SYLLABUS

Class: - B.B.A. IV Semester

Subject: - Indian Legal System for Business

UNIT – I	**The Indian Contract Act, 1872:** Essentials of a Valid Contract, Void and Voidable Agreements, Performance of Contracts, Breach of a Contract and Its Remedies, Quasi- Contracts. Indemnity and Guarantee, Bailment and Pledge, Contract of Agency.
UNIT – II	**The Sale of Goods Act. 1930:** Formation of a Sales Contract.
UNIT – III	**Negotiable Instrument Act, 1881**: Definition and Essential Features of Negotiable Instruments, Types of Instruments and Endorsement, Parties to Negotiable Instrument.
UNIT – IV	**Consumer Protection Act**- Provisions related to consumer protection and Redressal of consumer Grievances
UNIT – V	**Evolution of Indian Companies Act, 1956**, The Companies Act, 1956: Types of Companies, Memorandum and Article of Association, Shareholders and Debenture Holders, Minority Protection, Winding-up
UNIT – VI	**Law of Partnership**: Definition and Nature of Partnership, Formation of Partnership, Rights, Duties and Liabilities of Partners, Dissolution of Partnership Firm.

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UNIT-I
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. (Section 1-75)
2. Specific kinds of contracts viz. (section 124-238)
   a. Indemnity and Guarantee
   b. Contracts of Bailment and Pledge
   c. Contract of Agency.

Meaning and Definition of an Agreements
An Agreement consist of an offer by one party and its acceptance by other words, an agreements comes into existence only when one party make 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 promise forming the consideration for each other is an obligation."

Meaning and Definition of a Contract –
A contract is a promise or set of promise for the breach of which the law given 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 in a contract.
3. Lawful Considerations – An Agreement is legally enforceable only when each of the parties to it gives something and gets something. This something is the price to the promise and is called consideration.
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 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 must be free. It is said to be free when it is not caused by –
   (i) Coercion, or (ii) undue influence, or (iii) fraud, or (iv) misrepresentation, or (v) mistake.

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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 – an 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 of 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 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 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 an initio.
   "Void Agreement" should be distinguished from "Void Contract". A voids agreement never becomes a contract as it is void from beginning but a void contract is valid when it is entered into, but later on something happens which makes it unenforceable by law.
4. **Unenforceable contract** – It is one which is valid in itself, 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 is illegal and void if its object or consideration, (a) is forbidden any law, or (b) is of such nature that it would defeat the provisions of any law; of (c) is fraud; (d) involves injury to the other person or property of other person.

B. On the basis of Creation

1. **Express Contract** – Where both the offer and acceptance making an agreement enforceable at law made in world spoken or written, it is an express contract. Ex. A says top B on phone that he want to sell his car for Rs. 50,000 and B accepts that offer. It is an Express Contract.
2. **Implied Contract** – where both the offer and the acceptance constituting an agreement enforceable at law are made otherwise than in words i.e. by act or conduct it is an implied contract.
3. **Constructive or Quasi Contract** – It is not a contract made intentionally by the parties by exchange or promise. It is a contract imposed by the law. The basis of this contract is that no one can allowed to enrich him at the cost of the other.

C. 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. **Executor Contract** – When either party have still to perform their share of obligation in to or there remains something to be done under the contract on both sides.

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 agreement	An agreement enforceable by law is a contract

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2. Creation	An agreement is created by acceptance of an offer.	Agreement and its enforceability together create a contract
3. Legal rights and obligation	An agreement my 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	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 an Agreement and Void contract

Basis of distinction	Agreement	Void contract
1. Definition	An agreement not enforceable by law is said to be void (Sec. 2(g)]	A contract which cases 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 every 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 has been mentioned as void in the Act. Agreement without consideration, agreements with lawful object or consideration and some other agreements have expressly been declared to be void.	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.

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 contact 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 arrangement 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-fulfillment 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 becomes 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 party	Its validity is not affected by the will of any party. It is decided by the Law court	Its validity is affected by the will of the aggrieved 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 provisions of the sections 36, 53 and 55.

Distinction between Void an 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 illegal agreements are void.
4. Restitution	The court may grant restitution of money advanced it 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.

Performance contract

Two parties enter into a legal contract with a view to fulfilling objectives in the form of reciprocal promise. After the formation of a contract, the next normal step in the contractual course is the doing of the piece of work which has been promise to do by each party.
In other words, the parties have to perform their respective legal obligation arising out of the contract.
According to section 37 of the contract act prescribes that "The parties to a contract must either perform or offer to perform their respective promises, unless such performance is dispensed with or excused under the provision of this act or of any other law".
Non performance will amount to a breach of contract if the performance is dispensed with or excused its legal consequence is a discharge from the obligations.

Types of performance

1. Actual performance – When a party to a contract has done, what he had under taken to do their remains nothing to be done by him, the promise is said to have been actually performed by him and the liability to such party comes to an end.
2. Attempted performance or tender – When the performance becomes due and the promisor offers to perform his obligation under the contract at the proper time, place and in the proper manner, but the promisee does not accept or refuses to accept the performance such attempt made by the promisor is known as 'Attempted Performance 'or Tender'.

Kinds of Tender –

a. Tender of goods or services
b. Tender of money

Essentials or Rules of valid Tender (Attempted Performance)

1. It must be unconditional
2. It must be made at a proper opportunity of inspection of goods
3. It must provide proper opportunity of inspection of goods
4. A 'Tender' must be for the whole obligation
5. It must be made to a proper person
6. It must to be made in proper form
7. The person making a 'Tender' must be able and willing to perform his obligation.

Effect of Refusal to Accept offer of Performance (To Accept Tender) – (Section-38) – Lays down that where a promisor has made an offer of performance to the promisee but the promisee has not accepted the offer; the promisor is not responsible for non-performance, and more over dose not there by lose his rights under the contract".

Effect to Refusal of party to perform promise wholly

According to section-39 of the contract act when a party to a contract has either refuses to perform or disabled himself from performing the promise in its entirety (completely or wholly) the promise may put an end to the contract. If he has not signified by word or by conduct his acceptance.
"He may put an end to the contract" in the below courses of action –

1. He may refuses to perform his part of the promise
2. He may reject the incomplete work done by the promisor and refuses to pay for the same or may refuse further deliveries.
3. He may return the defective goods.
4. He may treat the refusal to perform as breach and sue for damages.

Who can demand performance	By whom contract must be performed
1. Promisee	1. Promisor himself
2. Legal Representative	2. Legal Representative
3. Third Party	3. Agent

4. Joint Promisee	4. Third Person
5. Authorized Person	5. Authorized Person

Performance of Joint Promises – When two or more persons enter into a contract with one or more persons. The promises under such a contract are known joint promises; the conditions regarding the performance of joint promises may be discussed as follows –

1. Devolution (passing or transfer) of joint liabilities (section-42)
2. Any one from the joint promisor may be compelled to perform (section-43)
3. Right and liabilities of joint promisors, among themselves (Section-43)
4. Release of a joint promisor and its effect (Section-44)
5. Devolution of joint rights

Performance of reciprocal promises – "Promises which form the consideration or part of the consideration for each other are called reciprocal promises."
Kinds of reciprocal promises and the relevant rules regarding their performance may be discussed as follows–

1. Mutual and concurrent promises (section 51)
2. Mutual and independent promises (section 51)
3. Mutual dependent promises (Section 51)
4. Order of performance of reciprocal promises (Section 52) – These promises are to be performed is expressly fixed by the contract and it must be performed in that order.
5. Effects of preventing a party from performance of his promise (section 53) – the contract becomes voidable at the option of the party so prevented is entitled to compensation from the preventing party for any loss which he may sustain as a result of the non-performance of his promise.
6. Effect of default in relation to that promise which of should be performed first (Section-54) – Where the nature of reciprocal promises is such that one of them cannot be performed till the other party has performed his promise then if the other party fails to perform it, he cannot claim the performance of the reciprocal promise from the first party.
7. Reciprocal promise to do thing legal and also other thing illegal (Section-57) – The first set of promises is a contract but the second is a void agreement.
8. Promises in which one branch is legal and the other illegal (Section 57) – The legal branch alone can be enforced by law.

Time and Place for Performance
Rules regarding time & place in contract

1. Performance of the promise where 'no time' is specified and no request is made by the promisee than the contract in such cases must be performed within a reasonable time which is decided on the basis of the circumstances (Section-46)
2. Performance of promise where time is specified but no request is to be made by the promisee than in such cases the promisor may perform the promise at any time during the usual hours of business on the fixed day and at the place at which the promise should be performed (Section-47)
3. Performance of promise where 'time is specified' but a 'request is to be made' by the promisee in such cases it is the duty of the promisee to apply for performance at a proper place and within the usual hours of business (section-48)
4. Performance of promise where no place is specified also and no request is to be made by the promisee. In such cases it is the duty of the promisor to apply the promisee to fix or decide a reasonable place for the performance of the promise and then to perform it at such place (section 49)

5. Performance of the Promise where the manner and time is prescribed in such cases the performance of promise must be made in the prescribed manner and at the prescribed time (Section 50)

Performance where time is an Essential factor (time as the essence of contract) – when time as the essence of contract means that the time is an essential factor and therefore the concerned parties must perform their promises within the specified time.

Time is generally considered to be the essence of the contract in the following cases –
1. Where the parties have expressly agreed to treat the time as the essence of the contract
2. Where the delay in performing the promise operates as an injury to the party.
3. Where the nature and the necessity of the contract requires the time to the essence of the contract.

When time is not the essence of contract in the following cases –
1. Where the parties have not agreed to treat the time as the essence of the contract
2. Where the delay in performing the contract does not have an effect as an injury to the party.
3. Where the nature of the contract does not establish that time is the essence of contract neither there is any other necessity to make it so.

(According to section-55)
A. Effect of failure to performance within fixed time where time is the essence of the contract than the contract becomes voidable at the option of the Promisee.
B. Effect of failure to perform within fixed time where time is not the essence of the contract than the contract does not become voidable however, the promisee is entitled to compensation from the promisor for any loss suffered by him due to such failure.
C. Effect of acceptance of performance at a time other than that agreed and resulting the contract become voidable however if he opts to accept the performance after the agreed time he cannot claim compensation for any loss suffered by him due to the non performance of the promise at the agreed time.

Contracts which need not be performed
1. When its performance become impossible (section 56)
2. When the concerned parties agree to substitute a new contract in its place or agree to cancel or alter it (section 62).
3. When the promises releases from performance either wholly or in part or extends the time for its performance or accepts any other satisfaction in place (section 63)
4. When it become voidable and the person at whose option it is voidable & rescinds (cancel) (Section 64)
5. When the promises neglects or refuses to afford the promisor reasonable facilities for its performance (section 67)
6. When it is illegal

Appropriation of payments:
Appropriation of a payment means setting a part of payment for a specific use.
1. Application of payment where the debt to be discharged is indicated or instruction is given then the payment is to be applied to the discharge of some particulars debt (section-59).
2. Application of payment where the debt to be discharged is not dictated then the payment is applied according to creditor's discretion to any lawful debt actually due and payable to him from the debtor the amount may be applied to a dept which has become time barred (section-60)
3. Application of payment where neither the debtor nor the creditor makes any appropriation then the Payment shall be applied in discharge of the debts in 'order of time, whether they barred or

not barred by the existing law of limitation, if debts are of equal standing (of the same date) the payment shall be applied in discharge of each proportionately.

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 arrangement
3. By subsequent or supervening impossibility or illegality
4. By lapse of time
5. By operation of law
6. By breach of contract

A. **Discharge by Performance –** Performance of a contract is the most popular manner of discharge of a contract. The performance may be either Actual performance of attempted performance.
   1. **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.
   2. **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 – It fulfills the following conditions –

1. It must be unconditional – If A who is a debtor of company B, offers to pay if share 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. A 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 good it must give a reasonable opportunity to the promise 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 promise or his authorized person.
7. If there are several joint promises, an offer to any one of them is a valid tender (but the actual payment must be made to all joint promises 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 promise can be sued for breach of contract. Thus we can say that "a valid tender discharges the contract."

B. **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.
   1. **Novation –** "Novation occurs when a new contract is substituted for an existing contract, either between the same parties or different parties, the consideration mutually being the discharge of the old contract." If the parties are same, then small changes in the terms of contract are called "alteration" and not "Novation". For being "Novation", the changes must be of significant nature. Novation cannot be compulsory; it can only with the mutual consent of all the parties.
   2. **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 contract made in a contract by one party without the consent of the other

will make the whole contract void and no person can maintain alteration upon it.

3. **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.
   Note – in rescission, the existing contract is cancelled by mutual consent without substituting a new contract in its place.
4. **Remission –** It is defined as "Acceptance of Lesser amount than what was contracted for or it lesser fulfillment of the premise made"
5. **Waiver –** It means deliberate giving up of a right which a party is entitled to under a contract where upon the other party to the contract is released from his obligation. Example a Promise to stitch a shirt for B if B sings a song in A's party and accepting if 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.

C. **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 promisee knows about the impossibility after using reasonable efforts the promisor is bound to compensate the promise for any loss he may suffer because of non performance of the promise, even if the agreement being void ab initio.
   Subsequent impossibility is found out after the contract is made, "A contract to do an act which after making the contract, become impossible or unlawful, becomes void when the act becomes impossible or unlawful."
   Conditions for It…
   1. The act should have become impossible.
   2. The impossibility should be by reason of some event which the promisor could not prevent.
   3. 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 unless 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 imposition or illegality of the act it's logical to absolve the parties from further performance of it as they never did promise to perform impossibility.

D. **Discharge by Lapse of time –** In some circumstances, the lapse of time may also discharge a contract, e.g. the period of limitation for simple contracts is three years under the limitation Act and therefore on default by a debtor, if the creditor does not file a suit for a 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 the time 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.

E. **Discharge by operation of law –** A contract is discharged by operation of law in the following cases –
   1. Death – Sometimes a contract involves personal skills of promise. In such cases the contract is discharged on the death of the promisor.
   2. Insolvency – When a person is adjudged Insolvent then he is released from his all his previous liabilities. His rights (Assets) and liabilities are transferred to the official assignee or official receiver as the case may be.
   3. Merger – Sometimes, inferior right of a person is merged into superior right 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 order of ownership in such case the inferior rights need not to be enforced because these rights have merged to a superior right of mortgage or ownership.

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4. Loss of evidence of contract – If the evidence of the existence of the contract is lost of vanished. The contract is discharged; for example document of contract is lost or destroyed and no other evidence is available the contract is discharged.

F. **Discharge by Breach of contract –** A contract is something discharged, by its breach generally breach of contract means refusal of any one party to perform his contractual obligations under the contract specially a breach of contract occurs when a party to a contract does any of the following things
   1. Fails or refuses to perform his obligation under the contract
   2. Disable him from performing his contract.
   3. Make the performance of contract impossible by his own acts

BREACH OF CONTRACT

Meaning – A breach of contract occurs if any party refuses or fails to perform his part of contract or by his act makes it impossible to perform his obligation under the contract.
In case of breach, the aggrieved party is relived from performing his obligation and gets a right to proceed against the party at fault.

TYPES OF BREACH OF CONTRACT

Anticipatory breach of contract – Anticipatory breach of contract occurs when the party declares his intention of not performing the contract before the due date of performance.
A party can declare the intention of anticipatory breach of contract by fallowing ways
1. A party can refuse to perform promise.
2. Party can disable himself from performing promise in its entirely

OPTIONAL AVAILABLE TO AGGRIEVED PARTY

(a) Rescind the contract and claim damages for breach of contract without waiting until the due date of performance.
(b) Treat the contract as operative and wait till the due date of performance.
(c) Treat the contract as operative and wait till the due date of performance and claim damages if the promise still remains unperformed.

Actual breach of contract – Actual breach of contract takes place in following ways –
(a) On due date of performance – If any party to contract refuses or fails to perform his part of contract at the time fixed for performance. It is called an actual breach of contract on due date of performance.
(b) During the course of performance – If any part has performed a part of the contract and then refuses or fails to perform the remaining part of the contract. It is called an actual breach of contract during the course of performance.

Remedies for breach of contract

A remedy is a method or process prescribed or provided by law for the enforcement of a right of the aggrieved or inured party. Thus, the process of enforcing of a right of the injured party is known as remedies for breach of contract. Remedies are the courses of action winch may be pursued by the aggrieved part. The aggrieved or injured party is that person in the contract who is not involved in the breach and has been adversely affected by it.
When there is actual breach, one or more of the following remedies are available to the aggrieved party.
a. Rescission of the contract
b. Suit for damages or monetary compensation
c. Suit upon quantum meruit.
d. Suit for specific performance of the contract
e. Suit for injunction.
f. Restitution of benefit.

1. **Rescission of the Contract –** Section 39 of the Contract Act lays down that when a party to a contract has refused to perform or has disabled him from performing his promise in its entirety; the promisee may put an end to the contract. This is called the right of rescission which means a right to set aside (i.e. reject) the contract. When the aggrieved party rescinds the contract, he is discharged from the obligation under the contract
2. **Suit for damages –** Damages is the monetary compensation which is been paid by the party breaching the contract to the aggrieved party for any kind of loss occurring due to breach of contract. The object of awarding damages is not to punish the party at fault but to the recovery of financial loss occurring to aggrieved party. Following kinds of damages can be claimed in case of breach of contract.

Amount of Damages

Amount of damages are calculated in following ways:

S.No	Options	Amount of Damages
1	When the aggrieved party rescinds the contract at the date of breach	The amount of damages will be equal to the difference between the price prevailing on the date of breach and the control price.
2	When the aggrieved party does not rescind the contract at the date of breach	The amount of damages will be difference between price on date of performance and the contract price.

a. Ordinary Damages – Ordinary damages also called general damages. These are those damages which arise as a result of breach of contract. General damages are such damages which the law presumes from the breach of contract. They are awarded to compensate the injured party and not to punish party at fault. These damages are assesses on the basis of actual loss suffered by the party i.e. difference between contract price and market price of such goods to breach of contract. Ex: X contracted to sell 50 tons of wheat @ 8000 Rs. Per ton to y on 1st Jan. Afterward y contracted to sell those goods to Z @ Rs 10000 per ton. X fails to deliver goods on 1st Jan when price of wheat was 9500Rs per ton. Y is entitled to receive 75000 Rs. i.e. (9500-8000X 50) as ordinary damages i.e. difference between contract price and market price.

b. Special damages – Special damages are those damages which are result of unusual circumstances affecting party and their interest. These are the damages which the parties know when they made the contract as likely to arise from the breach of contract. These damages can be recovered if special circumstances which would result in special loss of breach of contract. In case of loss aggrieved party to contract can claim for such damages only when an advance notice of such damages is given before.

c. Exemplary or punitive or vindictive damages – These are those damages which are given in nature of punishment. The court may award these damages is case of
   1. Breach of promise to marry
   2. Wrong full dishonor of a Cheque by banker.

d. Nominal Damages – Nominal damages are those damages which are awarded where there is only a technical relation but aggrieved party has not suffered any loss because of breach of contract.

e. Damages for Inconvenience and discomfort – If a party has suffered any physical inconvenience and discomfort due to breach of contract, that party can recover the damages for the same discomfort.

f. Liquidated damages & penalty – Liquidated damages is the specified sum which represents a fair and genuine pre-estimate of the damages likely to arise due to breach. Penalty is disproportionate sum to damages likely to result due to breach. These specified sum is payable by the party responsible for breach and is been decided at the time of formation of contract. In India there is no distinction between penalty and liquidated damages. In English law, liquidated damages are enforceable and penalty is unenforceable.

g. Forfeiture of security deposit or (earnest money) – A clause in a contract which provides for forfeiture of security deposit in the event of failure to perform. In such cases, the court may award reasonable Compensation only.

3. Suit for quantum meruit – The phrase 'Quantum meruit' means payment in proportion to the 'amount of work done' A right to sue on quantum meruit arises where a contract, partly performed by one party has discharged by breach of the contract by other party.
4. Suit for specific performance – Suit for specific performance means demanding the court's direction to the defaulting party to carry out the promise according to the terms of the contract.

Cases where suit for specific performance is not maintained are

a. Where damages are considered as an adequate remedy.
b. Contract of personal nature.
c. Contract beyond the scope of memorandum of association.
d. Impossibility of court to supervise-the performance of the contract.
e. Contract with minor.
f. Inequitable contracts.

5. Suit for injunction: Injunction is the preventive relief. It is an order of the court restraining the Wrong door from doing continuing the wrongful complained of and not mentioned in contract. Injunction means an order of the court which prohibits a person to do a particular act.
6. Restitution, of Benefit – Restitution return or restoration of benefit received by one party from the other under a Void contract.

