of a partner-The implied authority of a partner include--

- Purchasing goods, on behalf of the firm, in which the firm deals or which are employed in the firm’s business;
- Selling the goods of the firm;
- Receiving payment of the debts due to the firm and giving receipts for them;
- Setting accounts with the persons dealing with the firm;
- Engaging servants for the partnership business;
- Borrowing money on the credit of the firm;
- Drawing, accepting, endorsing bills and other negotiable instruments in the name of the firm;
- Pledging any goods of the firm for the purpose of borrowing money; and
- Employing a solicitor to defend an action against the firm for goods supplied.

No implied authority:-

- Submit a dispute relating to the business of the firm to arbitration;
- Open a bank account on behalf of the firm in his own name;
- Compromise or relinquish any claim or portion of a claim by the firm;
- Withdraw a suit or proceeding filed on behalf of the firm;
- Admit any liability in a suit or proceeding against a firm;
- Acquire immovable property on behalf of the firm;
- Transfer immovable property belonging to the firm; or
- Enter into partnership on behalf of the firm.
- All such activities can be done by a partner if he has specific or express authority from the partners, or the usage or the custom of trade permits him.

Dissolution of the firm :- section 39 of the Indian partnership Act lays down that the dissolution of partnership between all the partners of a firm is called the “dissolution of the firm”. This is different from the dissolution of partnership. A partnership may be dissolved without dissolving the firm. But dissolution of firm involves dissolution of partnership.

Dissolution of partnership on the happening of certain contingencies:- A partnership is dissolved by—

- The death of a partner;
- The completion of the adventure of partnership;
- The insolvency of a partner; and
- The retirement of a partner.



- In all these cases, the remaining partners, may constitute the firm. Hence, dissolution of partnership does not necessarily involve dissolution of the firm. If they do not continue, the firm is dissolved automatically.

Dissolution of Firm :-A partnership between all the partners is dissolved in the following ways—

- Dissolution by agreement- By mutual consent of all the partners.
- Compulsory dissolution- by the insolvency of all the partners, or by the business of the partnership becoming illegal or unlawful by subsequent events.
- Dissolution of partnership at will.
- Dissolution through court.



UNIT-IV

CONSUMER PROTECTION ACT 1986

Introduction

The Consumer Protection Act, 1986 has been enacted to provide for the establishment of consumer councils and other authorities for the settlement of consumers' disputes and for matters connected therewith. In fact, the basic motive of enacting this important Act is to provide cheaper and speedy remedies to the consumers who are in disadvantageous position in comparison with the traders who are well organised and rule the market.

The Consumer Protection Act, 1986' extends to the whole of India except the State of Jammu & Kashmir, and save as otherwise expressly provided by the Central Government, this Act shall apply to all goods and services [Section 1]. The Act has come into force on 15.4.1987*

Objects of the Act

The objects of the Act are as follows:

1. **Better protection of interests of consumers.** The Act seeks to provide for better protection of the interests of consumers. For that purpose, the Act makes provision for the establishment of Consumer Councils and other authorities for the settlement of consumer disputes and for matters connected therewith.
2. **Protection of rights of consumers.** The Act seeks, inter alia, to promote and protect the rights of consumers such as—
 - a) The right to be protected against marketing of goods or services which are hazardous to life and property ;
 - b) The right to be informed about the quality, quantity, potency, purity, standard and price of goods or services so as to protect the consumers against unfair trade practices ;
 - c) The right to be assured, wherever possible, access to goods and services at competitive prices ;
 - d) The right to be heard and to be assured that consumers' interest will receive due consideration at appropriate forums ;
 - e) The right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers ; and
 - f) right to consumer education.
3. **Consumer Protection Councils.** The above objects are sought to be promoted and protected by the Consumer Protection Councils established at the Central and State levels.
4. **Quasi-Judicial machinery for speedy redressal of consumer disputes.** The Act seeks to provide speedy and simple redressal to consumer disputes. For this purpose, there has been set up a quasi-judicial machinery at the district, State and Central levels.

IMPORTANT DEFINITION

COMPLAINANT Sec. 2(1) (13)

"Complainant" means-

- (i) a consumer; or
- (ii) any voluntary consumer association registered under the Companies Act, 1956 (1 of 1956). Or under any other law for the time being in force; or
- (iii) the Central Government or any State Government, who or which makes a complaint;
- (iv) one or more consumers, where there are numerous consumers having the same interest
- (v) in case of death of a consumer, his legal heir or representative*

COMPLAINT Sec. 2(1) (C)

"Complaint" means any allegation in writing made by a complaint that-

- (i) an unfair trade practice or a restrictive trade practice has been adopted by any trader; or **service provider***
- (ii) the goods bought by him or agreed to be bought by him; suffer from one or more defect;



- (iii) the services hired or availed of or agreed to be hired or availed by him suffer from deficiency in any respect;
- (iv) a trader or the **service provider** has charged for the goods or for the service mentioned in the complaint a price in excess of the price (a) fixed by or under any law for the time being in force, (b) displayed on the goods or any package containing such goods, (c) displayed on the price list exhibited by him, (d) agreed between the parties.
- (v) Goods which will be hazardous to life and safety when used, are being offered for sale to the public in contravention of any law for the time being in force.
- (vi) service which are hazardous or likely to be hazardous to life and safety of the public when used**

CONSUMER Sec. 2(1) (D)

'consumer' means any person who:

- (i) Consumer of goods buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or
- (ii) Consumer of services hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person;"

CONSUMER DISPUTE

"Consumer dispute" means a dispute where the person against whom a complaint has been made, denies or disputes the allegations contained in the complaint;

DEFECT

"defect" means any fault, imperfection or shortcoming in the quality, quantity, potency, purity, or standard which is required to be maintained by or under any law for the time being for or under any contract, express or implied or as it claimed by the trader in any manner whatsoever in relation to any goods;"

"manufacture" means a person who-

- (i) makes or manufactures any goods or parts thereof : or
- (ii) does not make or manufacture any goods but assembles parts thereof made or manufactured by other; or
- (iii) puts or causes to be put his own mark on any goods made or manufactured by any other manufacture.

