

Unit – I

Contract Act: Offer and Acceptance, Consideration and Capacity of the Parties, Free Consent, Indemnity and Guarantee, Bailment and Agency. **The Negotiable Instruments Act:** Definition, Types of Negotiable Instruments, Negotiation, Endorsement and Crossing of Cheque, Dishonour of Cheques, Parties to Negotiable Instruments.

INDIAN CONTRACT ACT 1872

Introduction: Law is a basic necessity of every civilized society. Law is the bundle of rules and principles to be followed by the members of the society. When there is a law in a country, it brings uniformity and balance in human actions, and provides justice to the aggrieved persons.

According to **Holland**, “*Law is a rule of external human action enforced by the sovereign political authority.*”

In the words of **Blackstone**, “*Law is a rule of civil conduct, prescribed by the supreme power of state, commanding what is right and prohibiting what is wrong.*”

INDIAN CONTRACT ACT 1872

The law relating contract in India is contained in the Indian contract Act, which came in to force on the first day of Sept 1872. The act is extended to the whole of India except the state of Jammu and Kashmir. The act as it now stands contains the general principles of contract, contract of indemnity, surety ship, Bailment, and Agency. The law of contract deals with those transactions or promises which create legal rights and obligations. In case of non performance of the promise by one party, it also provides legal remedies to an aggrieved party.

CONTRACT – Definition

Generally contract may be defined as an agreement which creates rights and obligations between the parties. These obligations and right s must be of such a nature that these can be claimed in the court of law.

According to Salmond, “*A contract is an agreement creating and defining obligation between the parties.*” Section 8(h) of the Indian Contract Act defines contract as an agreement which is enforceable by law.

From the above definitions of contract it is clear that a contract essentially consists of three elements:

1. An agreement
2. Obligation, and
3. Enforceability

1. Agreement: An agreement involves a valid offer by one party a valid acceptance by the other party.

2. Enforceability: It means contract must be legal in nature and which can be claimed in the court of law.

For example, X invites Y to a party and Y accepts the invitation, then it is only a social agreement and not a contract. On the other hand A agrees to sell his house to B for Rs. 5, 00,000. This is a contract.

ELEMENTS OF CONTRACT

An agreement to be enforced in the court has to satisfy certain conditions. On satisfying these, the agreements become a contract, and those conditions become essentials of a valid contract. The essential elements of a contract are contained in the definition of contract given in sec. 10 of the contract Act. According to this Act, “all agreements are contracts if they are made by free consent of parties competent to contract for a lawful consideration and with a lawful object and are not hereby expressly declared to be void.” The essential elements of a contract include:

1. **Agreement:** - There must be an agreement between the parties of a contract. It involves a valid offer by one party and a valid acceptance by the other party. Agreement is created by offer and acceptance. Therefore an agreement is = offer + acceptance. It is only by an agreement a contractual relation is established between the parties. For example, A sends a proposal to B to purchase a property for Rs. 10 lakhs and B accept the same, then this result into an agreement.
2. **Lawful consideration:** Consideration means something in return. An agreement is legally enforceable only when each of the parties to it give something and gets something. It may be past, present or future and must be real and lawful. A contract without consideration is not a contract at all. The consideration must be legal, moral and not against public policy.
3. **Capacity of parties:** The parties to an agreement must be capable of entering into a valid contract. According to sec. 11, the following persons are not competent to enter in to a contract.
 - a. Persons of unsound mind (Idiots, lunatic person etc.)
 - b. Persons disqualified by law to which they are subject.
 - c. Minors (Not completed the age of 18)
4. **Free consent:** For the formation of a contract one person must give his consent to another person. The consent thus obtained must be a free consent. Consent is said to be free if it is not caused by coercion, undue influence, fraud, misrepresentation or mistake. If the consent is obtained by unfair means, the contract would be voidable.
5. **Consensus ad idem:** It means the two parties of the contract must agree upon the subjectmatter of the contract in the same manner and in the same sense. That is there must be identity of minds among the parties regarding the subject matter of the contract. **For example,** A has two houses one at Calicut and another at Palakkad. He has offered to sell one house to B. B accepts the offer thinking to purchase the house at Palakkad, while A, when he offers; he has his mind to sell the house at Calicut. So there is no consensus ad idem.
6. **Lawful object:** The object of an agreement must be lawful. It must not be illegal or immoral or opposed to public policy. If it is unlawful, the agreement becomes void.
7. **Not declared to be void:** There are certain agreements which have been expressly declared void by the law. It includes:

- Wagering agreement
- Agreement in restraint to marriage
- Agreement in restraint of trade etc.

Thus an agreement made by parties should not fall in the above category.

8. **Certainty and possibility of performance:** - The terms of the contract must be precise and certain. They should not be vague. The terms of agreement must be capable of performance. For example A agrees to sell one of his houses. A has four houses. Here the terms of agreement are uncertain and the agreement is void.
9. **An intention to create legal relationship:-** There should be an intention between the parties to create a legal relationship. Mere informal promise is not to be enforced. Social agreements are not to be enforced as they do not create any legal obligations. An oral contract is a valid contract except in those cases where writing, registration etc. is required by some statute.

TYPES OF AGREEMENTS

Void agreements: “An agreement not enforceable by law is said to be void”. A void agreement has no legal significance from the beginning. No contract comes out from a void agreement i.e. it is void *ab initio*. The following agreements are examples of void agreements:-

- A. Agreement without consideration
- B. Agreement with persons like minors (sec.11)
- C. Agreement made without consideration (sec.25)
- D. Uncertain agreement (sec.29)
- E. Impossible agreements (sec.56) etc.

Illegal agreements: - An agreement which is either prohibited by law or otherwise against the policy of law is an Illegal agreement. All illegal agreements are null and void but void agreements are not illegal. All collateral transaction to an illegal agreement is also illegal.

CLASSIFICATION OF CONTRACTS

Contracts made by the parties can be classified into different types on the following bases.

- A. Formation of Contract
- B. Performance of Contract
- C. Extend of validity of Contract

A. On the basis of Formation:- On this basis, contracts may be grouped into three,

- a) **Express contract:** - These are the contracts, which are entered into between the parties, by words spoken or written. For example, A writes to B, “I am willing to sell my Car to you for Rs. 2,00,000.” B accepts A’s offer by another letter. This is an express contract.
- b) **Implied contract:** - Implied contracts are formed on the basis of implied promises on the part of parties. When the proposal or acceptance is made otherwise than in words, the contract formed is called implied contract. Thus in implied contract, making an offer and giving acceptance to it is manifested by the act on the part of party. For example, X gets

into a public bus, and then he enters into an implied contract with the authorities of the bus that he wishes to travel in the bus.

- c) **Quasi contracts:** In certain circumstances law itself creates legal rights and obligations against the parties. These obligations are known as quasi contracts. It is also known as constructive contract. For example, the finder of lost goods is under an obligation to find out the owner and return the goods. Section 68 to 72 of Indian Contract Act deal with the cases of quasi contracts.

B. On the basis of Performance:-It includes

- a) **Executed Contract:-**Executed contract is one that has been performed. If both parties of a contract have performed their respective obligations, contract is known as executed contract. For example, A sells a Car to B for Rs. 1,00,000. B pays the price. This is an executed contract.
- b) **Executory contract:-**An executor contract is one in which both the parties have not yet performed their obligations either wholly or partly. For example, A makes an agreement for buying a car from a car dealer and has made payment. The car has been delivered, but the ownership is yet to be transferred.

C. On the basis of extend of Validity: On this basis contract may be classified as under

- a. **Valid contract:** Contract is said to be valid if it satisfies all conditions required for its enforceability. In other words an agreement enforceable by law is a valid contract.
- b) **For example,** If A offers B to sell his car for Rs. 2,00,000. B agree to buy the car for this price, then it is a valid contract.
- a. **Void Contract:** A contract which ceases to be enforceable by law become void. No party has right to claim it in the court of law. A void contract not necessarily is unlawful but it has no legal effects. A contract with alien friend becomes subsequently void when alien friend become alien enemy.
- b. **Voidable contract:-** According to sec.2(i) “ An agreement which is enforceable by law at the option of one or more parties, but not at the option of other or others is a voidable contract.” Generally a contract becomes voidable when the consent of one of the parties to the contract is obtained by coercion, undue influence or misrepresentation.
- For example,** if the consent of the party was caused by coercion the contract is enforceable at the option of the party whose consent was not free.
- c. **Illegal contracts:** - The contract is said to be illegal, if its object is illegal. A contract arising out of an illegal agreement is illegal abilities. For example, an agreement to commit murder is an illegal one.
- d. **Unenforceable contract:** - It is a contract, which is valid, but not capable of being enforced in a court of law because of some technical defects. Technical reasons affecting validity of contract may be that contract is not in writing or is

not registered or has no adequate stamp duty on it etc. For example, A make out promissory note in favour of B for Rs. 1000, It has stamp duty of Rs. 5 only. But as per law it must have stamp duty of Rs. 10, such promissory note is invalid. But if stamp duty is raised up to required level it may be allowed to be enforced.

Distinction between void and illegal agreements:

Base	Void agreement	Voidable contract
Definition	Agreement not enforceable by law	Agreement which is enforceable by law at the option of one party.
Cause	An agreement become void if it lacks any one of the essentials of a valid contract	An agreement becomes voidable if the consent of one of the party had not been free.
Time	Void agreement is void ab initio	Voidable contract become void only when it is declared to be so by an aggrieved party.
Right	The defects of a void agreement are incurable	The defects in the case of a voidable agreement are curable and may be condoned.

“All contracts are agreements but all agreements are not contracts”

According to section 2 (h) of the Indian Contract Act, “an agreement enforceable by law is a contract”. That is all agreements are not contract. An agreement, in order to become a contract must satisfy certain conditions which are the essential elements of a contract. For example, if an agreement is not indented to create legal relationship, agreement not made with the free consent of the parties, agreement not made for a lawful object etc. These agreements are not valid contracts. An agreement which does not create legal obligation is also not a contract. Thus all contracts are agreements but all agreements are not contracts.

PERFORMANCE OF CONTRACT

After formation of contract, the next stage is the performance of the contract. A contract creates legal obligations. Performance of a contract means the carrying out of these obligations. Every person who is bound by an obligation must be ready to perform it at the time when he has promised to do, and in the manner in which he has promised to do.

Who must perform the Contract

The liability of performing a contract basically lies on the promisors. Sec. 37 to 41 of this Act lays down the basic rules regarding the legal status of the person who is to perform the contract. The contract may be performed by:-

1. **Promisor himself:** It is very clear that a person who makes a promise must perform it. If a contract involves the exercise of personal skill and qualification of the promisor then it must be performed by the promisor himself and not by any other person and in case of death of such promisor, his heirs are not liable to perform the contract.

For Example, X is a painter who promise to paint a picture for Y. In this case X alone must perform the contract personally. If X dies, his heirs are not liable to perform the contract.

2. **By the agent of promisor:** When the personal skill of the promisor is not necessary, and the work could be done by any one, the promisor or his representative may employ a competent person to perform it. He acts as an agent of the promisor.
3. **By legal representative:-**If the promisor dies before the performance of the contract, his legal representative like son and daughter who inherit the property of the deceased promisor are bound to perform it.
4. **Third person:-**If the promisee accepts performance of the promise from third party, there is discharge of the contract and the promisor is thereby discharged.

Time and Place of Performances:

Ordinarily a person who is bound to perform a contract must be ready to perform it at the time when he has undertaken to do the same. The following rules are applicable regarding the time and place of performance of a contract:

- a. **Where time is not fixed:** Where the contract is to be performed without any demand by the promisee and where no time for performance is fixed then the contract must be performed within a reasonable time.
- b. **Where time is fixed:** - When a promise is to be performed on a certain day and the promisor has undertaken to perform it without application by the promisee the promisor may perform it at any time during the usual hours of business on such a day and at the place at which the promise ought to be performed.
- c. **Place of performance:-**If the contract mentions a place, the contract must be performed at the place mentioned in the contract. If no place is mentioned, the promisor must ask the promisee to fix a reasonable place to perform the contract.
- d. The performance of any promise may be made in any manner or at any time which the promisor prescribes or sanctions. (sec. 50)

Performance of Joint promises:

When two or more individuals are bound to perform a contract together, it is called a joint promise. When a joint promise is made, then unless contrary intention appears from the contract, all such persons must jointly with the surviving promisors fulfill the promise. The following are the rules regarding the performance of Joint Promises:

1. **Joint liability:** When two or more persons make joint promises for doing or not doing something, both the promisors are jointly liable to perform it. In case of death of any one of them, his legal representative along with remaining promisors will perform the promise.
2. **Individual liability:** - When two or more joint promisors make promise and there is no express contract contrary to it, both of them are individually liable to perform them. Here the liability of joint promisors is 'Joint and several'.

3. **Right of contribution:** Joint promisors have joint and several liabilities. When one of the joint promisors has been compelled to perform entire promises, he has a right to claim contribution or share of other promisors, unless contrary intention appears from the contract.
4. **Release of one of the joint promisors:** According to section 44 of this act, “a release by the promisee of any one of the joint promisors does not discharge other joint promisors from liability. The released joint promisor also continues to be liable to other joint promisors.

SPECIAL CONTRACTS

CONTINGENT CONTRACT

Contract is mutual exchange of promise between the parties. A contract may be absolute or contingent. An absolute contract is one in which the promisor must perform the contract in all events.

Contingent Contract: - A contract is said to be contingent when its performance depends upon the happening or non happening of a future event. According to section 31 of the Indian Contract Act, “a contingent contract is a contract to do or not to do something, if some event collateral to such contract does or does not happen.” Contingent contract are called conditional contracts in English law. Contract of indemnity and guarantee is a contingent contract.

For example, X agrees to pay a sum of Rs. 20,00,000 to Y, if his house gets a fire. Here the contract between X and Y is a contingent contract. The performance of it depends on breaking of fire in Y’s house.

Essentials of a Contingent Contract:-

- i. The performance of a contingent contract will depend upon a future event.
- ii. The happening of the event must be uncertain
- iii. The happening or non-happening of such future events should not form an essential part of the contract, but it should only be collateral to it.
- iv. The happening or non-happening of such future event must be beyond the powers of the contracting parties.

Rules regarding contingent contract:

- A. **Contingency on Happening of an event:** The performance of the contract is conditional on the happening of an event. It cannot be enforced unless such event occurs. If it does not occur, such contract becomes void.
- B. **Contingency on non-happening of an event:** - When the performance of contingent contract depends upon non-happening of future uncertain events; on the occurrence of that event, agreements become void.
- C. **Contingency on the happening of an event within stipulated time:** - When a contract is made on the happening of a specified uncertain event within a fixed time, it becomes void if at the expiration of the time so fixed, specified event does not happen.

- D. Contingency on non-happening of an event within the stipulated time:** - When the performance of a contract depends on non-happening of some event within stipulated period of time, if the event occurs within that, contract becomes void.
- E. Contingency on the non-happening of impossible event:**-Contingent agreement, which depends on the happening of an impossible event are void, whether the impossibility of the event is known or not known to the parties to the agreement at the time when it is made.

CONTRACT OF INDEMNITY

A contract of indemnity is a contract in which one party promises to compensate or protect the other party from the losses arising in future. According to section 124 of Indian Contract Act,” a contract of indemnity is a, contract by which one party promises to save the other from loss caused to him either by the conduct of the promisor himself or by the conduct of any third party.”

The object of a Contract of Indemnity is essentially to protect the promise against anticipated loss. A contract of fire insurance and marine insurance is a contract of indemnity.

The person who promises to save the other from the loss is called indemnifier. The person to whom the promise is made, is called indemnified or indemnity holder. A valid contract of indemnity must have the following ingredients:

- One party promises to save the other from loss caused to the latter
- The loss is caused to him by the conduct of the promisor, and
- The loss is caused by the conduct of any other third person.

Object of contract of indemnity:-The object of indemnity is essentially to protect the indemnified from the anticipated loss.

Features of Indemnity contract:

- A. **Express contract of indemnity:** - Where the terms of the contract of indemnity are either in oral or in written, it is called an express contract of indemnity.
- B. **Implied contract of indemnity:** -Where the contract of indemnity inferred from the circumstances of the case, or from the relationship of parties, is called an implied contract of indemnity.
- C. **Compensation of loss:** - In the case of contract of indemnity, there is a compensation for the loss suffered by the indemnified.
- D. **Essentials of a valid contract:** A contract of indemnity is also required to possess all the essentials of a valid contract.

Rights of an indemnity holder:-According to sec.125, the following are the rights of an indemnity holder:

- 1. **Right to recover damages:** - All damages which he may be compelled to pay in any suit of any matter to which he promise to indemnify applies.

2. **Right to recover cost:** - All costs he may be compelled to pay in any such suit. But the indemnity holder can recover such cost only if he had acted prudently and did not contravene the orders of the indemnifier or only if the indemnifier authorized him to bring or defend the suit.
3. **Right to recover all sum paid:** - He is entitled to recover all the sums which he may have paid under the terms of any compromise of any such suit, provided such compromise is not contrary to the orders of the promisor and was one which it would have been prudent for the indemnity holder to make.
4. **Suit for specific performance:** - An indemnity holder is entitled to sue the indemnifier even before he has suffered any damage, provided an absolute liability has been incurred by him.

Rights of an Indemnifier:

1. **Right to subrogation:** - On payment of the amount of loss or liability to the indemnified the indemnifier is subrogated to all the rights of indemnified.
2. **Right to equities:** - After making payment to the indemnified for the loss, indemnifier is entitled for all equities which indemnified could have enforced against the third party liable for loss.
3. **Right to refuse indemnity:** The indemnifier has the right to refuse indemnity provided the loss caused to the indemnity holder is beyond the scope of the contract.

CONTRACT OF GUARANTEE

Where a person gives a guarantee to another person, either to

(a) Performing a promise or

(b) Discharging the liability of a third person, there arises a “Contract of Guarantee”.

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, and the person in respect of whose default the guarantee is given is called the principal debtor, and the person to whom the guarantee is given is called the creditor.

For example, A lends Rs. 5000 to B on C’s promise to pay the same if B fails to pay within a year.

This is a contract of guarantee.

A contract of guarantee may be either oral or written. It may be expressed or implied and may even be inferred from the conduct of the parties concerned.