Measure of Damages

The general principle on which damages are assessed is that the injured party must be placed so for as Possible in the same position as he would occupied if no breach had taken place, but in applying this principle, the court will not necessarily award the relief to the plaintiff for all the damages he has suffered.

Meaning & Features of Quasi contracts

A Quasi contract is not a contract at all because one or the other essentials far the formation of contracts is absent. It is an obligation imposed by law upon a person for the benefit of one another even in the absence of a contract. It is based on the principle of equity, which means no person shall be allowed to unjustly enrich himself at the expense of another. Such obligations are called quasi contract.

Features of a Quasi Contract –

a. It is imposed by law & does not arise from any agreement.
b. The duty of a party and not the promise of any party is the Basis of Such contract.
c. The right under it is always a right to money & generally, though not always, to a liquidated sum of money.
d. The right under it is available against specific person & not against the world.
e. A suit for its breach may be filed in the same way as in case of a completed contract.

Quasi contracts & other contracts

S.No	Basis of destination	Quasi contract	Contract
1	Essential for the formation of a valid contract	The essential for the formation of a valid contract are absent	The essential for the formation of a valid contract are present
2	Obligation	Obligation is imposed by law.	Obligation is created by the consent of parties.

Kinds of Quasi Contract –

a. Right to recover or the Price of Necessaries supplied – The person who has supplied the necessaries to a person who is incapable of contracting or anyone whom such incapable person is legally bound to support, is entitled to claim their price from the property of such incapable person.
b. Right to Recover Money period for another person – A person who is interested in the payment of money which another is bound by law to pay & who therefore pays it entitled to be reimbursed by the other.
c. **Right to Recover for Non-Gratuitous Act –** Such right to recover arises if the following conditions are satisfied –
    1. The things must have been delivered lawfully.
    2. The person who has done or delivered the thing must not have intended to do so gratuitously.
    3. The person for whom the act is done must have enjoyed the benefit of the act.
d. **Responsibility of finder of Goods –** A person, who finds goods belonging to another & takes them into his custody, is subject to the same Responsibility as a Bailee.
e. **Right to recover from a person to whom money is paid or thing is delivered, by mistake or under coercion –** A person to whom money has been paid or anything delivered by mistake or under coercion, must repay or return it.

Quantum Meruit –
The term 'Quantum Meruit' means as much as merited or 'as much as earned'. In other words it means payment in proportion to the amount of work done. Generally one cannot claim performance from another unless one has performed his obligation in full but in certain cases, a person who has performed some work under a contract can claim remuneration for the work which he has already done.

Cases in which the claim of Quantum Meruit arises –
a. In case of void agreements or contract that becomes void — When an agreement is discovered to be void or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it
b. In ease of Non-Gratuitous Act — The obligation to pay arises in the following three conditions:-
    1. The thing must have been done or delivered lawfully
    2. The person who had done or delivered the thing must have intended to do so gratuitously.
    3. The person for whom the act is done must have enjoyed the benefit of the Act.
c. In case or preventing the completion of contract – If a party does not complete the contract or prevents the other party to complete the contract the aggrieved party can sue on Quantum meruit.
d. In case of Divisible Contract – The party at default may sue on a Quantum meruti the following conditions are satisfied.
    1. If the contract is divisible
    2. If the party not ay default has enjoyed benefits of the part performance.
e. In case of indivisible contract performed complexity but badly.

INDEMNITY AND GUARANTEE CONTROL
The contract of indemnity and guarantee are special kinds of contract. These contracts are therefore also required to fulfill all the essentials 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 conduct 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. Promise for pay compensation of loss/damage.
3. Loss/damage may by the own or other person.
4. Creation of liability
5. All essential features of valid contract.
6. Compensation for actual loss/damages
7. It may be express or implied.

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

Rights to Indemnified (Indemnity Holder) –

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

Liability/Duties of indemnified –

1. Liability to pay all damage/losses
2. Liability to pay all costs related to contract
3. Liability to pay all sums which is received by self for contract from indemnified.

Contract of Guarantee

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 grantee is given is called the principal debtor, 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 Contract of Guarantee

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

Distinction between a Contract of Indemnity and Guarantee

S.No	Difference Basis	Indemnity Contract	Contract of Guarantee
1	Nature of Contract	Promises to save the other from loss	One party promises to discharge the liability of a third party in case of his default
2	No. of Parties	Only two parties are there	There are three parties
3	No. of Contract	There is only one contract	There are three contracts between debtors, creditors and surely
4	Nature of	The liability of the indemnifier is	The liability of the surety is secondary and

	Liability	primary and independent	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 existing 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 at the request of the debtor
8	Right to sue	The indemnifier cannot sue the third party for loss in his own name	It surety 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 of a single debt or specific transaction and it's to come 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 extends to a series of transactions, is called a continuing guarantee. Thus, a continuing guarantee is not confined to a single transaction but keeps on moving to prevail transaction continuously.

Revocation of Guarantee – Revocation of guarantee means cancellation of guarantee already given. It may be noted that the specific guarantee cannot be revoked if the liability has already accrued. 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 transactions. The surety continues to be liable for the transaction which have taken place up to the time of revocation.

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 enters into an agreement with the principal debtor (Sec 135)
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, surely is free to restrict limit his liability.
4. Sometimes the surely is liable though the principal debtor 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 the conduct of the creditor
    a. Variance (change) in terms of the contract
    b. Release or discharge or the principal debtor
    c. Certain arrangement 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 contract of guarantee
    a. Guarantee obtained by misrepresentation
    b. Guarantee by concealment
    c. Failure of co-surety to join a surety

Bailment and Pledge
Bailment
The word 'bailment' is derived from 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.

Definitions 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'.

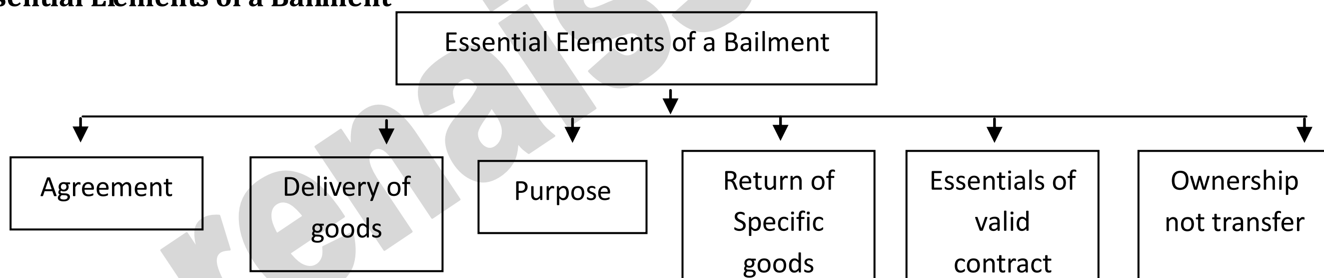
Examples

(a) A delivers a piece of cloth to B, a tailor, to be stitched into a suit. There is a contract of 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 of money payment either by the bailor or the bailee, as for example, when A gives his bicyle 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 the 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



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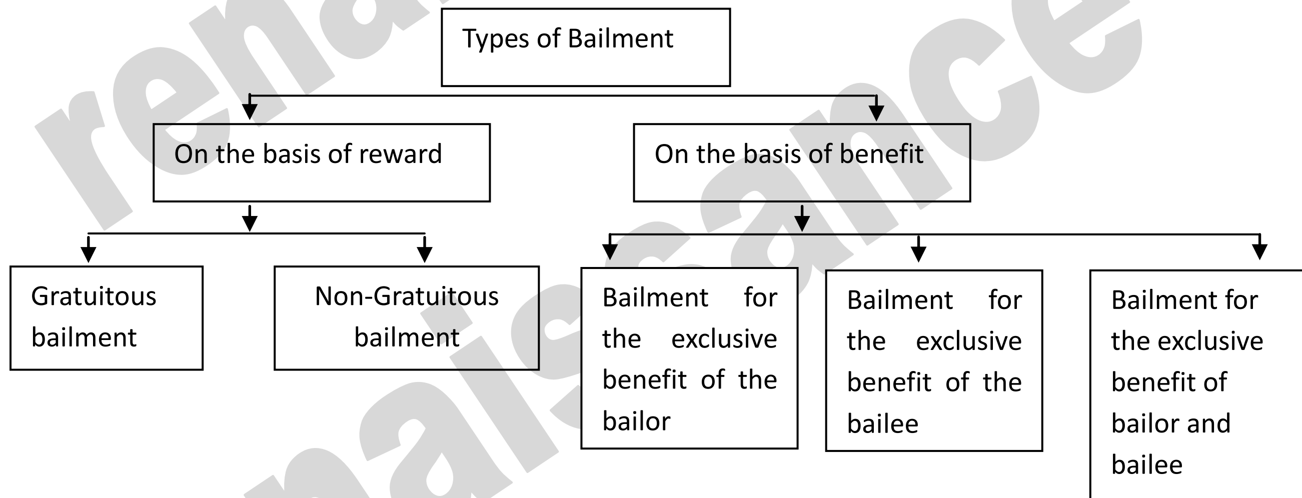
Distinction between Bailment and Contract of Sale

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

S. No.	Basis 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 need not 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



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 indemnity 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 unauthorized use of goods [Sections 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 accretions to the goods [Section 163]

Rights of a Bailor

1. Right to claim damages in case of negligence [Section 152]
2. Right to terminate the contract in case of unauthorized use [Section 153]
3. Right to claim compensation in case of unauthorized use [Section 154]
4. Right to claim the separation of goods in case of unauthorized mixture [Section 156]

5. Right to claim compensation in case of unauthorized mixture of goods which cannot be separated [Section 157]
6. Right to demand return of goods [Section 160]
7. Right to claim compensation in case of unauthorized retention of goods [Section 161]
8. Right to demand accretions to goods [Section 163]

RIGHTS OF A BAILEE

- Right to claim damages [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 particular 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 repair 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 a 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 a 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 a 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 allowed 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 persons 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.

Distinction between Particular Lien and General Lien

S. No.	Basis 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 services.	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 and policy brokers.
4	Rendering of service	It is available only when some service involving the exercise of labour or 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 who 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 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 to 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 premise 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 pawnor (or Pledgor) [Section 172)

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

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 a promise is called the Pawnee or Pledgee. In the aforesaid example. Citi Bank is the pawnee.

Rights of a 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 178 A]

Duties 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 accretions to the goods

Rights of a Pawnor

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

Duties of a Pawnor

- Duty to comply with the terms of pledge
- Duty to compensate the pawnee for extraordinary expenses [Section 175]

Distinction between Pledge and Bailment

Basis 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.	Bailee 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:

Basis of distinction	Pledge	Hypothecation
1. Possession of goods	Borrower transfers the possession of goods.	Borrower does not transfer the possession of goods.
2. Right to deal with the goods.	Borrower has no right to deal with the goods pledged.	Borrower has a right to deal with the goods hypothecated.

AGENCY

Meaning of Agency: Agency is relation between an agent and 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 who 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 of 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 causes 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 means the agency which comes into existence when certain circumstances compel a person to act as an agent for another 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 confirms 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 examples, (a) when a partnership is formed, every partner automatically becomes agent of 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 neglect.

Duties of an Agent

1. To follow the directions 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.

TERMINATION OF AGENCY

Termination of agency means revocation (cancellation) of authority of the agent. All the modes of termination of agency may be classified are 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 agent.
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

Irrevocable 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.

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UNIT-II
SALE OF GOODS ACT, 1930

Contract of Sale of Goods

According to Section 4, a contract of sale of goods is a contract whereby the seller:
(i) Transfers or agrees to transfer the property in goods
(ii) To the buyer,
(iii) For a money consideration called the price.

It shows that the expression "contract of sale" includes both a sale where the seller transfers the ownership of the goods to the buyer, and an agreement to sell where the ownership of goods is to be transferred at a future time or subject to some conditions onto be fulfilled later.
It is a bilateral contract because the property in goods has to pass from one party to another. A person cannot buy the goods himself. The object of a contract of sale must be the transfer of property (meaning ownership) in goods from one person to another.
The subject matter must be some goods. The goods must be sold for some price, where the goods are exchanged for goods it is barter system and it will not be considered as sale.
All essential elements of a valid contract must be present in a contract of sale.

Distinction between Sale and Agreement to Sell

The following points will bring out the distinction between sale and an agreement to sell:

(a) In a sale, the property in the goods sold passes to the buyer at the time of contract so that he becomes the owner of the goods. In an agreement to sell, the ownership does not pass to the buyer at the time of the contract, but it passes only when it becomes sale on the expiry of certain time or the fulfillment of some conditions subject to which the property in the goods is to be transferred.
(b) An agreement to sell is an executory contract; a sale is an executed Contract.
(c) An agreement to sell is a pure and simple contract, but a sale is contract plus conveyance
(d) In the case of an agreement to sell if the goods are destroyed by an accident, Seller will bear the loss, while in the case of a sale; the loss will fall on the buyer, even though the goods are with the seller.
(e) If there is an agreement to sell and the seller commits a breach, the buyer has only a personal remedy against the seller, namely, a claim for damages. But if there has been a sale, and the seller commits a breach by refusing to_ deliver the goods; the buyer has not only a personal remedy against him but also the other remedies which an owner has in respect of goods themselves such as a suit for conversion or detinue, etc.

Sale and Bailment

A "bailment" is a transaction under which goods are delivered by one person (the bailor) to another (the bailee) for some purpose, upon a contract that they be returned or disposed of as directed after the purpose is accomplished (Section 148 of the Indian Contact Act, 1872).

The property in the goods is not intended to and does not pass on delivery though it may sometimes be the intention of the parties that it should pass in due course. But where goods are delivered to another on terms which indicate that the property is to pass at once the contract must be one of sale and not bailment.

Sale and Contract for Work and Labour

The test generally applied is that if as a result of the contract, property in an article is transferred to one who had no property therein previously, for a money consideration, it is a sale. Where it is otherwise it is a contract for work and labour.

Sale and Hire Purchase Agreement
"Sale", is a contract by which property in goods passes from the seller to the buyer for a price.

A "hire purchase agreement' is basically a contract of hire, but in addition, it gives the hirer an option to purchase the goods at the end of the hiring period.

The distinction between the two is very important because, in a hire-purchase agreement the risk of loss or deterioration of the goods hired lies with the owner and the hirer will be absolved of any responsibility therefore, if he has taken reasonable care to protect the same as a bailee. But it is otherwise in the case of a sale where the price is to be paid in installments.

Subject matter of Contract of Sale of Goods
Goods

According to Section 2(7) "goods'" means every kind of movable property' other than actionable claims and money and includes stock and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be served before sale or
Under the contract of sale.

Actionable claims and money are not goods and cannot be bought and sold under this Act. Money means current money, i.e., the recognized currency in circulation in the country, but not old and rare coins which may be treated as goods. An actionable claim is what a person cannot make a present use of or enjoy, but what can be recovered by him by means of a suit or an action. Thus, a debt due to a man from another is an actionable claim and cannot be sold as goods, although it can be assigned.

Goods may be (a) existing, (b) future, or (c) contingent. The existing goods may be (i) specific or generic, (ii) ascertained or unascertained.

Existing Goods

Existing goods are goods which are either owned or possessed by the seller at the time of the contract.

Existing goods are specific goods which are identified and agreed upon at the time of the contract of sale. Ascertained goods are either specific goods at the time of the contract or ascertained or identified to the contract later on i.e. made specific.
Generic or unascertained goods are goods which are not specifically identified but are indicated by description.

Future Goods
Future goods are goods to be manufactured or produced or acquired by the seller after the making of the contract of sale.

Contingent Goods
Where there is a contract for the sale of goods, the acquisition of which by the seller depends upon a contingency which may or may not happen - such goods are known as contingent goods. Contingent goods fall in the class of future goods.

Actual sale can take place only .of specific goods and property in goods passes from the seller to buyer at the time of the contract, provided the goods are in a deliverable state and the contract is unconditional.

Effect of Perishing of Goods
In a contract of sale of goods, the goods may perish before sale is complete. Such a stage may arise in the following cases:
(i) Goods perishing before making a contract
Where in a contract of sale of specific goods, the goods without the knowledge of the seller have

perished, at the time of making of the contract or become as damaged as no longer to their description in the contract, the contract is void. (Section 7)
If the seller was aware of the destruction and still entered into the contract, he is stopped from disputing the contract. Moreover, perishing of goods not only includes loss by theft but also where the goods have lost their commercial value.

(ii) Goods perishing after agreement to sell
Where there is an agreement to sell specific goods and subsequently, the goods without any fault of any party perish or are so damaged as *no* longer to answer to their description in the agreement before the risk passes to the buyer, the agreement is thereby avoided. If the sale is of unascertained goods. The perishing of the whole quantity of such goods in the possession of the seller will not relieve him of his obligation to deliver. (Section 8)

Conditions and Warranties (Sections 10-17)

As a rule, before a contract of sale is concluded, certain statements are made by the parties to each other. The statement may amount to a stipulation, forming part of the contract or a mere expression of opinion which is not part of the contract. If it is a statement by the seller on the reliance of which the buyer makes the contract, it will amount to a stipulation. If it is a mere commendation by the seller of his goods it does not amount to a stipulation and does not give the right of action. .

The stipulation may either be a condition or a warranty. Section 12 draws a clear distinction between a condition and a warranty.

Conditions

If the stipulation forms the very basis of the contract or is essential to the main purpose of the contract. it is a condition. The breach of the condition gives the aggrieved party a right to treat the contract as repudiated. Thus, if the seller fails to fulfill a condition, the buyer may treat the contract as repudiated, refuse the goods and. if he has already paid for them, and recover the price. He can also claim damages for the breach of contract.

Warranties

If the stipulation is collateral to the main purpose of the contract, i.e. it is a subsidiary promise, it is a warranty. The effect of a breach of a warranty is that the aggrieved party cannot repudiate the contract but can only claim damages. Thus, if the seller does not fulfill a warranty. the buyer must accept the goods and claim damages for breach of warranty.

Section 11 states that the stipulation as to time of payment are not to be deemed conditions (and hence not to be of the essence of a contract of sale) unless such an intention appears from the contract. Whether any other stipulation as to time (e.g., time of delivery) is the essence of the contract or not depends on the terms of the contract.

Implied Warranties/Conditions

Even where no definite representations have been made, the law implies certain representations as having been made which may be warranties or conditions. An express warranty or condition does not negative an implied warranty or condition unless inconsistent therewith.

There are two implied warranties:

Implied Warranties
(a) ***Implied warranty of quiet possession****:* If the circumstances of the contract are such as there is an implied warranty that the buyer shall have and enjoy quiet possession of the goods.
(b) ***Implied warranty against encumbrances****:* There is a further warranty that the goods are not subject to any right in favour of a third-party, or the buyer's possession shall not be disturbed by reason of the existence of encumbrances.

This means that if the buyer is required to, and does discharge the amount of the encumbrance,

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there is breach of warranty, and he is entitled to claim damages from the seller.

Different implied conditions apply under different types of contracts of sale of goods, such as sale by description, or sale by sample, or sale by description as well as sample. The condition, as to title to goods applies to all types of contracts, subject to that there is apparently no other intention.

Implied Conditions* as *to title

There is an implied condition that the seller, in an actual sale, has the right to sell the goods, and, in an agreement to sell, he will have this right only when property is passed to him. As a result, if the title of the seller turns out to be defective, the buyer is entitled to reject the goods and can recover the full price paid by him.

Implied conditions under* a *sale by description

(a) ***Goods must correspond with description:*** Under Section 15, when there is a sale of goods by description, there is an implied condition that the goods shall correspond with description.

(b) ***Goods must also be of merchantable quality:***

Merchantable quality means that the goods must be such as would be acceptable to a reasonable person, having regard to prevailing conditions. They are not merchantable if they have defects which make them unfit for ordinary use, or are such that a reasonable person knowing of their condition would not buy them.

But, if the buyer has examined the goods, there is no implied condition as regards defects which such examination ought to have revealed. If, however, examination by the buyer does not reveal the defect, and he approves and accepts the goods, but when put to work, the goods are found to be defective, there is a breach of condition of merchantable quality.

(c) ***Condition* as *to wholesomeness:*** The provisions, (i.e., eatables) supplied must not only answer the description, but they must also be merchantable and wholesome or sound.

(d) ***Condition* as *to fitness for* a *particular purpose:*** Ordinarily, in a contract of sale, there is no implied warranty or condition as to the quality of fitness for any particular purpose of goods supplied.

But there is an implied condition that the goods are reasonably fit for the purpose for which they are required if:

(i) The buyer expressly or impliedly makes known the intended purpose, so as to show that he relies on the seller's skill and judgment, and

(j) The goods are of a description which it is in the course of the seller's business to supply (whether he be the manufacturer or not). There is no such condition if the goods are bought under a patent or trade name.