PERSON

"person" includes-

- (i) a firm whether registered or not;
- (ii) a Hindu undivided family;
- (iii) a co-operative society
- (iv) every other association of persons whether registered under the Societies Registration Act.

Consumer Disputes Redressal Agencies Three-Tier Redressal System



Introduction

The object of the Consumer Protection, 1986, is to provide better protection to consumers. To secure this object, the Act intends to provide simple, speedy and inexpensive redressal to the consumers' grievances. For this purpose, the Act provides for the establishment of three-tier quasi-judicial machinery at the District, State and National levels. **The three consumer disputes redressal agencies at the different levels are as under:**

1. Consumer Disputes Redressal Forum to be known as District Forum at the District level.
2. Consumer Disputes Redressal Commission to be known as State Commission at the State level.
3. National Consumer Disputes Redressal Commission to be known as National Commission at the National level.

ESTABLISHMENT OF AGENCIES

1 DISTRICT FORUM

The 'District Forum' is the short name of the Consumer Disputes Redressal Forum established in the District under Section 9(a) of the Consumer Protection Act, It is the redressal agency to deal with the complaints of the consumers at the District level.

Legal provision relating to District forum:

1. Composition of the district forum

The District Forum is a body of three persons appointed by the State Government. The qualifications of the President and other members are as follow:

(a) President: A person who is, or has been or is qualified to be, a District Judge shall be the President of the District Forum.

(b) Other Member: A part from the President, the District Forum shall consist of two other members one of whom shall be a woman. The qualification for appointment of other members are:

- (i) He/She must not be less than 36 years of age.
- (ii) He/She must possess a bachelor's degree from a recognised university.
- (iii) He/She must be a person of ability, integrity and standing and have adequate knowledge and experience of at least 10 years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administrations.

2. Appointment of members of District Forum: The appointment of the President and of the members shall be made by the State Government on the recommendation of the selection committee consisting of (a) the President of the State Commission, (b) Secretary, Law Department of the State, and (c) Secretary, in charge of the Department dealing with consumer affairs in the State.

3. Disqualifications of members :

- a) If he has been convicted and sentenced to imprisonment for an offence, which, in the opinion of the State Government, involves moral turpitude, or
- b) If he is an undischarged insolvent, or
- c) If he is of unsound mind and stands so declared by a competent court, or
- d) If he has been removed or dismissed from the services of the Government or a body corporate owned or controlled by the Government,

4. Tenure of office of the members of the District Forum

A person may act as a President or a member of the District Forum for 5 years or up to the age of 65 years, whichever is earlier. Thus, in any case, a person cannot hold the office of the President or that of the member beyond the age of 65 years.

5 Vacancy in the office of the District Forum

The officer of the President or of any member of the forum may become vacant on his attaining the age of sixty-five years.

5. Jurisdiction of the District Forum

The District Forum has the jurisdiction to entertain complaints where the value of the goods or services and the compensation, if any, claimed does not exceed rupees 20 lakhs.



The limit has been enhanced from Rs. 5 lakhs by the Consumer Protection (Amendment) Act 2002

PROCEDURE ON RECEIPT OF COMPLAINT SECTION-13

The district forum has to observe the procedure mentioned in section. It may be summarised as follows-

- I. **Reference of complaint to opposite party** - Whenever the district forum receives a complaint, relating to a goods, it should refer a copy of the complaint to the opposite party. It must be given within 30 days of receiving the complaint. However, it may be extended by a further period not exceeding 15 days.
- II. **On refusal or dispute by opposite party** - When the opposite party, on receipt of a complaint, refusal/disputes the allegations contained in the complaint or fails to take any action within the time given by the district forum, the forum shall proceed to settle the consumer dispute in the following manner -
 1. Reference of sample to laboratory
 2. Deposit of fees
 3. Forwarding of report to opposite party
 4. Objection by any of the parties.
 5. Reasonable opportunity to parties of being heard and issue order.

Who can complaint in the district forum

A complaint in relation to any goods sold or delivered or any serviced provided may be filed with a district forum by -

1. Consumer of goods/service
2. Any recognized consumer association.
3. Central or state government

For the purpose of this section "recognised consumer association" means any voluntary consumer association registered under the companies Act 1956 or any other law for the time being in force (Sec. 12)

Power of the District forum -

The district forum shall have the same power as are vested in a civil court under the code of civil procedure, 1908 while trying a suit in respect of the following matter, namely-

1. The summoning and enforcing attendance of any defendant or witness and examining the itness on oath.
2. The discovery and production of any document or other material object producible as evidence.
3. The reception of evidence on affidavits
4. The requisitioning of the report of the concerned analysis or test from the appropriate laboratory or form any other relevant source.
5. Issuing of any commission for the examination of any witness and
6. Any other matter which may be prescribed.