Essential features of a contract of guarantee:-

The essential features of a contract of guarantee are as follows:-

1. **Three parties:** - There must be three parties in a contract of guarantee, namely the principal debtor, the creditor and the surety.

2. **Three contracts:** There are three contracts in a contract of guarantee, namely, contract between principal debtor and creditor, contract between principal debtor and surety, and contract between creditor and surety.
3. **Capacity to contract:** In a contract of guarantee, the principal debtor may not be a person competent to contract, but his incapacity should be in the knowledge of the surety. In such case, the surety is regarded as the principal debtor and is personally liable to pay the debt, although the principal debtor is not liable to pay.
4. **Concurrence:** The contract of guarantee requires concurrences of all the three parties i.e., creditor, Principal debtor and the surety. It may be either express or implied by the circumstances of the case.
5. **Liability:** A contract of guarantee pre supposes a liability enforceable by law. That is in a contract of guarantee, the surety undertakes to pay a debt or discharge a liability of a third person, in case of his default.
6. **Consideration:-**Like all other contracts, the contract guarantee must be supported by a lawful consideration. It is not necessary that the surety must get some consideration directly from the creditor. Rather the benefit enjoyed by the principal debtor is considered a sufficient consideration to support the promise of the surety.
7. **Disclosure of facts:** Though, the contract of guarantee is not a 'contract of utmost good faith'. But it is a duty of the creditor that, he must disclose to the surety, all those facts likely to affect the degree of his responsibility.

Kinds of guarantee:

Guarantee may be classified in the following ways:

1. **On the basis of purpose:** There are three types of guarantees on this basis
 - a. **For Payment of debt:-**A guarantee may be for payment of debt or loan. This may either be for an existing debt or for a future debt. Guarantee for an existing debt is a retrospective guarantee, and for a future debt is a prospective guarantee.
 - b. **For price:** A guarantee may be for the payment of price of the goods to be sold on credit.
 - c. **For honesty:** A guarantee given for the honesty or good conduct is known as fidelity guarantee. This is generally given when a person is employed as an agent or servant.
2. **On the basis of transaction:** It may be
 - a. **Simple or specific guarantee:** - When a guarantee is given in respect of a single debt or specific transaction, it is called a specific or simple guarantee.
 - b. **Continuing guarantee:** When a guarantee extends to a series of transactions, it is called a continuing guarantee (sec.129). The surety's liability in this case will continue till all the transactions are completed or till the guarantee is revoked by him for further future transactions.

Revocation of a continuing guarantee:

A continuing guarantee as regards future transaction may be revoked under the following circumstances.

1. **By notice of revocation by the surety:** - Section 130 of the Act provides that where a guarantee is continuing it is open to the surety to terminate the same after due notice to the creditor in respect of any future transactions. In such a case the surety would not be responsible for future transactions which may be made by the principal debtor after surety has revoked the contract of guarantee.
2. **By the death of the surety:-** As per sec.131, in the absence of any contract to the contrary, the death of the surety revokes a continuing guarantee so far as regards future transactions. It is not necessary that, notice of death should be given to the creditor.
3. **By novation:** - Novation means substitution of a new contract in the place of an old one. If a new contract of guarantee is substituted in the place of an old one either between the same parties or between different parties the original contract of guarantee is revoked.
4. **By altering the terms of contract:** Sec 133 of the Contract act provides that when the terms of the contract between the creditor and the principal debtor are altered without the consent of the surety, the surety will be discharged as to transactions subsequent to alteration. Accordingly a continuing guarantee may be revoked if any alteration takes place in terms of the contract without the consent of the surety.
5. **By release of Principal debtor:** -If there is any contract between the creditor and the principal debtor, by which the principal debtor is released, the continuing guarantee of the surety is also revoked and surety is discharged by any act or omission of the creditor.
6. **By creditors act of omission:** Any act or omission of the creditor which results into eventual remedy of the surety against the debtor amounts to revocation of the Contract of Guarantee.(Sec.139)

CONTRACT OF BAILMENT

The word 'bailment' is derived from a French word 'Bailer' which means 'to deliver'. In legal sense, it has been defined as voluntary change of possession of goods from one person to another for some purpose.

According to sec. 148 of Contract Act defines a bailment," A bailment is 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 person delivering them." The person who delivered the good is called bailer and the person to whom they are delivered is called the bailee. The transaction is called bailment.

Essentials of Bailment:

1. **There must be a delivery of goods:** Delivery of goods from one person to another for some specific purpose is very essential for bailment. Mere custody without possession does not create bailment. Possession should be distinguished from mere custody. A person under whose custody the goods are without its possession is not a bailee.
2. **Delivery may be actual or constructive:** In actual delivery, the delivery may be made by physical handing over the goods to the bailee. In some cases it may not always be possible

to give physical possession due to difficulty or inconvenience. In such cases delivery may be constructive or symbolic.

3. **Specific purpose:** Delivery of goods should be made for some specific purpose. If the goods are delivered to a particular person by mistake, there is no bailment at all.
4. **Return of goods:** When the purpose is accomplished the same goods are to be returned. But the condition is that the specific goods should be returned either in their original form or in altered form.
5. **Ownership:** In the bailment, ownership is not transferred from the bailor to the bailee. Possession alone is transferred.
6. **Movable goods:** Bailment is concerned with only movable goods. It is important to note that money is not included in the category of movable goods.

Duties of a Bailor:

1. **Duty to disclose known defects:**-It is the duty of the bailor to disclose all the known defects in the goods bailed to the bailee. If he fails to do so, he is responsible for any damage caused to the bailee directly from such defects.
2. **Duty to bear extraordinary expenses:** - Where the bailment is gratuitous and the bailee is to receive no remuneration the bailor shall pay the bailee all the necessary expenses incurred for the purpose of bailment.
3. **Duty to indemnify bailee:** - Sec. 164 of the act says that the bailor should indemnify the bailee for any cost or costs incurred because of the defective title of the bailor to the goods bailed.
4. **Duty to receive back the goods bailed:** When the bailee returns the goods after the purpose is fulfilled or the time is expired, it is the duty of the bailor to receive back the goods.

Rights of Bailor:

1. **Entitled to get back the goods:**-He is entitled to get back the goods bailed as soon as the time for which they were bailed has expired or the purpose for which they were bailed has been accomplished.
2. **Right to terminate the contract:** The bailor can terminate the contract if the bailee does, with regard to the goods bailed, any act which is inconsistent with the terms of the bailment.
3. **Right to claim damages:** The bailor has an inherent right to claim for damages for any loss that might have been caused to the goods bailed, due to the negligence of the bailee.
4. **Right to recall goods at any time in a gratuitous bailment:** When goods are lent gratuitously, the bailor can demand the return whenever he pleases, even though he had lent them for a specified period.
5. **Right to file a suit against third person:** If a third party does some wrongful act and deprives the bailee from the use of goods bailed or does some injury to the goods bailed, the bailor has a right to file a suit against that third party.

6. **Enforcement of right:** - The bailor has a right to enforce by suit all the liabilities or duties of the bailee.

Duties of a Bailee:

1. **To take reasonable care of the goods bailed:** - The most important duty of the bailee is to take care of the goods entrusted to him. The degree of care required from the bailee is the same whether the bailment is for reward or is gratuitous.
2. **Not to mix the goods bailed and his own goods:** - The bailee must keep his own goods separately from the goods of bailor.
3. **Not make an unauthorized use of goods:** - He is under a duty not to use the goods in any unauthorized way. If the bailee makes unauthorized use of goods, he is responsible for all damages to the goods and must pay compensation to the bailor. This liability arises even if the bailee is not guilty of any negligence, and even if the damage is the result of accident.
4. **Not to set up an adverse title:** - It is the duty of the bailee to return the goods only to the bailor even though any third person is claiming the title over them.
5. **Return the goods:** - According to sec. 160, it is the duty of the bailee to return or deliver according to bailor's directions, the goods bailed, without demand, as soon as the time for which they were bailed has expired, or the purpose for which they were bailed has been accomplished.
6. **Return the additions or profit:** - According to sec 163, in the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, or according to his directions, any increase of profit which may have acquired from the goods bailed.

Rights of a bailee:-

1. **Right to enforce the duties of the bailor:** The bailee, by suit enforce the duties of the bailor.
2. **Right to deliver goods to one of the joint owners:** In the absence of an agreement to contrary, when several joint owners of goods bail them to a bailee, the bailee has a right to deliver back the goods to anyone of the joint bailors without the consent of all.
3. **Right to claim damages:** - According to sec 150, if the bailee has suffered any loss due to the non-disclosing of facts by the bailor, he has a right to claim damages to that.
4. **Right to indemnify:** - If any loss is caused to the bailee due to the demand made by the bailor for return of goods before the specified time, the bailee has a right to be indemnified by the bailor.
5. **Right to sue:** - Bailee can file a suit against a person who has wrongfully deprived him of the use or possession of the goods bailed or has done them an injury.
6. **Right of lien:** - Where the bailee has rendered any service in accordance with the purpose of the bailment involving the exercise of labour or skill, he has a right to retain

such goods until he receives the due remuneration for the services he has rendered in respect of them, if there is no contract to the contrary.

LIEN

Lien is a right by which one person is entitled to retain the possession of some goods belonging to another, until the demands of the person in possession are satisfied. This right is sometimes called 'possessory Lien'. For example, X gives his Radio to Y, a Radio mechanic, for repairing. X fails to pay the repairing charges to Y. Hence Y is entitled to retain the Radio until X pays the repairing charges. This right of retaining Radio by Y is called lien. Lien may be of two types, Particular lien and General lien.

1. **Particular or special lien**:-According to sec 170,"where the bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill in respect of the goods bailed, he has, in the absence of a contract to the contrary, a right to retain such goods until he receives the remuneration for the services he has rendered in respect of them." In case of particular lien, the following conditions must be satisfied.

- He should have rendered some service involving the exercise of labour or skill.
- Labour should have been performed in accordance with the purpose of bailment.
- He can retain only such goods on which he has expended labour or skill.
- There should not be any contract to the contrary.

2. **General Lien**:- A general lien is a right to retain any goods belonging to the other as security for a general balance of accounts. The right of a general lien is given only to particular person. The persons entitled to general lien are bankers, factors, Wharfingers, Attorneys of a High court and policy brokers.

Distinction between Particular lien and General Lien:

Basis	Particular lien	General lien
1. Goods	Right to retain particular goods until claims on account of those goods are paid Available to all bailees	Right to retain all the goods of the other party until all the claims of the holder are paid. Available to limited number of bailees
2. Entitled person	Can be exercised in those goods in respect of which labour or skill has been exercised by the bailee	Can be exercised against all goods lying under the possession of the bailee
3. Nature of exercise		

Termination of Bailment:

A contract of bailment will be terminated in the following circumstances:

1. **On the expiry of time**:- If the contract of bailment is for a stipulated time period, on the expiry of the time, it will be terminated automatically.

2. **Accomplishing the objectives:** - If the bailment is for a specific purpose, it terminate as soon as the purpose is fulfilled.
3. **Destruction of subject matter:** - When the subject matter of the bailment is destroyed, a bailment is terminated.
4. **Death of bailor or bailee:** - A gratuitous bailment is terminated by the death of either the bailor or the bailee.
5. **Misuse of the goods:** If the bailee does any act in respect of goods bailed against the terms of bailment, the contract of bailment becomes voidable at the option of the bailor.

CONTRACT OF AGENCY

It is a contract which creates the relationship of agent with principal is known as agency. According to sec.182 of the Contract Act, “an agent is a person employed to do or to represent another in dealings with third person. The person for whom such act is done or who so represented, is called the principal.

Thus, an agency is the relation between an agent and his principal created by an express or implied agreement whereby an agent is authorized by his Principal to act or represent him in dealing with third parties and to establish principal’s contractual relations with them.

Rules of Agency:

1. Whatever a person can do personally, he can do through an agent. This rule has some exceptions like marriage, singing, painting etc
2. He who does an act through another does it by himself.

Essential features of agency:

1. **The principal should be competent to contract:** Any person who is major and of sound mind can employ an agent. A lunatic or a drunken person cannot employ an agent.
2. **An agreement:** Agency should be created by an agreement between the principal and the agent. Such agreement may be either express or implied.
3. **Intention of the agent:** Intention of the agent to act on behalf of the Principal is also an essential feature of the contract of agency.
4. **No consideration is necessary:-** According sec.185, No consideration is necessary to create an agency. Generally an agent is remunerated by way of commission for service rendered, but no consideration is immediately necessary at the time of creating an agency.
5. **Free consent:** An agreement of agency depends up on free consent of the principal and agent.

Creation of an Agency:

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

1. **Agency by express agreement:** - When an agent is appointed by words, spoken or written is called agency by express agreement.
2. **Agency by implied agreement:** - It includes

- a. **Agency by estoppels:** Estoppels means preventing a person from denying a fact. According to sec. 237 of the contract act lays down that, when an agent has, without authority done acts or incurred obligations to third persons on behalf of his principal, the principal is bound by such acts or obligations if he has by his words or conduct induced such third persons to believe that such acts and obligations were within the scope of the agent's authority.
- b. **Agency by holding out:** It is a branch of the agency by estoppels. In this case some affirmative conduct by the principal is necessary. Where a person permits another by a long course of conduct to pledge his credit for certain purposes, he is bound by the act of such person in pledging his credit for similar purposes, though in some cases without the previous permission of his master.
- c. **Agency by necessity:** In some extra ordinary circumstances, a person who is not really an agent should act as an agent of another. Such an agency is called agency by necessity.

3. Agency by ratification (Ex-post facto agency): Ratification means subsequent acceptance by the principal in all respect of an act done by the agent without authority. Sometimes the agent may act without the authority of the principal. If the principal accepts or ratify subsequently the act of the agent, he is said to have ratified the act.

For example, 'X' without 'Y's authority, lends Y's money to Z. Afterwards Y accepts interest from Z. Y's conduct implies a ratification of the loan.

Essentials of Ratification:

Ratification is an approval of a previous act done without authority. In the agency contract, sometimes ratification becomes necessary. Essentials of ratification include:

1. The act to be ratified must be a lawful one.
2. The principal must be in existence at the time of the act that is to be ratified.
3. The principal must have contractual capacity both at the time of entering into contract and at the time of ratification.
4. Ratification may be implied or expressed and must be made within a reasonable time.
5. Ratification must be with full knowledge of facts.
6. The agent must purport to act as agent for a principal.
7. The whole transaction must be ratified
8. Ratification relates back to the date of the act of the agent
9. Ratification must be communicated to all the related parties

Duties and Rights of an Agent:

Duties of an agent to Principal:

1. **Duty to follow directions given:** An agent must conduct the business of the principal according to the directions given by the principal. In the absence of any direction, should conduct according to the custom.

2. **Duty to act with skill and diligence:** - An agent is bound to conduct business of the agency with as much skill as is generally possessed by persons engaged in similar business unless the principal has notice of his want of skill.
3. **Duty to render accounts:** It is the duty of an agent to keep the money and property of the Principal separate and to keep true and correct accounts of all his transactions on behalf of the principal and to produce the same to his principal whenever he demands.
4. **Duty to communicate in case of difficulty:** In cases of difficulty it is the duty of the agent to communicate with his principal and get his instruction. Otherwise any act of loss will not bind the principal.
5. **Duty to pay the amounts received for the principal:** It is the duty of the agent to pay overall money received on behalf of the principal subject to any lawful deductions for remunerations or expenses properly incurred.
6. **Duty not to delegate his authority:** An agent cannot delegate his authority to another person unless authorized or warranted by the usage of trade or nature of the agency.
7. **Duty on termination of agency by principal's death or insanity:-** When an agency is terminated by the principal's death or becoming of unsound mind, the agent is bound to take on behalf of the representatives of his late principal, all reasonable steps for the protection and preservation of the interest entrusted to him.
8. **Duty not to disclose confidential information:** It is very important not to disclose the confidential information relating to the business of agency.
9. **Duty not to deal on his own account:** An agent should not deal on his own account in the business of agency. If an agent, without the knowledge of his principal, deals in the business of the agency on his own account, the principal may either repudiate the transaction or claim from the agent any benefit which may have resulted to him from the transactions.

Rights of an Agent:

1. **Rights to remuneration:** Where services rendered by agent are gratuitous, he is entitled to receive the agreed remuneration or if nothing has been agreed, a reasonable remuneration.
2. **Right of retainer:** The agent has a right to retain his principal's money until his claim in respect of his remuneration or advances made or expenses properly incurred in conducting the business of agency are paid.
3. **Right of lien:** An agent has a right to retain goods, papers and other movable or immovable property of the principal received by him until the amount due to him had been paid or accounted for.
4. **Right of indemnification:** An agent has a right to be indemnified by the principal against the consequences of lawful acts done in exercise of his authority.
5. **Rights of compensation:-** An agent is entitled to claim compensation from the principal in respect of any injury caused to the agent by the negligence of the principal or want of skill.

Rights and Duties of a Principal

Rights of a Principal:

1. The principal is entitled to compensation for any breach of duty by the agent.
2. The principal has a right to give proper directions to the agent for the conduct of the business.
3. The principal is entitled to receive proper accounts from his agent
4. He is entitled to get profit, the agent makes by dealing with the principal's goods on the agent's own account.
5. He has the right to receive any secret profit made by the agent out of the agency.
6. He can revoke the authority of the agent under certain circumstances.
7. The principal has a right to receive all sums received on his account by the agent, after deducting the lawful remuneration and expenses incurred thereon.

Duties of the Principal:

1. Duty to pay remuneration
2. Duty to indemnify the agent against the consequences of all lawful acts done in exercise of his duty.
3. Duty to give compensation to the agent in respect of any injury caused to such agent by the principal's neglect.

Liabilities of Principal to third parties:-

1. **All acts of agent done within his authority:-**The principal is liable for the acts of the agent if they are done within the scope of his authority and in the course of his employment as an agent.
2. **Misrepresentation or fraud of the agent:-** The principal is responsible for and is bound by misrepresentation or frauds committed by the agent in respect of matters falling within his authority.
3. **Information obtained by the agent:-**Where an agent receives any information the presumption is that the agent communicates the same to his principal and it is construed that the principal has taken notice of it even though the agent did not in fact, communicate the information. It is called doctrine of 'constructive notice'.
3. **Where the agent acts for an unnamed or undisclosed principal:-**Undisclosed principal means principal whose existence and name both have not been disclosed by the agent. In this case, third parties have a right to discover the principal and to proceed against him and hold him responsible for the contract entered into by the agent.
4. **Where the agent is personally liable:-** In cases where the agent has rendered himself personally liable in respect of the transactions, a third person dealing with him may hold either him or his principal, or both of them, liable.