Implied conditions under* a *sale by sample (Section 15)

In a sale by sample:

(a) there is an implied condition that the bulk shall correspond with the sample in quality;

(b) there is another implied condition that the buyer shall have a reasonable opportunity of comparing the bulk with the sample;

(c) it is further an implied condition of merchantability, as regards latent or hidden defects in the goods which would not be apparent on reasonable examination of the sample. "

Implied conditions in sale by sample* as *well* as *by description

In a sale by sample as well as by description, the goods supplied must correspond both with the samples as well as with the description.

Implied Warranties

Implied warranties are those which the law presumes to have been incorporated in the contract of sale in spite of the fact that the parties have not expressly included them in a contract of sale. Subject to the contract to the contrary, the following are the implied warranties in the contract of sale:

(i) ***Warranty* as *to quite possession:*** Section 14(b) provides that there is an implied' warranty that the buyer shall have and enjoy quiet possession of goods'. If the buyer's possession is disturbed by anyone having superior title than that of the seller, the buyer is entitled to hold the seller liable for breach of warranty.

(ii) ***Warranty* as *to freedom from encumbrances:*** Section 14(c) states that in a contract for sale, there is an implied warranty that the goods shall be so free from any charge or encumbrances in favour of any third party not declared or known to the buyer before or at the time when the contract is made'. But. if the buyer is aware of any encumbrance on the goods at the time of entering into the contract, he will not be entitled to any compensation from the seller for discharging the encumbrance.

(iii) ***Warranty to disclose dangerous nature of goods:*** If the goods are inherently dangerous or likely to be dangerous and the buyer is ignorant of the danger, the seller must warn the buyer of the probable danger:

(iv) ***Warranties implied by the custom or usage of trade:*** Section 16(3) provides that an implied warranty or conditions as to quality or fitness for a particular purpose may be annexed by the usage of trade.

Doctrine of Caveat Emptor

The term *caveat emptor* is a Latin word which means "let the buyer beware". This principle states that it is for the buyer to satisfy himself that the goods which he is purchasing are of the quality which he requires. If he buys goods for a particular purpose, he must satisfy himself that they are fit for that purpose. In simple words, it is not the seller's duty to give to the buyer the goods which are fit for a suitable purpose of the buyer. If he makes a wrong selection, he cannot blame the seller if the goods turn out to be defective or do not serve his purpose health.

Exceptions to the doctrine of *Caveat Emptor:*

(1) Where the seller makes a false representation and the buyer relies on it.

(2) When the seller actively conceals a defect in the goods which is not Visible on a reasonable examination of the same.

(3) When the buyer, relying upon the skill and judgment of the seller, has expressly or impliedly communicated to him the purpose for which the goods are required.

(4) Where goods are bought by description from a seller who deals in goods of that description.

Passing of Property or Transfer of Ownership (Sections 18-20)

The sole purpose of a sale is the transfer of ownership of goods from the seller to the buyer. It is important to know the precise moment of time at which the property in the goods passes from the seller to the buyer for the following reasons:

(a) The general rule is that risk follows the ownership, whether the delivery has been made or not. If the goods are lost or damaged by accident or otherwise, then, subject to certain exceptions, the loss falls on the owner of the goods at the time they are lost or damaged.

(b) When there is a danger of the goods being damaged by the action of third parties it is generally the owner who can take action.

(c) The rights of third parties may depend upon the passing of the property if the buyer resells the goods to a third-party, the third-party will only obtain a good title if the property in the goods has passed to the buyer before or at the time of the resale. Similarly, if the seller, in breach of his contract with the buyer, attempts to sell the goods to a third party in the goods, has not passed to the buyer, e.g., where there is only an agreement to sell.

(d) In case of insolvency of either the seller or the buyer, it is necessary to know whether the goods

can be taken over by the official assignee or the official receiver. It will depend upon whether the property in the goods was with the party adjudged insolvent.

Thus in this context, ownership and possession are two distinct concepts and these two can at times remain separately with two different persons.

Passing of property in specific goods

In a sale of specific or ascertained goods, the property passes to the buyer as and when the parties intended to pass. The intention must be gathered from the terms of the contract, the conduct of the parties, and the circumstances of the case.

Unless a contrary intention appears, the following rules are applicable for ascertaining the intention of the parties:

(a) Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property passes to the buyer when the contract is made.

(b) Where there is a contract for the sale of specific goods not in a deliverable state, i.e., the seller has to do something to the goods to put them in a deliverable state, the property does not pass until that thing is done and the buyer has notice of it. (Section 21)

(c) Where there is a sale of specific goods. in a deliverable state, but the seller is bound to weigh, measure, test or do something with reference to the goods for the purpose of ascertaining the - price, the property to the goods for the purpose of ascertaining the price, does not pass until that thing is done and the buyer has notice of it. (Section 22)

(d) When goods are delivered to the buyer on approval or "on sale. or return", the property therein passes to the buyer:
   (i) when he signified his approval or acceptance to the seller, or does any other act adopting the transaction;
   (ii) if he retains the goods, without giving notice of rejection, beyond the time fixed for the return of goods, or if no time is fixed, beyond a reasonable time.

Ownership in unascertained goods

The property in unascertained or future goods does not pass until the goods are ascertained.

Unless a different intention 'appears, the following things are applicable for ascertaining the intention of the parties in regard to passing of property in' respect of such goods:

(a) The property in unascertained or future goods sold by description passes to the buyer when goods of that description and in deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller. (Section 23)

(b) If there is a sale of a quantity of goods out of a large quantity.

(c) Delivery by the seller of the goods to a carrier or other buyer for the purpose of transmission to the buyer in pursuance of the contact is an appropriation sufficient to pass the property in the goods.

(d) The property in goods, whether specific or unascertained, *does not pass* if the seller reserves a right of disposal of the goods. Apart from an express reservation of the right of disposal, the seller is deemed to reserve the right of disposal in the following two cases:
   i) where goods are shipped and by the bill of lading of the goods deliverable to the order or the seller or his agent.
   ii) when the seller sends the bill of exchange for the price of the goods to the buyer for this acceptance, together with the bill of lading, the property in the goods does not pass to the buyer unless he accepts the bill of exchange.

***Passing of Risk* (Section 26)**

The general rule is that goods remain at the seller's risk until the ownership is transferred to the

buyer. After the ownership has passed to the buyer, the goods are at the buyer's risk whether the delivery has been made or not. For example, 'A' buys goods of 'B' and property has passed from 'B' to 'A': but the goods remain in 'B's warehouse and the price is unpaid. Before delivery, 'B's warehouse is burnt down for no fault of 'B' and the goods are destroyed. 'A' must pay 'B' the price of the goods, as he was the owner.

Transfer of Title by Person not the Owner (Section 27-30)

The general rule is that only the owner of goods can sell the goods. Conversely, the sale of an article by a person who is not or who has not the authority of the owner, gives no title to the buyer. The rule is expressed by the maxim; *"Nemo dot quod non habet"* i.e. no one can pass a better title than what he himself has. As applied to the sale of goods, the rule means that a seller of goods cannot give a better title to the buyer than he himself possess.

Exception to the General Rule

The Act while recognizing the general rule that no one can give a better title than what he himself has, laid down important exceptions to it. Under the exceptions the. buyer gets a better title of the goods than the seller himself. These exceptions are given below:

- **(a)** ***Sale by a mercantile agent:*** A buyer will get a good title if he buys in good faith from a mercantile agent who is in posession either of the goods or' documents of title of goods with the consent of the owner, and who sells the goods in the ordinary course of his business.
- **(b)** ***Sale by a co-owner:*** A buyer who buys in good faith from one of the several joint owners who is in sale possession of the goods with the permission of *his co-owners will get good title to the goods.*
- **(c)** ***Sale by a person in possession under a voidable contract:*** A buyer buys in good faith from a person in possession of goods under a contract which is voidable, but has not been. rescinded at the time of the sale.
- **(d)** ***Sale by seller in possession after sale:*** Where a seller, after having sold the goods, continues in possession of goods, or documents of title to the goods and again sells them by himself or through his mercantile agent to a person who buys in good faith and without notice of the previous sale, such a buyer gets a good title to the goods.
- **(e)** ***Sale by buyer in possession:*** If a person has brought or agreed to buy goods obtains, with the seller's consent, possession of the goods or of the documents of title to them, any sale by him or by his mercantile agent to a buyer who takes in good faith without notice of any lien or other claim of the original seller against the goods, will give a good title to the buyer. In any of the above cases, if the transfer is by way of pledge or pawn only, it will be valid as a pledge or pawn.
- **(f)** ***Estoppel**:* If the true owner stands by and allows an innocent buyer to pay over money to a third-party, who professes to have the right to sell an article, the true owner will be estopped from denying the third-party's right to sell.
- **(g)** ***Sale by an unpaid seller:*** Where an unpaid seller has exercised his right of lien or stoppage in transit and is in possession of the goods, he may resell them and the second buyer will get absolute right to the goods.
- **(h)** ***Sale by person under other laws:*** A pawnor on default of the pawnee to repay, has a right to sell the goods, pawned and the buyer gets a good title to the goods. The finder of lost goods can also sell under certain circumstances. The Official Assignee or Official Receiver, Liquidator, Officers of Court selling under a decree, Executors, and Administrators, all these persons are not owners, but they can convey better title than they have.

12. Performance of the Contract of Sale

It is the duty of the seller and buyer that the contract is performed. The duty of the sellers is to deliver the goods and that of the buyer to accept the goods and pay for them in accordance with the contract of sale.

Unless otherwise agreed, payment of the price and the delivery of the goods and concurrent

conditions, *i.e.,* they both take place at the same time as in a cash sale over a shop counter.

Delivery

Delivery is the voluntary transfer of possession from one person to another. Delivery may be actual, constructive or symbolic. Actual or physical delivery takes place where the goods are handed over by the seller to the buyer or his agent authorised to take possession of the goods. Constructive delivery takes place when the person in possession of the goods acknowledges that he holds the goods on behalf of and at the disposal of the buyer

Rules as to delivery

The following rules apply regarding delivery of goods:

(a) Delivery should have the effect of putting the buyer in possession.

(b) The seller must deliver the goods according to the contract.

(c) The seller is to deliver the goods when the buyer applies for delivery; it is the duty of the buyer to claim delivery.

(d) Where the goods at the time of the sale are in the possession of a third person, there will be delivery only when that person acknowledges to the buyer that he holds the goods on his behalf.

(e) The seller should tender delivery so that the buyer can take the goods. It is not the duty of the seller to send or carry the goods to the buyer unless the contract so provides. But the goods must be in a deliverable state at the time of delivery or tender of delivery. If by the contract the seller is bound to send the goods to the buyer, but no time is fixed, the seller is bound to send them within a reasonable time.

(f) The place of delivery is usually stated in the contract. Where it is so stated, the goods must be delivered at the specified place during working hours on a working day. Where no place is mentioned, the goods are to be delivered at a place at which they happen to be at the time of the contract of sale and if not then in existence they are to be delivered at the price they are produced.

(g) The seller has to bear the cost of delivery unless the contract otherwise provides. While the cost of obtaining delivery is said to be of the buyer, the cost of the putting the goods into deliverable state must be borne by the seller. In other words in the absence of an agreement to the contrary, the expenses of and incidental to making delivery of the goods must be borne by the seller, the expenses of and incidental to receiving delivery must be borne by the buyer.

(h) If the goods are to be delivered at a place other than where they are, the risk of deterioration in transit will, unless otherwise agreed, be borne by the buyer.

(i) Unless otherwise agreed, the buyer is not bound to accept delivery in Installments.

Acceptance of Goods by the Buyer

Acceptance of the goods by the buyer takes place when the buyer:

(a) intimates to the seller that he has accepted the goods; or

(b) retains the goods, after the lapse of a reasonable time without intimating to *the seller that he has rejected them; or*

(c) does any act on the goods which is inconsistent with the ownership of the seller, e.g., pledges or resells. If the seller sends the buyer a larger or smaller quantity of goods than ordered, the buyer may:

(a) reject the whole; or

(b) accept the whole; or

(c) accept the quantity be ordered and reject the rest.

If the seller delivers, with the goods ordered goods of a wrong description, the buyer may accept the goods ordered and reject the rest, or reject the whole.

Where the buyer rightly rejects the goods, he is not bound to return the rejected goods to the seller. It is sufficient if he intimates to seller that he refuses to accept them. In that case, the seller has to remove them.

Installment Deliveries
When there is a contract for the sale of goods to be delivered in stated installments which are to be separately paid for, and either the buyer or the seller commits a breach of contract, it depends on the terms of the contract whether the breach is a repudiation of the whole contract or a severable breach merely giving right to claim for damages.

Suits for Breach of Contract
Were the property in the goods has passed to the buyer, the seller may sue him for the price.

Where the price is payable on a certain day regardless of delivery, the seller may sue for the price, if it is not paid on that day, although the property in the goods has not passed.

Where the buyer wrongfully neglects or refuses to accept the goods and pay for them, the seller may sue the buyer for damages for non-acceptance.

Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue him for damages for non-delivery.

Where there is a breach of warranty or where the buyer elects or is compelled to treat the breach of condition as a breach of warranty, the buyer cannot reject the goods. He can set breach of warranty in extinction or diminution of the price payable by him and if loss suffered by him is more than the price he may sue for the damages.

If the buyer has paid the price and the goods are not delivered, the buyer can sue the seller for the recovery of the amount paid. In appropriate cases the buyer can also get an order from the Court that the specific goods ought to be delivered.

Anticipatory Breach
Where either party to a contract of sale repudiates the contract before the date of delivery, the other party may, either treat the contract as still subsisting and wait till the date of delivery, or he may treat the contract as rescinded and sue for damages for the breach.

In case the contract is treated as still subsisting it would be for the benefit of both the parties and the party who had originally repudiated will not be deprived of:

(a) his right of performance on the due date in spite of his prior repudiation or
(b) his rights to set up any defense for non-performance which might have actually arisen after the date of the prior repudiation.

Measure of Damages
The Act does not specifically provide for rules as regards the measure of damages except stating that nothing in the Act shall affect the right of the seller or the buyer to recover interest or special damages in any case were by law they are entitled to the same. The inference is that the rules laid down in Section 73 of the Indian Contract Act will apply.

Unpaid Seller
The seller of goods is deemed to be unpaid seller:
(a) When the whole of the price has not been paid or tendered; or
(b) When a conditional payment was made by a bill of exchange or other negotiable instrument, and the instrument has been dishonoured.

Rights of an Unpaid Seller against the Goods

An unpaid seller's rights against the goods are:

(a) A lien or right of retention

(b) The right of stoppage in transit.

(c) The right of resale.

(d) The right to withhold delivery.

(a) Lien: - An unpaid seller in possession of goods sold, may exercise his lien on the goods, i.e., keep the goods in his possession and refuse to deliver them to the buyer until the fulfillment or tender of the price in cases where:

the goods have been sold without stipulation as to credit; or

(i) the goods have been sold on credit, but the term of credit has expired; or

(ii) the buyer becomes insolvent.

The lien depends on physical possession. The seller's lien is *possessory lien,* so that it can be exercised only so long as the seller is in possession of the goods. It can only be exercised for the non-payment of the price and not for any other charges.

A lien is lost

(i) When the seller delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer, without reserving the right of disposal of the goods;

(ii) When the buyer or his agent lawfully obtains possession of the goods;

(iii) By waiver of his lien by the unpaid seller.

(b) ***Stoppage in transit****:* - The right of stoppage in transit is a right of stopping the goods while they are in transit, resuming possession of them and retaining possession until payment of the price.

The right to stop goods is available to an unpaid seller

(i) when the buyer becomes insolvent; and the goods are in transit.

The buyer is insolvent if he has ceased to pay his debts in the ordinary course of business, or cannot pay his debts as they become due. It is not necessary that he has actually been declared insolvent by the Court.

The goods are in transit from the time they are delivered to a carrier or other bailee like a wharfinger or warehouse keeper for the purpose of transmission to the buyer and until the buyer takes delivery of them.

The transit comes to an end in the following cases:

(i) If the buyer obtains delivery before the arrival of the goods at their destination;

(ii) If, after the arrival of the goods at their destination, the carrier acknowledges to the buyer that he holds the goods on his behalf, even if further destination of the goods is indicated by the buyer.

(iii) If the carrier wrongfully refuses to deliver the goods to the buyer.

If the goods are rejected by the buyer and the carrier or other bailee holds them, the transit will be deemed to continue even if the seller has refused to receive them back.

The right to stop in transit may be exercised by the unpaid seller either by taking actual possession of the goods or by giving notice of the seller's claim to the carrier or other person having control of the goods. On notice being given to the carrier he must redeliver the goods to the seller, who must pay the expenses of the redelivery.

The seller's right of lien or stoppage, in transit is not affected by any sale on the part of the buyer unless the seller has assented to it. A transfer, however, of the bill of lading or other document of seller to a *bona fide* purchaser for value is valid against the seller's right.

(c) ***Right of re-sale: -*** The unpaid seller may re-sell:

(i) where the goods are perishable;

(ii) where the right is expressly reserved in the contract;
(iii) where in exercise of right of lien or stoppage in transit, the seller gives notice to the buyer of his intention to re-sell, and the buyer, does not pay or tender the price within a reasonable time.

If on a re-sale, there is a deficiency between the price due and amount realized, the re-seller is entitled to recover it from the buyer. If there is a surplus, he can keep it. He will not have these rights if he has not given any notice and he will have to pay the buyer any profits.

(d) ***Rights to withhold delivery:-*** If the property in the goods has passed, the unpaid seller has right as described above. If, however, the property has not passed, the unpaid seller has a right of withholding delivery similar to and co-extensive with his rights of lien and stoppage in transit.

Rights of an unpaid seller against the buyer
An unpaid seller may sue the buyer for the price of the goods in case of breach of contract where the property in the goods has passed to the buyer or he has wrongfully refused to pay the price according to the terms of the contract.

The seller may sue the buyer even if the property in the goods has not passed where the price is payable on a certain day.

Under Section 56, the seller may sue the buyer for damages for breach of contract where the buyer wrongfully neglects or refuses to accept and pay for the goods.
Thus an unpaid seller's right against the buyer personally is:
(a) a suit for the price.
(b) a :suit for damages.

Auction Sales (Section 64)
A sale by auction is a public sale where goods are offered to be taken by bidders. It is a proceeding at which people are invited to complete for the purchase of property by successive offer of advancing sums.
Section 64 lays down the rules regulating auction sales. Where goods are put up for sale in lots, each, lot is *prima facie* deemed to be the subject of a separate contract of sale. The sale is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner. Until such announcement is made, any bidder may retract his bid.

UNIT-III
Negotiable Instruments Act, 1881

The Negotiable Instruments Act was enacted, in India, in 1881 and it came into force on 1st March, 1881. Prior to its enactment, the provision of the English Negotiable Instrument Act were applicable in India, and the present Act is also based on the English Act with certain modifications. It extends to the whole of India except the State of Jammu and Kashmir. The Act operates subject to the provisions of Sections 31 and 32 of the Reserve Bank of India Act, 1934

Definition

A "negotiable instrument" means a promissory note, bill of exchange or cheque payable either to order or to bearer.

Explanation (i) - A promissory note, bill of exchange or cheque is payable to order which is expressed to be so payable or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it shall not be transferable.

Explanation (ii) - A promissory note, bill of exchange or cheque is payable to bearer which is expressed to be so payable or on which the only or last endorsement is an indorsement in blank.

Explanation (iii) - Where a promissory note, bill of exchange or cheque, either originally or by endorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option.

(2) A negotiable instrument may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees. The word negotiable means 'transferable by delivery,' and the word instrument means 'a written document by which a right is created in favour of some person.' Thus, the term "negotiable instrument" literally means 'a written document which creates a right in favour of somebody and is freely transferable by delivery.'

A negotiable instrument is a piece of paper which entitles a person to a certain sum of money and which is transferable from one to another person by a delivery or by endorsement and delivery.

"According to **Blackburn J**, a negotiable instrument has two characteristics namely

1. It is transferable, like cash, by delivery (which assumes it is in a deliverable state) so that the transferee can enforce the rights embodied in it in his own name.
2. The transferee being a bonafide holder for value can acquire a better title to it than that of his transferor."

Negotiable Instrument is moreover a document of title which clearly explains the rights towards the payment of money or a security for money which is transferable by delivery either by custom or by legislation. The use of negotiable Instrument is mainly to facilitate payment for exports and imports of trade. The rapid growth of technology has revolutionized the world with computer, which is used in every field of profession. This has reduced the use of negotiable instrument and in future it may decline more. Even though the electronic revolution has got more advantages it may be considered as the next step because the world needs time to get used to it. But, the negotiable instrument are still in use.