Every proceeding before the district forum shall be deemed to be a judicial proceeding within the meaning of Sec. 193 and 228 of the Indian Penal code; 1860 and the District forum shall be deemed to be a civil court for the purposes of Sec. 195 and chapter XXVI of the code of criminal procedure 1973.

Findings of the District forum (Sec. 14)

If the district forum is satisfied that the goods suffer from any of the defects specified in the complaint or that any of the allegations contained in the complaint about the services are proved, it shall issue an order to the opposite party directing him to take one or more of the following things namely-

- a) To remove the defect pointed out by the appropriate laboratory from the goods in question.
- b) To replace the goods with new goods of similar description which shall be free from any defect.
- c) To return to the complainant the price or as the case may be the charge paid by the complainant.



STATE COMMISSION

'State Commission' is the short name given to the Consumer Disputes Redressal Commission established in the State under Section 9(b) of the Consumer Protection Act, 1986 [Section] 2(1) (p). It is the redressal agency to deal with the complaints of the consumers at the State level.

Legal provision relating to District forum

Composition of the State Commission

Section 16(1) makes the following provisions regarding the qualifications of the President and other members:

- (a) **President:** A person who is or has been a judge of a High Court shall be the President of the State Commission.
- (b) **Other members:** Apart from the President, the State Commission shall consist of two other member one of whom shall be a woman. The qualifications for appointment of the other member are:
 - (i) He/She must not be less than 35 year of age.
 - (ii) He/She must possess a bachelor's degree from a recognised university.
 - (iii) He/She must be a person of ability, integrity and standing and have adequate knowledge or experience of at least 10 years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration.

1. Appointment of members of State Commission

The appointment of the President shall be made by the State Government after consultation with the Chief Justice of the High Court of the State. And the appointment of the other members shall be made by the State Government on the recommendation of the selection committee consisting of (a) President of the State Commission, (b) Secretary of the Law Department of the State and (c) Secretary, in charge of Department dealing with consumer affairs in the State.

2. Disqualification of members

These disqualifications are the same as already discussed the District Forum.

3. Tenure of office of the members of the State Commission

The President or the member of the State Commission shall hold office for a term of 5 years or up to the age of 67 year, whichever is earlier. Thus, in any case, a person cannot hold the office of President or that of a member beyond the age of 67 years.

4. Jurisdiction of the State Commission

- (a) **Pecuniary jurisdiction:** The State Commission has the jurisdiction to entertain complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees 20 lakhs but does not exceed rupees one crore.
- (b) **Appellate jurisdiction:** Any person aggrieved by an order made by the District Forum may prefer an appeal to the State Commission with a period of 30 days from the date of the order.

NATIONAL COMMISSION

The 'National Commission' is the short name given to the National Consumer Disputes Redressal Commission established in the country under Section 9(c) of the Consumer Protection Act, 1986.

Legal provision relating to District forum

1. Composition of the National Commission

The 'National Commission' is a body of minimum five persons appointed by the Central Government. Legally, the National Commission shall consist of a President and at least four other members.

- (a) **President:** A person who is or has been a judge of the Supreme Court shall be the President of the National Commission. Thus, only the sitting or retired judges of the Supreme Court are eligible for appointment as President.
- (b) **Other members:** Apart from the President, the National Commission shall consist of at least four other members one of whom shall be a woman. The qualifications for appointment of other members are:
 - (i) He/She must not be less than 35 year of age.



(ii) He/She must possess a bachelor's degree from a recognised university.

He/She must be a person of ability, integrity and standing and have adequate knowledge or experience of at least 10 years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration.

2. Appointment of the members of the National Commission [Section 20(1) (a) (b):

The appointment of the President shall be made by the Central Government after consultation with the Chief Justice of India. The appointment of the other four members shall be made by the Central Government on the recommendation of the selection committee consisting of (a) sitting judge of the Supreme Court, (b) Secretary in the Department of Legal Affairs, Government of India, (c) Secretary of the Department dealing with consumer affairs in the Government of India

3. Disqualification of members

These disqualifications are the same as already discussed in case of members of District Forum and of State Commission. Any other disqualification may also be prescribed the Central Government.

4. Tenure of office of the members of the National Commission

The President or the members of the National Commission shall hold the office for a term of 5 year or up to the age of 70 years, whichever is earlier. Thus, in any case, a person cannot hold the office of President or that of a member beyond the age of 70 years.

5. Jurisdiction of the National Commission

(a) Pecuniary jurisdiction: The National Commission has the jurisdiction to entertain complaints where the value of the goods or services and compensation, if any claimed exceeds rupees 1 crore. Prior to the Consumer Protection (Amendment) Act, 2002, the National Commission had the jurisdiction where the value of this claim exceeded rupees twenty lakhs.

(b) Appellate jurisdiction: The National Commission also has the appellate jurisdiction to entertain appeals against the order of any State Commission.

CONSUMER PROTECTION COUNCILS

Consumer protection councils have been set up at national and state levels. Their object is to protect rights of consumers. Provisions with regard to consumer protection councils are contained in the consumer protection act wide section 4 to 8.