Liability of agent to third parties:-

According to sec. 230 of the Act, the agent, in the absence of any contract to that effect, is not personally bound by the contracts entered into by him on behalf of his principal. But in certain cases an agent will be personally liable.

1. **Where the agent acts for foreign principal:** - Where an agent enters into a contract for the sale or purchase of goods that the agent should be personally liable, in such cases the agent would be personally liable.
2. **Where the agent acts for an undisclosed principal:** - Where the agent acts for an undisclosed principal, he is personally liable. But it is open to the third party on discovering the name of the principal to sue him if he so chooses.
3. **When acting for a principal who cannot be sued:** Where the principal, though disclosed, cannot be sued, the agent is personally liable.
4. **Where money is paid by mistake or fraud:** - Where third party pays money to the agent by mistake or fraud, they can sue the agent personally. In the same way, if the agent pays money to a third party by mistake or fraud, he can recover it from him.
5. **Where the agent exceeds his authority:** When the agent acts without or beyond his authority and in this way commits a breach of warranty of authority, he can be held personally liable.
6. **Where the agent's authority is coupled with interest:** - Where the agent has himself interest in the subject matter of agency, he shall be personally liable to that extent. He is then a principal to the extent of such interest and is entitled to enforce it.
7. **Where the usage or custom of trade makes the agent liable:** - Where according to usage or custom of a trade provides for agent's personal liability, the agents can be held personally liable, provided there is no contract to the contrary.
8. **When the agent signs the negotiable instrument in his own name:** - When an agent signs a negotiable instrument in his own name without making it clear that he is signing as an agent, he is personally liable for the instrument.
9. **When the contract expressly provides:** Where the contract with the parties specially stipulates that the agent should be personally liable, in such cases the agent would be personally liable.

Kinds of Agent:

1. On the basis of extent of their authority:

-  General agent
-  Special agent
-  Universal agent

2. On the basis of nature of work performed:-

a. Commercial agent/mercantile agent

-  Auctioneers
-  Broker
-  Commission agent

- Del credere agent
- Factor

b. Non mercantile agent

Sub Agent: A sub agent is a person employed by, and acting under the control of the original agent in the business of the agency. The agent is responsible to the principal for the acts of the sub agent. The legal relation between the principal and the subagent depends upon the important factor

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Sub Agent: A sub agent is a person employed by, and acting under the control of the original agent in the business of the agency. The agent is responsible to the principal for the acts of the sub agent. The legal relation between the principal and the subagent depends upon the important factor namely whether the sub agent is properly appointed or not.

Substituted agent (Co-agent)

According to section 194 of the Contract Act, “When an agent has an express or implied authority of his principal to name another person to act for the principal and the agent names another person accordingly, such person is known as substituted agent. Such a person is an agent of the Principal and is responsible to him. Sec.195 states that in selecting such agent for his principal, an agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case; and if he does this he is not responsible for the principal for the acts or negligence of the agent so selected.

One of the effects of appointing a substituted agent is that a direct private of contract is established between the principal and the substituted agent. The principal can sue the substituted agent for accounts or damages.

Termination of Agency:-

Termination of agency means cancellation of authority of the agent. A contract of agency may be terminated either by the act of parties or by the operation of law.

1. Termination by the act of parties: - An agency may be terminated either by the principal or by the agent or both in the following ways.

- a. **By Agreement:** - An agency contract can be terminated at any time and at any stage by the mutual agreement between the principal and the agent.
- b. **Revocation by the principal:** - Principal may either expressly or impliedly after giving reasonable notice; revokes the authority of the agent before it has been exercised by the latter so as to bind the former.
- c. **By renunciation of agency:** - The agent himself may renounce the agency after giving a reasonable notice to the principal. If the contract of agency is for a fixed period, the agent cannot renounce it before that period without any sufficient cause for the same, namely whether the sub agent is properly appointed or not.

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2. **Termination by operation of law:-** An agency may be terminated by operation of law in any of the following ways.

- a. **By expiry of time:** - Where the agent is appointed for a fixed period, it terminates on the expiry of that time. For example, If an agent is appointed for a sale of plot within a period of six months, the agency comes to an end at the end of six months even though the sale is not effected.

- b. **By destruction of the subject matter:** - If the subject matter of the agency is destroyed, the agency comes to an end. For example, if the agency is for the sale of a house, the same is terminated if the house is destroyed.
- c. **Insolvency of the principal:** - If the principal is adjudicated as insolvent, the agency terminates, but insolvency of the agent does not terminate the agency.
- d. **Principal becoming an alien enemy:-**The principal and the agent belong to different countries and war breaks out between those two countries, contract of agency is terminated.
- e. **Death or insanity of the Principal or agent:** - According to sec. 201, death or insanity of principal or agent automatically terminate the agency.
- f. **Dissolution of the company:** - When a company is dissolved, the contract of agency automatically comes to an end.

Revocation of Agency:

The principal may revoke his agent's authority and that puts an end to the agency. Revocation of agency takes effect not from the moment of revocation, but when it becomes known to the agent and with regard to third persons when it becomes known to him.

Irrevocable Agency:

Agency cannot be revoked in the following cases:-

- 1. **When the agency is coupled with interest:** - When the agent is personally interested in the subject matter of agency, it is said to be agency coupled with interest. Agency is irrevocable during the existence of such interest.
- 2. **When the agent has incurred liability:** - Where the agent has incurred a personal liability in the contract of agency, the agency becomes irrevocable and the principal will not be permitted to revoke the agency leaving the agent exposed to risk.
- 3. **When the agent has partly exercised his authority:** - The principal cannot revoke the authority given to his agent after the authority has been partly exercised by the agent.

THE NEGOTIABLE INSTRUMENTS ACT, 1881

The law relating to negotiable instruments is primarily contained in the Negotiable Instruments Act, 1881. The word 'negotiable' means transferable from one person to another and the term 'instrument' means 'any written document by which a right is created in favor of some person.' Thus, the negotiable instrument is a document by which rights vested in person can be transferred to another person in accordance with the provisions of the Negotiable Instruments Act, 1881. The Negotiable Instruments Act does not affect the provisions of Sections 31 and 32 of the Reserve Bank of India Act, 1934. But, the following are Not Promissory Notes.

Ex. "I promise to pay B Rs.500 and all other sums which shall be due to him."

Essentials or Characteristics of a Promissory Note:

- 1. In writing.
- 2. Promise to pay.

3. Unconditional.
4. Signed by the Maker.
5. Certain Parties.
6. Certain sum of money.
7. Promise to pay money only.
8. Number, place, date etc.
9. It may be payable in installments
10. It may be payable on demand or after a definite period
11. It cannot be made payable to bearer on demand or even payable to bearer after a certain period (Sec. 31 of RBI Act).
12. It must be duly stamped under the Indian Stamp Act

BILL OF EXCHANGE

A 'bill of exchange' is defined by Section 5 as "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 the order of, a certain person, or to the bearer of the instrument."

Characteristic features of a Bill of Exchange:

1. It must be in writing.
2. It must contain an order to pay and not a promise or request. Words, like 'Please pay Rs. 10,000 to A on demand and oblige, do not constitute the instrument a bill of exchange.
3. The order must be unconditional.
4. There must be three parties, viz., drawer, drawee and payee.
5. The parties must be certain.
6. It must be signed by the drawer.
7. The sum payable must be certain or capable of being made certain.
8. The order must be to pay money and money alone.
9. It must be duly stamped as per the Indian Stamp Act.
10. Number, date and place are not essential. Oral evidence may be obtained as to date and place of execution.

CHEQUE

A cheque is defined as 'a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand' (Section 6). Thus, a cheque is a bill of exchange with two added features, viz.:

- i. It is always drawn on a specified banker;
- ii. It is always payable on demand and not otherwise.

DISTINCTION BETWEEN PROMISSORY NOTE AND BILL OF EXCHANGE

Promissory note differs from a bill of exchange in the following respects:

	Promissory Note		Bill of Exchange
1.	There are only two parties-the maker (debtor) and the payee (creditor).	1.	There are three parties-the drawer, the drawee and the payee.
2.	Contains an unconditional promise by the maker to pay the payee.	2.	Contains an unconditional order to the drawee to pay according to the drawer's directions.
3.	No prior acceptance is needed.	3.	A bill payable 'after sight' must be accepted by the drawee or his agent before it is presented for payment.
4.	The liability of the maker or drawer is primary and absolute.	4.	The liability of the drawer is secondary and conditional upon non-payment by the drawee.
5.	No notice of dishonour need be given.	5.	Notice of dishonour must be given by the holder to the drawer and the intermediate endorsers to hold them liable thereon.

DIFFERENCE BETWEEN BILL OF EXCHANGE AND CHEQUE:

	Cheque		Bill of Exchange
1.	Must be drawn only on a banker.	1.	Can be drawn on any person including a banker.
2.	The amount is always payable on demand.	2.	The amount may be payable on demand or after a specified time.
3.	The cheque is not entitled to days of grace.	3.	A usance (time) bill is entitled to three days of grace.
4.	Acceptance is not needed.	4.	A bill payable after sight must be accepted.
5.	A cheque can be crossed	5.	Crossing of a bill of exchange is not possible.
6.	Notice of dishonour is not necessary. (The parties thereon remain liable, even if no notice of dishonour is given.)	6.	Notice of dishonour is necessary to hold the parties liable thereon. (A party who does not receive a notice of dishonour can generally escape its liability thereon.)
7.	Not to be noted or protested in case of dishonour.	7.	Noted or protested to establish dishonour.

HOLDER AND HOLDER-IN –DUE-COURSE: According to section 8, a **holder** of a negotiable

instrument is “a person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto.” Thus, a person who has obtained the possession of an instrument by theft or under a forged endorsement is not a holder as is not entitled to recover the amount of the instrument.

A ‘holder in-due-course’: Is “a person who for consideration became the possessor of a promissory note, bill of exchange or cheque, if payable to bearer, or the payee or endorsee thereof, if payable to order, before the amount mentioned in it becomes payable and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title (Section 9).

Privileges of a Holder in Due Course

1. A person, who signed and delivered to another a stamped but otherwise inchoate (incomplete) instrument, is stopped from asserting, as against a holder in due course.
2. The maker or drawer, the acceptor, and all the intermediate endorsers continue to remain liable to the holder in due course until the instrument is duly satisfied.
3. Where a bill of exchange is drawn by a fictitious person and is payable to his order, the acceptor cannot be relieved from his liability to the holder in due course.
4. Where an instrument is negotiated to a holder in due course, the parties to the instrument cannot escape liability on the ground that the delivery of the instrument was conditional or for a special purpose only (Sections 46 & 47).
5. Not only that the title of the holder in due course is not subject to the defect in previous holder’s title but once the instrument passes through the hands of a holder in due course, it is purged of all defects.
6. No maker of a promissory note and no drawer of a bill of exchange or cheque shall in a suit thereon by a holder in due course, be permitted to deny the validity of the instrument as originally made or drawn.
7. No maker of a note and no acceptor of a bill payable to order is, in a suit thereon by a holder in due course, permitted to deny the payee’s capacity at the date of the note or bill to endorse it (Section 121).

Ambiguous Instrument (Sec.17): An ambiguous instrument is one which may be construed either as a promissory note or as a bill exchange. The holder may at his option treat it as either and the instrument shall be treated accordingly.

Where Amount is stated differently in Figures and Words (Sec. 18): If the amount undertaken or ordered to be paid is stated differently in figures and in words, the amount stated in words shall be the amount undertaken or ordered to be paid.

Inchoate Instruments (Sec.20): An inchoate instrument means an instrument that is incomplete in certain respects. The person so signing shall be liable upon the instrument, in the capacity in which he signed the same, to any holder-in due-course for such amount. But, a person other than a holder-in-due course cannot recover from the person delivering the instrument anything in excess of the amount intended by him to be paid there under.

Minor (Sec. 26): A minor may draw, indorse, deliver and negotiate negotiable instruments so as to bind all parties except himself.

Agency (Sec. 27): Every person capable of binding himself or of being bound may so bind himself or be bound by a duly authorized agent acting in his name.

Liability of Agent Signing (Sec. 28): An agent who signs his name to a P/N,B/E or cheque without indicating thereon that he does not intend thereby to incur personal responsibility, is liable personally on the instrument, except to those who induced him to sign upon the belief that the principal only would be held liable.

Liability of Legal Representative (Sec.29): A legal representative of a deceased person who signs his name to a promissory note, bill of exchange or cheque is liable thereon, unless he expressly limits his liability to the extent of the assets received by him as such.

Negotiable Instruments Made, etc.: Without Consideration (Sec.43): A negotiable instrument made, drawn, accepted, indorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction.

Partial Absence or Failure of Money Consideration (Sec.44): When the consideration for which a person signed a promissory note, bill of exchange or cheque consisted of money, and was originally absent in part or has subsequently failed in part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionately reduced.

Partial Failure of Consideration not Consisting of Money (Sec. 45): When a part of the consideration for which a person signed a promissory note, bill of exchange or cheque, though not consisting of money, is ascertainable in money without collateral enquiry, and there has been a failure of that part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

Lost or Stolen Instruments [Sec. 58]: When a negotiable instrument has been lost, or has been obtained from any maker, acceptor or holder thereof by means of an offence or fraud, or for an unlawful consideration, no possessor or endorsee who claims through the person who found or so obtained the instrument is entitled to receive the amount due thereon from such maker, acceptor or holder, or from any party prior to such holder. However, if such possessor or endorsee is a holder in due course he shall be entitled to receive the payment thereof.

Lost Instruments: When a bill or note is lost, the finder acquires no title to it as against the rightful owner. He is also not entitled to sue the acceptor or maker in order to enforce payment on it. If the finder obtains payment, the person who pays it in due course may be able to get a valid discharge for it. But the true owner can recover the money due on the instrument from the finder.

Stolen Instruments:

1. A person cannot enforce payment of it against any party thereto nor can he retain it against the party from whom he had stolen it.
2. If the thief negotiates the instrument to a purchaser for value who has notice of the theft, the transferee cannot acquire a better title than the thief and thus cannot enforce payment.
3. If a person who has stolen a bill or note payable to bearer transfers it to a holder in due course, he confers a good title on him or any person deriving title from such holder.

Instruments Obtained for Unlawful Consideration

1. The instrument is void.

2. A holder in due course, however, obtains a good title to an instrument which was originally made or drawn or subsequently negotiated for an unlawful consideration.

Forged Instruments: The most common species of forgery is fraudulently writing the name of an existing person. It is also a forgery to sign the name of a fictitious person or non-existing person. Even a man's signature of his own name may amount to forgery, if it is put with the intention that the signature should pass for the signature of another person of the same name.

Legal Position:

1. A forged signature is worthless and confers no title.
2. The holder of a forged instrument cannot enforce payment thereon nor can he give a valid discharge therefore.
3. The true owner can compel the debtor to pay it over again to him.
4. Even a holder in due course cannot claim payment on a forged instrument.
5. A person whose signatures have been forged may, by his conduct, be stopped from denying its genuineness to an innocent holder.

CHEQUE

A cheque is the usual method of withdrawing money from an account with a banker. A cheque, in essence, is an order by the customer of the bank directing his banker to pay on demand, the specified amount, to or to the order of the person named therein or to the bearer. Section 6 defines a cheque as "bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand."

Requisites of a Cheque:

1. **Written Instrument.** A cheque must be an instrument in writing.
2. **Unconditional Order.** A cheque must contain an unconditional order.
3. **On a Specified Banker Only.** A cheque must be drawn on a specified banker.
4. **A Certain Sum of Money.** The order must be only for the payment of money and that too must be specified.
5. **Payee to be certain.** A cheque to be valid must be payable to a certain person.
6. **Payable on Demand.** A cheque to be valid must be payable on demand and not otherwise.
7. **Amount of the Cheque.** A mount of the cheque must be clearly mentioned.
8. **Dating of Cheques.** The drawer of a cheque is expected to date it before it leaves his hands.

A cheque bearing an earlier date is **ante-dated** and the one bearing the later date is called **post-dated**. In India, a cheque that bears a date earlier than six months is a **stale cheque** and cannot be claimed for. In England, cheque can remain in circulation for a period of twelve months.

CROSSING OF CHEQUES: Crossing of a cheque is a direction to the paying banker by the drawer that payment should not be made across the counter. The payment on a crossed cheque can be collected only through a banker.

Section 123, defines crossing as, "Where a cheque bears across its face an addition of the words 'and company' or any abbreviation thereof, between two parallel transverse lines, or of two parallel transverse lines simply, either with or without the words 'not negotiable', that addition shall be deemed a crossing and the cheque shall be deemed to be crossed generally. Cheques having the

cross mark such as 'X' is not generally regarded as a crossed cheque.

A cheque that is not crossed is called an open cheque.

Significance of Crossing: Payment cannot be claimed across the counter on a crossed cheque, crossing of cheques serves as a measure of safety against theft or loss of cheques in transit. By crossing a cheque, a person, who is not entitled to receive its payment, is prevented from getting the cheque encashed at the counter of the paying banker.

TYPES OF CROSSING: Crossing may be either (1) General or (2) Special.

General Crossing: The term general crossing implies the addition of two parallel transverse lines.

Special Crossing: 'Special Crossing' implies the specification of the name of the banker on the face of the cheque. Section 124 in this regard, reads: Where a cheque bears across its face, an addition of the name of a bank, either with or without the words 'not negotiable', that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed to that banker." The object of special crossing is to direct the drawee banker to pay the cheque only if it is presented through the particular bank mentioned therein. Thus, it makes the cheque systems till safer.

Not Negotiable Crossing: By including the words 'not negotiable', the cheque is deprived of its special feature of negotiability. Such a cheque is like any other goods where the title of the transferee is always subject to the title of the transferor. A bank, therefore, should be extra careful in paying such cheques.

Account Payee Crossing (A/c Payee crossing): An A/c payee crossing signifies that the drawer intends the payment to be credited only to the payee's account and in none else. The addition of 'A/c payee' to a crossing has no legal sanctity and the paying banker may ignore such a direction without being liable for any damages.