Characteristics of Negotiable Instruments

1. Free transferability or easy negotiability

Negotiable instrument is freely transferable from one person to another without any formality. The property (right of ownership) in these instruments passes by either endorsement and delivery (in case it is payable to order) or by delivery merely (in case it is payable to bearer) and no further evidence of transfer is needed.

2. Title of holder is free from all defects

A person who takes negotiable instrument bona-fide and for value gets the instrument free from all defects in the title. The holder in due course is not affected by defective title of the transferor or of any other party.

3. Transferee can sue in his own name without giving notice to the debtor:
A bill, promissory note or a cheque represents a debt, i.e., an "actionable claim" and implies the right of the creditor to recover something from the debtor.
The creditor can either recover this amount himself or can transfer his right to another person.
In case he transfers his right, the transferee of a negotiable instrument is entitled to sue on the instrument in his own name in case of dishonour, without giving notice to the debtor of the fact that he has become holder.
In case of transfer or assignment of an ordinary "actionable claim" i.e., a book debt evidenced by an entry by the creditor in his account book, under the transfer of property act, notice to the debtor is necessary in order to make the transferee entitled to sue in his own name.

4. Presumptions:
Certain presumptions apply to negotiable instruments. Section 118, 119 and 139 lay down the following presumptions:
(a) For consideration : that every negotiable instrument, was made, drawn, accepted, endorsed or transferred for consideration.
(b) As to date : that every negotiable instrument bearing a date was made or drawn on such date.
(c) As to time of acceptance : that every bill of exchange was accepted within a reasonable time after its date and before its maturity.
(d) As to transfer: that every transfer of a negotiable instrument was made before its maturity
(e) As to time of endorsements : that the endorsements appearing upon a negotiable instrument were made in the order in which they appear thereon.
(f) As to stamps : that a lost promissory-note, bill of exchange or cheque was duly stamped.
(g) As to a holder in due course: that every holder of a negotiable instrument is holder in due course (this presumption would not arise where it is proved that the holder has obtained the instrument from its lawful owner, or from any person in lawful custody thereof, by means of an offence, fraud or for unlawful consideration and in such a case the holder has to prove that he is a holder in due course
(h) As to dishonour: that the instrument was dishonoured, in case a suit upon a dishonoured instrument is filed with the court and the fact of protest is proved.

Section 139 - Presumption in favour of holde:
It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability.
"The effect of these presumptions is to place the evidential burden on the accused of proving that the cheque was not received by the complainant towards the discharge of any liability. Because both sections 138 and 139 require that the court shall presume the liability of the drawer of the cheques for the amounts for which the cheques are drawn…it is obligatory on the courts to raise this presumption in every case where the factual basis for the raising of this presumption had been established. It introduced an exception to the general rule as to the burden of proof in criminal cases and shifts the onus on to the accused."

Types of Negotiable Instruments

There are two types of Negotiable instruments:-
Negotiable Instruments recognized by statutes: The Negotiable Instruments Act mentions only three kinds of negotiable instruments **(Section 13)**.
These are: **1. Promissory Notes**
2. Bills of Exchange, and
3. Cheques

Negotiable instruments recognized by usage or customs of trade: There are certain other instruments which have acquired the characteristic of negotiability by the usage or custom of trade.
For example: Exchequer bills, Bank notes, Share warrants, Circular notes, Bearer debentures, Dividend

warrants, Share certificates with blank transfer deeds, etc.

Promissory Note

Definition: According to **Section 4 of Negotiable Instruments Act**, "A promissory note is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument."

Parties to a Promissory Note

There are primarily two parties involved in a promissory note. They are:

(i) The Maker or Drawer: The person who makes the note and promises to pay the amount stated therein.

(ii) The Payee – The person to whom the amount is payable i.e. to whom the payment is to be made is called a payee.

In course of transfer of a promissory note by payee and others, the parties involved may be –

(a) The Endorser – the person who endorses the note in favour of another person.

(b) The Endorsee – the person in whose favour the note is negotiated by endorsement.

Characteristics of Promissory Note

1. It must be in writing:

A promissory note has to be in writing

An oral promise to pay does not become a promissory note

The writing may be on any paper or book

Illustrations: A signs the instruments in the following terms:

"I promise to pay B or order Rs.500/-"

"I acknowledge myself to be indebted to B in Rs.1,000/- to be paid on demand, for value received"

Both the above instruments are valid promissory notes.

2. It must contain a promise or undertaking to pay:

There must be a promise or an undertaking to pay

The undertaking to pay may be gathered either from express words or by necessary implication.

A mere acknowledgement of indebtedness is not a promissory note, although it is valid as an agreement and may be sued upon as such

Illustrations: A signs the instruments in the following terms:

"Mr. B I owe you Rs.1,000"

"I am liable to pay to B Rs.500"

The above instruments are not promissory notes as there is no undertaking or promise to pay. There is only an acknowledgement of indebtedness.

Where A signs the instrument in the following terms:

"I acknowledge myself to be indebted to B in Rs.1,000, to be paid on demand, for value received," there is a valid promissory note

3. The promise to pay must be unconditional:

A promissory note must contain an unconditional promise to pay

The promise to pay must not depend upon the happening of some uncertain event, i.e., a contingency or the fulfillment of a condition

Illustrations: A signs the instruments in the following terms:

"I promise to pay B Rs. 500 seven days after my marriage with C"

"I promise to pay B Rs. 500 as soon as I can"

The above instruments are not valid promissory notes as the payment is made depending upon the happening of an uncertain event which may never happen and as a result the sum may never become

payable

4. It must be signed by the maker: It is imperative that the promissory note should be duly authenticated by the 'signature' of the maker
'Signature' means the writing or otherwise affixing a person's name or a mark to represent his name, by himself or by his authority with the intention of authenticating a document.
5. The maker must be a certain person:
The instrument must itself indicate with certainty who is the person or are the persons engaging himself or themselves to pay
Alternative promisors are not permitted in law because of the general rule that "where liability lies no ambiguity must lie"

6. The payee must be certain:
Like the maker the payee of a pronote must also be certain on the face of the instrument
A note in favour of fictitious person is illegal and void
A pronote made payable to the maker himself is a nullity, the reason being the same person is both the promisor and the promisee

7. The undertaking must be to pay a certain and definite sum of money only.
For a valid pronote it is also essential that the sum of money promised to be payable must be certain and definite
The amount payable must not be capable of contingent additions or subtractions
Illustrations: A signs the instruments in the following terms:
"I promise to pay B Rs.500 and all other sums which shall be due to him"
"I promise to pay B Rs.500, first deducting thereout any money which he may owe me"
The above instruments are invalid as promissory notes because the exact amount to be paid by A is not certain

8. The amount payable must be in legal tender money of India:
A document containing a promise to pay a certain amount of foreign money or to deliver a certain quantity of goods is not a pronote. The payment must be in a legal money of the country.
9. Revenue stamps or requisite value under the stamp Act of the country should be affixed.
10. Other matters of form like number, date, place etc, are usually found given in notes, but they are not essentials in law.
11. A bank note or a currency note is not a promissory note within the meaning of this section.
12. A promissory note cannot be made payable to bearer on demand.

Bill of Exchange

Definition: Section 5 of the Negotiable Instruments Act defines a Bill of Exchange as follows:
"A bill of exchange is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument." It is also called a Draft.
Illustration:
Mr. X purchases goods from Mr. Y for Rs.1000/-
Mr. Y buys goods from Mr. S for Rs.1000/-
Then Mr. Y may order Mr. X to pay Rs.1000/- Mr. S which will be nothing but a bill of exchange.

Parties to a Bill of Exchange
There are three parties involved in a bill of exchange
(i) The Drawer – The person who makes the order for making payment.
(ii) The Drawee – The person to whom the order to pay is made. He is generally a debtor of the drawer. The person directed to pay the money by the drawer is called the drawee.

(iii) The Payee – The person to whom the payment is to be made. The person named in the instrument, to whom or to whose order the money are directed to be paid by the instruments are called the payee.

The drawer can also draw a bill in his own name thereby he himself becomes the payee. Here the words in the bill would be Pay to us or order.
In a bill where a time period is mentioned, is called a Time Bill.
But a bill may be made payable on demand also. This is called a Demand Bill.

Essentials of a Bill of Exchange

1. **It must be in writing**
2. **It must contain an order to pay. A mere request to pay on account, will not amount to an order**
3. **The order to pay must be unconditional**
4. **It must be signed by the drawer**
   The drawer, drawee and payee must be certain. A bill cannot be drawn on two or more drawees but may be made payable in the alternative to one of two or more payees
5. **The sum payable must be certain**
6. **The bill must contain an order to pay money only**
7. **It must comply with the formalities as regards date, consideration, stamps, etc**

Cheque

Definition: A cheque is bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form. (Sec. 6, NIA)
Explanation I - For the purposes of this section, the expressions-
(a) a cheque in the electronic form means a cheque which contains the exact mirror image of a paper cheque, and is generated, written and signed in a secure system ensuring the minimum safety standards with the use of digital signature (with or without biometrics signature) and asymmetric crypto system;
(b) a truncated cheque means a cheque which is truncated during the course of a clearing cycle, either by the clearing house or by the bank whether paying or receiving payment, immediately on generation of an electronic image for transmission, substituting the further physical movement of the cheque in writing.
Explanation II - For the purposes of this section, the expression clearing house means the clearing house managed by the Reserve Bank of India or a clearing house recognised as such by the Reserve Bank of India.

A cheque is a kind of bill of exchange but it has additional qualification namely-

1. **It is always drawn on a specified banker and**
2. **It is always payable on demand without any days of grace.**

Parties to a cheque
Drawer: Drawer is the person who draws or makes the cheque.
Drawee: Drawee is the drawer's banker on whom the cheque has been drawn.
Payee: Payee is the person who is entitled to receive the payment of a cheque.

Crossing of Cheques

A Crossed Cheque is one which bears across its face two parallel transverse lines with or without certain words. Such lines are usually drawn on the left side top corner of the face of the Cheque. However, such lines can be drawn anywhere on the face of the Cheque.
Crossing of Cheque is a direction to the drawee bank to pay the amount of the Cheque to a bank or to a particular bank. Therefore, a crossed Cheque is not payable to the payee or holder at the counter of the bank. In order to get the payment of the Cheque, it is required to be deposited in an account with a bank.

The bank, in turn, presents the Cheque to the drawee bank and gets payment on behalf of the payee or indorsee of the Cheque.
The objects of crossing of a Cheque are as follows:
To direct the drawee bank to pay the amount of the Cheque only to a bank or a particular bank;
To prevent the payment of the Cheque to an unauthorized or wrong person.

KINDS OF CROSSING
Crossing of Cheque is basically of two kinds:-

1. **General crossing, and**
2. **Special crossing.**

These basic kinds of crossing may take several forms. Some of them are:

3. **Restrictive crossing.**
4. **Not negotiable crossing.**

1. General crossing: A Cheque is deemed to be generally crossed in any of the following cases:

a. When it bears across its face two parallel transverse lines without any words.
b. When it bears across its face an addition of the words "and company" or any abbreviation thereof between two parallel transverse lines. It may also be with or without the words 'Not negotiable'.

Effects of general crossing
The Cheque is not payable at the counter of the bank.
The drawee bank shall pay the amount of the Cheque only to a banker. Therefore, the holder will have to deposit the Cheque in an account with any banker. [Sec. 126 Para 1]

2. Special crossing: A Cheque is said to be specially crossed when the name of a banker is added across the face of the Cheque, either with or without words, not negotiable. Usually, two parallel transverse lines are used in special crossing but they are required not by law.

Effects of special crossing:
In the case of a Cheque especially crossed, the payment can be obtained only through the particular banker whose name appears across the face of the Cheque or his agent for collection.[Sec. 126, para2]

3. Restrictive crossing: Restrictive crossing has not been described anywhere in the Negotiable Instrument Act. It is a type of crossing which has evolved out of business and banking usage and now recognized by the law. Every Cheque crossed wither generally or specially may be crossed restrictively credit the proceeds of the Cheque only to the account of the payee.
4. Not negotiable crossing: Sometimes, a Cheque crossed generally or specially contains the words 'not negotiable' A crossing with such words is said to be 'not negotiable' crossing.
The words 'not negotiable' on a crossed Cheque destroy the negotiable character of the Cheque but not the transferability of the Cheque. Therefore, any person taking a crossed Cheque bearing the words 'not negotiable' shall not have and shall not be capable of giving a better title to the Cheque than the title of the person from whom he took it. [Sec. 130]

Parties to a Negotiable Instrument:

Holder and Holder in due course
Holder (Sec. 8, NIA)
Holder means any person entitled in his own name to the possession a promissory note bill of exchange or cheque and to recover or receive the amount due thereon from the parties thereon. A holder must therefore have the possession of the instrument and also the right to recover the money in his own name.
Therefore**, holder of a negotiable instrument is the person:**

1. **Who is entitled in his own name to the possession of the instrument, and**
2. **Who has the right to receive or recover the amount due thereon from the parties thereto.**

Characteristics:

a) **Entitled to possession of an instrument**
b) **Entitled to receive or recover the amount**
c) **Holder of lost or destroyed instrument**

Who can be a Holder?

i. **Payee**
ii. **Indoresee**
iii. **Bearer**
iv. **Legal representative or heir**

Who is Not a Holder?

i. **Agent**
ii. **Servant**
iii. **Beneficial**
iv. **Thief or finder**
v. **Forged indorsee**

Powers of Holder

I. **He is entitled in his own name to the possession of the instrument.**
II. **He can receive or recover the amount due on the instrument.**
III. **If necessary, he can sue the parties in order to recover the money due on the instrument.**
IV. **He can validly discharge the instrument on payment of the instrument.**
V. **He may indorse the instrument to any other person**

"Holder in due course" (Sec. 9, NIA)

Holder in due course means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque, if payable to the bearer or the payee or indrosee thereof, if payable to the order before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from who he derived his title'

Thus, a person is a holder in due course if he satisfies the following conditions:

a) **He must be a holder (possessor) of a negotiable instrument.**
b) **He must have become holder (possessor) of the instrument for consideration.**
c) **He must have become holder before maturity of the instrument.**
d) **He must have obtained the instrument in good faith.**
e) **He must have received the instrument complete and regular on the face of it.**

RIGHTS AND PRIVILEGES OF HOLDER IN DUE COURSE

A holder in due course enjoys certain rights and privileges. They are available in the following particular cases:

In case of an inchoate instrument: Sometimes a person signs a stamped but otherwise incomplete (inchoate) instrument and delivers it to another person. In such a case, it implies that the holder may fill in any amount for which authority has been given by the maker.

In case of a fictitious bill: Sometimes the name of the drawer or the payee or both is fictitious in a bill. Such a bill is called a fictitious bill. The acceptor of such a fictitious bill is not liable to the holder of the bill. But if the same bill is passed on to a holder in due course, he will have a privilege to claim money on it from the acceptor. [Sec.42]

In case of the liability of prior parties: A holder in due course has a privilege to hold every prior party to a negotiable instrument liable on it until the instrument is duly satisfied. [Sec.36]

In case of instrument without consideration: Sometimes an instrument is made, drawn, accepted, indorsed or transferred without consideration. But, if the same instrument comes into the hands of a holder in due course, he has a privilege to recover the amount from any party thereto [Sec.43]

In case of transfer of title to a subsequent holder: A holder in due course has a privilege to transfer the title to an instrument free from all defects to subsequent holder. Therefore, any holder of a negotiable instrument who derives title to a negotiable instrument from a holder in due course enjoys all the rights and privileges of that holder in due course.

In case of an instrument obtained by unlawful means or for unlawful consideration: Sometimes, a person gets a lost instrument or obtains an instrument by means of an offence (i.e. by stealing or defrauding). In such a case, the holder cannot claim any right against the party liable on it. But if the same instrument is negotiated to a holder in due course, he will get good title to it.

DISTINCTION BETWEEN HOLDER AND HOLDER IN DUE COURSE

Basis of Distinction	Holder	Holder in Due Course
1. Definition	Holder is a person who is entitled in his own name to the possession of the instrument and to receive the amount due on it.	Holder in due course is a person who becomes the possessor of the instrument for consideration before its maturity and in good faith. [Sec. 9]
2. Consideration	A holder need not necessarily acquire the instrument for consideration. For instance, a holder may get the instrument by way of gift.	A holder in due course can acquire the instrument for consideration only.
3. Before maturity	A holder may obtain possession before or after the maturity of the instrument.	A holder in due course must obtain the possession before maturity of the instrument.
4. Good faith	A holder need not necessarily acquire possession of the instrument in good faith.	A holder in due course must always acquire possession of the instrument in good faith.
5. Inchoate instrument	A holder can claim only the amount which signer of the inchoate instrument intended to pay.	A holder in due course can claim any amount filled in the inchoate instrument provided it is covered by the stamp affixed on it. [Sec. 20]
6. Right against prior parties	A holder does not have rights against all the prior parties. He has rights against the original parties and his immediate indorser.	A holder in due course has rights against every prior party to the instrument. He can hold them liable jointly and severally.[Sec. 36]
7. Title better than the transferor	A holder can never get a better title than that of the transferor.	A holder in due course can acquire a better title than that of the transferor. In other words he gets the instrument cleansed of all prior defects.

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Negotiation

One of the essential features of a negotiable instrument is its transferability. A negotiable instrument may be transferred from one person to another in either of the followings way-

1. **By negotiation**
2. **By assignment**

1) By negotiation - The transfer of an instrument by one party to another so as to constitute the transferee a holder is called Negotiation. Negotiation means as the process by which a third party is constituted the holder of the instrument so as to entitle him to the possession of the same and to receive the amount due thereon in his own name.
According to section 14 of the Act, "when a promissory note, bill of exchange or cheque is transferred to any person so as to constitute that person the holder thereof, the instrument is said to be negotiated." The main purpose and essence of negotiation is to make the transferee of a promissory note, a bill of exchange or a cheque the holder there of.

Modes of negotiation (Sec. 47 and 48, NIA)
1. Negotiation by delivery (Sec. 47): Where a promissory note or a bill of exchange or a cheque is payable to a bearer, it may be negotiated by delivery thereof.
Example: A the holder of a negotiable instrument payable to bearer, delivers it to B's agent to keep it for B. The instrument has been negotiated.

2. Negotiation by delivery (Sec. 48):
A promissory note, a cheque or a bill of exchange payable to order can be negotiated only be endorsement and delivery. Unless the holder signs his endorsement on the instrument and delivers it, the transferee does not become a holder. If there are more payees than one, all must endorse it.

2) By Assignment –
When a holder of a bill, promissory note or cheque transfers the same to another, he in fact gives his right to receive the payment of the instrument to the transferee.

Difference between Assignment & Negotiation:-

1) Mode of transfer- The transfer by negotiation requires only delivery with or without endorsement of a bearer or order instrument. Whereas the transfer by assignment requires a separate written document such as transfer deed signed by the transferor.
2) Notice of transfer-Not require in negotiation
3) Consideration-consideration must be proved in assignee.
4) Title
5) Right to sue

Endorsement

The word "endorsement" in its literal sense means, writing on the back of an instrument. But under the Negotiable Instruments Act, it means, the writing of one's name on the back of the instrument or any paper attached to it with the intention of transferring the rights therein. Thus, endorsement is signing a negotiable instrument for the purpose of negotiation. The person who effects an endorsement is called an "endorser", and the person to whom negotiable instrument is transferred by endorsement is called the "endorsee". Who may Endorse / Negotiate [Section 51]: Every Sole maker, drawer, payee or endorsee, or all of several joint makers, drawers, payees or endorsees of a negotiable instrument may endorse and negotiate the same if the negotiability of such instrument has not been restricted or excluded as mentioned in Section 50.

When the maker or holder of a negotiable instrument signs the instrument (otherwise than as maker) for the purpose of its negotiation, it is said to be the Endorsement of the instrument. **[Section 15]**

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Essentials of a Valid Endorsement: Following are the essentials of a valid endorsement:

1. Indorsers must be holder: For a valid Endorsement, the indorser must be holder of the instrument. In other words, indorser must be entitled in his own name to the possession of the instrument and recover or receive the amount due thereon. Therefore, a person who steals or finds a lost instrument cannot indorse the instrument because he is not a holder.

2. On the instrument: Endorsement must be on the face or back of the instrument or on a piece of paper annexed to the instrument.

3. Signature: Endorsement must be signed by the indorser for the purpose of negotiation of the instrument. It may be signed by the maker or holder of the instrument but the maker must not sign the Endorsement in the capacity of the maker.