II. Central consumer protection Council -

1. Establishment of this council by a notification of the central government.
2. Central government nominates government and private members from different departments and sectors.
3. At present there are 150 members in the council.
4. Chairman of the council is central government food & civil supplies minister.
5. 3 years term of office of council.
6. If any post of the council falls vacant, it shall be filled up by a same cadre member.
7. 3 meetings are compulsory in a year time and place is fixed by chairman.
8. Main object of council is to expand and protect the rights of consumers.
 - Protection against fatal advertisement of goods/for human life services.
 - Protection against improper trade transaction and service.
 - As far as possible, a right of satisfaction about the various qualities.
 - A right of belief and confidence on goods & services.
 - A right of compensation against mis-behaviour in restricted trade polices.
 - A right of consumer education.

III. State consumer protection council -

1. Establishment of this council by notification of state government.
2. Chairman of the council is state minister of food and civil supplies.
3. State government nominated government or private member from different sectors.
4. There must be at least two meetings in a year or arrange according to convened any time.



5. Time and place of meetings shall be fixed by the chairman.
6. Object of council is to protect the interest and rights of consumer in state which is same central council.

APPROPRIATE LABORATORY [Sec. 2(1) (a)]

If means a laboratory or organization –

1. Recognised by central government
2. Recognised by state government, subject to guidelines as may be prescribed by central government.
3. Any laboratory or organization established by or under any law for the time being in force, which is maintained, financed or aided by the central government or state government.



UNIT-V

FEMA 1999 (FOREIGN EXCHANGE MANAGEMENT ACT)

In the context of the ongoing process of economic liberalization, need for better foreign exchange management was felt. Therefore, the Foreign Exchange Regulation Act (FERA) 1973 was reviewed in 1993 in the light of the developments & experience in relation to foreign trade & investment. The Government came to the conclusion that a better course would be to repeal the existing FERA & enact a new legislation. Therefore, this new Act i.e. Foreign Exchange Management Act (FEMA), 1999 was enacted to replace & repeal the FERA, 1973. The FEMA, 1999 was passed by Lok Sabha on 2 Dec. 1999 & received the assent of the President of India on 9 Dec. 1999.

Extent, Application and Commencement:

1. The Foreign Exchange Management Act extends to the Whole of India.
2. It shall also apply to all Branches, offices and agencies outside India owned or controlled by a person resident in India and also to any contravention there under committed outside India by any person to whom this Act applies. Thus, the Act has extra territorial jurisdiction.
3. It shall come into force on such date as the Central government may, by notification in the Official Gazette, appoint.

It may be noted that this Act came into effect from 1st June, 2000 Objectives of FEMA The main objectives of this Act are as follows —

1. To consolidate & amend the law relating to foreign exchange.
 2. To facilitate external trade & payments.
 3. To promote the orderly development & maintenance of foreign exchange markets in India.
- terminology
1. Capital Account Transaction — CAT means a transaction which alters the assets or liabilities outside India of persons resident in India or assets or liabilities in India of person's resident outside India, & includes transaction referred in Section 6 (3). [Sec 2(e)].
 2. Currency — Currency includes all currency notes, postal notes, postal orders, money orders, cheques, drafts, traveler's cheques, letters of credit, bills of exchange & promissory notes, credit cards or such other similar instruments as may be notified by the Reserve Bank of India (RBI). [Sec. 2(h)]
 3. Currency Notes — It means & includes cash in the form of coins & bank notes [Sec. 20]1
 4. Current Account Transaction — CAT means a transaction other than a capital account transaction & includes the following transactions.
 - a. Payments due in 'connection with foreign trade, other current business, services & short-term banking & credit facilities in the ordinary course of business.
 - b. Payments due as interest on loans & as net income from investments.
 - c. Remittances for living expenses of parents, spouse & children residing abroad.
 - d. Expenses in connection with foreign travel, education & medical care of parents, spouse & children [Sec. 2(f)]
 5. Export — Export means:
 - a. The taking out of India to a place outside any goods, &
 - b. Providing services from India to any person outside India. [Sec. 2(I)]
 6. Import— It means bringing into India any goods or services. [Sec. 2(p)].
 7. Foreign Currency— It means any currency other than Indian currency. (Sec. 2(m))
 8. Foreign Exchange — it means foreign currency & includes the following:
 - a. Deposits credit and balances payable in any foreign currency.
 - b. Drafts traveler's cheques, letters of credit or bills of exchange, expressed or drawn in Indian currency but payable in any foreign currency.
 - c. Drafts, traveler's cheques, letters of-credit or bills of exchange drawn by banks; institutions or persons outside India, but payable in Indian Currency. (Sec. 2(n))
 - 9 Security — Security means shares, stocks, bonds and debentures, Government securities, savings certificates, deposit receipts in respect of deposits of securities and units of the Unit Trust of India or of



any mutual fund. The term also includes certificates to title to securities and government promissory notes. But it does not include bill of exchange or promissory notes other than Government promissory notes or any instruments which may be notified by the RBI as security for the purposes of this Act. [Sec. 2(Za)]

10. Foreign Security — Foreign security means any security, in the form of shares, stocks, bonds, debentures or any other instrument denominated or expressed in foreign currency. The term security also includes securities expressed in foreign currency, but where redemption or any form of return such as interest or dividends is payable in Indian currency. [Sec.2 (o)].