Not Negotiable, A/c Payee Crossing: The instrument is rendered not negotiable plus A/c payee crossing directs the collecting banker to collect it for the payee only and warns that if the amount is collected for someone else, he may be held liable for damages.

Who can Cross a Cheque?:

1. **The drawer** of a cheque.
2. **The holder of a cheque.**
3. **The Banker.** A cheque once crossed need not remain so forever.

The drawer has the right to cancel the crossing by writing the words 'pay cash' and putting his 'full signatures'.

MARKING OF CHEQUES: Marking or certification is a method adopted when the paying banker verifies the customer's account and indicates thereon that there are enough funds in his Account to meet that cheque. The marking of a cheque may be done at the instance of the **drawer** or at the instance of the **payee** or at the instance of the **collecting banker**. The effect of marking is different in the three cases.

Marking at the Instance of the Drawer: The banker acquires a right to retain money to meet such a cheque. Marking only certifies the genuineness of the drawer's signature and the sufficiency of funds and not the endorsements.

Marking at the Request of the Payee or Holder: It constitutes nothing more than intimation that

at the time of marking, the bank has a sufficient balance to the credit of the drawer.

Marking between Bankers: This marking is an appropriation of funds in the banker's hands for a specific purpose he is entitled to deduct the amount of such marked cheque when estimating the balance available for meeting other cheques.

Marking of Post-dated Cheques: It has been held anomalous and invalid. Marking of such a cheque amounts to a promise, requiring consideration to support it.

MATERIAL ALTERATIONS: A material alteration was defined as "an alteration which alters the business effect of the instrument if used for any business purpose. Any change made in the instrument that causes it to speak a different language from what is originally intended, or which changes the legal identity of the instrument in its terms or in relation or parties thereto is a material alteration."

Examples of material alteration are:(i) date (ii) the time of payment (iii) the place of payment (iv) the sum payable (v) the number of parties (vi) the relationship between parties (vii) legal character of the cheque (viii) opening a crossed cheque (ix) converting an order cheque into a bearer cheque.

Effect of Material Alteration (Section 87): It renders the same void as against anyone who is party thereto at the time of making such alteration and does not consent thereto unless it was made in order to carry out the common interest of the original parties, and any such alteration, if made by an endorsee, discharges his endorsers from all liability to him in respect of the consideration thereof."

Examples of Alterations Which are not Material: (i) filling blanks of the instrument (Section 20); (ii) conversion of blank endorsement into endorsement in full (Section 49); (iii) crossing of cheques (Section 125);

FORGERY: No protection is granted to paying banker for making payment of cheques bearing forged signature of the customer. Payment of a cheque bearing forged signature of the customer is deemed to be a payment without the authority of customer and hence constituted breach of the implied contract between banker and the customer.

THE PAYING BANKER: The 'paying banker' is a term used to denote the position and duties of the drawee banks in payment the cheques of their customers. Thus, 'paying banker' is a banker upon whom a cheque is drawn. The job of a paying banker in regard to the payment of cheques is highly risky. However, this obligation of the paying banker to honour his customer's cheque is subject to certain conditions:

Statutory Protection Available to a Paying-Banker: Section 31 holds the paying banker liable for payment to a wrong person. But, the banker, despite his efforts, may inadvertently happen to pay a cheque to a wrong person claiming payment under a clever **forgery of endorsement**.

PAYMENT IN DUE COURSE

(Section 10) The following conditions must be satisfied before a payment of negotiable instrument can be called as a payment in due course:-

- ✓ **Payment must be in accordance with the apparent tenor of the instrument.**
- ✓ **Payment must be made in good faith and without negligence.**
- ✓ **Payment must be made to the person in possession of the instrument.**

- ✓ **Payment must be made under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount mentioned therein.**
- ✓ **Payment must be made in money only.**

WHEN BANKER MUST REFUSE PAYMENT?

1. **Where the customer countermands the payment:** A banker must refuse to honour cheque, payment for which has been stopped by the drawer.
2. **On receipt of a notice of customer's death**
3. **On customer's becoming insolvent**
4. **On receipt of a notice of the customer's insanity**
5. **On receipt of Garnishee order**
6. Where Garnishee Order is absolute, i.e., attaching the whole amount, payment on cheques received after the receipt of such an order must be refused.
7. **On assignment of Credit balance:** On receipt of a notice of assignment signed by the customer of credit balance of his account.
8. **On suspicious misuse by trustee**
9. If the banker feels suspicious, that the trustee intends to use the amount of the cheque for his personal use.
10. **On suspicious as to the title**
11. Where the banker believes that the person presenting the cheque is not entitled to receive the payment thereon.
12. In case of a joint account to be operated by all jointly where the cheque is not signed by all of the joint account holders.
13. Where the cheque is irregular, ambiguous or otherwise materially altered.
14. Where the cheque is presented after a period of six months from the date it bears, i.e., it has become stale.

WHEN BANKER MAY REFUSE PAYMENT?

In the following cases the banker may dishonor a cheque without incurring any liability thereon:

1. **Where the cheque is post-dated.** Refusal to pay a post-dated cheque before its due date does not make a banker liable for wrongful dishonour.
2. **Where the funds of the customer are insufficient.**
3. **Where a cheque is not duly presented.** (For instance, a cheque presented after business hours).

NEGOTIATION: A negotiable instrument may be transferred by negotiation or assignment. When a negotiable instrument is transferred by negotiation, its transferee, if holder in due course, gets a better title than its transferor.

Negotiation by Mere Delivery: (Section 47) A bill or cheque payable to bearer is negotiated by mere delivery of the instrument. Delivery may be actual or constructive. Actual delivery means change of actual possession. It is a constructive delivery when the possession is given to the

transferee's agent, clerk or servant on his behalf.

Payable to bearer: An instrument is payable to bearer (1) where it is made so payable, or (2) where it is originally made payable to order but the only or the last endorsement is in blank. A cheque which is originally drawn payable to bearer remains bearer even though it is subsequently endorsed in full. The rule is **once a bearer cheque always a bearer cheque** or (3) where the payee is a fictitious person.

Negotiation by Endorsement and Delivery: Instruments payable to a specified person or to the order of a specified person can be negotiated only by endorsement and delivery.

Unit – II

Contract of Sale of Goods: Sale, and Agreement to Sale, Conditions and Warranties, Performance of Contract of Sale, Unpaid Seller and his Rights, Caveat Emptor, Partnership Act, and Limited Liability Act.

SALE OF GOODS ACT 1930

The Sale of goods Act contains certain law relating to sale of movable properties. The Act covers topics such as the concept of sale of goods, warranties and conditions arising out of sale, delivery of goods and passing of property and other obligations of the buyer and the seller, the documents to title to goods and the transfer of ownership on the basis of such documents. This act came into force on 1st July 1930, and it extends to the whole of India, except the state of Jammu and Kashmir. A contract of sale has some special features which are not common to all contracts.

Goods:

The goods include every kind of movable property other than actionable claim or money. Actionable claims are claims which can be enforced only by taking action in a court of law. Goods also include stocks, shares, growing crops etc.

Contract of Sale:

According to section 4 of the sale of Goods Act, “A contract of sale of goods is a contract where by the seller’s transfer or agrees to transfer the property in goods to the buyer for a price.” A Contract of sale may be absolute or conditional. In absolute sale the property in the goods passes from the seller to the buyer immediately and nothing remains to be done by the seller. In conditional contract of sale, the property in the goods does not pass to the buyer absolutely until certain conditions fulfilled.

Essential features of a contract of sale:

1. **Contract:** - A contract of sale is a contract and must fulfill all the requirements of a valid contract.
2. **Two parties:** - The sale requires existence of two parties, the seller and the buyer. The seller is a person who sells or agrees to sell goods. The buyer is a person who buys or agrees to buy goods. It is necessary that the same person cannot be both a seller and a purchaser.
3. **Movable goods:** - The subject matter of the contract of sale must be in the form of movable goods. Sale and purchase of immovable property are covered under the Transfer of Property Act 1882.
4. **Transfer of ownership:** It is the element which distinguishes a sale from several other classes of contract like bailment, lease etc. Hence, in a sale, ownership must be transferred from the seller to the buyer.
5. **Price:** - Price means money consideration for sale of goods. In a contract of sale money must be paid or promised. If there is no money consideration, the transaction is not a contract of sale.

Sale and Agreement to Sale: - Where the ownership of goods is transferred just at the time of making a contract it is known as 'sale'. If the seller promises to transfer it at some future date, it is known as 'agreement to sell'.

Distinction between sale and agreement to sell:

1. **Nature of contract:** - Sale is an executed contract, while an agreement to sell is an executor contract, because it is yet to be performed.
2. **Transfer of property:** - In sale, the property in goods passes to the buyer immediately at the time of making the contract, but in an agreement to sale, transfer of property in goods takes place at some future date.
3. **Nature of right:** - A sale creates 'jus in rem' gives right to the buyer to enjoy the goods as against the world at large. An agreement to sell creates 'Jus in personam', i.e.; gives a right to the buyer against the seller to sue for damage.
4. **Risk of loss:** - In sale, when the goods are destroyed even in the possession of seller without his fault, the buyer of those goods will bear the loss. On the other hand, in an agreement to sell, in case the goods are destroyed, in transit, or in the possession of buyer without his fault. The loss of goods falls on the seller.
5. **Breach of contract by buyer:** - In a sale, in case of breach by the buyer, the seller can sue for price of the goods. But in an agreement to sell, if the buyer fails to accept the goods, the seller may sue for damages only and not for the price.
6. **Breach of contract by the buyer:** - In sale, if the seller makes breach of contract, the buyer gets two rights. The buyer can file suit against seller for damages and can also use the rights to follow property in the hands of subsequent buyer. But in an agreement to sell, the buyer can only claim for damages.
7. **Insolvency of the seller:** - In a sale, if the seller become insolvent, the buyer is entitles to recover the goods form the assignee or official receiver. In an agreement to sell, if the buyer has already paid the price and seller becomes insolvent, the buyer can claim only a ratable dividend and not the goods.
8. **Insolvency of the buyer:** - In a sale, if the buyer become insolvent the seller is entitled to a ratable dividend for the price of the goods. But in an agreement to sell. If the buyer becomes insolvent before he pays for the goods, the seller may refuses to sell the goods.

SALE AND BAILMENT

Bailment is a contract to deliver the goods by one person to another for some purpose on the conditions that when the purpose is over, the goods will be returned to the person delivering them. The bailment contract differs with 'sale' on the following grounds.

1. **Transfer of property:** - In a sale, the general property in goods is transferred to buyer at the time of making a contract. But in bailment specific property in goods passes to bailee for a temporary period.
2. **Transfer of possession:** - In a sale, possession of goods may or may not be transferred immediately at the time of making a contract. While in bailment goods are immediately handed over to the bailee.

3. **Return of goods:** - In a sale goods are not returned to the seller. But in bailment, when the purpose is over the goods are returned to the bailor according to his instruction.
4. **Consideration:** - In a sale, consideration given to the seller in the form of money. But in bailment, consideration may or may not be present in the form of money.
5. **Use of goods:** - In a sale, the buyer is entitled to possess and use the goods at his own. But in bailment goods will be used according to instructions and terms and conditions of bailment.

Formation of a contract of sale

Sec. 4 of the Act defines a contract of sale and sec. 5 deals with the formalities required for making a contract of sale. It provides that a contract of sale is made by a buyer offering to buy or seller offering to sell goods for a price and the other party accepting such offer. Every contract thus involves two parties one of whom must offer and the other must accept to buy or sell goods and the consideration should be the price.

A contract of sale may be in writing or by word of mouth. It may be made partly in writing and partly by word of mouth. It may also be implied from the conduct of the parties. The conduct of the parties may give rise to an inference of fact that the parties intend to sell and purchase. Persons enter restaurants, order dinner and eat them, but obviously there is a sale. A written offer to sell goods may be orally accepted or vice versa.

Subject matter of contract of sale:

According to Sec. 6 'Goods' form the subject matter of a contract of sale. Goods may be divided into three types,

1. **Existing goods:** - Goods owned and possessed by the seller at the time of making of the contract of sale are called existing goods. Where the existing goods are the subject matter of a contract, they must be in actual existence since a sale can be made only of a subject matter having actual or possible existence. Existing goods may be specific, ascertained or unascertained:

- A. **Specific goods:** - 'Specific goods' means goods identified and agreed upon at the time a contract of sale is made. It means goods identified and agreed at the time when a contract of sale is made. To be specific, the goods must be actually identified.
- B. **Ascertained goods:** - It means goods identified in accordance with the agreement after the contract of sale is made. Ascertained goods are sometimes used as specific goods, but ascertained goods are not always the same as specific goods. For example, If A had 50 chairs of the same kind and offers to sell 40, the goods are ascertained only when 40 particular chairs be appropriated towards the contract. On appropriation the goods become ascertained.
- C. **Unascertained goods:** - It means 'generic goods' i.e., goods defined by description or even by samples. Unascertained goods are not definite and specific. The seller in the case of a contract for the sale of a unascertained goods has the option, rather the right to supply goods of the kind or the quality contracted for. He is not bound to deliver any particular goods.

2. **Future goods:** - Sec. 2(6) of sale of goods act defines future goods as, “Future goods means goods to be manufactured or produced or acquired by the seller after making of the contract of sale.” Future goods are not in existence at the time of contract of sale.

3. **Contingent goods:** - It is a type of future goods, the acquisition of which by the seller depends upon a contingency which may or may not happen. A seller may contract to sell goods conditionally on their acquisition, goods which might be expected to come into existence such as goods to arrive, future crops and eggs. Such contracts are completed when goods arrive or crops mature or the eggs grow.

CONDITIONS AND WARRANTIES

Condition:

A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated. If a condition is broken, the buyer has the right to terminate the contract to refuse the goods, and if he has already paid for them, then to recover the goods.

Essential features

1. It is essential to the main purpose of the contract
2. The non –fulfillment of condition causes irreparable damage to the aggrieved party
3. The breach of condition gives a right to terminate the contract to the aggrieved party.

Warranty:

A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract repudiated.

In short, breach of warranty will only give rights to claim for damages, while a breach of condition would entitle the other party to avoid the contract altogether.

Distinction between condition and warranty:

Sl. No	Base	Condition	Warranty
1.	Nature	It is fundamental in nature and essential for main purpose of contract.	It is supportive and collateral to the contract.
2.	Breach	Due to breach of condition, the contract may be avoided.	Breach of warranty may give a rise to a right to claim for compensation.
3.	Treatment	Breach of condition can be treated as breach of warranty	Breach of warranty cannot be treated as breach of condition
4.	Fulfilling purpose	The main purpose of contract cannot be fulfilled unless the condition is fulfilled.	Fulfillment of a contract does not depend on the fulfillment of a warranty

Express and Implied Conditions and Warranty:

In a contract of sale of goods, conditions and warranties may be express or implied. Express conditions and warranties are those which have been expressly agreed upon by the parties at the time of contract of sale. They are stated in definite words as the basis of the contract.

When the conditions and warranties are not written in the contract, but applied to the contract either by operation of law or by trade or custom, they are called implied conditions and warranties.

Important implied conditions:-

1. **Conditions as to title of goods sold:** - The first implied condition in the part of the seller is that, in the case of a sale, he has a right to sell the goods and that in the case of an agreement to sell, he will have a right to sell the goods at the time when the property is to pass. If the title of the seller turns out to be defective, the buyer is entitled to reject the goods and can recover the whole amount.

2. **Goods sold should correspond to description:** - Where there is a contract of sale of goods by description, there is an implied condition that the goods shall correspond with the description.

The expression sale by description includes the following things:

- A. Buyer has not seen the goods but buys them on the basis of description given by the seller
- B. Buyer has seen the goods, but he relies not on what he has seen but what was stated to him by the seller.
- C. Packing of goods may sometimes be a part of the description
- D. The arrival of goods at a particular time and place may form part of the description.

3. **Sale by sample:-**If the goods are supplied in a contract of sale, according to sample agreed upon, the implied conditions are:

- A. The bulk shall correspond with the sample
- B. The buyer shall have a reasonable opportunity of comparing the bulk with the sample, and
- C. The goods supplied shall be free from any defect.

4. **Conditions as to quality or fitness:** - Normally in a contract of sale there is no implied condition as to quality or fitness of the goods for a particular purpose. But there is an implied condition that the goods sold are reasonably fit for the purpose for which they are purchased for.

- a. The goods are needed for a particular purpose which the buyer brings to the knowledge of the seller, either expressly or impliedly.
- b. The buyer relies on seller's skill and judgment and
- c. It is seller's duty to supply by description, then there is an implied condition that the goods should be reasonably fit for that purposes.

5. **Condition as to merchantability:** Where goods are bought by description from a seller who deals in goods of that description, there is an implied condition that the goods shall be mercantile quality.

6. **Conditions as to wholesomeness:** In a contract of sale of eatables and provisions, there is an implied condition on the part of the seller that the goods shall be wholesome. It means, the goods supplied by the seller must not be dangerously adulterated and must be fit for human consumption.

Important Implied Warranties:

1. **Warranty for quiet possession:** - Where the buyer has obtained possession of the goods and if the buyer is in any way disturbed in the enjoyment of goods, the buyer has a right to sue the seller for damages caused.
2. **Implied warranty against encumbrance:** - There is also an implied warranty in all cases of sale that the goods are not subject to any charge in favour of third parties which is not disclosed or known to the buyer before or at any time when the contract is made.
3. **Implied warranty as to usage of trade:** - An implied warranty as to quality or fitness for a particular purpose may be fixed by the usage of trade.

Doctrine of Caveat emptor:

It is an important doctrine in connection with sale of goods. The term 'Caveat emptor' means 'let the buyer beware'. This principle states that, at the time of buying goods, the buyer must make reasonable examination of the goods as to satisfy himself regarding suitability of goods for the purpose, he buys for and as to discover the defects. If the goods turn out to be defective or do not suit his purpose, the buyer cannot hold the seller liable for the same. It is the duty of the buyer to ensure that the goods are in good condition and suitable for his purposes.