4. Additional words and form of words: Indorser may sign the Endorsement with a without additional words or statement.

5. Endorsement by joint holders: An Endorsement is valid only when all joint holders (i.e. all makers, drawers, indorsees or payees) join in Endorsement unless any one of them has the authority to indorse for the others.

6. Endorsement of entire instrument: Endorsement must be of the entire instrument. An Endorsement which purports to transfer only a part of the amount of the instrument is not a valid Endorsement.

7. Delivery: In order to make a complete and effective Endorsement, the instrument must be delivered by the indorser to the indorsee.

8. It must be made by the holder of the instrument.
9. It must be completed by the delivery of the instrument.
10.It must be signed by the endorser. It must be on the back or face of instrument or on a slip of paper annexed thereto.

Persons Entitled to Indorse:

1. **Payee**
2. **Maker, drawer or holder**
3. **Indorsee**
4. **Joint makers, drawers etc.**

Kinds of Endorsements

1. Blank or general Endorsement: When the indorser signs his name only on the instrument for the purpose of its negotiation, it is called the blank or general Endorsement. Illustration: Anta has a Cheque payable to 'Anta or order' Anta merely signs on the instrument. It constitutes a blank Endorsement.

2. Full or special Endorsement: When an indorser signs his name and adds a direction to pay the amount mentioned in the instrument to or to the order of a specified person, it is called the Endorsement in full. Illustration: Anita is a holder of a Cheque. He writes 'Pay Banta or Order or Pay Banta only' and signs the Cheque. It is a full or special Endorsement.

3. Restrictive Endorsement: Illustration: (a) 'Pay the contents to Banta only'. (b) 'Pay Banta for my use'.

4. Partial Endorsement: Sometimes, an Endorsement purports to transfer only a part of the amount of the instrument. Such an Endorsement is called as partial Endorsement. It is not a valid Endorsement for the purpose of negotiation.

5. Conditional or qualified Endorsement: When an indorser inserts a condition in his Endorsement, it is called a conditional Endorsement. Sometimes, an indorser by express words in the Endorsement may exclude his liability on the instrument makes the right of the indorsee to receive the amount due thereon on the happening of a specified event or on the implement of some condition. In such a case, the Endorsement is said to be conditional.

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Effects of Endorsement:

1. An unconditional Endorsement of a negotiable instrument followed by an unconditional delivery of the instrument has the following effects:
2. The property in the instrument stands transferred to the indorsee.
3. The indorsee gets the right of further negotiation of the instrument [Sec. 50]
4. The indorsee is entitled to sue all parties, whose names appear on it.

Discharge of a negotiable instrument

"**Discharge means release from obligation**." Discharge can take place-

1) **By payment in due course:** The instrument is discharged by payment made in due course by the party who is primarily liable to pay, or by a person who is accommodated in case the instrument was made or accepted for his accommodation, The payment must be made at or after the maturity to the holder of the instrument if the maker or acceptor is to be discharged. A payment by a party who is secondarily liable does not discharge the instrument.

2) **By party primarily liable by becoming holder (Section 90):** If the maker of a note or the acceptor of a bill becomes its holder at or after its maturity in his own right, The Negotiable Instruments Act, 1881 4.5 instrument is discharged.

3) **By express waiver:** When the holder of a negotiable instrument at or after its maturity absolutely and unconditionally renounces in writing or gives up his rights against all the parties to the instrument, the instrument is discharged. The renunciation must be in writing unless the instrument is delivered up to the party primarily liable.

4) **By Cancellation:** Where an instrument is intentionally cancelled by the holder or his agent and the cancellation is apparent thereon, the instrument is discharged. Cancellation may take place; by crossing out signatures on the instrument, or by physical destruction of the instrument with the intention of putting an end to the liability of the parties to the instrument.

5) **By discharge as a simple contract:** A negotiable instrument may be discharged in rile same way as any other contract for the payment of money. This includes for example, discharge of an instrument by innovation or rescission or by expiry of period of limitation.

Dishonour of a negotiable instrument

An instrument is said to be dishonored when the acceptance and/or payment is refused on a duly presented instrument. Thus, a negotiable instrument may be dishonored in two ways:

1. **by non acceptance, and**
2. **by non payment**

Dishonor by Non-acceptance:

Only a bill may be dishonored by non acceptance. A bill is deemed to be dishonored by non acceptance in any of the following cases:

a. **Refused to accept**
b. **Not signed by all the drawees**
c. **Not accepted by any partner**
d. **Bill not accepted within forty eight hours.**
e. **Drawee could not be found**

Dishonour by Non-payment:

a. **Default in payment**
b. **When excused from presentment**

On the dishonour of a cheque, one can file a suit for recovery of the cheque amount along with the cost &

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interest under order XXXVII of Code of Civil Procedure 1908 (which is a summary procedure and) can also file a Criminal Complaint u/s 138 of Negotiable Instrument Act for punishment to the signatory of the cheque for haring committed an offence. However, before filing the said complaint a statutory notice is liable to be given to the other party.

NOTICE OF DISHONOUR

When a negotiable instrument is dishonored by non acceptance (bill) or by non-payment, the holder may sue against the parties liable for the same. But he can do so only when he has served a formal notice to the effect.

The notice of dishonor is necessary for two reasons:

a. **To warn the party about his liability.**
b. **To secure rights of the holder**

Notice by Whom?

The notice of dishonor may be given by any of the following:

i. **By the holder.**
ii. **By any party receiving the notice of dishonor. He may do so if he wants to hold any prior party liable to himself.**
iii. **By an agent of the holder**

Notice to Whom?

i. **To all prior parties.**
ii. **To some one of the several parties.**
iii. **To an agent of the person.**
iv. **To the legal representative, in case the party liable is dead.**
v. **To the official assignee, in case the party liable has been declared insolvent.**

Time and Place of Notice:

i. The notice must be given within a reasonable time after dishonour.
ii. The notice must be given at the place of business. In case the party has no place of business, it must be given at the residence of the party.

Dishonour of certain cheques for insufficiency of funds

Provided that nothing contained in this section shall apply unless-

(a) the cheque has been presented to the bank within a period of three months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque within 15 days of the receipt of the said notice.

Explanation - For the purposes of this section, debt or other liability means a legally enforceable debt or other liability.

Ingredients of the offence under Section 138, NIA: It is manifest that to constitute an offence under Section 138 of NIA, the following ingredients are required to be fulfilled:

1. a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability; that cheque has been presented to bank within a period

of three months from the date on which it is drawn or within the period of its validity whichever is earlier;
2. that cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of the account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank;
3. the payee or the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within 30 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;
4. The drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice.

Section 139 - Presumption in favour of holder
It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability.
The effect of these presumptions is to place the evidential burden on the accused of proving that the cheque was not received by the complainant towards the discharge of any liability. Because both sections 138 and 139 require that the court shall presume the liability of the drawer of the cheques for the amounts for which the cheques are drawn…it is obligatory on the courts to raise this presumption in every case where the factual basis for the raising of this presumption had been established. It introduced an exception to the general rule as to the burden of proof in criminal cases and shifts the onus on to the accused.

NOTING

Meaning – Noting is the process of recording the fact and reasons of dishonor of negotiable instrument by the notary public upon the dishonored instrument. In other words, noting consists of recording and authenticating the fact and reasons of dishonor of a negotiable instrument by the notary public.

Need – Noting is not compulsory in the case of an inland bill or note. But noting serves as an authentic and official proof of dishonor of an instrument by non acceptance or non-payment. It serves as an evidence of dishonor of a negotiable instrument in the legal proceedings before the Court.

Procedure of Noting – When a promissory note or a bill of exchange is dishonoured, the holder may request within a reasonable time after its dishonor to a notary public for its noting. On receipt of the request, the notary public takes following steps:
The notary public makes a formal demand upon the acceptor or maker for acceptance or payment. It may be noted that such demand may be made either by the notary public personally or by his clerk. If authorized by agreement or usage, the demand may be made by a registered letter.
When it is not then accepted or paid, the notary public records the fact of dishonor upon the instrument, or upon a paper attached thereto or party upon each.

Such a note must specify the following things:
a) The fact of dishonour.
b) The date of dishonor of the instrument.
c) The reasons, if any, assigned for such dishonor.
d) If the instrument has not been expressly dishonored, the reasons why the holder treats it as dishonored.
e) The notary's charges. [Sec. 99]

In addition, the notary public also makes a reference of his register and puts signature with seal on the instrument.

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PROTEST

Protest is a certificate issued by a notary public attesting the fact of dishonor of a negotiable instrument recorded upon the dishonored instrument.

Contents of protest

1. The instrument itself or a literal transcript of it which must contain everything written or printed thereon.
2. The name of the person for whom and against whom the instrument has been protested.
3. A statement that payment or acceptance, or better security (as the case may be) has been demanded of such person by the notary public; and the terms of his answer, if any
4. If the person gave no answer, or that he could not be found a statement to that effect.
5. The date, place and time of dishonor of the instrument. If better security has been refused; the place and time of refusal.

Distinction between Noting and Protest

The notice is different from protest on the following grounds:

Nature - Noting consists of recording the fact and reasons of dishonor of a negotiable instrument upon the instrument. Protest is a certificate as to fact and reasons that an instrument has been dishonored or the acceptor has refused to give a better security for the bill.

Contents - The contents of noting are limited to the date and reasons (express or implied) of dishonor. But contents of protest are more detailed as specified under Section 101.

Scope - Noting can be done even without protest but protest is issued only after the noting has been done.

Requirement - Noting is optional in case of inland bill or note. But a foreign bill must be protested if it is required by the law of the place where they are drawn.

Conclusion

Negotiable Instruments plays a major role in the trade world. We can also see the use of negotiable instruments in the international trade. We can assume that the international trade is also developing with the negotiable instrument. The nature of negotiable instrument is an area of law which has major influence on any person in his professional field. Negotiable instrument plays a major role in different part of the world in raising the economy. The negotiable instrument is of contractual in nature and it characterizes the fact that it is negotiable.

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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 were well organized and ruling the market.

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 quasi-judicial machinery at the district, State and Central levels.

IMPORTANT DEFINATION

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 is 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 recognized 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 office, which, in the opinion of the State Government, involves moral turpitude, or

   b) If he is an undercharged insolvents, 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 vacation 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.

PROCEDURE ON RECEIPT OF COMPLAIN SECTION-13

The district forum has to observe the procedure mentioned in section. It may be summarized 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 of dispute by opposite party –** When the opposite party, on receipt of a complaint, denies or disputes the allegations in the complaint or does not reply within the time, the District Forum shall proceed to settle dispute. The Act does not make mandatory the personal hearing of complaint or opposite party, probably to expedite the disposal of cases.

Who can complaint in the district forum?

A complaint in relation to any goods sold or delivered or any services 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 “recognized 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 typing a suit in respect of the following matter, namely-

1. The summoning and enforcing attendance of any defendant or witness and examining the fitness 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.

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 this shall be free from any defect.
c) To return the price or charge as the case may be 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.

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 recognized 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:** A part 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 recognized 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**

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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 misbehavior in restricted trade policies.
   - A right of consumer education.

III. State consumer protection council –

1. This council is established by notification of state government.
2. The Chairman of the council is state minister of food and civil supplies.
3. State government nominates government or private members 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 the state.

UNIT-V

Company

The word 'company' in its literary sense, conveys the idea of togetherness. In the business world, the word 'company' may be found being used loosely for any large business concern. In the legal sense the word 'company' point towards a very specific form of business set-up, floated and run by more than one person. This is the body corporate form of business organization.

Definition of a Company

Company : sec.3 (1)(i)- " Company means a company formed and registered under this Act or an existing company"
clause (ii) of Sec.3 (1) defines an existing company as follows :
"**E**xisting company" means a company formed and registered under any of the previous companies laws..."
Thus, every such organization would be a company which is registered under the relevant law as a company before or after the enactment of the companies Act, 1956.
Lord Justice Lindley: "A company is an association of persons who contribute money to a common stock and employed in some trade or business and who share the profit and loss arising there from. The common stock so contributed is denoted in money in money and is the capital of the company".
Haney : "A Company is an artificial person created by law having separate entity with a perpetual succession and common seal."

SPECIAL FEATURES OF A COMPANY

1. Incorporated entity
2. Artificial person
3. Separate legal identity
4. Limited liability
5. Perpetual succession
6. Transferable shares
7. Separate property
8. Common Seal
9. Capacity to sue and be sued
10. Governance by majority

LIFTING OR PIERCING CORPORATE VEIL

Lifting of corporate veil is a fiction of law which means disregarding the separate legal entity of a company and identifying the realities which lay behind the legal façade. In applying this doctrine, the court ignores the company and concerns itself directly with the members or directors.
The various cases in which the corporate veil is lifted may be put under two categories:

I. **Statutory Exceptions-**
   1. When the number of members falls below statutory minimum (Sec. 45)
   2. Misdiscription in prospectus (Sec. 62)
   3. Failure to refund application money [Sec.69 (5)]
   4. Misdiscription representation of name (Sec. 147)
   5. Subsidiary company (Sec. 212 & 214)
   6. For investigation into affairs of related companies (Sec. 239)
   7. for investigation of ownership of a company (Sec. 247)
   8. Fraudulent conduct (Sec. 542)
   9. Liability for pre-incorporation contracts

II. **Judicial Exceptions –**
   1. Determination of character of company
   2. For protection of revenue
   3. Prevention of fraud
   4. Where the company is acting as the agent of the shareholders
   5. Avoidance of welfare laws
   6. To punish for contempt of court

KINDS OF COMPANIES

The incorporated bodies or the companies may be put in various classes on the basis of following aspects :

A. Mode of formation.
B. Permitted number of members.
C. Liability of members
D. Control of management.

A. **ON THE BASIS OF MODE OF FORMATION**

There are two modes under which a corporate body may be formed; one, through a special Act of parliament, and two, through registration under the Companies Act.

1. **Statutory Companies**: Corporations created under the special legislations of parliament or state legislatures may be called statutory companies; examples: Life Insurance Corporation of India, Food Corporation of India etc. The Acts creating such corporations would include in them all necessary rules and regulations for the corporate bodies so created.
2. **Registered Companies**: A corporate body registered under the Companies Act, 1956 would be called the registered company.

B. **ON THE BASIS OF PERMITTED NUMBER OF MEMBERS**

1. Private company

Sec. 3 (iii) has defined a private company as follows :

A private company means a company which has a minimum paid-up capital of one lakh rupees or such higher paid-up capital as may be prescribed, and by its articles.

(a) restricts the right to transfer its shares, if any;
(b) Limits the number of its members to 50 not including.
  (i) persons who are in the employment of the company; and
  (ii) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased.
(c) Prohibits any invitation to the public to subscribe for any shares in, or debentures of, the company; and
(d) Prohibits any invitation or acceptance of deposits from persons other than its members, directors or their relatives.

2. **Public company**

Sec. 3 (1) (iv) has defined a public company as follows :

Public Company ; A public company means a company which –

(a) is not a private company;
(b) has a minimum paid-up capital of five lakh rupees or such higher paid-up capital, as may be prescribed;
(c) is a private company which is a subsidiary of a company which is not a private company.

(C) ON THE BASIS OF LIABILITY OF MEMBERS

(a) Limited liability companies
  (i) Limited by shares
  (ii) Limited by guarantee
(b) Unlimited companies

1. **Company limited by shares**. In the matter of members liability, this is the most common type of company. Such a company must have a share capital. The members liability is limited up to the amount of shares held. Sec. 12(2) (a) states that such a company would be:
2. **Guarantee company**. This is also called a company limited by guarantee. The guarantee is received from the members. Such a company may or may not have share capital. This is also a limited liability company but the amount of members liability is based not on the shares

held but on the guarantee given by the members. Sec. 12(2) (b) states that this is a company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake by the memorandum to contribute to the assets of the company in the event of its being would up.

3. **Unlimited company**. The unlimited company may or may not have share capital. The members liability being unlimited, the quantum of share capital is not a very crucial mater. If it has share capital, it can be easily increased or reduced by altering the Articles. The restrictions on changes in capital are not relevant for an unlimited liability company. Such a company may purchase its own shares and is free from the restrictions provided by Sec. 77.

(D) **ON THE BASIS OF CONTROL OVER MANAGEMENT**

A company is supposed to be autonomous in running its affairs but working under the supervision of law. Sometimes, however, a company may exercise control over another company. The former would be called a holding company and the latter its subsidiary company.

1. **Holding company**. A company would be a holding company in relation to another company if it possesses control over the other company. Sec 4(4) states that a company shall be deemed to be the holding company of another if, but only if, that other is its subsidiary.
2. **Subsidiary company**. Sec. 4(1) describes a subsidiary company as follows:

Subsidiary company: A company shall be deemed to be a subsidiary of another if, but only if,

(a) that other controls the composition of its Board of directors; or

(b) that other -

(i) where the first mentioned company is an existing company in respect of which the holders of preference shares issued before the commencement of this Act have the same voting rights in all respects as the holders of equity shares, exercises or controls more than half of the total voting power of such company;

(ii) where the first mentioned company is any other company, holds more than half in nominal value of its equity share capital; or

(c) the first mentioned company is a subsidiary of any company which is that other's subsidiary.

Company M holds share capital of Rs. 5,00,000 out of Rs. 18,00,000 share capital in company R. Its subsidiary company N holds Rs. 4,50,000 capital in company R. Company R world be the subsidiary of company M since company M and its subsidiary company N together hold a majority share capital in company R.

CERTAIN OTHER KINDS OF COMPANIES

1. Non profit companies or Section 25 companies

It is not uncommon for people to form organizations or associations to pursue non business objectives, such as promotion of art, culture, science and commerce etc. Such associations may or may not be registered. If members do desire registration, then one of the options would be to get the registration under the Companies Act, 1956. Sec. 25 of the Act facilitates the registration of such non business associations as a company under the Act. For this reason, these associations are called Section 25 companies.

2. Government companies

A Government company is such a company registered under the Act in which not less than 50% of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary of a Government company as thus defined (Sec. 617).

3. Foreign companies

Foreign companies are defined in Sec. 59(1) as follows:

Foreign company: Foreign companies are the companies falling under the following two categories:

(a) Companies incorporated outside India which, after the commencement of this Act, establish a place of business within India; and

(b) Companies incorporated outside India which have, before the commencement of this Act, established a place of business within India and continue to have an established place of business within India at the commencement of this Act.

4. **One-man company**

Where almost the entire shareholding in a company is under the ownership of a single person, while a few more members, usually the family members, are there in the company to comply with the requirements of minimum number of members, such a company is commonly called a one-man company or a family company.

PRIVILEGES AND EXEMPTIONS AVAILABLE TO PRIVATE COMPANIES

The following privileges and exemptions are available to a private company:

1. The provisions of Sec. 81 dealing with the further issue of shares do not apply to a private company. So, the shares of a private company, in the event of further issue of capital, need not first be offered to the existing shareholders.
2. A certificate for commencement of business is not necessary for a private company (Sec. 149). It can commence its business as soon as the certificate of incorporation is obtained.
3. A private company need not hold a statutory meeting and file a statutory report [Sec. 165(10)].
4. In case of a private company, under Sec. 179, in a general meeting of the company, a demand for poll on a resolution, may be made by only one member.
5. At the time of getting the company incorporated with the Registrar of companies, the directors of a private company are not required to file with the Registrar their consent in writing to act in that capacity and the undertaking to take up qualification shares.
6. It can proceed to allot shares without having to wait for any such thing as minimum subscription.
7. A life director appointed by a private company on or before April 1, 1952, cannot be removed by the company in general meeting.
8. A private company need not keep an index of members (Sec. 151).
9. Financial assistance to acquire own shares. A private company is not prohibited from giving financial assistance to any one for purchasing or subscribing for its own shares (Sec. 77).
10. Share capital and voting rights. The provisions that there should be only two kinds of share capital i.e. equity share capital and preference share capital, and that voting rights should be proportionate to the capital paid-up, are not applicable to a private company.
11. Provisions as to general meetings. The provisions of sections 171 to 186 relating to the holding of general meetings do not apply on a private company.
12. Managerial remuneration. A private company is exempted from the provisions of Sec. 198 which fixes the overall limit to the managerial remuneration at 11% of net profits.
13. Appointment of firm or body corporate. A private company may appoint a firm or body corporate to any office or place of profit under it for any period.
14. Restriction on disclosure of profit and loss. No person other than a member of the company is entitled to inspect the profit and loss account of a private company in the office of the Registrar (Sec. 220).

Distinction between Private and Public Company

1. **Paid-up capital**. A private company must have a minimum paid-up capital of Rs. 1 lakh whereas the public company should have at least Rs. 5 lakhs.
2. **Minimum number of members**. In the case of a private company, minimum number of persons to form a company is two while it is seven in the case of a public company (Sec. 12).