11. Indian Currency — Indian currency means which is expressed or drawn in Indian rupees but does not include special bank notes and special One rupee notes issued under Section 28A of the Reserve Bank of India Act, 1934. [Sec. 2 (q)]

12. Persons — Person includes the following:

- a. An individual
- b. A Hindu Undivided Family (HUF).
- c. A company
- d. A firm
- e. An association of persons or a body of individuals, whether incorporated or not.
- f. Every artificial juridical person, not failing within any of the [preceding sub-clauses.
- g. Any agency, office or branch owned or controlled by such person. (Sec. 2(u)).

13. Person resident in India — Persons resident in India includes the following:

- a. A person who is residing in India for more than 182 days except (a) a person who stays outside India for any purpose (e.g. employment or business) and (b) a person who stays in India for any purpose for an uncertain period.
- b. A body corporate registered in India.
- c. An office or branch or agency outside India owned or controlled by a person resident in India. [Sec. 2 (w)].

14. Person resident outside India - Person resident outside India means a person who is not resident in India. (Sec. 2(w))

15. Repatriate to India - Repatriate to India means bringing into India the realized foreign exchange, and:

- a. The selling of such foreign exchange to an authorized person in India in exchange for rupees, or
- b. The holding of realized amount in an account with an authorized person in India to the extent notified by the RBI.

The term also includes use of the realized amount for discharge of a debt on liability denominated in foreign exchange. [Sec. 2 (y)]

16. Service - Service means, service of any description which is made available to potential users. Service also includes the provision of facilities in connection with banking, financing, insurance, Medical assistance, legal assistance, chit fund, real estate, transport, processing, supply of electrical or other energy, boarding or lodging or both, entertainment, amusement or the purveying of news or other information. But it does not include the rendering of any service free of charge or under a contract of personal service. [Sec. 2 (zb)].

17. Transfer - "Transfer" includes sale, purchase, exchange, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien. (Sec. 2 (ze))

Regulation and Management of Foreign Exchange

The provisions with regard to the following aspects of regulation and management of foreign exchange are as follows -

I. Provisions as to transactions in foreign exchange, security etc - According to these provisions [Sec. 3], no person shall do the following except as per the provisions of FEMA rules and regulations made under it or with the general or special permission of the RBI:

1. No person shall deal in or transfer any foreign exchange or foreign security to any person other than an authorized person.



2. No person shall make any 'payment to-or for the credit of any person resident outside India in any manner.
3. No person shall receive (otherwise through an authorized person) any payment by order or on behalf of any person resident outside India.
4. No person shall enter into any financial transaction in India as consideration for or in association with acquisition or creation or transfer of a right to acquire any asset outside India by any person.
- II. Provisions as to holding in foreign exchange, security etc. by residents - No person, resident in India, shall acquire, hold, own, possess or transfer any (i) foreign exchange, (ii) foreign security, or (iii) any immovable property situated outside India except as provided in this Act. [Sec.4]
- III. Provisions as to current account transactions-Any person may sell or draw foreign exchange to or from an authorized person if such sale or drawl is a current account transaction. But the Central Government may, in public interest and in consultation with the RBI, impose such reasonable restrictions for current transductions as may be prescribed. [Sec. 5]
- IV. Provisions as to capital account transactions-Any person may sell or draw foreign exchange to or from an authorized person for a capital account transaction subject to the rules specified by the RBI. [Sec 6(1)]. However, the RBI may, in consultation with the Central Government specify the following —
 1. Any class or classes of capital account transactions which are permissible.
 2. The limit up to which foreign exchange shall be admissible for such transactions. But the RBI shall not impose any restriction on the drawal of foreign exchange for payments due on account of amortization of loans or for depreciation of direct investments in the ordinary course of business. [Sec. 6 (2)]
- V. Provisions as to export of goods and services — Certain provisions have been incorporated in

FEMA

with a view to ensure repatriation of the foreign exchange earned by export of goods and services.

These provisions are as follows in the form of duties of exporters —

1. Furnishing declaration as to the facts relating to export — Every exporter of goods shall furnish to the PSI or to such other authority a declaration in such form and in manner as may be specified. The declaration shall contain true and correct mail-jai particulars, including the amount representing the full export value. [Sec. 7 (1) (a)].
2. Furnishing information to RBI — Every exporter of goods shall furnish to the RBI or to such other information as may be required by the RBI for the purpose of ensuring the realization of the export proceeds by such exporter. [Sec. 7 (1) (b)].
3. Duty of exporter of services — Every exporter of services shall furnish to the 1161 or to such other authorities a declaration in such form and in such manner as may be specified. The declaration shall contain the true and correct material particulars in relation:, to payment for such services. [Sec. 7 (3)]
- VI. Provisions as to realization and repatriation of foreign exchange — Where any amount of foreign exchange is due or has accrued to any person resident in India, such person shall take all reasonable steps to realize and repatriate to India such foreign exchange within such period and in such manner as may be specified by the RBI. [Sec. 8]

Exemption from Holding and Repatriation —

In the following cases, foreign exchange earned can be held or invested outside India (i.e. against Section 4) or need not be repatriated (i.e. against Section 8) to India [Sec.9):

1. Possession of foreign currency up to specified limit
2. Holding foreign currency account
3. Foreign exchange received before July, 1947
4. Foreign exchange acquired by way of gift or inheritance



5. Foreign exchange acquired abroad
6. Any other receipt specified by RBI

Authorized Person

Authorized person means an authorized dealer, money changer, off-shore banking unit or any other person authorized to deal in foreign exchange or foreign securities. [Sec. 2 (c)].