Exceptions:

The following are the exceptions to the rule of caveat emptor:

1. **Fitness for buyers purpose:-** When the buyer, expressly or impliedly, make known to the seller the particular purpose for which he requires the goods and relies on the sellers skill or judgment the goods must be suitable for buyers purpose. In such cases the doctrine of caveat emptor does not apply.
2. **Sale under a patent or trade name:-** In the case of a contract for the sale by a specified article under its patent or other trade name, there is an implied condition that the goods shall be reasonably fit for any particular purpose.
3. **Merchantable quality:** Where the goods are purchased by description from a seller who deals in goods of such description there is an implied consideration is that the goods shall be of merchantable quality. But if the buyer has examined the goods, there is no implied condition as regards defects which such examination ought to have revealed.
4. **Usage of trade:** An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.(Sec 16(3)).
5. **Consent by fraud:** Where the consent of the buyer is obtained by the seller or where the seller conceals a defect, the doctrine of caveat emptor does not apply.
6. **Sale by Sample:** Where the goods are bought by sample the doctrine does not apply, if the bulk does not correspond with the sample.

TRANSFER OF OWNERSHIP IN GOODS

The transfer of ownership in goods, delivery and passing of the risk are the three important stages in the performance of a contract of sale. Among these, the most important feature of a contract of sale is transfer of property. It may be noted that there is a difference between property

in goods and possession of goods. Property in goods means the ownership of goods whereas possession of goods refers to custody or control of goods. Merely because an article is delivered to a person and the goods are in his custody, he will not become the owner of the goods. Unless ownership is transferred, the transferee will not become the owner.

Rights and obligations of parties in passing of ownership:

1. **Risk of loss:** - In the case of loss or destruction of goods it is the owner who suffers. If the goods are still in the possession of the seller and the ownership is transferred to the buyer, the loss of goods shall fall on the buyer.
2. **Only owner can sue:** Where the goods are destroyed or damaged by the action of a third party, it is he who possesses the ownership in goods can sue or take legal action against third party.
3. **Suit for price:** The seller can sue for the price, unless otherwise agreed, only if the goods have become the property of the buyer.

Rules regarding the transfer of ownership:

1. **In the case of ascertained or specific goods:** - Specific goods are existing goods at the time of contract of sale and that is identified and agreed upon at the time of sale. In this type of goods, the property in them is transferred to the buyer at which time as the parties to the contract intend it to be transferred. Therefore once the goods are ascertained, it is purely a question of the intention of parties, as to be gathered in respect of the time of transfer, from the terms of the contract, the conduct of the parties and surrounding circumstances. When the intention of the parties cannot be ascertained in the case of sale of specific or ascertained goods, the following rules are applicable.

a. **When goods are in deliverable state:** In this case, the ownership passes to the buyer as soon as the the contract is made and the sale is affected. The following conditions are to be satisfied for applying this rule,

- (a) Contract sale should be unconditional
- (b) It must relate to specific goods
- (c) The goods must be in a deliverable state.

b. **When goods are not in a deliverable state:** According to section 21, where contract is for specific goods which are not in a deliverable state and the seller has to do something to put the goods in a deliverable state, in such cases the ownership will not pass to to the buyer until that particular thing is done and the goods are put in a deliverable state and the buyer has notice thereof.

c. **When goods are to be measured and weighted:-** According to sec.22, in a sale of specific goods which are in a deliverable state, if the seller has to do something in order to ascertain the price, like weighing and measuring, the ownership in the goods will pass only after such things are done and the buyer has notice thereof.

d. **When goods are delivered “on sale or return” or “on approval basis”:-** According to section 24, in case where goods are delivered to the buyer ‘on approval’ or ‘on sale or return basis’ the ownership passes to the buyer only.

2. In the case of unascertained goods: - The goods which are not identified and ascertained at the time of sale are unascertained goods. In case of sale of unascertained goods, no property in the goods is transferred to the buyer unless and until the goods are ascertained. A contract to sell unascertained goods is not a complete sale but a promise to sell.

Transfer of ownership in case of sale on approval:

Sec.24 of the Act lays down, “when, goods are delivered to the buyer on approval or ‘on sale or return’ or other similar terms, the property there is passes to the buyer.

1. When he signifies his approval or acceptance to the seller
2. When he does any other act adopting the transaction; and
3. Failure to return the goods.

SALE BY NON OWNERS

The general rule is that if a person, who has no right or title to the goods, sold the same, the buyer cannot obtain any right or title to the goods which he purchased even though he may have acted honestly and paid the value for the goods. In other words, no one can transfer a better title than what he himself has. This is expressed in the Latin maxim “Nemo dat quod non habet”. This means that one cannot give that which he has not. The buyer cannot acquire a better title than what the seller had, and the maxim protects the true owner.

According to sec. 27 of the sale of goods act, a buyer cannot get a good title to the goods unless he has purchased the same from the owner. For example if goods are purchased from thief, the buyer gets no title because the thief is not the owner.

Exceptions to the General Rule: Under the following circumstances, the buyer gets a valid title even if the seller is not the absolute or full owner.

1. Title by estoppels: - When the owner by his conduct, or by an act, leads the buyer to believe that the seller has the authority to sell, then subsequently he may be stopped from denying the seller’s authority to sell.

2. Sale by a mercantile agent: - The mercantile agent is a person who has authority, in the customary course of business, either to sell goods or to consign goods for the purpose of sale or to buy goods or to raise money on the security of goods. A mercantile agent gets better title of the good if he fulfills the following conditions.

- a. The agent is in possession of the goods or documents of title to goods with the consent of the owner
- b. The agent sell the goods in the ordinary course of business of a mercantile agent
- c. The purchaser acts in good faith and has no notice that the agent has no authority to sell.

3. Sale by one of the joint owners: - If one of the several joint owners of goods has the sole possession of the goods by permission of the co-owners, the property in the goods is transferred to any person who buys them from such joint owner provided the buyers acts in good faith and without notice that the seller had no authority to sell.

4. Sale of goods obtained under a voidable agreement: - When the seller of goods has obtained possession of goods has obtained possession thereof under a voidable agreement but the

agreement has not been rescinded at the time of sale, the buyer obtains a good title to the goods provided he buys them in good faith and without notice of the seller's defect of title.

5. Sale by the seller in possession of goods after sale: - Where a seller, having sold goods, continues to be in possession of the goods or of documents of title to the goods and resells them either himself or through a mercantile agent in the same good faith and value without notice of previous sale, the new buyer gets good title.

6. Re sale by an unpaid seller: - An unpaid seller of goods who has exercised his right of lien or stoppage in transit resells the goods; the buyer acquires a good title to the goods as against the original buyer.

7. Sale under provisions of other acts:-

- a. Sale by a finder of lost goods under certain circumstances
- b. Sale by a Pawnee or pledge under certain circumstances
- c. Sale by an official assignee or liquidator of companies.

Performance of Contract of Sale:

According to sec.31 of the Sale of Goods Act, performance of contract of sale means as regards seller delivery of goods to the buyer, and as regards the buyer acceptance of the delivery of the goods and payment for them, in accordance with the terms of the contract of sale.

Delivery of the Goods: Sec. 2(2) of the Sale of Goods Act defines delivery as a voluntary transfer of possession from one person to another. The delivery of goods may be actual, symbolic or constructive.

1. **Actual delivery:** - When the goods are handed over by the seller to the buyer or his duly authorized agent, the delivery is said to be actual.
2. **Symbolic delivery:** Where the goods are bulky and heavy, it is not possible to give actual delivery of the goods. In such a case, the control over the goods is transferred by delivery of a symbol.
3. **Constructive delivery or delivery by attornment:** When a person who is in possession of goods accepts or acknowledges holding them on behalf of the buyer, it is called constructive delivery.

Rules regarding delivery: - Following are the provisions relating to the delivery of goods by the seller to the buyer:

1. **Possession of goods:** Delivery should have the effect of putting the buyer in possession of the goods. So a delivery to anyone other than the buyer or his agent is insufficient.
2. **Delivery and payment are concurrent conditions:** - The seller should be ready to hand over the possession of goods and the buyer should be ready to pay the price.
3. **Part delivery:** A delivery of part of the goods has the effect of delivery provided such part delivery is made in progress of the delivery of the whole (Sec. 34)
4. **Buyer to apply for delivery:** Unless expressly agreed to the contrary, the seller is not bound to deliver them until the buyer applies for delivery.

5. **Time of delivery:** - in a contract of sale, the delivery of goods should be made within a reasonable time unless a time is fixed in the contract.
6. **Place of delivery:** - Where the place of delivery is stated in the contract, the goods must be delivered at the specified place during working hours on a working day.
7. **Goods in possession of third person:** - When the goods at the time of sale are in possession of a third person, delivery takes place if such third person acknowledges to the buyer that he holds the goods on his behalf.
8. **Expenses of delivery:** - The seller should bear the expenses of putting the goods into a deliverable state and also the incidental expenses unless otherwise agreed.
9. **Installment delivery:** - Unless both the parties agree, the buyer of goods is not bound to accept delivery thereof by installments.
10. **Delivery to a carrier by wharfinger:** Delivery of goods to a carrier for the purpose of transmission to the buyer or the delivery of the goods to a wharfinger for safe custody is prima facie deemed to be delivery of the goods to the buyer.
11. **Buyer right of examining the goods:** - Where the goods are delivered to the buyer which he has not previously examined, he is entitled to examine them for his satisfaction. He is not deemed to have accepted them unless and until he has had a reasonable opportunity for such examination.
12. **Return of rejected goods:** - A mere fact that goods have been received does not lead to acceptance. In certain cases, buyer has a right to reject the goods after having received them. In such cases, the buyer is not bound to return the goods to the seller. It should be sufficient if he intimates his rejection.
13. **Examination of goods by the buyer:** - Where goods are delivered to the buyer which he has not previously examined, he is not deemed to have accepted them unless and until he is given a reasonable opportunity of examining the goods.
14. **When wrong quantity is delivered:** - Where the quantity delivered is different from the quantity contracted then, the buyer accepts the goods which are in accordance with the contract and rejects the rest.
15. **Liability of buyer for neglecting or refusing delivery of goods:** - When a seller is ready and willing to deliver the goods and requests the buyer to take delivery, and the buyer fails to take delivery within a reasonable time of that request, the buyer is liable to compensate the seller for any loss arising due to his neglect or refusal to take delivery plus a reasonable charge for the care and custody of the goods.

1. UNPAID SELLER:

An unpaid seller is a seller who has not been paid the whole of the price or any other negotiable instrument which is subsequently dishonored. According to sec.45 (1) of the Sale of Goods Act, the unpaid seller means, a seller

- a. Who has not been paid or tendered the whole of the price of goods sold and
- b. Who has received a Bill of Exchange or any other negotiable instrument like cheques as conditional payment the condition being that the instrument shall be duly honoured.

Under sale of goods act, the unpaid seller has rights against goods and against the buyer personally.

1. **Rights of an unpaid seller against the goods:-**It includes

a. **Right of lien** (sec.47 to 49):- A lien is a right to retain possession of goods until payment of the price. In the case of unpaid vendor's lien, the seller is entitled to retain the goods of the buyer until the whole price is paid even though the ownership is passed from the seller to the buyer. A lien may be of two kinds. General lien and particular lien. The conditions that should be fulfilled before an unpaid vendor can exercise right of lien are,

- (1) Ownership must have been passed to the buyer
- (2) The goods must be in the possession of the seller
- (3) The price or part of the price must remain unpaid.

b. **Right of stoppage of goods in transit** (sec.50 to 52): It is only an extension of the unpaid seller's right of lien. This right can be exercised only when the following conditions are satisfied.

- i. The seller must be an unpaid seller
- ii. Goods must be in transit
- iii. The buyer must have become insolvent

The moment when the buyer takes delivery of the goods the seller loses his right of stoppage.

c. **Right of resale** (sec. 54): An unpaid seller can re-sell the goods:

- i. If the goods are of a perishable nature
- ii. When the unpaid seller notice of his intention to sell
- iii. Where the seller expressly reserves a right of re sale in case the buyer makes default.

2. **Rights of an unpaid seller against the buyer personally:-**The unpaid seller can exercise the following rights against the buyer personally

- a. **Suit for price:** - When the property has passed to the buyer, and the buyer wrongly neglects or refuses to pay, the seller can sue him for the price.
- b. **Suit for damages:** - When the buyer wrongfully refuses to accept the goods, the seller may sue him for damages for non-acceptance.
- c. **Suit for repudiation:** - If buyer repudiates the contract before the date of delivery the seller may treat the contract as subsisting and wait till the date of delivery, or may treat the contract as rescinded and sue for damages for breach.
- d. **Suit for interest:** - The seller has a right to get interest from the buyer on the price of goods.

Auction Sale:

An Auction sale is a public sale, where the goods are offered to be taken by the highest bidder from among the public. The person who sells goods through auction is known as auctioneer. The relationship between the owner of the goods and the auctioneer is that of the principal and agent.

Rules of auction sale

1. Where an auction sale is made in lots, each lot is prima facie deemed to be the subject of separate contract of sale.

2. A sale by auction is complete when the auctioneer announces its completion and consequently property in the goods passes to the buyer
3. If the sale is notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the auctioneer to take the bid
4. A right to bid may be reserved by the seller
5. Any sale contravening the above rule may be treated as fraudulent by the buyer.
6. If the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.

The Indian Partnership Act, 1932

An Introduction

When two or more people come together as partners, they can form a partnership firm. This partnership firm is governed by the rules and regulations of the Indian Partnership Act, 1932. The partnership is also governed by the Indian Contract Act in areas where the Partnership Act, 1932 is silent. Let us have an overview of this act by understanding its meaning, scope, and different kinds of partnerships.

Definition of Partnership

Section 4 of the Indian Partnership Act defines a partnership as “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”.

Meaning of Partnership

In a partnership firm, two or more people come together to carry out a business for the purpose of earning profits and sharing those profits. The partners combine their capital resources and work jointly to carry on the business. According to Section 12 of the Indian Partnership Act, a partnership must be formed for the purpose of carrying a business that is legal in nature. Co-ownership of a property is not considered as a partnership.

Essentials of a Partnership

- There must be an agreement between the partners to carry on the business of the partnership firm.
- The aim of the formation of the partnership should be to earn profits and share them among partners. The sharing of profit and losses can either be according to the ratio of the capital contributed by each partner or be equally among all the partners unless otherwise specified.
- The partnership agreement must state that the business will be jointly carried on by all of them or some of them acting on the behalf of all. According to Section 13 of the Partnership Act, 1932, the mutual agency exists between the partners. Every partner in a

partnership acts as a principal as well as an agent for other partners. The actions of a partner are binding on the actions of all the other partners.

- **Unlimited Liability-** The partners can be held liable jointly for any debts of the firm. They have an unlimited liability that extends to their private assets for the disposal of the firm's debts.

Number of Partners in a Partnership

According to the Indian Partnership Act, there is no limit on the maximum number of partners that can be there in partnership but there must be a minimum of two partners. However, according to Companies Act 2013, the maximum number of partners must not exceed 100 in case of a partnership. If the number of members in a partnership exceeds 100 then it is termed as an illegal association as per Section 464 of the Companies Act, 2013. As per Section 11 of the Companies Act, the maximum number of partners for banking purposes is 10 and for other purposes is 10.

Partnership Deed

The partnership agreement forms the basis of a partnership. It is the foundation that creates a legal relationship between the partners to carry out the business of the partnership firm. A partnership agreement can either be written or oral but in the written format it is known as the partnership deed. Some of the details mentioned in a partnership deed are as follows.

- Name and address of the partnership firm as well as that of the business
- Name and address of all the partners
- Rights, duties, and obligation of partners
- Profit and loss sharing ratio
- Capital contribution by each partner
- Rate of interest on capital, loan, drawings
- Settlement of accounts in the event of the dissolution of the firm
- Mode of settlement in the event of disputes among partners
- Salaries and commission payable to partners
- Rules to be followed in the event of the admission of a new partner, retirement and death of an existing partner
- Any other provisions affecting the rights of the partners

The Indian partnership act of 1932 is an extremely important act that is studied by students in the commerce stream. The Indian partnership act of 1932 is started as a part of the accountancy class 12 NCERT book of accounts This act contains 3 to 4 chapters that are based on the concept of partnership in the firms. These chapters are extremely important as they not only hold significant weightage in the class 12 board examination of accounts but also, the knowledge and the impact are extremely important to have in mind as it will help people who are interested in building a firm to stay vigilant as they will know about all the legal features that are associated with it.

The Indian partnership act of 1932 can be read from the chapter called accounting for partnership – basic concepts 2. After reading the study notes provided by Vedantu on the topic of the Indian partnership act of 1932, students will be able to define partnership and will also be able to list the essential features. They will be able to identify the provisions of the Indian partnership act of 1932 that are related to accounting, they will know how to prepare partners capital accounts under fixed and fluctuating capital methods, preparing the profit and loss appropriation account and partners, calculate interest on capital, they will have knowledge on how guarantee for a minimum account of profit affects the distribution of profit among the partners, they will be able to make adjustments to rectify the past errors, they will also learn how to prepare final accounts of a partnership firm.

According to the Indian partnership act of 1932, a partnership can be defined as a “relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all”.

People who have entered into a partnership willingly with the knowledge of every other detail relating to the firm are called partners and they collectively form a firm. They agree on a particular name under which the business will be carried on which is called the firm’s name. A partnership firm does not have a separate legal entity other than the partners constituting it.

Essential Features of a Partnership

Two or More than Two Persons – in order for a firm to come into existence, it should involve two or more than two partners, who have a vested interest in a common goal. However, according to section 464 of the companies act of 2013, the central government has prescribed a limit on the maximum number of partners a firm can hold. Therefore, According to the central government, the maximum number of partners a firm can hold is 50.

Legal Agreement- Partners who come together to form a firm, already have a mindset that they will be sharing both profits and losses of the firm equally. These agreements, if made orally are valid however it is advised to get these agreements written in a legal form to avoid disputes in the future.

Partners in Business- In order to be partners in business, there should be some business going on in the firm that only then can they be called Business partners and only then can the Indian partnership act of 1932 be applicable to them.

Mutual Agreements - In order for a partnership to take place, a Mutual agreement on the mutual agency is extremely important. Partners of a firm can make rules and bind other partners to it and also bound to the rules that are made by other partners of the firm. Every partner is allowed to make decisions and conduct the affairs of the business according to him/her.

Limited Liability Partnership LLP

An Introduction to Limited Liability Partnership

Any kind of business partnership form is prone to suffer from unlimited liability. The liabilities of the partners involved in the business tend to extend to their personal assets. And this, in turn, makes the partnerships undesirable for many entrepreneurs. However, there exists a solution for this kind of issue which is known as limited liability partnerships, which is referred to as the LLPS full form. Let us discuss LLP and Private Limited and how to change from LLP to Private Limited Company.