3. **Maximum number of members**. In case of private company the membership must not exceed 50 whereas there is no such restriction on the maximum number of members for a public company (Sec. 3).
4. Transferability of shares. In a private company, the right to transfer shares is restricted, whereas in the case of public company the shares are freely transferable (Secs. 3 and 82).
5. **Prospectus**. A private company cannot issue a prospectus; while a public company may issue a prospectus to invite the general public to subscribe for its shares or debentures.
6. **Statement in lieu of prospectus**. A public company, if it does not issue a prospectus, is required to file a Statement in lieu of prospectus with the Registrar of Companies at least 3 days before allotment. A private company is not required to do this.
7. **Minimum number of directors**. A private company must have at least two directors, whereas a public company must have at least three directors (Sec. 252).
8. **Increase in number of directors**. The number of directors in a private company may be increased to any extent but in case of a public company if the maximum number of directors is more than twelve, then the approval of the Central Government is necessary for any increase in the number of directors (Secs 258 and 259).
9. **Appointment of directors**. Directors of a private company may be appointed by a single resolution, but it is not so in case of a public company where each director is to be appointed by a separate resolution (Sec. 255).
10. **Retirement of directors**. Directors of a private company are not required to retire by rotation, but in case of a public company at least 2/3rds of the directors must retire by rotation at each annual general meeting (Sec. 256).
11. **Quorum for general meetings**. Two members personally present form the quorum in a private company but in a public company the number is five members (Sec. 174).

When does a private company become a public company?

1. **Conversion by default (Sec. 43).** Where a default is made by a private company in complying with the essential requirements of a private company (viz., restriction on transfer of shares, limitation of the number of members to 50 and prohibition of invitation to the public to buy shares or debentures), the company ceases to enjoy the privileges and exemptions conferred on a private company. In such a case, the provisions of the Companies Act apply to it as if it were not a private company.

2. **Conversion by operation of law (deemed public company)** The Companies (Amendment) Act, 1960 introduced a new Sec. 43-A with a view to deal with those private companies which employed public money to a large extent but escaped the restrictions and limitations as to disclosure as apply to public companies J
   The Companies (Amendment) Act, 2000 abolished Sec. 43-A with effe from 13th December, 2000.

3. **Conversion by choice or volition** (Sec. 44). If a private company so alters its Articles that they do not contain the provisions which make it a private company, it shall cease to be a private company as on the date of the alteration. Il shall then file with the Registrar, within 30 days, either a prospectus or a statement in lieu of prospect us..

A private company which becomes a public company shall also

1. File a copy of the resolution altering the Articles
2. Take steps to raise its membership to at least 7 if it is below that number
3. Alter the regulations contained in the Articles which are inconsistent with those of a public company

Conversion of a public company into a private company

A public company may be converted into a private company by passing a special resolution. The special resolution should be to change the Articles of the company so as to include the conditions as prescribed in Sec. 3 (!) (iii) Which make a company a private company? An alteration made in the Articles which has the effect of converting a public company into a private company shall have effect only when such alteration has been approved by the Central Government. Where the alteration has been approved by the Central Government a printed copy of the Articles as altered shall be filed by the company with the Registrar within 1 month of the date of receipt of approval.

FORMATION OF A COMPANY

The process of formation of a company can be divided and discuss under the following four stages:

1. Promotion;
2. Incorporation or Registration:
3. Capital Subscription;
4. Commencement of Business

Of these stages only the first two are necessary for the formation of a private company, and of a public company not having any share capital. A public company having a share capital has to pass through all the four stages mentioned above before it can commence business or exercise any borrowing powers. (Sec. 149)

PROMOTION

Before a company can be formed, there must be some persons who intended to form a company and who take the necessary steps to carry that intention into operation. Such persons are called promoters. The promotion of a company is a comprehensive terms denoting that process by which a company is incorporated and floated, or established financially as a joint concern, by the issue of a prospectus.

The 'promotion' is the first stage in the formation of a company. Promotion may be defined as "the discovery of business opportunities and the subsequent organisation of funds, property and managerial ability into a business concern for the purpose of making profit there from."

The Promoter

"A person who originates a scheme for the formation of the company, has the memorandum and articles prepared, executed and registered and finds the first directors and settles the terms of the preliminary contracts and prospectus (if any) and making arrangement for advertising and circulating the prospectus and placing the capital is a promoter."

A person may be a promoter even if the undertakes a lesser active role in the formation of a company. Section 62(6) makes it clear that person who acts in a professional capacity is not a promoter, like an advocate, solicitor and auditor.

Who can be a promoter:- A promoter may be a natural person or a company, firm or association of persons, whether a person is or is not a promoter depends upon the nature of the role played by him in the promotion of business.

Functions/Role of a Promoter

1. **To originate the scheme for formation of the company:** Promoter conceives the idea of forming a company after a through study of the business world and identify the business fields which are unexplored or may be explored further.
2. **To secure the cooperation of the required number of persons willing to associate themselves with the project:** In fact, the minimum number of members required to join a private company is two and in case of a public company seven.
3. **Nomenclature:** The promoters have to verify from Registrar of Companies whether the proposed name is available. Promoters usually give three names in order of preference.
4. **To get the documents of the proposed company prepared:** No company can be incorporated unless the M.O.A. and A.O.A. and other documents are not field with the Registrar. Since the company takes birth from the date when certificate of incorporation is issued.

5. **To appoint bankers, legal advisors of the company:**
6. **Arrangement of capital:** If a company is to be incorporated as a private company, it has to make arrangement of its capital through private sources as a private cannot invite public to subscribe for its shares.

However, if the company is to be incorporated as a public company and it intends to invite public for subscribing its shares, then the promoters have to prepare the prospectus.

Consent of Directors: Since the first directors are to be appointed by the promoters so they must get the consent of such persons who are to be so appointed.

7. **To enter into preliminary Contracts with the Vendors:**
8. **To arrange for filing of the necessary documents with the Registrar:**

Legal Position of Promoters

While the accurate description of a promoter may be difficult, his legal position is quite clear.

A Promoter is neither a trustee nor an agent:- The reason is that a person cannot act as an agent or trustee for a person who is non-existent and the company is non-existent at the time when the promoters act for it.

Fiduciary relations with the company: - It does not mean that the promoters do not have any legal relationship with the proposed company. The legal position of a promoter can be correctly described by saying that he stands in a fiduciary position (relationship of trust and confidence) in relation to the company be promoted.

Duties of Promoters

Since the promoters occupies a position of total trust and confidence in relation to the company promoted by him. The promoters in their fiduciary capacity have the following duties:

1. **Duty not to make any secret profit:** A promoter cannot make either directly or indirectly any profits at the expenses of the company he promotes, without the knowledge and consent of the company and that if he does so, in disregard of this rule, the company can compel him to account for it.

   In case, a promoter makes a secret profit, the company has the following remedies against him:
   (a) **Rescission of the contract:-** The Company may rescind the contract, in which the promoter has made secret profits.
   (b) Order for repayment of secret profits.
2. **Duty to make full disclosure to the company o all relevant facts:** It is the duty of the promoter to disclose to the company all relevant facts including any profit made from the sale of his own property to the company and his personal interest in a transaction with the company.

   Erlanger vs. New Sombrero Phosphate Co. (1878) 3 A.C. 1218.
3. **Duty towards future allotttees:** It is a study of the promoters to ensure that the real truth is disclosed to those who are induced by the promoters to join the company and the future allottees of the shares.

Liability of Promoters:-

(1) Selection 56 lays down matters to be stated and reports to be set out in the prospectus. Promoter may be held liable for the non-compliance of the provisions of this section.
(2) Under section 62, a promoter is liable for any untrue statement in the prospectus to a person who has subscribed for any shares or debentures on the faith of the prospectus.
(3) Section 63 specifies the criminal liabilities for issuing a prospectus which contains untrue statement. The punishment prescribed, is imprisonment for a term which may extend to two years or with fine which may extend to Rs. 50,000 or with both.
(4) A promoter can be held liable if he had mis-applied or retained any of the property of the company or is found guilty of breach of trust or misfeasance in relation to the company.

Remuneration to Promoters:-

The promoters cannot claim as a matter right any remuneration from the company for the service rendered for a company that is yet in existence. Even where the articles of a company specifically provide that a specified sum may be paid to the promoters for their services, it does not give the promoters a right to claim remuneration or to sue the company for the same.

However, the normal ways of rewarding the promoters for their valuable services are as follows:

(i) They may be paid a lump sum either in cash or in the form of shares or debentures of the company.
(ii) They may be given commission on the purchase price of the business taken over by the company.
(iii) They may be inducted into the Board of Directors.
(iv) He may be allowed to sell his own property to the company for cash at an inflated price, after he has made a full disclosure about the valuation and the profit earned to an independent Board of Directors.
(v) The company may give him an option to subscribe for a certain number of the company's unissued shares at par when their market price is higher.

Preliminary Contracts and Pre-incorporation Contracts

The promoters of a company usually enter into contracts to acquire some property or right for the company which is yet to be incorporated, such contracts are called pre-incorporation or preliminary contracts.

Provisional Contracts

The provisional contracts are those contracts which are entered by a public company after incorporation but before the company becomes entitled to commence business.

INCORPORATION OF A COMPANY

"Any seven or more persons or where the company to be formed will be a private company, any two or more persons, associated for any lawful purpose may, by subscribing their name to a memorandum of associations and otherwise complying with the requirement of this Act in respect of registration, form an incorporated company, with or without limited liability." [Sec. 12]

Disqualifications of subscribers of MOA: The 'person' who subscribes to the memorandum of association of the company should not be an infant, an undischarged insolvent, an alien enemy, a lunatic and a person disqualified by law from entering into a contract.

Procedure of Incorporation of a Company

Before proceeding to register a company, the promoters have to decide the following aspects:

(a) Type of company: the promoters must decide whether they want to incorporate a private company or a public company.

(b) Availability of Name: A company is identified by the name with which it is registered.
As per section 13, the memorandum of association of a company should state the name of the company.

Promoters of a company under a proposed name may make an application to Registrar of Companies in e-Form No. 1A, accompanied with a fee of Rs. 500.

Corporate Identity Number: Registrar of Companies is to allot a Corporate Identity Number (CIN) to each company registered on or after Nov. 1, 2000.

Documents to be filed with the Registrar:-

1. Memorandum of Association
2. Articles of Association
3. Copy of Proposed Agreement
4. Power of Attorney
5. Consent of the Directors
6. Particulars of Directors
7. Notice of Registered Address
8. Statutory Declaration
9. Filing of Document with the Registrar for Registration

On registration, the Registrar will issue a certificate of incorporation whereby he certifies that the company is incorporated and in the case of a limited company, that the company is limited. **(Sec. 39**

(1) This certificate contains the name of the company, the date of its issue, and the signature of the Registrar with his seal.

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Effect of Certificate of Incorporation
From the date of incorporation mentioned in the certificate of incorporation, such of the subscribers of the memorandum and other persons, as may from time to time be members of the company, shall be a body corporate by the name contained in the memorandum.
Conclusiveness of the Certificate of Incorporation:-
The certificate of incorporation shall be conclusive evidence that:
(i) all the requirements of the Act have been complied with in respect of registration.
(ii) The company is duly registered, and
(iii) that the company has come into existence on the date of the certificate.
(iv)

CAPITAL SUBSCRIPTION
After being registered and receiving the Certificate of Incorporation, Company is ready for flotation. It can go ahead with raising capital from the public to commence its operation satisfactorily.
Since private company is prohibited from inviting public to subscribe, it can raise the necessary capital from friends and relatives.
Section 70 of the Companies Act requires every public company to take either of the following two steps:
(i) Issue a Prospectus if public is to be invited to subscribe to its share capital, or
(ii) File 'A Statme In Lieu of Prospectus', in case capital has been arranged privately.

COMMENCEMENT OF BUSINESS
A private company can commence business immediately after incorporation. However, in the case of companies other than the private company and a company having no share capital, further requirement is to be complied with, namely, obtaining 'a certificate of commencement of businesses before it commence its business.

No public company can commence any business on exercise any borrowing power unless the Certificate to Commence Business is obtained.

Penalty: If any public company having share capital commences business or exercises borrowing power without obtaining the certificate to commerce business, then every person at fault shall be liable to fine which may extend to Rs. 5,000 for every day of default. **(Sec. 149 (b))**

It should be noted that the company commences business within one year of its incorporation or otherwise it is liable to be wound up by the Tribunal. **(Sec. 433 (c))**

Procedure for the Incorporation of a Private Company: The procedure for the incorporation of a private company is the same as that of a public limited company with the following charges:
(a) There should be at least two subscribers in place of seven.
(b) e-Form No. 29 (relating to consent of directors) need not be prepared and filed.
(c) Registration of articles of association in compulsory.

MEMORANDUM OF ASSOCIATION

Definition

Memorandum means the memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous companies law or of this Act.
Palmer,….. It contains the objects for which the company is formed and therefore, identifies the possible scope of its operations beyond which its actions cannot go. It defines as well as confines the powers of the company.

Significance
1. It determines some basic features of the company being formed, such as its name, registered office, capital etc.
2. It determines the area of activity for the company.

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3. It lays down the basic parameters to guide the relationship between the company and the outsiders who deal with the company.

Sec. 13 refers to the contents of the Memorandum

1. **Name clause** :
   Every company has to adopt its corporate name carefully. This name has to be stated in the Memorandum. The name of the company as approved by the Registrar would need to be given sufficient display as per the rules, such as outside every office, on the letters, notices etc. In the case of a limited liability company, the word Limited Private limited must be there as the last words of the name.
2. **Registered office clause** :
   This clause requires the mention of the state in which the registered office of the company is to be situate. A company must have a registered office as a stable place for its location and as its domicile.
3. **Object clause** :

The memorandum must state the objects for which the company is being formed. This clause defines the area of activities for which the company is being formed. Any activity outside the limits defined by this clause would be ultra vires (beyond the powers) for the company and the company can neither do it nor ratify it if it is done by any agent without its sanction.

4. **Liability clause** :
   The nature of liability of the members of the company being formed must be indicated by the memorandum. The memorandum of a company limited by shares or by guarantee shall also state that the liability of its members is limited [Sec. 13(2)]
5. **Capital clause** :
   The capital clause lays down the maximum limit of the capital beyond which the company cannot issue shares. This amount is described as registered capital or authorized capital or nominal capital.
6. **Subscription or association clause**
   This clause contains the declaration by the signatories to the Memorandum about their desire to be formed into a company, about their commitment to acquire the qualification shares, if any, and the personal details about the subscribers with their signatures attested by a witness.

ALTERATION OF MEMORANDUM

(A) **Alteration of name clause**

A company may, be special resolution and with the approval of the Central Government signified in writing change its name : If a company makes default in complying with any direction given by the government. Shall be punishable with fine which may extend to Rs. 1000 for every day during which the default continues (Sec. 22).

(B) Alteration of registered office clause

(i) Change of office within the same city. The rule contained in Sec. 146(2) implies that a company can make a change in the registered office within the local limits of the same city, town or village through a resolution of the Board of directors. Such a change must be brought to the notice of the Registrar within 30 days of the change.

(ii) Change from one city to another within the same state. This situation attracts the provisions of sec. 17A and Sec. 146. Sec. 146(2) lays down that a change in the registered office from one city to another within the same state would require the passing of a special resolution in the general meeting of the company and filing its copy with the Registrar within 30 days.

(iii) Change of registered office from one state to another.

The office is shifted to the new state and the address notified to the new Registrar within 30 days of shifting to the new office.

(C) **Alteration of liability clause**

A company can alter its objects clause also, but, since it is a very vital clause in the Memorandum.

a) passing a special resolution in the general meeting [Sec. 17(1)]
b) Filing the resolution with the Registrar with 1 month together with the printed copy of the altered Memorandum.

(D) Alternation of liability clause

The liability of members of the company may be altered only to increase it. The liability cannot be decreased. And the liability can be increased only if the members give their consent in writing either before or after the alteration.

This will require the following :

Authorization of the articles of association; (b) A special resolution of the company. (c) A written consent of the affected officer of the company if he was holding the office before the date of alteration.

(E) **Alteration of capital clause**

The alteration in the capital clause may take many forms :

(a) Alteration of share capital (Sec. 94,95,97) (b)Reduction of share capital (Sec. 100 to 1004) (c) Variation of the rights of shareholders (Sec. 106,107) (d) Re-arrangement of share capital (Sec. 391).

This alteration requires :

(i) Authorization by the Articles of Association. (ii) An ordinary resolution in the general meeting. (iii) No confirmation by court or any other authority. (iv) A notice has to be given to the Registrar of the alteration made within 30 days of the resolution.

DOCTRINE OF ULTRA VIRES

The doctrine of ultra vires is one of the most important principles of company law.

The word ultra means beyond, and the word vires means powers. So, the doctrine of ultra vires means that it is beyond a company's powers to do those activities which have been kept outside the scope of the objects clause in the Memorandum. If any such act is undertaken by the company or any of its agents on its behalf, the act shall not be deemed to be done by the company. Even the entire Board or the body of the shareholders cannot approve or ratify it.

Effects of ultra vires Transactions

(i) Contact are void ab initial. A contract which is ultra vires the company is void ab initial. Under such a contract, the company cannot sue or be sued upon.
(ii) Personal liability of directors to the company. If the directors of the company utilize funds of the company in ultra vires transactions, they would be personally liable to compensate the company for any loss suffered by the company.
(iii) Personal liability of directors to third parties. As the agent of the company, the directors are expected to act within the authority available to them. If they act outside the scope of this authority by presenting themselves to the possessing the authority, this will be a breach of warranty of their authority.
(iv) Property acquired ultra vires. The funds of the company may be spent in acquiring a property ultra vires. The company's right over the acquired property shall be secure and intact.
(v) Injection. In case a company has done is about to do an act ultra vires its Memorandum, any shareholder may seek an order of injunction from the court restraining the company from doing so.

Where the Doctrine does not Apply under some circumstances as mentioned below:

(i) Where the act is ultra vires only the directors, it may be ratified by the company.
(ii) Where the act is ultra vires only the Articles of Association, the Articles may be altered to make the action intra vires the articles.
(iii) Where the act is intra vires but has been done in violation of some bye-laws of the company, the Board or the general meeting may condone it.

ARTICLES OF ASSOCIATION

The Articles of Association is the second important document to be prepared by the promoter and then submitted at the time of registration. The Articles contain the rules and regulations and the bye-laws of the company to govern its internal affairs and functioning.

Definition: According Sec. 2(2) of the Act

"Articles means the articles of association of a company as originally framed or as altered from time to time in pursuance of any previous companies law or of this Act, including, so far as they apply t the company the regulations contained in Table A in Schedule I annexed to this Act".

A public company limited by shares may either frame its own Articles and get them registered or may adopt Table A of Schedule I as its Articles.

Form

Regarding the form of the articles Sec. 30 states that the Articles shall be printed, be divided into paragraphs numbered consecutively, and be signed by each subscriber of the memorandum of association.

Contents

1) Various classes of shares the company shall issue and their rights.
2) Procedure for issue of shares and their allotment.
3) Procedure for issuing share certificates and share warrants.
4) Forfeiture of shares and the procedure for their re-issue.
5) Procedure for transfer and transmission of shares.
6) Calls on shares.
7) Conversion of shares into stock.
8) Payment of commission on shares and debentures to underwriters.
9) Borrowing powers of directors.
10) Rules for adoption for preliminary contracts, if any,
11) Re-organization and consolidation of share capital.
12) Alteration of shares capital.
13) Payment of dividends and creation of reserves.
14) General meetings, proxies and polls.
15) Voting rights of members.
16) Keeping of books of account and their audit.
17) Rules regarding use of the Common Seal of the company.
18) Appointment, powers, duties, qualifications and remuneration of directors.
19) Appointment, powers, duties remuneration, etc of auditors.
20) Appointment, powers, duties, qualifications, remuneration etc of the managing director, manager and secretary, if any.
21) Lien on shares.
22) Capitalization of profits.
23) Board meeting and their proceedings
24) Rules as t resolutions.
25) Winding up of the company.

ALTERATION OF ARTICLES

According to Sec. 31, the Articles of a company can be altered by a special resolution. A copy of the special resolution which authorized the alteration of Articles must be sent to the Registrar together with the copy of the altered Articles within 30 days of passing of the resolution.

Procedure of Alteration

1. **Where the form of company remain unchanged:** The following procedure is required to be followed for effective alteration of the articles :

   a. Approval of the Board

b. Special resolution
c. Filing resolution with the Registrar

2. **Where a private company is converted in to a public company**

1. The Board shall approve the draft resolution
2. Special resolution
3. To get the approval of the Central Government to the alteration.
4. File with the Registrar a printed copy of the altered articles. It shall be filled within one month from date of receipt of the order of approval.