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MONOPOLISTIC & RESTRICTIVE TRADE PRACTICE ACT

INTRODUCTION

India has adopted the socialistic pattern of the society as its goal so with view to restrict the monopolistic & obstructive trading operations of the vast expanding industrial units of managerial houses and to control economic concentration into few hands an act called, "Monopolies and Restrictive Trade Practice act" was promulgated in 1969. Except "Jammu and Kashmir" this act came into force from 1st June 1970 in India. The aim was to control natural resources at equal level and to restrict concentration of economic power. Later several amendments were made in 1982, 1984, 1985 and 1991. Provisions of the act were restricted due to announcement of liberalization policy of the year 1991. Now the main object of the act is not to control monopoly but to restrict unfair trade practice.

Main Objectives of The Act-

1. Restriction on concentration of economic power.
2. To prohibit monopolistic trade practice.
3. To promote healthy competition
4. Check on unfair trade practices.

MAIN PROVISION OF MRTP ACT-

1. **Establishment of MRTP Commission-**
 - a. Commission shall examine the MRTP
 - b. Commission will submit a report to central govt.
 - c. Central govt. can check MRTP on the advice of the commission
2. **Restraint on Concentration of economic power-** The government shall keep control on large unit under MRTP who hold 100 Rs. Crore Property (which include "Dominant undertaking" who control 1/3 portion of total market demand and monopoly undertaking who control 1/2 portion of trade market demand.)
3. **Registration of Monopolistic trade transaction-** Two officers are appointed who will act as registrar for monopolistic trade transaction and the other enquiry officers.
4. **Control over monopolistic Tendencies-** Govt. can control on such activities which tend to reduce competition, create artificial security of commodity, increase the price level and lower the quality of product.
5. **Difference between monopolistic and restrictive trade-** Monopolistic trade activity implies trade practice of effective enterprises on the other hand RTP imply collective trade transaction of two or more concern in order to eliminate competition.
6. **Permission of Government-** Prior permission is necessary for the huge and effective enterprise under such condition-
 - a. To increase production capacity
 - b. Set up of inter connected concern
 - c. For amalgamation
 - d. At time of full or partial take over
 - e. During about changes in existing concern
7. **Restriction on obligation to sell at minimum price-** No enterprise shall compel its sellers to sell its commodities at minimum price.
8. **Private enterprise-** Act applies only of private sector Act can be applied on public sector of govt. think so.
9. **Penalty-** Act lays down penalty clause on violation of provision.



Amendments In MRTP Act

After independence a number of policies were framed and acts were passed for the regulation and control for industrial development, but no desired results came out on the contrary, industrial growth was checked due to unnecessary Govt. interference. It was, therefore, deemed necessary to consider over the policy of industrial development by the government. The govt. declared a new industrial policy on 27th July 1991. Efforts were made to make provisions more liberal and practical. The two acts were most effected and important amendments were made in these two acts which are as under-

Important amendments have been made under the Industrial policy of 1991 in MRTP-

1. **No Restrictions on Admission-** No prior permission of the central govt. is required for establishment, absorption, amalgamation, requisition or appointment of directors for any enterprise. Whether it is a dominant or monopoly Concern.
2. **No Restrictions in receipt or transfer of shares of monopolistic concerns-** But it shall apply on only on dominant firms.
3. **New definition of Dominant Undertaking-** The definition of dominant undertaking was determined on the basis of licence capacity, but now it is determined on the basis of quantity of production.
4. **Change in Unfair Trade Practice-** A new shape has been given in the definition of the words unfair trade practice. The effect of this amendment will result in huge expansion of products in the sector of U.T.P.
5. **Goods-** The definition of goods has been expanded. Goods shall now include the shares, securities and debentures.
6. **Voluntary Enquiry-** It was obligation on the part of the commission to conduct an inquiry compulsory about the complaint of U.T.P. received from a consumer.
7. **Monopolistic and Restrictive Trade Practices-** Till now the commission had only two powers-
 - i. to issue orders to stop such trade
 - ii. To issue orders for amendment of agreement giving birth to such trade practices.Under Amendment Act, the commission can with hold any statement, information or advertisement as well as publication there of or issue orders for amendment therein considered unfair.
8. **Expansion of service clause-** Now it shall include trade or chit fund companies as well as trade connected with land property.
9. **Expansion on power of commission-** Powers of the commission have been extended. These are-
 - a. Commission can examine & inquire
 - b. Commission can exercise the power of civil court
 - c. Commission can exercise the same power as vested in the high court on disregard of its orders.
 - d. Commission can issue injunction etc.
10. **To make punishment provisions harder-** In respect of disregard of the instructions and directions of the commission.

Different terms with reference to MRTP Act-

Monopolistic Undertaking

Monopolistic undertaking means an undertaking which by itself or with other two undertaking in India-

- i. Produces, supplies, distributes or controls not less than half of any goods or
- ii. Arranges on control not than half shares of any services.

Monopolistic Trade Practices

Under section 2(i) a trade practical which has, or is likely to have, the effect of-

- i. Maintaining the price of goods or services at an unreasonable level by limiting, reducing a controlling. Production, supply or distribution of goods of any description or the supply or in any other manner.
- ii. Unreasonable preventing or lessening competition as production, supply or distribution of any good or services.
- iii. Limiting technical development or capital investment to the common detriment or allowing the quality of good produced, supplied or distributed rendered in India to deteriorate.
- iv. Increasing unreasonably-



- a. Cost of production
- b. Charges for provision, or maintenance of services.
- c. Price of goods
- d. Profit on sales/ supply production/ distribution of any goods or services.
- v. Preventing/ Lessening competition in production supply or distribution of goods or in the provisions or in the maintenance of any services by adoption of unfair method or deceptive practices.