LLPs are actually very common, and it is not like one needs to be an accountant or a lawyer to actually grasp the meaning behind it. LLPs are very common due to the fact that it deals with limited liabilities. This means a sort of business partnership where all the liabilities a person has been restricted to the money he/she invests only. This means that in case the person is unable to get profitable returns, creditors cannot seize their personal assets.

Limited Liability Partnerships

Partners of the partnership firms possess unlimited liability for their total debts and legal consequences. In this, their assets are liable to get attached to meet the debts and liabilities of the firm. However, the LLP formation solved this issue.

LLPS have all the primary features of a partnership firm, except that of the unlimited liability of the partners involved and same legal entity status. Also, llps include legal existence and the identities are separate from their partners.

LLP Meaning

The Limited Liability Partnership Act was passed by the Parliament of India in the year 2008 for governing the LLP businesses in the country. The Section 2 of this law states that the LLP is a type of partnership which is registered under this act. Also, the LLP agreement refers to the written agreement between either the LLP partners or the LLP itself and its partners. This agreement tends to define the duties, liabilities, rights and powers of the partners in the LLP.

Since this Limited Liability Partnership Act typically governs the LLPs in India, the Indian Partnership Act, 1932 provisions are not applicable to the Limited Liability Partnerships. They are only applicable to the traditional partnership businesses.

Nature of Limited Liability Partnership

The Limited Liability Partnership consists of the features mentioned below:

1. Distinct Legal Entity

The Limited Liability Partnerships, unlike the traditional partnership firms, are considered as separate legal entities. LLPs may own assets and incur the liabilities in their names. Also, they can enter into the contracts and can sue and be sued in their names.

2. Limited Liability of the Partners Involved

The liabilities of the partners in an LLP are limited and separate. Their personal assets are not liable to the attachment if the LLP is suffering or winding up legal consequences of debt or repayments.

However, the liability of the partners could become unlimited in certain offensive cases like frauds, illegal and wrongful acts, or commission of offences.

3. Profit Sharing

All the partners of the Limited Liability Partnership would share business profit similar to the partners of the traditional firms. However, they are free to decide the profit ratios amongst themselves.

4. Partners of Limited Liability Partnerships

The partners of the LLPs can be either body corporations or individuals. Also, an individual cannot be a partner in an LLP in case he or she is insolvent or does not have a sound mind.

The LLPs should have at least two partners during all the times. Furthermore, the number of the partners that can be involved is unlimited, whereas in the regular partnership firms the partners are restricted to a number of 50 people. If, in case, the number of LLP partners get less than two and if the sole partner carries the business for over six months, then under these circumstances, their liability towards the business’s firm would be unlimited.

LLP and Partnership

Given below is the Difference Between a Limited Liability Partnership and the Traditional Partnership.

Difference Between a Limited Liability Partnership and the Traditional Partnership

Differences	Traditional Partnerships	Limited liability Partnerships
Governing Law	Indian Partnership Act, 1932	Limited Liability Partnerships Act, 2018
Presence of separate entity	No	Yes
Availability of unlimited liability of partners	No	Yes

Nature of the partners	Only natural persons, that are individuals	Both individuals and body corporates
Number of partners	Minimum 2, maximum 50	Minimum 2, maximum is unlimited
Registration	Optional	Mandatory
Assets	Only partners of the partnership can own the assets of the firm	A firm can own assets in its own name

The Number of Partners in LLP

Every LLP needs to have at least two people that are partners, and two people that are designated partners. The number can extend to anything beyond this, but this is the minimum that is required. At least one of the designated partners needs to be an Indian citizen and resident. There is no cap on the maximum number of partners that can be there in an LLP.

An Artificial Person for Legal Purposes

The law recognises LLPs as artificial legal persons, and therefore they can have all the rights that a person is supposed to have.

Private entity be converted to LLP

According to the provisions of the Act, it is possible for a private entity or firm to transform into LLP any unlisted public company can do this at any given time.

Need for LLP

It has been seen that people who mainly depend on LLPs have a certain reputation they can work with. LLPs are usually operated by people who have influence, power and experience so that their venture does not crash. This is also why creditors pay them money. They put together resources to gain more profit and increase the prospects that the LLP has of growing.

Sometimes, LLPs may have junior partners who work for a salary and have no stake whatsoever in the LLP. It is possible that they work with the hopes of becoming senior partners someday and then having a share in the LLP. This is an important method of delegating responsibilities.

Unit – III

Concept of Company and its Characteristics. Formation of a company. Memorandum and Articles of Association. Board of Directors, Role, Functions. Arbitration.

INTRODUCTION

Industrial has revolution led to the emergence of large scale business organizations. These organizations require big investments and the risk involved is very high. Limited resources and unlimited liability of partners are two important limitations of partnerships of partnerships in undertaking big business.

MEANING OF COMPANY

Section 3 (1) (i) of the Companies Act, 1956 defines a company as “a company formed and registered under this Act or an existing company”. Section 3(1) (ii) Of the act states that “an existing company means a company formed and registered under any of the previous companies laws”.

According to Chief Justice Marshall of USA, “A company is a person, artificial, invisible, intangible, and existing only in the contemplation of the law. Being a mere creature of law, it possesses only those properties which the character of its creation of its creation confers upon it either expressly or as incidental to its very existence”.

CHARACTERISTICS OF A COMPANY

The main characteristics of a company are:

1. Incorporated association
 2. Artificial legal person
 3. Separate Legal Entity
 4. Perpetual Existence
 5. Common Seal
 6. Limited Liability
 7. Transferable Shares
 8. Separate Property
 9. Delegated Management
1. **Incorporated association.** A company is created when it is registered under the Companies Act. It comes into being from the date mentioned in the certificate of incorporation. It may be noted in this connection that Section 11 provides that an association of more than ten persons carrying on business in banking or an association or more than twenty persons carrying on any other type of business must be registered under the Companies Act and is deemed to be an illegal association, if it is not so registered.
 2. **Artificial legal person.** A company is an artificial person. Negatively speaking, it is not a natural person. It exists in the eyes of the law and cannot act on its own. It has to act through a board of directors elected by shareholders. It was rightly pointed out in Bates V

Standard Land Co. that: “The board of directors is the brains and the only brains of the company, which is the body and the company can and does act only through them”.

3. **Separate Legal Entity:** A company has a legal distinct entity and is independent of its members. The creditors of the company can recover their money only from the company and the property of the company. They cannot sue individual members. Similarly, the company is not in any way liable for the individual debts of its members. The property of the company is to be used for the benefit of the company and not for the personal benefit of the shareholders.
4. **Perpetual Existence.** A company is a stable form of business organization. Its life does not depend upon the death, insolvency or retirement of any or all shareholder(s) or director (s). Law creates it and law alone can dissolve it. Members may come and go but the company can go on forever. “During the war all the member of one private company, while in general meeting, were killed by a bomb. But the company survived; not even a hydrogen bomb could have destroyed”. The company may be compared with a flowing river where the water keeps on changing continuously; still the identity of the river remains the same. Thus, a company has a perpetual existence, irrespective of changes in its membership.
5. **Common Seal.** As was pointed out earlier, a company being an artificial person has no body similar to natural person and as such it cannot sign documents for itself. It acts through natural person who are called its directors. But having a legal personality, it can be bound by only those documents which bear its signature. Therefore, the law has provided for the use of common seal, with the name of the company engraved on it, as a substitute for its signature.
6. **Limited Liability:** A company may be company limited by shares or a company limited by guarantee. In company limited by shares, the liability of members is limited to the unpaid value of the shares. For example, if the face value of a share in a company is Rs. 10 and a member has already paid Rs. 7 per share, he can be called upon to pay not more than Rs. 3 per share during the lifetime of the company. In a company limited by guarantee the liability of members is limited to such amount as the member may undertake to contribute to the assets of the company in the event of its being wound up.
7. **Transferable Shares.** In a public company, the shares are freely transferable. The right to transfer shares is a statutory right and it cannot be taken away by a provision in the articles. However, the articles shall prescribe the manner in which such transfer of shares will be made and it may also contain bona fide and reasonable restrictions on the right of members to transfer their shares.
8. **Separate Property:** As a company is a legal person distinct from its members, it is capable of owning, enjoying and disposing of property in its own name. Although its capital and assets are contributed by its shareholders, they are not the private and joint owners of its property. The company is the real person in which all its property invested and by which it is controlled, managed and disposed of.

- 9. Delegated Management:** A joint stock company is an autonomous, self-governing and self-controlling organization. Since it has a large number of members, all of them cannot take part in the management of the affairs of the company. Actual control and management are, therefore, delegated by the shareholders to their elected representatives, known as directors.

	Company	Partnership
1. Mode of creation	By Registration by Statute.	By Agreement
2. Legal Statute	Legal entity distinct from members, perpetual succession.	Firm and partners are not separate; no separate entity; uncertain life
3. Liability	Limited liability of members	Unlimited joint and several liability of partners
4. Authority	Divorce between ownership and management Representative Management	Right to share management, common and ownership and Management. Mutual agency - Implied authority.
5. Transfer of shares	Public Co.-freely transferable; transferee gets all the rights of the transferor	Ordinarily no right of transfer of share by a partner-limited rights of transferee
6. Number of members	Private Co-Minimum 2 and Maximum 50 public Co. Minimum 7 and Maximum unlimited.	Minimum 2 Maximum 20.
7. Resources	Large and unlimited resources	Personal resources of partners are limited.

8. General powers	Memorandum defines and confines the scope of the company. alteration difficult.	Easy to change the agreement and so also the powers of the partners.
9. Legal formalities	Statutory books, Audit, Publication Registration, filing, etc. lots of legal formalities	No legal formalities Registration not compulsory. No audit, no publication of accounts etc.
10. Dissolution	Only according to the provisions of law- usually by an order of the court. Death of a shareholder does not affect the existence of a company.	Dissolution by agreement by notice, by court. Death of a partner may mean dissolution of partnership

Formation of a Company

Formation of a company is the procedure of registering a company as a limited company. As a consequence, the firm becomes a definite legal entity. This formation is also known as ‘company registration’ or ‘company incorporation’.

The process of formation of a company is an extensive activity and can be categorised into four different stages. Let us understand and get more insight into various phases of the Formation of a Company.

Steps in Formation of a Company

The formation of a company goes through a number of steps, starting from idea generation to commencing of the business. This whole process can be broken down into 4 major phases or steps, which we will be discussing in the lines below.

The major steps in formation of a company are as follows:

1. Promotion stage
2. Registration stage
3. Incorporation stage
4. Commencement of Business stage

Promotion Stage: Promotion is the first step in the formation of a company. In this phase, the idea of starting a business is converted into reality with the help of promoters of the business idea.

In this stage the ideas are executed. The promotion stage consists of the following steps:

1. Identify the business opportunity and decide on the type of business that needs to be done.

2. Perform a feasibility study and determine the economic, technical and legal aspect of executing the business.
3. Interest shown by promoters towards the business idea and supply of capital and other necessary procedures to start the business.

Registration stage: Registration stage is the second part of the formation process. In this stage, the company gets registered, which brings the company into existence.

A company is said to be in existence, if it is registered as per the Companies Act, 2013. In order to get a company registered, some documents need to be provided to the Registrar of Companies.

There are several steps involved in the registration phase, and are as follows:

1. Memorandum of Association: A memorandum of association (MoA) must be signed by the founders of the company. A minimum of 7 members are required in case of a public company and 2 in case of a private company. The MoA must be properly registered and stamped.
2. Article of Association: Article of Association (AoA) is also required to be signed and submitted. All members who previously signed MoA, should also be signing the AoA.
3. The next step is preparing a list of directors which should be filed with the Registrar of Companies.
4. Directors of the company should provide a written consent agreeing to be directors, should be filed with the Registrar of Companies (RoC).
5. The notice of address of the office needs to be filed.
6. A statutory declaration should be made by any advocate of either the High Court or Supreme Court, or a person of the capacity of Director, Secretary or Managing Director. This declaration shall be filed with the RoC.

Certificate of Incorporation: Certificate of incorporation is issued when the registrar is satisfied with the documents provided. This certificate validates the establishment of the company in the records.

Certificate of commencement of business: Certificate of commencement of business is required for a public company to start doing business, while a private company can start business once it has received the certificate of incorporation.

Public companies receiving the certificate of incorporation can issue prospectus in order to make the public subscribe to the share for raising capital. Once all the minimum number of required shares have been subscribed, a letter should be sent to the registrar along with a bank document stating the receiving of the money.

The registrar will issue a certificate upon finding the provided documents satisfactory. This certificate is known as certificate of commencement of business. The company can start business activities from the date of issue of the certificate and the business shall be done as per rules laid down in the MoA (Memorandum of Association).

Memorandum of Association

The memorandum of association acts as the foundation of every company. It explains all the rules and bubbles powers of the owner in your systematic formal representation. It has a broad scope. As it is very important for every organisation, we will try to understand more about moa. Let us discuss the meaning of the memorandum of association and its aims, features, and many more.

Memorandum of Association of a Company

Memorandum of association of the company deals with all aspects of that particular organisation such as the operations delegation of duties and policies, principles, etc. The memorandum of association of any company is formed or designed by considering the objective of a particular firm. In the year 2013, section 399 of the companies act, designed to form an MOA, which is the public document and needs to get aware of this moa to all employees of an organisation.

Meaning of MOA

The memorandum of association definition explains that all the powers and the rights should be mentioned in this public document and no one should depart from the contract as well as not to Violate the rules and regulations specified in the moa. If anyone violates, they can be termed as ultra vires of the company and immediately can void them. This is the simple and straight away definition of the memorandum of association of any company. It is completely under legal survival. All the papers are strictly verified and are tested by the moa in company law.

Types of MOA

Based on their form, there are five main types of memorandum of association and they are as follows:

1. Table A - if shares end up limiting a company.
2. Table B - if a guarantee limits a company.
3. Table C - if a guarantee along with share capital limits a company.
4. Table D - if it is an unlimited company.
5. Table E - if it is an unlimited company and has a share capital.

Contents of MOA

The contents of the memorandum of the association consist of different clauses. Each clause plays a vital role in the organisation. Let's see all the classes in a detailed manner as given below,

1. **Name Clause:** the name clause of moa specifies that the titles of all the private limited companies should end with 'private limited'. On the other hand, the titles of all the government companies should end with 'limited'.

The companies under section 8 of the act, may need not to follow these rules. These companies can be identified by certain words like-

- a. Association
 - b. Federation
 - c. Foundation
 - d. Confederation
 - e. Forum
 - f. Chamber
 - g. Council
 - h. Electoral trust.
2. **Registered Office Clause:** indicates the state of the registered office where the organisation is located exactly. It is very important to specify the branch of the registered office where the organisation got registered.
 3. **Object Clause:** this segment of the memorandum of association explains the motto of the organisation and its activities. After a few months if there is a change in activities and operations, then the head of the institution needs to change the name of that organisation within 6 months. Otherwise, it will become an offence.
 4. **Capital Clause:** it concentrates on the capital invested by two or more shareholders of one company. We need to furnish the information regarding the amounts of share between the shareholders and how they formulated their rules etc. in the memorandum of association.
 5. **Liability Clause:** it is another important class of memorandum of association. Here we need to explain the liability of the members either limited or unlimited in the firm.

If the company is limited by shares, it needs to specify the amounts held by the shareholders and whether they are paid or unpaid. All these aspects need to be mentioned clearly in the MOA.

If the company is restricted by guarantees, the Moa specifies that all contributors with a bonus have equal rights. Even during the winding up of a company, both assets and

liabilities which include all the expenses while demolishing the firm need to be distributed equally.

6. **Association Clause:** It is the last but not least, class of the memorandum of association. Here one should mention the exact idea and goal of the owner of the company.

Amendment of MOA

If any of the following changes take place, then it means that the memorandum of association needs to be amended:

- 🚧 If an alteration takes place in the name of business.
- 🚧 If any changes happen in the office of registration.
- 🚧 If an alteration takes place in the object clause of the business.
- 🚧 If an alteration takes place in the authorised capital of the business.
- 🚧 If any kind of adjustments are made in the legal liabilities of the business members.

The procedures to be followed for making any types of amendments in the memorandum of association have been mentioned in the 13th clause of The Companies Act, 2013.

Conclusion

Hence it is clear that the memorandum of association is the fundamental public agreement of all kinds of organisations that involves the operational activities, rights, powers, etc. From the definition of a memorandum of association, we can understand that it is important to check the format and all clauses without any fail. And the memorandum of association of your company should be verified and attested by the moa of company law.

Board of Directors

A board of directors is essentially a panel of people who are elected to represent shareholders. Every public company is legally required to install a board of directors; non-profit organizations and many private companies – while not required to – also name a board of directors.

The board is responsible for protecting shareholders' interests, establishing policies for management, oversight of the corporation or organization, and making decisions about important issues a company or organization faces.

Functions of a Board of Directors

In a broad sense, a corporate board of directors acts as a fiduciary for shareholders. The board is also tasked with a number of other responsibilities, including the following:

- ✚ Creating dividend policies
- ✚ Creating options policies
- ✚ Hiring and firing of senior executives (especially the CEO)
- ✚ Establishing compensation for executives
- ✚ Supporting executives and their teams
- ✚ Maintaining company resources
- ✚ Setting general company goals
- ✚ Making sure that the company is equipped with the tools it needs to be managed well

Duties & Responsibilities of Board of Directors

The duties and responsibilities of the board of directors are as follows

1. **Trusteeship:** The board of directors act as trustees to the property and welfare of the company. Hence, the board must use the company's property for the long-run gain of the company, but not for their personal use.
2. **Formulation of Mission, Objective and Policies:** Board of directors must see the long run view and have long run perspective of the company. The board formulates reviews and reformulates the company's mission, objectives and policies which form the basis for strategy formulation and implementation.
3. **Designing Organizational Structure:** The board designs the structure of the organization based on the objectives, policies, environmental factors, degree of competition, role of quality, expectations of employees etc.
4. **Selection of Top Executives:** The board should assume the responsibility of screening and selecting the top executives who can formulate and implement the strategies. Chief executives are key personnel in the process of strategy implementation.
5. **Financial Sanctions:** The important financial decisions like sanctioning of finances to various projects, reserves, distribution of profit to shareholders and repayment of loans and advances etc., are taken by the board. Further, the board reviews the financial performance of the company from time to time and reformulates the financial policies.
6. **Feed forward and Feedback:** The board has to obtain information from the external environmental factors and feed that information forward to various key points in the company in order to prevent possible hurdles and mistakes in the process of achieving organizational goals. Further, the board also obtains the information from internal sources of the organization, and feeds it forward to prevent possible failures in decision-making by the top level executives.