Limitations of freedom to alter the Articles

(i) Alteration must not exceed the scope of or conflict with the Memorandum.
(ii) The alteration must not be inconsistent with the provisions of the Companies Act or any other law.
(iii) The Articles cannot be made to include anything which is in itself unlawful or opposed to public policy.
(iv) The alteration must not seek to undo the alteration made by the CLB or Tribunal in the documents of the company.
(v) The alteration must be bona fide and for the benefit of the company as a whole.
(vi) The alteration must not amount to a fraud by majority on the minority.
(vii) The alteration cannot be done to break a contract with a third party.
(viii) An alteration would not be complete unless it is followed by the approval of the Central Government wherever necessary.

Distinction between Memorandum and Articles

The memorandum and articles are two important documents for incorporation and governance of a company. The two may, however, be distinguished on the basis of the following points :

(i) The memorandum contains the basic conditions associated with the incorporation of the company. This includes the name, the maximum capital and the total area of activity of the company etc. The articles however, are the rules governing the internal functioning of the company.
(ii) The memorandum is a supreme document sub-ordinate to the Companies Act only. The articles is the document sub-ordinate to the memorandum and cannot override it.
(iii) A memorandum has to be compulsorily registered. The articles may not be registered.
(iv) The memorandum defines the relationship between the company and the outside world. The articles determine the relationship between the company and the members.
(v) The alteration in memorandum requires a somewhat difficult procedure. The articles will require a simple procedure for alteration.
(vi) The acts of the company which are ultra vires the memorandum cannot be made valid through their ratification by the company. However, the acts ultra vires the articles can be made valid through their ratification if they are intra vires the memorandum.

SHARE

Ordinary Shares (Equity Share)

Equity shares capital means all share capital which is not preference share capital. In other words, a share or share capital which does not give the definition of preference shares or preference share capital, is equity share capital.

Equity shareholders receive dividend out of profits as recommended by the Board of directors and as declared by the shareholders in an annual general meeting but after preference shares have been paid their fixed dividend.

Moreover, equity shareholders have a right to vote on every resolution placed in the meeting and the voting right shall be in proportion to the paid up equity capital. Unless a company issue equity shares with differential rights.

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Preference Shares

Preferences shares with reference to any company limited by shares are those which carry:

(a) A right to be paid a fixed amount of dividend or the amount of dividend, calculated at a fixed rate, e.g., 10% nominal value of shares and also.

(b) A right to be paid the amount of capital paid up as such shares in the event of winding up of the company.

The articles share capital is the sum of total of preference shares.

Those of Preference Shares

These may be of the following types:

1. **Cumulative Preference Shares:** These share are entitled to dividend at a fixed rate whether there are profits or not. The company pays dividend if it has sufficient profits. In case the company does not have sufficient profits, dividend on cumulative preference shares will go on accumulating till it is fully paid off, such arrears are carried forward to the next year and are actually paid out of the subsequent years' profits. In the case of winding up of the company, the arrears of dividend on these shares are payable only if the article of association contains express provision in this respect. It may be noted, that all preference shares are presumed to be cumulative unless expressly stated in the articles to be non-cumulative.
2. **Non-cumulative Preference Shares:** Non-cumulative preference shares are those shares on which the arrears of dividend do not accumulate. If in a particular year there are no profits are inadequate, the shareholders shall not get anything or receive a partial dividend and they cannot claim the arrears of dividends in the subsequent year. In simple words, on such shares the unpaid dividends do not accumulate but lapse, i.e., the shareholders lose them forever.
3. **Participating Preference Shares:** The holders of such shares are entitled to receive dividend at a fixed rate and, in addition, they have a right to participate in the surplus profits along with equity shareholders after dividend at a certain rate has been paid to equity shareholders, there are surplus assets, then the holders of such shares shall be entitled to share in the surplus assets as well. Such shares can be issued only if there is a clear provision in the memorandum or articles of association or the terms of issue.
4. **Non-participating Preference Shares:** The holders of such shares are entitled to only a fixed rate of dividend and do not participate further in the surplus profits. If the articles are silent, all preference shares are deemed to be non-participating.
5. **Convertible Preferences Shares:** the holder of such shares have a right to convert these shares into equity shares within a certain period.
6. **Non-convertible Preference Shares:** The preference shares, where the holders have no right to convert their shares into equity shares are known as non-convertible preferences shares. Unless otherwise stated preference shares are assumed to be non-convertible.
7. **Redeemable Preference Shares:** ordinarily, the amounts received by the company on shares is not returned except on the winding up of the company. A company limited by shares, if authorised by its articles, may issue preference shares which are to be redeemed or repaid after a certain fixed period. Thus, the amounts received on such shares can be returned during the life-time of the company. Such shares are termed as redeemable preferences shares.

CLASSES OF CAPITAL

In view of the stages involved in collecting the money on shares, the shares capital of a company may be classified as follow:

(1) **Authorised Capital:** It is the capital which is stated in company's memorandum of association with which the company intends to be registered. It is called the nominal or registered capital. It is the maximum amount of shares capital which a company is authorised to raise by issuing the shares.

(2) **Issue Capital:** It is that part of the authorised capital which is actually offered (issued) to the public for subscription. Therefore, the issued capital can never be more than the authorised capital. It can

at the most be equal to the nominal capital. The balance of nominal capital remaining to be issued is called 'unissued capital'.

(3) Subscribed Capital: It is that part of the issued capital which has been actually subscribed by the public. In other words, it is that part of issued capital for which the applications have been received from the public and shares allotted to them.

(4) Called-up Capital: It is that part of nominal value of issued capital which has been called-up or demanded on the shares by the company. Normally, a company does not collect the full amount of shares it has allotted.

(5) Paid-up Capital: It is that part of the called-up capital which has actually been received from the shareholders.

(6) Reserve Capital: It is that part of the uncalled capital which cannot be called by the company except in the event of its winding up.

ISSUE OF SHARES AT PREMIUM

The term 'Securities' has been defined under Section 2(45AA) inserted by Companies (Amendment) Act, 2000. The premium is an amount in excess of par value or nominal value or face value of the securities (shares). Where a company issues securities at a premium whether for cash or for a consideration other than cash, a sum equal to aggregate amount of premiums on these securities shall be transferred to Securities Premium Account. The Securities Premium Account may be applied by the company:

(a) in paying up unissued shares of the company to be issued to the members of the company as fully paid bonus shares:
(b) in writing off the preliminary expenses of the company;
(c) in writing off the expenses of or commission paid or discount allowed on any issue of shares or debentures of the company.
(d) In providing for the premium payable on the redemption of any redeemable preference shares or any debentures of the company.
(i) A company may issue shares at a premium, i.e, at a value greater than its face value. Premium so received shall be credited to a separate account called **Securities Premium Account.**

ISSUE OF SHARES AT A DISCOUNT

Discount means a price which is less than nominal value or face value of a share. If share of Rs. 10 is issued at Rs. 8, then, 10-8, i.e., the amount of Rs.2 is discount.

When shares are issued at a price which is lower than market price but not below the face value of the shares, such an issue is not an issue at a discount.

1. A company shall not issue shares at discount except in the Company of a class already issued, if the following conditions are fulfilled, namely:
   (i) The issue of the shares at a discount is authorised by a resolution passed by the company in general meeting and sanctioned by the company in general meeting and sanctioned by the Company Law Boards;
   (ii) The resolution specifies the maximum rate of discount at which the share are to be issued;
   (iii) Not less than one year has at the date of issue elapsed since the date on which the company was entitled to commence business; and
   (iv) The shares to be issued at discount are issued within two moths after the date on which the issue is sanctioned by the Company Law Board or within such extend time as the Company Law Board May allow.
2. Where a company has passed a resolution authorizing the issue of shares at a discount, it may apply to the Company Law Board for an order sanctioning the issue, on such application the Board may make an order if it thinks proper to do so, sanctioning the issue on such terms and conditions as it thinks fit.
3. Every prospectus relating to the issue of shares shall contain particulars of the discount allowed on the issue of shares.

Winding up of a company

Winding up of a company is defined as a process by which the life of a company is brought to an end and its property administered for the benefit of its members and creditors. An administrator, called the liquidator, is appointed and he takes control of the company, collects its assets, pays debts and finally distributes any surplus among the members in accordance with their rights. At the end of winding up, the company will have no assets or liabilities. When the affairs of a company are completely wound up, the dissolution of the company takes place. On dissolution, the company's name is struck off the register of the companies and its legal personality as a corporation comes to an end.

The procedure for winding up differs depending upon whether the company is registered or unregistered. A company formed by registration under the Companies Act, 1956 is known as a registered company. It also includes an existing company, which had been formed and registered under any of the earlier Companies Acts.

Difference between dissolution and winding up

1. Winding Up is first stage where assets/liabilities are realised/paid-off; Dissolution is final stage where company ceases to exist.
2. Winding up is carried on by liquidator appointed by company/court; Order for dissolution is given by court only.
3. Liquidator can represent company during winding up till dissolution; After dissolution liquidator don't represent co.
4. Creditors can prove their debts in winding up but not on dissolution 5. Winding up always don't lead to dissolution

Winding up a Registered Company

The Companies Act provides for two modes of winding up a registered company:

A . Winding up by the Tribunal

B. Voluntary Winding Up

A. <u>Winding up by the Tribunal or Grounds for Compulsory Winding Up</u>

The petition for winding up to the Tribunal may be made by:-

- The company, in case of passing a special resolution for winding up.
- A creditor, in case of a company's inability to pay debts.
- A contributory or contributories, in case of a failure to hold a statutory meeting or to file a statutory report or in case of reduction of members below the statutory minimum.
- The Registrar, on any ground provided prior approval of the Central Government has been obtained.
- A person authorized by the Central Government, in case of investigation into the business of the company where it appears from the report of the inspector that the affairs of the company have been conducted with intent to defraud its creditors, members or any other person.
- The Central or State Government, if the company has acted against the sovereignty, integrity or security of India or against public order, decency, morality, etc.

The following circumstances for the winding up of accompany by the court:

a) If the company has, by a Special Resolution, resolved that the company be wound up by the Tribunal.
b) If default is made in delivering the statutory report to the Registrar or in holding the statutory meeting. A petition on this ground may be filed by the Registrar or a contributory before the expiry of 14 days after the last day on which the meeting ought to have been held. The Tribunal may instead of winding up, order the holding of statutory meeting or the delivery of statutory report.
c) If the company fails to commence its business within one year of its incorporation, or suspends its business for a whole year. The winding up on this ground is ordered only if there is no intention to carry on the business and the Tribunal's power in this situation is discretionary.
d) If the number of members is reduced below the statutory minimum i.e. below seven in case of a public company and two in the case of a private company.
e) If the company is unable to pay its debts.
f) If the tribunal is of the opinion that it is just and equitable that the company should be wound up.

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g) Tribunal may inquire into the revival and rehabilitation of sick units. It its revival is unlikely, the tribunal can order its winding up.
h) If the company has made a default in filing with the Registrar its balance sheet and profit and loss account or annual return for any five consecutive financial years
i) If the company has acted against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality.

B. Voluntary Winding Up of a Registered Company

When a company is wound up by the members or the creditors without the intervention of Tribunal, it is called as voluntary winding up. It may take place by:-

- By passing an ordinary resolution in the general meeting if: -
    (i) the period fixed for the duration of the company by the articles has expired; or
    (ii) Some event on the happening of which company is to be dissolved, has happened.
- By passing a special resolution to wind up voluntarily for any reason whatsoever.

Within 14 days of passing the resolution, whether ordinary or special, it must be advertised in the Official Gazette and also in some important newspaper circulating in the district of the registered office of the company.

The Act provides two methods for voluntary winding up:-

1. Members' voluntary winding up
2. Creditor's voluntary winding up

1. Members' voluntary winding up

It is possible in the case of solvent companies which are capable of paying their liabilities in full. There are two conditions for such winding up:-

a) A declaration of solvency must be made by a majority of directors, or all of them if they are two in number. It will state that the company will be able to pay its debts in full in a specified period not exceeding three years from commencement of winding up. It shall be made five weeks preceding the date of resolution for winding up and filed with the Registrar. It shall be accompanied by a copy of the report of auditors on Profit & Loss Account and Balance Sheet, and also a statement of assets and liabilities upto the latest practicable date; and

b) Shareholders must pass an ordinary or special resolution for winding up of the company.

The provisions applicable to members' voluntary winding up are as follows:-

a) Appointment of liquidator and fixation of his remuneration by the General Meeting.
b) Cessation of Board's power on appointment of liquidator except so far as may have been sanctioned by the General Meeting, or the liquidator.
c) Filling up of vacancy caused by death, resignation or otherwise in the office of liquidator by the general meeting subject to an arrangement with the creditors.
d) Sending the notice of appointment of liquidator to the Registrar.
e) Power of liquidator to accept shares or like interest as a consideration for the sale of business of the company provided special resolution has been passed to this effect.
f) Duty of liquidator to call creditors' meeting in case of insolvency of the company and place a statement of assets and liabilities before them.
g) Liquidator's duty to convene a General Meeting at the end of each year.
h) Liquidator's duty to make an account of winding up and lay the same before the final meeting.

2.Creditor's voluntary winding up

It is possible in the case of insolvent companies. It requires the holding of meetings of creditors besides those of the members right from the beginning of the process of voluntary winding up. It is the creditors who get the right to appoint liquidator and hence, the winding up proceedings are dominated by the creditors.

The provisions applicable to creditors' voluntary winding up are as follows:-

- The Board of Directors shall convene a meeting of creditors on the same day or the next day after the meeting at which winding up resolution is to be proposed.
- A statement of position of the company and a list of creditors along with list of their claims shall be placed before the meeting of creditors.
- A copy of resolution passed at creditors' meeting shall be filed with Registrar within 30 days of its passing.
- It shall be done at respective meetings of members and creditors. In case of difference, the nominee of creditors shall be the liquidator.
- A five-member Committee of Inspection is appointed by creditors to supervise the work of liquidator.
- Fixation of remuneration of liquidator by creditors or committee of inspection.
- Cessation of board's powers on appointment of liquidator.

As soon as the affairs of the company are wound up, the liquidator shall call a final meeting of the company as well as that of the creditors through an advertisement in local newspapers as well as in the Official Gazette at least one month before the meeting and place the accounts before it. Within one week of meeting, liquidator shall send to Registrar a copy of accounts and a return of resolutions.

Winding up an Unregistered Company

According to the Companies Act, an unregistered company includes any partnership, association, or company consisting of more than seven persons at the time when petition for winding up is presented. But it will not cover the following:-

- A railway company incorporated by an Act of Parliament or other Indian law or any Act of the British Parliament;
- A company registered under the Companies Act, 1956;
- A company registered under any previous company laws.
- An illegal association formed against the provisions of the Act.

However, a foreign company carrying on business in India can be wound up as an unregistered company even if it has been dissolved or has ceased to exist under the laws of the country of its incorporation.
The provisions relating to winding up of a unregistered company:-

- Such a company can be wound up by the Tribunal but never voluntarily.
- Circumstances in which unregistered company may be wound up are as follows:-
  - If the company has been dissolved or has ceased to carry on business or is carrying on business only for the purpose of winding up its affairs.
  - If the company is unable to pay its debts.
  - If the Tribunal regards it as just and equitable to wind up the company.

- Contributory means a person who is liable to contribute to the assets of a company in the event of its being wound up. Every person shall be considered a contributory if he is liable to pay any of the following amounts:-
  - Any debt or liability of the company;
  - Any sum for adjustment of rights of members among themselves;
  - Any cost, charges and expenses of winding up;
- On the making of winding up order, any legal proceeding can be filed only with the leave of the Tribunal.

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UNIT-VI

THE INDIAN PARTNERSHIP ACT-1932

What is Partnership?
Partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any one of them acting for all (Section 4). It, therefore, follows that a partnership consists of three essential elements;-
(i) It must be a result of an agreement between two or more persons.
(ii) The agreement must be to share the profits of the business.
(iii)The business must be carried on by all or any of them acting for all.
All these essentials must coexist before a partnership can come into existence.

The Indian Partnerships have the following common characteristics:

(1)Agreement: Partnership must be the result of an agreement between two or more persons. An agreement from which relationship of Partnership arises may be express. It may also be implied from the act done by partners and from a consistent course of conduct being followed, showing mutual understanding between them. It may be oral or in writing.
(2) Sharing profits of the business: First, there must exist a business i.e. trade, occupation and profession. The motive of the business is the acquisition of gains. Therefore there can be no partnership where there is no intention to carry on the business and to share the profit thereof. Secondly, there must be an agreement to share profits. The agreement to share losses is not an essential element.
(3)Business carried on by all or any of them acting for all: Each partner carries on the business as a principle as well as the agent on behalf of the other partners. This is the cardinal principle of the partnership Law. Therefore, the true test of partnership is mutual agency rather than sharing of profits.
(4) Unlimited Liability. The major disadvantage of partnership is the unlimited liability of partners for the debts and liabilities of the firm. Any partner can bind the firm and the firm is liable for all liabilities incurred by any firm on behalf of the firm. If property of partnership firm is insufficient to meet liabilities, personal property of any partner can be attached to pay the debts of the firm.
(5) Partners are Mutual Agents. The business of firm can be carried on by all or any of them for all. Any partner has authority to bind the firm. Act of any one partner is binding on all the partners. Thus, each partner is 'agent' of all the remaining partners. Hence, partners are 'mutual agents'. Section 18 of the Partnership Act, 1932 says "Subject to the provisions of this Act, a partner is the agent of the firm for the purpose of the business of the firm"[
(6) Oral or Written Agreements. The Partnership Act, 1932 nowhere mentions that the Partnership Agreement is to be in written or oral format. Thus the general rule of the Contract Act applies that the contract can be in be 'oral' or 'written' as long as it satisfies the basic conditions of being a contract i.e. the agreement between partners is legally enforceable. A written agreement is advisable to establish existence of partnership and to prove rights and liabilities of each partner, as it is difficult to prove an oral agreement.
(7) Number of Partners is minimum 2 and maximum 10 in case of banking business and 20 in others. Since partnership is 'agreement' there must be minimum two partners. The Partnership Act does not put any restrictions on maximum number of partners. However, section 11 of Companies Act prohibits partnership consisting of more than 10 members for Banking business and 20 members in other businesses, unless it is registered as a company under Companies Act, 1956 or formed in pursuance of some other law. Some other law means companies and corporations formed via some other law passed by Parliament of India.
(8) Mutual agency is the real test. The real test of 'partnership firm' is 'mutual agency' set by the Courts of India, i.e. whether a partner can bind the firm by his act, i.e. whether he can act as agent of all other partners.

TYPES OF PARTNERSHIP
General Partnership
A general partnership is a partnership with only general partners. Each general partner takes part in the

management of the business, and also takes responsibility for the liabilities of the business. If one partner is sued, all partners are held liable. General partnerships are the least desirable for this reason.

Limited Partnerships A limited partnership includes both general partners and limited partners. A limited partner does not participate in the day-to-day management of the partnership and his/her liability is limited. In many cases, the limited partners are merely investors who do not wish to participate in the partnership other than to provide an investment and to receive a share of the profits.

Limited Liability Partnerships
A limited liability partnership (LLP) is different from a limited partnership or a general partnership, but is closer to a limited liability company (LLC). In the LLP, all partners have limited liability.

An LLP combines characteristics of partnerships and corporations. As in a corporation, all partners in an LLP have limited liability, from errors, omissions, negligence, incompetence, or malpractice committed by other partners or by employees. Of course, any partners involved in wrongful or negligent acts are still personally liable, but other partners are protected from liability for those acts.

In recent years, the limited liability company has supplanted the general partnership and the limited partnership, because of the limits of liability. But there are still cases in professional practices in which some partners want to be limited in scope of duties and they just want to invest, having the liability protection.

This is a general overview of these partnership types; if you are considering forming a partnership, consult with your attorney or legal adviser.

Partnership at will (Section 7)- Where no provision is made by contract between the partners for the duration of their partnership, or for the determination of their partnership, the partnership is " Partnership at will"

Particular partnership (Section 8) - A person may become a partner with another person in particular adventures or undertaking.

Types of partners
There are various types of partners in a partnership firm. They are as follows:

Active Partner:
Partner who takes an active part in the management of the business is called active partner. He may also be called 'actual' or 'ostensible' partner. He is an agent of the other partners in the ordinary course of business of the firm and considered a full fledged partner in the real sense of the term.