Restrictive Trade Practices

Restrictive trade practices means trade practice which has or may have the effect of preventing distorting or restricting competition in any manner in particular a trade practice will be a restrictive trade practices if-

- i. It tends to obstruct the flow of capital or resources into the stream of production.
 - ii. It tends to bring about manipulation of prices or condition of delivery or affect the flow of supplies in the market relating to goods or services in such a manner as to impose on the consumer unjustified costs or restrictions.
- i. False Representation
 - ii. False offer of Bargain Price
 - iii. Offering of Gift or prizes
 - iv. Non-compliance of prescribed standard
 - v. Handling, destruction or refused to sell

Monopolies and Restrictive Trade Practice Commission –

Formation – Sec. 5 lays down that the central government shall establish by notification, a commission to be known as monopolies and restrictive trade practice commission which shall consist of a chairman and not less than 2 and not more than 8 members appointed by central government to be chairman of the commission, the person must be one who is, or has been or is qualified to be a judge of supreme court or high court. To be a member, the person must be of ability, integrity and standing who have adequate knowledge or experience before appointing, the central government shall satisfy itself that the person does not have any such financial or other interest which will affect his functions.

Scope of the orders of the Commission

The scope of the orders to be made by the commission has been delimited as follows-

1. Order can be in respect of trade practice in India only (Sec.-14) -- If particular trade practice falls within monopolistic, restrictive or unfair trade practices related to production, storage or supply but such practice does not carry business in India, then an order may be made only on practice carried on in India.
2. Restriction of application of order in certain cases- (Sec-15)- Any order of the commission with respect to any restrictive trade practice, shall not operate so as to restrict any of the following rights-
 - (i) Right of any person to restrain any infringement of a patent granted in India.
 - (ii) Right of any person concerning the condition which he attaches to licence to do anything which without such licence would have been infringement of patent granted in India.
 - (iii) Right to export good from India, to the extent to which restrictive trade practices related exclusively to production supply or control of goods for such export.

PROCEDURE OF THE COMMISSION

The Procedure of the commission under the MRTP Act may be explained as follows –

1. **Sitting of the commission (Sec. – 16)** The Central office of the commission is in Delhi, but the commission may sit all such places in India at such times as may be most convenient for the exercise of its powers or function under this Act.

The powers or function of the commission may be exercised or discharged by Benches formed by the members. The chairman of the commission from among the members.



2. **Hearing to be in Public except in special Circumstances. (Sec. 17)** – The commission may-
 - (i) Hear the proceeding or any part thereof in private
 - (ii) Give direction concerning the person who may be present thereat.
 - (iii) Prohibit or restrict the publication of evidence given before the commission or of matter contained in documents filed before the commission.
3. **Regulation of Procedures and delegation of powers (Sec-18)**-The commission shall have power to regulate-
 - (i) The procedure and conduct of its business,
 - (ii) The procedure of benches of the Commission, and
 - (iii) The delegation to one or more members of such powers or functions as the chairman may specify.The power of the commission shall include the power to determine the extent to which person interested in the subject matter of any proceeding before it, are allowed to be present or to be heard either by themselves or by their representatives or to cross-examine witnesses or otherwise to take part in the proceeding.
4. **Nothing of orders in the register (Sec-19)**- The commission shall cause an authenticated copy of every order made by it in respect of a respective trade practice or an unfair trade practice, to be forwarded to the Director General who shall have it recovered in the register in such manner as may be prescribed.

POWERS OF THE COMMISSION

The powers bestowed upon the commission under the MRTP Act may be discussed as follows-

1. Power of a civil court (sec-12)
2. Power to grant temporary injunction (sec.12A)
3. Power to award compensation (Sec. 12B)
4. Power to enforce the order or temporary injunction and compensation (sec 12C)
5. Power to make conditional order and to amend or revoke order (sec-13)
6. Power to cause investigation to find out whether or not the orders have been complied with (sec-13A)
7. Power to punish for contempt (sec-13B)
8. Power to exempt particular classes of goods from (sec-39 & 40)
9. Powers when enquiring into an unfair trade practice (sec-36D)
10. Power to make regulations. (sec-66)

The Presumption In The Mrtp Act 1969 Regarding Public Interest Gateways- (Sec-30)

A respective trade practice is deemed to be against Public interest unless it is covered by any one or more of the exceptions which are based on the role of reasons and are called "Gateways". The test to be applied that of reasonableness in a given situation. In the case of Raymond. Wollie Mills Ltd. v/s MRTP Commission, the court observed- "The essence of justification is that a given practice procedures one or more of the benefited effects indicated in a sec. 38. It is like balancing a sea-saw or the scale a weighing machine. On the one side are the benefits claimed and on the other, extent of injury to the public. The standard to judge a given trade practice is that of Public interest."

The following are the exceptions-

1. Protection of the public against injury
2. Denial of specific or substantial benefit to public
3. Counter measures against restrictive practice of another
4. Ensuring negotiation of fair terms. For supply
5. Adverse effect on employment
6. Reduction in export
7. Ancillary permissible restriction
8. Restriction not affecting competition materially
9. Restriction Authorized by the Government.