The board also feeds the information back to the executives regarding their failures in decision-making with a view to avoid the recurrence of such mistakes. Thus, feedback of information helps the board to check and control the activities as board has the ultimate responsibility for the success of the company.

7. **Link between the Company and External Environment:** The board acts a vital and continuous link between the company and external environment like government, other companies, social and economic institutions etc.

Arbitration:

The definition of ‘arbitration’ in section 2(1) (a) verbatim reproduces the text of article 2(a) of the Model Law-‘arbitration means any arbitration whether or not administered by a permanent arbitral institution’. It is a procedure in which the dispute is submitted to an arbitral tribunal which makes a decision (an “award”) on the dispute that is binding on the parties.

It is a private, generally informal and non-judicial trial procedure for adjudicating disputes. There are four requirements of the concept of arbitration: an arbitration agreement; a dispute; a reference to a third party for its determination; and an award by the third party.

The essence lies in the point that it is a forum chosen by the parties with an intention that it must act judicially after taking into account relevant evidence before it and the submission of the parties. Hence it follows that if the forum chosen is not required to act judicially, the process it is not arbitration.

Types of arbitration are:

-  Ad Hoc Arbitration
-  Institutional Arbitration
-  Statutory Arbitration
-  Fast track arbitration

Ad Hoc Arbitration

An ad hoc arbitration is one which is not administered by an institution and therefore, the parties are required to determine all aspects of the arbitration like the number of arbitrators, manner of their appointment, etc. Provided the parties approach the arbitration in a spirit of cooperation, ad hoc proceedings can be more flexible, cheaper and faster than an administered proceeding. The advantage is that, it is agreed to and arranged by the parties themselves. However, the ground realities show that arbitration in India, particularly ad hoc arbitration, is becoming quite expensive vis-à-vis traditional litigation.

Institutional Arbitration

An institutional arbitration is one in which a specialized institution with a permanent character intervenes and assumes the functions of aiding and administering the arbitral process, as according to the rules of that institution. It is important to note that these institutions do not arbitrate the dispute, it is the arbitrators who arbitrate, and so the term arbitration institution is inapt and only the rules of the institution apply.

Incorporation of book of rules in the “arbitration agreement” is one of the principle advantages of institutional arbitration. Institutional Arbitration, throughout the world, is recognized as the primary mode of resolution of international commercial disputes. It is an arbitration administered by an arbitral institution.

Further, in many arbitral institutions such as the International Chamber of Commerce (ICC), before the award is finalized and given, an experienced panel scrutinizes it. As a result, the possibilities of the court setting aside the award is minimal.

Statutory Arbitration

When a law specifies that if a dispute arises in a particular case it has to be referred to arbitration, the arbitration proceedings are called “statutory arbitration”. Section 2(4) of the Arbitration and Conciliation Act 1996 provides, with the exception of section 40(1), section 41 and section 43, that the provisions of Part I shall apply to every arbitration under any other act for the time being in force in India.

Fast track arbitration

Fast track arbitration is a time-bound arbitration, with stricter rules of procedure, which do not allow any laxity for extensions of time, and the resultant delays, and the reduced span of time makes it more cost effective. Sections 11(2) and 13(2) of the 1996 Act provides that the parties are free to agree on a procedure for appointing an arbitrator and choose the fastest way to challenge an arbitral award respectively. The Indian Council of Arbitration (ICA) has pioneered the concept of fast-track arbitration in India and under its rules; parties may request the arbitral tribunal to settle disputes within a fixed timeframe.

Unit – IV

Social responsibility of business — Consumer Protection Act – Consumer Councils – Redressals. Right to information.

CONSUMER PROTECTION ACT, 1986

The consumer protection act is a milestone in the history of socio-economic legislation of the country. It is one of the most progressive and comprehensive piece of legislations enacted for the protection of consumer. The consumer protection act was passed on 5th December 1986. This Act was amended in the year 1991, 1993 and 2002.

This Act tries to help a consumer when the goods purchased are defective or the services rendered to him are unsatisfactory. Prior to enactment of this Act, consumer disputes had to be settled only through civil courts which are very expensive.

Definitions of Important terms:-

1. Complainant:- According to Section 2(1) (b) “Complainant” means (i) a consumer or (ii) any voluntary consumer association registered under the Companies Act, 1956 or under any other law for the time being in force or (iii) the central govt. or any state government, which makes a complaint (iv) one or more consumers, if there are a number of consumers and have the same interest.

2. Complaint:- A complaint means any allegation in writing made by a complainant that a. An unfair trade practice or a restrictive trade practice has been adopted by any trader or service provider.

b. The goods bought by him or agreed to be bought by him suffer from one or more defects.

c. The services hired or availed or agreed to be hired or availed of by him suffer from deficiency in any respect;

d. A trader or the service provider, as the case may be, has charged for the goods or for the services mentioned in the complaint, a price in excess of the price fixed by or under any law for the time being in force or displayed on the goods or any package containing such goods.

e. Goods which will be hazardous to life and safety when used are being offered for sale to the public in contravention of the provisions of any law, requiring traders to display information in regard to the contents, manner and effect of use of such goods with a view to obtaining any relief provided by or under this act.

3 Consumer:- According to this Act, “Consumer means any person who

a. 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. The term includes any user of such goods other than the person who buys such good for consideration paid or promised or partly paid and partly promised or under any system of deferred payment when such use is made with the approval of such person. But the term does not include a person who obtains such goods for resale or for any commercial purpose; or

b. 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.

4. **Consumer disputes:** - Consumer disputes means a disputes where the person against whom a complaint has been made, denies or disputes the allegations contained in the complaint.

5. **Defect:-** Defect means any fault, imperfection or short coming in the quality, quantity, potency or standard which is required to be maintained by or under any law for the time being in force or under any contract, express or implied or as is claimed by the trader in any manner whatsoever in relation to any goods.

6. **Deficiency:-** It means any fault , imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service.

7. **Goods:** - According to the sale of goods act, goods means every kind of movable property other than actionable claims and money ie, legal tender. It includes shares, patent rights, copy rights trademarks, fruits, minerals, water, electricity etc.

8. **Manufacturer:-**A manufacturer as per sec2 ((1)(j) is a person who

a. Makes or manufacture any goods or part thereof or

b. Does not make or manufacture any good but assembles part thereof made or manufacture by others and claim the end product to be goods manufactured by himself, or

c. Puts or causes to be put his own mark on any goods made or manufactured by any other manufacturer and claims such goods to be goods made or manufactured by himself.

9. **Restrictive Trade Practices:-** As per sec.2(1)(n) 'Restrictive trade practices' means any trade practice which requires a consumer to buy, hire or avail of any goods or as the case may be, services, as a condition precedent for buying, hiring or availing of other goods or services.

10. **Service:-** According to section 2(1) (o)' service' means service of any description which is made available to potential users and includes the provisions of facilities in connection with banking, financing, insurance, transport, supply electrical or other agency, boarding and lodging or both, housing construction entertainment, amusement etc. The term does not include the rendering of any service free of charge or under a contract of personal service.

11. **Persons:-**Person includes

a. A firm whether registered or not

b. A Hindu undivided family

c. A co-operative society

d. Every other association of person whether registered under the societies Registration Act 1860 or not.

12. **Trader:-**Trader in relation to any goods means a person who sells or distributes any goods for sale and includes the manufacture thereof, and where such goods are sold or distributed in package form, includes the packer thereof.

13. Unfair trade practices:- Unfair trade practice means a trade practice which for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practices including any of the following practices namely

(1) The practice of making any statement, whether orally or in writing or by visible representation which

- a. Falsely represent that the goods are of a particular standard, quality grade, composition, style or model.
- b. Falsely represent that the services are of a particular standard, quality or grade
- c. Falsely represents any rebuilt, second hand renovated, reconditioned or old goods as new goods.
- d. Represents that the goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits which such goods or services do not have
- e. Makes a false or misleading representation concerning the need for , or the usefulness of,
- f. any goods or services;
- g. Gives to the public any warranty or guarantee of the performance, efficacy or length of the life of a product or of any goods that is not based on an adequate or proper test thereof.
- h. Which makes to the public a representation in a form that purports to be(a) a warranty or guarantee of a product or of any goods or services; or(b) a promise to replace, maintain or repair an article or any part thereof or to repeat or continues a service until it has achieved a specific result
- i. Which materially misleads the public concerning the price at which a product or like product or goods or services, have been or are, ordinarily sold or provided, and, for this purpose, a representation as to price shall be deemed to refer to the price at which the product or goods or services has or have been sold by sellers or provided by suppliers generally in the relevant market unless it is clearly specified to be the price at which the product has been sold or services have been provided by the person by whom or on whose behalf the representation is made;
- j. Which gives false or misleading facts disparaging the good, services or trade or another person?

2. Permits the publication of any advertisement whether in any newspaper or otherwise, for the sale or supply at the bargain price, of goods or services that are not indented to be offered for sale for supply at the bargain price, or for a period that it, and in quantities that are, reasonable, having regard to the nature of the market in which the business is carried on, the nature and size of business, and the nature of the advertisement.

3. Permits (a) the offerings of gifts, prizes or other items with the intention of not providing them as offered or creating impression that something is being given or offered free of charge when it is fully or partly covered by the amount charged in the transaction as a whole; (b) the conduct of any contest, lottery, game of chance or skill, for the purpose of promoting, directly or indirectly, the sale, use or supply of any product or any business interest.

4. Permits the sale or supply of goods intended to be used, or are of a kind likely to be used, by consumers, knowing or having reason to believe that the goods do not comply with the standards prescribed by competent authority relating to performance, composition, contents, design, construction, finishing or packaging as are necessary to prevent or reduce the risk of injury to the person using the goods.

5. Permits the hoarding or destruction of goods, or refuses to sell the goods or to make them available for sale or to provide any service, if such hoarding or destruction or refusal raises, tends to raise or is intended to raise, the cost of those or other similar goods or services.

14. **Bargaining Prices:** - 'Bargaining Price' means

- (a.) a price that is stated in any advertisement to be a bargain price, by reference to an ordinary price or otherwise or;
- (b) a price that person who reads, hears or sees the advertisement, would reasonably understand to be a bargain price having regard to the prices at which the product advertised or like products are ordinarily sold.

Consumer Protection Councils

The Act provides the establishment of a Central Consumer Protection Council by the Central Government and the state consumer protection council in each state by the respective state government.

Central Consumer Protection Council: - The central government shall, by notification, establish with effect from such date as it may specify in such notification, a council to be known as the Central Consumer Protection Council.

Composition of Central Consumer Protection Council: The Central consumer protection council shall consist of the following members:-

- a. The minister in charge of the consumer affairs in the central government who shall be the chairman of the Central Council.
- b. Such members of other official or non-official members representing such interest as may be prescribed.

Terms and conditions of members of the Central Council:

The term of the council shall be three years. Any member may, by writing under his hand to the chairman of the central council, resign from the council.

Objectives of the Central Council:-The main objectives of Central consumer protection council are as follows:-

- 1. The right to be protected against the making of goods and services which are hazardous to life and property.
- 2. The right to be informed about the quality, quantity, potency, purity standard and price of goods or services as the case may be so as to protect against unfair trade practices.
- 3. The right to be assured, wherever possible, access to a variety of goods and services at competitive prices.

4. The right to be heard, and to be assured that consumers' interest will receive due consideration at appropriate forums.
5. The right to seek redress against unfair trade practices or restrictive trade practices
6. The right to consumer education.

Meetings

The meetings of the central council shall be presided over by the Chairman. In the absence of the chairman, the vice chairman shall preside over the function. The central council shall meet as and when necessary, but at least one meeting of the council shall be held every year.

The central council shall meet at such time and place as the Chairman may think fit and shall observe such procedures in regard to the transaction of the business as may be prescribed.

The state Consumer Protection Council: - The state government shall by notification establish with effect from such date as it may specify in such notification, a council to be known as the State Consumer Protection Council.

Members of the Council:-

The State consumer Protection Council shall consist of the following members:

1. The minister in charge of consumer affairs in the state government, who shall be its Chairman.
2. Such member of other officials or non-official members representing such interest as may be prescribed by the State Government.
3. Such member of other official or non-official members, not exceeding ten, as may be nominated by the Central Government.

Meeting of the Council: - The State Council shall meet as and when necessary, but not less than two meeting shall be held every year. The state council shall meet at such time and place as the Chairman may think fit and shall observe such procedure in regard to the transaction of its business as may be prescribed by the State Government

Objects:

The objects of State Consumer Protection Council shall be to promote and protect within the state the rights of the consumers as laid down in sec.6. Which are same as those of the central council.

The District Consumer Protection Council: - The District Consumer Protection Council shall consist of the following members.

1. The District Collector, who shall be its chairman.
2. Such member of other official and non-official members representing such interest as may be prescribed by the state Government.

Meetings: The District Council shall meet as and when necessary but not less than two meetings shall be held every year.

Time and Place of meeting: - The District Council shall meet as such time and place within the district as the chairman may think fit and shall observe such procedure in regard to the transaction of its business as may be prescribed by the State Government.

Objects: - The objects of every District Council shall be to promote and protect within the district the rights of the consumers.

Rights and Remedies of Consumers:

According to section 6 of the Consumer Protection Act, the following rights are available to consumers

1. **Rights to be protected or right to safety:** - Every consumer has the right to be protected against the marketing of goods and services which are hazardous to life and property.
2. **Right to be informed:** - Every consumer has the right to be informed about the quality, quantity, potency, purity standard and price of the goods or services as the case may be, so as to protect the consumer against the unfair trade practices.
3. **Right to be assured:** - Every consumer has a right to be assured, wherever possible, access to a variety of goods and services at competitive prices.
4. **Right to be heard:** - Every consumer has a right to be heard and to be assured that consumers interest will receive due consideration at appropriate forums.
5. **Right to seek redressal:** - Every consumer has a right to seek redressal against unfair trade practices or restrictive trade practices or exploitation of consumers.
6. **Right to consumer education:** - Every consumer has a right to consumer education, which will help the consumer to know his rights and duties.

Remedies to Consumers: - The consumer protection act provides the following remedies to consumers:

- a) Removal of defects from goods.
- b) Replacement of defective goods
- c) Refund against defective goods or deficient services.
- d) Award of compensation for the loss or injury suffered
- e) Removal of defects or deficiencies in the services
- f) Discontinuance of unfair trade practices or restrictive trade practices
- g) Prohibition on sale of hazardous goods.

Redressal Agencies for Consumer Disputes:

The consumer protection act provides for three tier quasi judicial redressal machinery at the District, State and National levels for redressal of consumer disputes and grievances. Accordingly sec. 9 provides for the establishment of the following agencies.

- a. A consumer Dispute Redressal Forum to be known as the “District Forum” established in each district of the State by notification. The State Government is empowered to establish more than one District Forum in a district.
- b. A consumer Disputes Redressal Commission to be known as the “State Commission” established by the state Government.
- c. A national Consumer Disputes Redressal Commission established by the Central Government.

District Forum:

Composition: - Each district forum shall consist of

- a. A person who is, or has been or is qualified to be a District Judge, who shall be its president
- b. Two other members, who shall be person of ability, integrity and standing and have adequate knowledge or experience, and one of whom shall be a woman.

Tenure of office: Every member of the District Forum shall hold office for a term of five years or up to the age of sixty five years, whichever is less and shall not be eligible for reappointment.

Office and Place of sitting of the District Forum: - The office of the District Forum shall be located at the headquarters of the District. Sitting of the District Forum, as and when necessary, shall be convened by the President.

Jurisdiction of the District Forum: - The District Forum shall have a jurisdiction to entertain complaints where the value of the goods or services and the compensation, if any, claimed does not exceed rupees five lakhs.

Powers of the District Forum:

The District Forum shall have the same powers as are vested in a civil court under the code of civil procedure. , and includes the power to

1. Discover and produce any document or other material object producible as evidence.
2. Reception of evidence on affidavits
3. Requisition of report of the concerned analysis from the appropriate laboratory or from any other relevant source.
4. Any other matter which may be prescribed

State Commission: - Each state commission consist of

1. A person who is or has been a judge of a High Court, appointed by the State Government, The person so appointed shall be its president
2. Not less than two and not more than such number of members as may be prescribed, and one of whom shall be a woman, and who Shall have the following qualification:
 - a. Not less than 35 years of age
 - b. Possess a bachelor degree from a recognized university
 - c. To be persons of ability, integrity and standing and have adequate knowledge and experience of at least ten years I dealing with problems relating to economics, law, commerce, accountancy etc.

Office and Place of sitting of State Commission: - Office of the state Commission shall be located at the capital of the State. Sitting of the State Commission, as and when necessary, shall be convened by the president.

Monetary limit: - The state commission shall have jurisdiction to entertain complaints where the value of goods or services and compensation, if any, claimed exceeds Rs. Twenty lakhs but does not exceeds Rs. One crore.

National Commission: The National Commission shall consist of

1. A person who is or has been a judge of the Supreme Court, to be appointed by the Central Government, who shall be its President.

2. Not less than four, and not more than such number of members, as may be prescribed, and one of whom shall be a woman, who shall have the following qualifications, namely

- a. To be persons of ability, integrity and standing and have adequate knowledge and experience of at least ten years in dealing with problems relating to economics, law, commerce, accountancy etc
- b. Be not less than thirty five years of age, and
- c. Possess a bachelor's degree from a recognized university

Monetary limit:- The National commission shall have jurisdiction to entertain complaints where the value of the goods or services and compensation, if any claimed exceeds Rs. One crore.

CORPORATE SOCIAL RESPONSIBILITY

The term "corporate social responsibility" became popular in the 1960s and has remained a term used indiscriminately by many to cover legal and moral responsibility more narrowly construed.

India's new [Companies Act 2013](#) (Companies Act) has introduced several new provisions which change the face of Indian corporate business. Companies Act 2013 (Companies Act) has introduced several new provisions which change the face of Indian corporate business. One of such new provisions is Corporate Social Responsibility (CSR). The concept of CSR rests on the ideology of give and take. Companies take resources in the form of raw materials, human resources etc from the society. By performing the task of CSR activities, the companies are giving something back to the society.