Sleeping or Dormant Partner:
A sleeping or dormant partner is one who does not take any active part in the management of the business. He contributes capital and shares the profits which are usually less than that of the active partners. He is liable to the firm but his relationship with the firm is not disclosed to the general public.

Nominal Partner:
A partner who simply lends his name to the firm is called nominal partner. He neither contributes any capital nor shares in the profits or take part the management of the business. But he is liable to third parties like other partners. A nominal partner must be distinguished from the sleeping partner. While the nominal partner is known to the outsiders and does not share in the profits, the sleeping partner shares in the profit and his relationship is kept secret.

Sleeping vs. Nominal Partners:
It may be clarified that a nominal partner is not the same as a sleeping partner. A sleeping partner contributes

capital shares profits and losses, but is not known to the outsiders.

A nominal partner, on the contrary, is admitted with the purpose of taking advantage of his name or reputation. As such, he is known to the outsiders, although he does not share the profits of the firm nor does he take part in its management. Nonetheless, both are liable to third parties for the acts of the firm.

Partner in Profits:
A partner who shares in the profits only without being liable of the losses is known as partner in profits. He does not take part in the management of the business but he is liable to third parties for all the debts of the firm.

Sub-partner:
When a stranger shares the profits derived from the firm by a partner he is regarded as a sub-partner. A sub-partner is in no way connected with the firm or he not a partner of the firm. He is simply a partners' partner. Therefore, he has no rights again the firm nor he is liable for the debts of the firm. He only shares profits from a partner.

Partner by Estoppel or Holding out:
When a partner is not a partner but represent to the outside world that he is a partner in a firm, he is stopped or prevented from denying the truth. He is considered as a partner in the eyes of law. Similarly, if a person is declared i be a partner by a partner of a firm and such person remained silent without denying it, he also considered a partner by holding out. Thus, such persons are liable to outsiders i partners on the principle of estoppel or holding out because on faith of their representation action outsiders have granted credit to the firm.

Minor Partner:
Partnership arises from contract and a minor is not competent to enter into contract. Therefore, strictly speaking, a minor cannot be a full-fledged partners. But with the consent of all the partners he can be admitted into partnership for benefits only. He is not personally liable to third parties for the debts of the firm, on attaining majority, if he continues as a partner, his liability will become unlimited with effect from the date of hi original admission into the firm.

Other partners:
In partnership firms, several other types of partners are also found, namely, secret partner who does not want to disclose his relationship with the firm to the general public. Outgoing partner, who retires voluntarily without causing dissolution of the firm, limited partner who is liable only up to the value of his capital contributions in the firm, and the like.

However, the moment public comes to know of it he becomes liable to them for meeting debts of the firm. Usually, an outgoing partner is liable for all debts and obligations as are incurred before his retirement. A limited partner is found in limited partnership only and not in general partnership.

Difference between Partnership and Company

1) Company is an artificial legal person. Partnership is not a legal person.
2) Company has perpetual succession. Partnership firm does not have perpetual succession.
3) Company is created by registration under Companies Act. For a partnership firm registration is not compulsory. It is guided by Indian Contract Act and Partnership Act.
4) Private Limited Company shall have at least 2 members and maximum 50 members. Partnership firm shall have at least 2 members and maximum 20 members and for banking business, maximum 10 members.
5) In a private limited company, liability of the members can be limited by shares or by guarantee. Liability of members is unlimited in a partnership firm.

6) A member is not an agent of company or of other members. Partner is an agent of firm and other partners.
7) Member cannot bind company by his act. Partner can bind firm by his act.
8) Ordinary members cannot take part in management of a company. Only director members can take part in management. Partners can take part in management of a firm.
9) Private limited company shall have a minimum paid up capital of Rupees 1,00,000/-(Rupees One Lakh Only) and public limited company of Rs. 5,00,000/- (Rupees Five Lakh Only). There is no minimum paid up capital for a partnership firm.
10) Shares of a private limited company can be transferred with ease. Partner can transfer his share but the assignee does not become a partner. He is only entitled to share of Profits.
11) A company is an entity distinct from its members. It may own property, make contracts, sue and be sued in its own name. The property of a firm is owned by the partners. It can also sue and be sued in the firm's name and partners can also be sued individually.
12) A single member cannot wind up a company. A partnership may be dissolved by any partner at any time.

Difference between Partnership and Co-ownership
CO-OWNERSHIP :-
In the co-ownership property is owned jointly without any intention to carry on business.
Example: Two or more persons purchase a car without any idea of giving it on hire, it is co-ownership.

PARTNERSHIP :-
It is the relation between persons who have agreed to share the profit of a business.
Example :- Two or more persons purchase a Bus with the intention of giving it on hire and distributing its income among the partners, is the case of partnership.

Difference between Co-ownership and Partnership
1. Profit Sharing :-
Partnership : In the partnership profit sharing the basic object of the partnership formation.
Co-Ownership : In the Co-ownership there is no concept of profit and loss sharing.

2. Creation :-
Partnership : Agreement or contract is essential for partnership.
Co-Ownership : Agreement is not essential for co-ownership.

3. Agent :-
Partnership : Every partner is an agent of other partner in the partnership.
Co-Ownership : One co-owner is not the agent of other co-owner.

4. Limit for Members :-
Partnership : In the partnership there is restriction for the maximum number of partners.
Co-Ownership : In the co-ownership there is no restriction for the maximum number of co-owners.

5. Transfer of Rights :-
Partnership : In the partnership a partner cannot transfer his rights to another person without consulting the other partners.
Co-Ownership : In a co-ownership a co-owner can transfer his rights to any one without consultation.

6. Legal Claim :-
Partnership : In a partnership a partner has legal claim on the property of partnership.
Co-Ownership : In a co-ownership a co-owner has a legal claim on the joint property.

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7. Division of Property :-
Partnership : In a partnership a partner has no right to demand the partition of property. He can only demand the share of profit.
Co-Ownership : In a co-ownership a co-owner can demand the division of property.

8. Dissolution Risk :-
Partnership : Partnership is affected by the death, insolvency or retirement of any partner.
Co-Ownership : Co-ownership can not be dissolved due to above reasons.

9. Minor Case :-
Partnership : In a partnership a minor can not become a regular partner.
Co-Ownership : In a co-ownership a minor can become a regular co-owner.

Difference between Partnership and Hindu Joint Family Firm
The points of difference are enumerated below:

Interest:
The interest of a partner in the business is determined by a contract whereas the interest in HUF business is decided by the status.
Death:
The death of a partner results in dissolution of a partnership while the death of a member of an HUF does not disturb the running of a business at all. On his death, his interest is automatically inherited by other surviving members.
Insolvency:
In case of insolvency of a partner, he ceases to be a member of the firm but the insolvency of a member of a Hindu Undivided Family does not disentitle him of his membership of the HUF.
Share :
In a partnership, every members is entitled to a stipulated share in profits, to work diligently and to have access to all documents, books of accounts, etc., but the mem¬bers of an HUF cannot claim these rights and privileges unless partition is affected.
New member:
A new partner can be admitted to a partnership when other partners agree but there is no such condition in the HUF. Every child by birth acquires an interest in the family business. Membership is automatic and is acquired by virtue of birth in the family.
Profit sharing:
So far as profit sharing is concerned, it is fixed in the partnership, unless some changes are introduced in the partnership deed by common consent of all the partners, but shares in HUF business are always liable to change due to death or birth of any member in the family.

Number of partners:
As regards the number of partners in a firm, the membership is restricted to a maximum of 20 but there is no such limit in respect of number of persons constituting an HUF.

Liability of a partner:
The liability of a partner is unlimited and he is personally liable to the outside world for all practical purposes so far as the firm's liabilities are concerned, but the responsibility of any member of the IIUF is limited to the extent of his share in the HUF.
Registration of Firm
1. The law relating to a partnership firm is contained in the Indian Partnership Act, 1932.
2. Under Section 58 of the Act, a firm may be registered at any time (not merely at the time of its formation but subsequently also) by filing an application with the Registrar of Firms of the area in which any place of business of the firm is situated or proposed to be situated.

3. Application shall contain:-
    i. name of the firm
    ii. place or principal place of business
    iii. names of any other places where the firm carries on business.
    iv. date on which each partner joined the firm
    v. name in full and permanent address of partners.
    vi. duration of the firm
4. Application shall be signed and verified by all the partners or their duly authorized agents.
5. Application shall be accompanied by prescribed fee as well as the following documents:
    i. Prescribed Registration Form for Incorporation of a Company. (Form No. 1 and Specimen of Affidavit)
    ii. certified true copy of the Partnership deed entered into.
    iii. ownership proof of the principal place of business
6. Name of the firm should not contain any words which may express or imply the approval or patronage of the government except where the government has given its written consent for the use of such words as part of the firm's name.
7. Under Section 59 of the Act, when the Registrar of Firms is satisfied that the provisions of section 58 have been duly complied with, he shall record an entry of the statement in the Register of Firms and issue a Certificate of Registration.
8. penalty for furnishing false particulars (Section 70)
   Any person who signs any statement, amending statement, notice or intimation under this Chapter containing any particular which he knows to be false or does not believe to be true or containing particulars which he knows to be incomplete or does not believe to be complete, shall be punishable with imprisonment which may extend to three months, or with a fine or with both.
9. Any alterations, subsequent to Registration shall be notified to the registrar.
10. Partnership Act, 1932 does not provide for compulsory registration of firms. It is optional for partners to set the firm registered and there are no penalties for non-registration.
    However, Section 69 of the Act which deals with the effects of non-registration denies certain rights to an unregistered firm. Under the Act :-
    a. A partner of an unregistered firm cannot file a suit in any court against the firm or other partners for the enforcement of any right arising from a contract or right conferred by the Partnership Act unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm.
    b. No suits to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm.
    c. An unregistered firm or any of its partners cannot claim a set off (i.e. mutual adjustment of debts owned by the disputant parties to one another) or other proceedings in a dispute with a third party.

    Hence, every firm finds it advisable to get itself registered sooner or later.
11. However, non-registration of a Partnership firm shall not affect:-
    a. The rights of third parties to sue the firm and/or its partners.
    b. The firms or partners in the firms which have no place of business in the territories to which this Act extends, or whose places of business in the said territories are situated in areas to which the act does not apply.
    c. any suit or claim or set-off not exceeding one hundred rupees in value, to any proceeding in execution or other proceeding incidental to or arising from any such suit or claim.
    d. the enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to realise the property of a dissolved firm.
12. Rectification of mistakes (Section 64 of the Act)
    a. The Registrar shall have power at all times to rectify any mistake in order to bring the entry in the Register of Firms relating to any firm into conformity with the documents relating to that

firm filed under this Act.

b. On application made by all the parties who have signed any document relating to a firm filed under this Act, the Registrar may rectify any mistake in such document or in the record or note thereof made in the Register of Firms.

13. Inspection of Register and filed documents (Section 66 of the Act:)

a. The Register of Firms shall be open to inspection by any person on payment of such fee as may be prescribed.

b. All statements, notices and intimations filed under this Act shall be open to inspection, subject to such conditions and on payment of such fee as may be prescribed.

14. Grant of copies (Section 67 of the Act)

The Registrar shall on application furnish to any person, an payment of such fee as may be prescribed, a copy, certified under his hand, of any entry or portion thereof in the Register of Firms.

Rights, duties and liabilities of Partners

The Partnership Deed contains the mutual rights, duties and obligations of the partners, in certain cases; the Partnership Act also makes a mandatory provision as regards to the rights and obligations of partners. When there is no Deed or the Deed is silent on any point, the rights and obligations as provided in the Partnership Act shall apply.

Rights of a Partner:

The rights of a partner are as follows:

i. Right of the partner to take part in the day-to-day management of the firm.
ii. Right to be consulted and heard while taking any decision regarding the business.
iii. Right of access to books of accounts and call for the copy of the same.
iv. Right to share the profits equally or as agreed upon by the partners.
v. Right to get interest on capital contributed by the partners to the firm.
vi. Right to avail interest on advances paid by the partners for business purpose.
vii. Right to be indemnified in respect of payment made or liabilities incurred or for protecting the firm from losses.
viii. Right to the use of partnership property exclusively for partnership business only not himself.
ix. Right as agent of the firm and implied authority to bind the firm for any act done in carrying the business.
x. Right to prevent admission of new partners/expulsion of existing partners.
xi. Right to continue unless and otherwise he himself cease to become partner.
xii. Right to retire with the consent of other partners and according to the terms-and conditions of deed.
xiii. Right of outgoing partner/legal heirs of deceased partner.

2. Duties of a Partner:

The duties of a partner are as follows:

i. To carry on the business to the greatest common advantage:
Every partner is bound to carry on the business of the firm to the greatest common advantage. In other words, the partner must use his knowledge and skill in the conduct of business to secure maximum benefits for the firm.

ii. To be just and faithful to each other:
Every partner must be just and faithful to other partners of the firm. Every partner must observe utmost good faith and fairness towards other partners in business activity.

iii. To render true accounts:
Every partner must render true and proper accounts I his co-partners. Each and every entry in the books must be supported by vouchers and the explanations if demanded by other partners.

iv. To provide full information:
Every partner must provide full information of £ activities affecting the firm to the other co-partners. No information should be concealed, kept secret.

v. To attend diligently to his duties:

Every partner is bound to attend diligently to duties in the conduct of the business of the firm.

vi. To work without remuneration:

A partner is not entitled to receive any kind remuneration for taking part in the conduct of the business. But in practice, the working partners are generally paid remuneration as per agreement, so also commission in some case.

vii. To indemnify for loss caused by fraud or willful neglect:

If any loss is caused to the firm because of a partner's willful neglect in the conduct of the business or fraud commit by him against a third party then such partner must indemnify the firm for the loss.

viii. To hold and use partnership property exclusively for the firm:

The partners must hold and use the partnership property exclusively for the purpose of business of the firm not for their personal benefit.

ix. To account for personal profits:

If a partner derives any personal profit from partnership transactions or from the use of the property of the firm or business connection the firm or the firm's name, he must account for such profit and pay it to the firm.

x. Not to carry on any competing business:

A partner must not carry on competing business to that of the firm. If he carries on and earns any profit then he must account for the profit made and pay it to the firm.

xi. To share losses:

It is the duty of the partners to bear the losses of the firm. 'partners share the losses equally when there is no agreement or as per their profit share ratio.

xii. To act within authority:

Every partner is bound to act within the scope of authority. If he exceeds his authority and the firm suffers from any loss, he shall have compensated the firm for such loss.

xiii. Duty to be liable jointly and severally:

Every partner is jointly and individual liable to the third parties for all acts of the firm done while he is a partner.

xiv. Duty not to assign his interest:

A partner cannot assign or transfer his partner interest to an outsider so as to make him the partner of the firm without the consent of other partners. However, he can assign his share of the profit and his share in the assets the firm where the assignee shall not be entitled to interfere in the conduct of the business

3. Liabilities of a Partner to Third Parties:

The following are the liabilities of a partner to third parties:

i. Liability of a partner for acts of the firm:

Every partner is jointly and severally liable for all acts of the firm done while he is a partner. Because of this liability, the creditor of the firm can sue all the partners jointly or individually.

ii. Liability of the firm for wrongful act of a partner:

If any loss or injury is caused to any third party or any penalty is imposed because of wrongful act or omission of a partner, the firm is liable to the same extent as the partner. However, the partner must act in the ordinary course of business of the firm or with authority of his partners.

iii. Liability of the firm for misutilisation by partners:

Where a partner acting within his apparent authority receives money or property from a third party and misutilises it or a firm receives money or property from a third party in the course of its business and any of the partners misutilises such money or property, then the firm is liable to make good the loss.

iv. Liability of an incoming partner:

An incoming partner is liable for the debts and acts of the firm from the date of his admission into the firm. However, the incoming partner may agree to be liable for debts prior to his admission. Such agreeing will not empower the prior creditor to sue the incoming partner. He will be liable only to the other co-partners.

v. Liability of a retiring partner:

A retiring partner is liable for the acts of the firm done before his retirement. But a retiring partner may not be liable for the debts incurred before his retirement if an agreement is reached between the third parties and the remaining partners of the firm discharging the retiring partner from all liabilities. After retirement the retiring partner shall be liable unless a public notice of his retirement is given. No such notice is required in case of retirement of a sleeping or dormant partner.

Dissolution of partnership firm:

When the relation between all the partners of the firm comes to an end, this is called dissolution of the firm. Section 39 of the Indian Partnership Act, provides that "the dissolution of the partnership between all the partners of a firm is called the dissolution of a firm." It implies the complete breakdown of the relation of partnership between all the partners.

Dissolution of partnership is different from the dissolution of firm.
Dissolution of a partnership firm merely involves a change in the relation of partners; whereas the dissolution of firm amounts to a complete closure of the business. When any of the partners dies, retires or become insolvent but if the remaining partners still agree to continue the business of the partnership firm, then it is dissolution of partnership not the dissolution of firm. Dissolution of partnership changes the mutual relations of the partners. But in case of dissolution of firm, all the relations and the business of the firm comes to an end. On dissolution of the firm, the business of the firm ceases to exist since its affairs are would up by selling the assets and by paying the liabilities and discharging the claims of the partners. The dissolution of partnership among all partners of a firm is called dissolution of the firm.
Dissolution of a Partnership firm may be affected in the following ways:
• Dissolution without the intervention of the Court.
• Dissolution by Court.

Dissolution without the intervention of Court:-

1. By Agreement (S.40):- A partnership firm can be dissolved any time with the consent of all the partners whether the partnership is at will or for a fixed duration. A partnership can be dissolved in accordance with the terms of the Partnership Deed or of the separate agreement.
2. (i) Compulsory Dissolution (Sec.41):- In case, any of the following events take place then it becomes compulsory for the firm to dissolute:
   Insolvency of Partners:- In case all the partners or all the partners except one become insolvent
   (ii) Unlawful Business:- In case the firm's business become unlawful on the happening of a subsequent event. e.g. trading with alien country
3. Dissolution on the happening of contingent event (S.42) A firm may be dissolved on the happening of any of the following contingent event:-
   (i) Expiry of Fixed Period:- If the firm is constituted for fixed period, then the firm is dissolves automatically.
   (ii) On achievement of specific task:- If the firm has been constituted for the achievement of specific task, on achievement of that task, firm ceases to exist, unless there is an agreement to the contrary.
   (iii) Death of Partner:- Death of any of the partner dissolves the partnership.
   (iv) Insolvency of Partner:- in the absence of a contract to the contrary, the insolvency of any of the partner may dissolve the firm. The rule shall apply even though the partnership has been constituted for a fixed term and the term has not yet expired or has been constituted for particular venture and the same has yet not been completed.
   (v) Resignation of Partner: - Resignation by any of the partners dissolves the partnership
4. Dissolution by notice (S.43) :-In case of partnership at will, a partner can dissolve it by giving written notice of dissolution to other partners duly signed by him. Notice must be very clear and certain. A notice once given cannot be withdrawn without the consent of other partners. Banarsidas v. Kanshi Ram A.I.R. (1963) S.C. 1165 In those cases where a partner has given notice of dissolution at a time when dissolution will give him some advantage over the other partners, he may be held in the firm till the pending transactions are completed.

Dissolution by Court (S.44):-

The court may order for the dissolution of the firm on the following grounds:-

(i) Insanity of Partner:- On the application of any of the partner, court may order for the dissolution of the firm if a partner has become of an unsound mind. Lunacy of a partner does not itself dissolve the partnership but it will be a ground for dissolution at the instance of other partners. It is not necessary that the lunacy should be permanent. In the case of a dormant partner the court may not order dissolution even on the ground of permanent insanity, except in special circumstances.

(ii) Incapacity of Partner:- If a partner has become permanent in capable of discharging his duties and obligations then court may order for the dissolution of firm on the application of any of the partner. Where a partner is imprisoned for a long period of time the court may dissolve the partnership. Whitwell v. Arthur 1865 beva 140.

(iii) Misconduct of Partner:- If any partner other than partner suing is responsible for any loss to the firm, which amounts to misconduct and prejudicially affects the carrying on of business then the court may order for the dissolution of the firm.

(iv) Constant breach of agreement by partner:- The court may order for the dissolution of the firm if the partner other than the suing partner is found guilty for constant breach of agreement regarding the conduct of business or the management of the affairs of the firm and it becomes impossible to continue the business with such partner.

(v) Transfer of Interest:- When any of the partner other than the suing partner transfers whole of its share to the third party for permanently.

(vi) Continuous Losses:- The court may order for dissolution if the firm is continuously suffering losses and there is no more capital available for the future growth of the firm.

(vii) Just and Equitable:- The court may order for dissolution on any other ground which court think is just, fair and equitable. e.g. loss of total confidence between the partners. Havidatt singh v. Mukhe Singh A.I.R. 1973, J&K ,

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