PROHIBITION OF UNFAIR TRADE PRACTICES

Unfair Trade Practice [Sec- 36(A)]

Definition and meaning of unfair trade practice-

It means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any services, adopts any unfair method or unfair or deceptive practice including any of the following practices.

Categories of unfair trade practices- A explains what unfair trade practice means- It includes the making of

I. False-Representation-

1. A false representation that goods/services are of a particular standard, quality, composition, style or mode.
2. A False Representation that the goods/services have sponsorship, approval, performance, characteristics, accessories, uses or benefits which that don't have.
3. A False Representation that the re-built, second hand, renovated, reconditioned or old goods are new goods.
4. A False Representation that the seller or supplier has a sponsorship, approval or affiliation which he does not have.
5. A False Representation or misleading representation concerning the need for or the usefulness of any goods/services.
6. A representation in the form of a warranty or guarantee of the performance, efficiency or length of life of a product or of goods that is not based on an adequate and proper test thereof, the burden of proof of which lies on the person making the representations.
7. A representation to the public claiming to be a warranty or guarantee of a product or of goods or services, or promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result.

If such form of claimed warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that it will be carried out.

8. A materially misleading representation to the public. Concerning the price at which a product or like products or goods have been or are ordinarily sold.
9. False or misleading representation of facts disparaging the goods/services/trade of another person.

The representation or statement to the public may be in any mode or any method. Thus representation may appear on the article or on its wrapper or container or on any thing on which the article is mounted.

II. False offer of Bargain Price

III. Offering of Gift or Prizes

IV. Non-Compliance of Prescribed standard

V. Hoarding, destruction or Refusal to sell.

PROVISIONS OF PENALTIES REGARDING VARIOUS OFFENCES

1. Division of undertaking or contravention of section 27- If any party/ person contravenes of sec-27 then he shall be punishable with imprisonment for 5 years or penalty of Rs.1 lakh or both.
2. On any mistake related to registration- If any party did not register his firm/unit under MRTP Act then he shall be punishable with imprisonment for 3 years or penalty of Rs. 5000 or both.
3. On the contravention of order of Sec.-27B- If any person Contravenes of order of sec 27B and contravenes of order sale out assets than he shall be punishable with imprisonment for 2 years or penalty of Rs.10000 or both.
4. On any mistake in orders- If any person done any mistake in order of sec. 27B of MRTP Act than he shall be punishable with imprisonment for 3 years or penalty of Rs. 50000 or both.
5. On the Contravention of order of Commission- If the director of any undertaking contravenes of any order of MRTP commission then he shall be punishable with imprisonment for 3 years (minimum 6 months) and penalty of Rs 10 lakh (maximum limit) or both.



6. **If offences by any company-** If any company contravenes of order of sec.27 B then that company shall be punishable with imprisonment of 3 years or penalty of Rs. 5000 or both.
7. **Other offences and Penalties-** If any person contravenes/any mistake in following conditions-
 - i. Contravenes of sec. 31 and 37
 - ii. Contravenes of any terms or conditions
 - iii. Involvement in unfair trade practices
 - iv. Contravenes of sec. 39 and 40
 - v. For giving misstatement

Then he shall be punishable with imprisonment of 3 years or penalty of Rs. 5000 (maximum limit) or both Above all penalties and imprisonment are in maximum limit. It will be less according to court.

DIRECTOR GENERAL OF INVESTIGATION AND REGISTRATION

According to section 2(c) "Director General" means the director General of Investigation and Registration and include any additional, joint, deputy or assistant Director-General of Investigation and Registration, he is to assist the MRTP commission in its work.

The provisions with regard to Director General may be discussed as follows-

1. **Appointment (sec.-8)-** The Central Government may by notification, appoint a Director General. It can also appoint as many additional, joint, Deputy or Assistant Director General of Investigation and Registration, as it may think fit.
2. **Functions and Duties- (sec-8)-** two important functions-
 - i. To make investigation for the purpose of MRTP Act
 - ii. To maintain a register of Agreements which have to be registered under the MRTP act.
 - iii. He may perform such other function which is related to Act
- a. Preliminary Investigation [sec-11 (1), 11 (2)]
- b. Keeping the Register, [sec-36]
3. **Powers [Sec-8-]**
 - a. The authorize to function as Registrar of Agreements [Sec-8 (2&3)]
 - b. To make application to the commission [Sec=10 (a) (iii)]
 - c. To obtain information [sec-42]

POWER OF CENTRAL GOVERNMENT

Along with the MRTP Commission, the central Government is another organ in the dual Machinery for implementation of the provisions of the MRTP Act, 1969. Thus, the Central Government is another entity which is responsible for the governance of the act. It was the following responsibilities and powers-

1. With regard to concentration of economic power:
 - a. Division of undertakings (sec-27)
 - b. Severance of inter-connection between undertakings (sec-27 A)
2. To decide certain matters (Sec. 2A)
3. To decide application of the MRTP Act (sec-3)
4. To call for information (sec-43)
5. To appoint inspectors (sec-44)
6. To regulate approvals etc. (sec-54)
7. To require the commission to submit a report (sec-61)
8. To make rules (sec 67)

WE WILL NEVER GET A SECOND CHANCE
TO MAKE THE FIRST IMPRESSION.