Ministry of Corporate Affairs has recently notified Section 135 and Schedule VII of the Companies Act as well as the provisions of the [Companies \(Corporate Social Responsibility Policy\) Rules, 2014](#) (CSR Rules) which has come into effect from 1 April 2014.

Applicability: Section 135 of the Companies Act provides the threshold limit for applicability of the CSR to a Company i.e. (a) net worth of the company to be Rs 500 crore or more; (b) turnover of the company to be Rs 1000 crore or more; (c) net profit of the company to be Rs 5 crore or more. Further as per the CSR Rules, the provisions of CSR are not only applicable to Indian companies, but also applicable to branch and project offices of a foreign company in India.

CSR Committee and Policy: Every qualifying company requires spending of at least 2% of its average net profit for the immediately preceding 3 financial years on CSR activities. Further, the qualifying company will be required to constitute a committee (CSR Committee) of the Board of Directors (Board) consisting of 3 or more directors. The CSR Committee shall formulate and recommend to the Board, a policy which shall indicate the activities to be undertaken (CSR Policy); recommend the amount of expenditure to be incurred on the activities referred and monitor the CSR Policy of the company. The Board shall take into account the recommendations made by the CSR Committee and approve the CSR Policy of the company.

Definition of the term CSR: The term CSR has been defined under the CSR Rules which includes but is not limited to:

- Projects or programs relating to activities specified in the Schedule; or
- Projects or programs relating to activities undertaken by the Board in pursuance of recommendations of the CSR Committee as per the declared CSR policy subject to the condition that such policy covers subjects enumerated in the Schedule.

This definition of CSR assumes significance as it allows companies to engage in projects or programs relating to activities enlisted under the Schedule. Flexibility is also permitted to the companies by allowing them to choose their preferred CSR engagements that are in conformity with the CSR policy.

Activities under CSR: The activities that can be done by the company to achieve its CSR obligations include eradicating extreme hunger and poverty, promotion of education, promoting gender equality and empowering women, reducing child mortality and improving maternal health, combating human immunodeficiency virus, acquired, immune deficiency syndrome, malaria and other diseases, ensuring environmental sustainability, employment enhancing vocational skills, social business projects, contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government or the State Governments for socio-economic development and relief and funds for the welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women and such other matters as may be prescribed.

Local Area: Under the Companies Act, preference should be given to local areas and the areas where the company operates. Company may also choose to associate with 2 or more companies for fulfilling the CSR activities provided that they are able to report individually. The CSR Committee shall also prepare the CSR Policy in which it includes the projects and programmes which is to be undertaken, prepare a list of projects and programmes which a company plans to undertake during the implementation year and also focus on integrating business models with social and environmental priorities and process in order to create share value.

The company can also make the annual report of CSR activities in which they mention the average net profit for the 3 financial years and also prescribed CSR expenditure but if the company is unable to spend the minimum required expenditure the company has to give the reasons in the Board Report for non-compliance so that there are no penal provisions are attracted by it.

Right to Information Act, 2005

The **Right to Information Act (RTI)** is an Act of the Parliament of India *"to provide for setting out the practical regime of right to information for citizens"* and replaces the erstwhile Freedom of information Act, 2002. Under the provisions of the Act, any citizen may request information from a "public authority" (a body of Government or "instrumentality of State") which is required to reply expeditiously or within thirty days. The Act also requires every public authority to computerise their records for wide dissemination and to proactively certain categories of information so that the citizens need minimum recourse to request for information formally. This law was passed by Parliament on 15 June 2005 and came fully into force on 12 October 2005. The first application was given to a Pune police station. Information disclosure in India was restricted by the Official Secrets Act 1923 and various other special laws, which the new RTI Act relaxes. It codifies a fundamental right of citizens.

Background of act

Freedom of Information Act 2002

The establishment of a national-level law for freedom of information proved to be a difficult task. The Central Government appointed a working group under H. D. Shourie and assigned it the task of drafting legislation. The Shourie draft was the basis for the Freedom of Information Bill, 2000 which eventually became law under the Freedom of Information Act, 2002. This Act was severely criticised for permitting too many exemptions, not only under the standard grounds of national security and sovereignty, but also for requests that would involve "disproportionate diversion of the resources of a public authority". There was no upper limit on the charges that could be levied. There were no penalties. The Act was passed by Parliament, but was never notified, so it did not attain legal force.

State-level RTI Acts

The state-level RTI Acts were first successfully enacted by the state governments of Tamil Nadu (1997), Goa (1997), Rajasthan (2000), Delhi (2001), Maharashtra (2002), Assam(2002), Madhya Pradesh (2003), Jammu and Kashmir (2004), Haryana (2005) and Andhra Pradesh(2005).

Scope

The Act covers the whole of India except Jammu and Kashmir, where J&K Right to Information Act is in force. It covers all constitutional authorities, including the executive, legislature and judiciary; any institution or body established or constituted by an act of Parliament or a state legislature. It is also defined in the Act that bodies or authorities established or constituted by order or notification of appropriate government including bodies "owned, controlled or substantially financed" by government, or non-Government organizations "substantially

financed, directly or indirectly by funds" provided by the government are also covered in the Act.

Private bodies

Private bodies are not within the Act's ambit directly. In a decision of *Sarbjitroy vs Delhi Electricity Regulatory Commission*,^[1] the Central Information Commission also reaffirmed that privatised public utility companies are not applicable for RTI. As of 2014, private institutions and NGOs receiving over 95% of their infrastructure funds from the government come under the Act.^[2]

Political parties

The Central Information Commission (CIC), consisting of Satyanand Mishra, M.L. Sharma and Annapurna Dixit, has held that the political parties are public authorities and are answerable to citizens under the RTI Act. The CIC, a quasi-judicial body, has said that six national parties - Congress, BJP, NCP, CPI(M), CPI and BSP and BJD - have been substantially funded indirectly by the Central Government and have the character of public authorities under the RTI Act as they perform public functions^{[3][4]} In August 2013 the government introduced a Right To Information (Amendment) Bill which would remove political parties from the scope of the law.^[5] In September 2013 the Bill was deferred to the Winter Session of Parliament.^[6] In December 2013 the Standing Committee on Law and Personnel said in its report tabled in Parliament^[7]

"The committee considers the proposed amendment is a right step to address the issue once and for all. The committee, therefore, recommends for passing of the Bill."

Process

The RTI process involves reactive (as opposed to proactive) disclosure of information by the authorities. An RTI request initiates the process.

Each authority covered by the RTI Act must appoint their **Public Information Officer (PIO)**. Any person may submit a written request to the PIO for information. It is the PIO's obligation to provide information to citizens of India who request information under the Act. If the request pertains to another public authority (in whole or part), it is the PIO's responsibility to transfer/forward the concerned portions of the request to a PIO of the other authority within 5 working days. In addition, every public authority is required to designate **Assistant Public Information Officers (APIOs)** to receive RTI requests and appeals for forwarding to the PIOs of their public authority. The applicant is required to disclose his name and contact particulars but not any other reasons or justification for seeking information.

The Central Information Commission (CIC) acts upon complaints from those individuals who have not been able to submit information requests to a Central Public Information Officer or State Public Information Officer due to either the officer not having been appointed, or because

the respective Central Assistant Public Information Officer or State Assistant Public Information Officer refused to receive the application for information.

The Act specifies time limits for replying to the request.

- If the request has been made to the PIO, the reply is to be given within **30 days** of receipt.
- If the request has been made to an APIO, the reply is to be given within **35 days** of receipt.
- If the PIO transfers the request to another public authority (better concerned with the information requested), the time allowed to reply is **30 days** but computed from the day after it is received by the PIO of the transferee authority.
- Information concerning corruption and Human Rights violations by scheduled Security agencies (those listed in the Second Schedule to the Act) is to be provided within **45 days** but with the prior approval of the Central Information Commission.
- However, if life or liberty of any person is involved, the PIO is expected to reply within **48 hours**.

Since the information is to be paid for, the reply of the PIO is necessarily limited to either denying the request (in whole or part) and/or providing a computation of "further fees". The time between the reply of the PIO and the time taken to deposit the further fees for information is excluded from the time allowed. If information is not provided within this period, it is treated as deemed refusal. Refusal with or without reasons may be ground for appeal or complaint. Further, information not provided in the times prescribed is to be provided free of charge. Appeal processes are also defined.

Fees

A citizen who desires to seek some information from a public authority is required to send, along with the application, a demand draft or a bankers cheque or an Indian Postal Order of Rs.10/- (Rupees ten) payable to the Accounts Officer of the public authority as fee prescribed for seeking information

The applicant may also be required to pay further fee towards the cost of providing the information, details of which shall be intimated to the applicant by the PIO as prescribed by the RTI ACT

Exclusions

Central Intelligence and Security agencies specified in the Second Schedule like IB, Directorate General of Income tax(Investigation), RAW, Central Bureau of Investigation (CBI), Directorate of Revenue Intelligence, Central Economic Intelligence Bureau, Directorate of Enforcement, Narcotics Control Bureau, Aviation Research Centre, Special Frontier Force, BSF, CRPF, ITBP, CISF, NSG, Assam Rifles, Special Service Bureau, Special Branch (CID), Andaman and Nicobar, The Crime Branch-CID-CB, Dadra and Nagar Haveli and Special Branch,

Lakshadweep Police etc. will be excluded. Agencies specified by the State Governments through a Notification will also be excluded. The exclusion, however, is not absolute and these organizations have an obligation to provide information pertaining to allegations of corruption and human rights violations. Further, information relating to allegations of human rights violation could be given but only with the approval of the Central or State Information Commission.

Information Exclusions

The following is exempt from disclosure under section 8 of the Act:-

- Information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, "strategic, scientific or economic" interests of the State, relation with foreign State or lead to incitement of an offense;
- Information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;
- Information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;
- Information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;
- Information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;
- Information received in confidence from foreign Government;
- Information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;
- Information which would impede the process of investigation or apprehension or prosecution of offenders;
- Cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers;
- Information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual (but it is also provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied by this exemption);

Notwithstanding any of the exemptions listed above, a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests. However, this does not apply to disclosure of "trade or commercial secrets protected by law".

Unit – V

Meeting of Directors and Shareholders. Winding up and Dissolution of a company. Ethics, and Morals, Ethical Practices.

Meaning and Definition of Company Meeting:

The word meeting is not defined anywhere in the Companies Act. Ordinarily, a company may be defined as gathering, assembling or coming together of two or more persons (by previous notice or by mutual arrangement) for discussion and transaction of some lawful business.

A company meeting may be defined as a concurrence or coming together of at least a quorum of members in order to transact either ordinary or special business of the company.

Some important definitions of meeting are given below:

- ✚ In the case of Sharp vs. Dawes (1971), the meeting is defined as An assembly of people for a lawful purpose or the coming together of at least two persons for any lawful purpose.
- ✚ According to P.K. Ghosh Any gathering, assembly or coming together of two or more persons for the transaction of some lawful business of common concern is called meeting.
- ✚ According to K. Kishore, A concurrence or coming together of at least a quorum of members by previous notice or mutual agreement for transaction business for a common interest is meeting.
- ✚ From the above definitions of meeting, it can be concluded that meeting is the congregation of several persons in a particular place for the purpose of discussing some important matters and expressing their opinion on the questions raised.

Characteristics of a Company Meeting:

The characteristics of a company meeting are as follows:

- ✚ Two or more persons (who are the members of the Company) must be present at the meeting.
- ✚ The assembly of persons must be for discussion and transaction of some lawful business.
- ✚ A previous notice would be given for convening a meeting.
- ✚ The meeting must be held at a particular place, date and time.
- ✚ The meeting must be held as per provisions/rules of Companies Act.

One-Man Meeting:

To Convene a meeting, two or more persons must be present. A meeting cannot be constituted by one person. However, there are certain circumstances where one person can constitute a valid meeting.

They are as follows:

- 1. Meeting Convened by Central Government:**

Where the Central Government calls an annual general meeting under Sec. 167 of the Act, it may direct that one member of the company present in person or by proxy shall constitute the meeting.

2. Absence of Quorum in an Adjourned Meeting:

By quorum we mean the minimum number of the members who must be present at a meeting as required by the rules. In the absence of quorum the proceedings of the company cannot be started.

If the quorum does not complete within half an hour of the prescribed time, meeting will be adjourned to the same time, place and date in the next week. If at the adjourned meeting also the quorum does not complete, the members present shall be quorum and attending members (even if one member is present) may be allowed to come to a decision and pass resolutions. It means one member present in person shall constitute a valid meeting.

3. Meeting Convened by Company Law Board:

Where the Company Law Board calls a meeting under Sec. 186 of the Act (other than an annual general meeting), it may direct that one member present in person or proxy shall be deemed to constitute a valid meeting.

4. Class Meeting of Shareholders:

Where one person held all the shares of a particular class, that member alone was held to constitute a valid meeting of that class of shareholders,

5. Meeting of One-Man Committee of Board of Directors:

As per Rule 77 of 'Table A', the board of directors may delegate their works to a Committee which may have only one member. When the meeting of such Committee will be held, only one member will be present and he alone will constitute a valid meeting.

Kinds of Company Meetings:

The meetings of a company may be classified into the following categories:

1. Meetings of shareholders:

- I. Statutory meeting;
- II. Annual general meeting (AGM)
- III. Extra ordinary general meeting;
- IV. Class meetings.

2. Meetings of directors:

- I. Meetings of board of directors;
- II. Meetings of directors;
- III. Meetings of creditors.

IV. Meetings of debenture-holders.

1. Meetings of Shareholders:

The shareholders are the real owners of the company, but due to certain limitations they cannot take part in the management of the company. They leave this to their representatives called the directors. For controlling the board of directors and their activities 'shareholders' 'meetings' are held from time to time. Meeting of shareholders can be classified as under.

I. Statutory Meeting:

Every public company having share capital must convene a general meeting of shareholders within a period of not less than one month and not more than six months after the date on which it is authorised to commence its business. This is the first meeting of the shareholders of the company and it is held once in the whole life of the company.

The following companies need not to hold statutory meeting:

-  Private company.
-  Company limited by Guarantee having no share capital.
-  Unlimited liability company.
-  A public company which was registered as a private company earlier.
-  A company which has been deemed as a public company under Sec. 43 A.

Notice of the Meeting:

The directors are required to send a notice of the meeting to all the members of the company at least 21 days before the date of the meeting stating that it is the 'statutory meeting' of the company. If the notice convening this meeting does not name it as the Statutory Meeting it will not amount to compliance with the provisions of this section.

Objects of Statutory Meeting:

The statutory meeting is held to inform the shareholders about matters relating to incorporation, allotment of share, the details of the contracts concluded by the company, etc. According to Stephenson, Statutory Meeting is convened in order to afford the shareholders an opportunity for seeing what degree of success has attained the floatation of the company and in order that any special matters requiring their approval may be laid before them.

Statutory Report:

The directors are required to prepare and send a report called the 'Statutory Report' to every member of the company at least 21 days before the date of the meeting. If the report is sent later it shall be deemed to have been duly forwarded if it is so agreed to by a unanimous vote of the members entitled to attend and vote at the meeting [Sec. 165 (2)]. A copy of this report should be sent to the Registrar.

The statutory report must set out the following information:

(i) Shares allotted:

The total number of shares allotted distinguishing those allotted as fully or partly paid-up otherwise than in cash and stating in case of shares partly paid-up the extent to which they are so paid-up and in either case the consideration for which they have been allotted.

(ii) Cash received:

The total amount of cash received by the company in respect of all the shares allotted, distinguished as aforesaid.

(iii) Abstract:

An abstract of the receipts of the company and of the payments made thereto, upto a date within seven days of the date of the report, exhibiting under distinctive headings the receipts of the company thereto from shares and debentures and other sources the payments thereto and particulars concerning the balance remaining in hand and an account or estimate of the preliminary expenses of the company, showing separately any commission, or discount paid or to be paid on the issue or sale of shares or debentures.

(iv) Directors, auditors and other managerial personnel:

The names, addresses and occupations of its directors and auditors and also of its manager and secretary, if any, and the changes which have occurred since the date of the incorporation.

(v) Contracts:

The particulars of any contract and the modification or the proposed modification of any contract which is to be submitted for the approval of the members at the meeting.

(vi) Underwriting contract:

The extent to which the underwriting contract, if any, has not been carried out and the reason therefore.

(vii) Arrears of calls:

The arrears, if any due on calls from any director and the manager.

(viii) Commission and brokerage:

The particulars of any commission or brokerage paid or to be paid to any director or to the manager in connection with the issue or sale of shares or debentures of the company.

Certification of Report:

The statutory report must be certified as correct by not less than two directors; one of whom shall be the managing director, if any. The auditors of company then shall certify it as correct regarding the shares allotted, cash received in respect of such shares and the receipts and payment of the company. [Sec. 165(4)]

A certified copy of the statutory report shall be filed with the registrar for registration immediately after the same has been sent to the members of the company. [Sec. 165(5)]

Procedure at the Meeting:

At the commencement of the meeting the Board shall place a list showing the name, addresses and occupation of the members of the company and the number of the shares held by them. During the continuance of the meeting the list shall remain open for inspection by members.

The members present at the meeting may discuss any matter relating to the formation of the company or arising out of statutory report, whether previous notice has been given or not. The meeting cannot pass a resolution on any item or on a subject unless notice has been given according to the provisions of the Act.

Effect of Non-compliance:

- i. If default is made in complying with the provisions of Section 165, every director or other officer of the company who is in default will be liable to a fine which may extend to Rs. 500.
- ii. If the statutory meeting is not held or the statutory report is not filed as per the provisions of Companies Act, the company may be compulsorily wound up under the orders of court. [Sec. 43(6)]

The court may, however, give direction for the statutory report to be filed or a meeting to be held as the case may be and refuse to order the winding up of the company. [Sec. 443(3)]

II. Annual General Meeting (AGM):

It is a meeting of shareholders which is held once in a year. The object of holding this meeting is to review the progress and prospects of the company and elect its office-bearers for the coming year.

Holding of the Meeting:

The first annual general meeting of the company is held within 18 months of its incorporation. After holding such meeting it is not necessary to hold any other annual general meeting in the year of its incorporation and in the next year.

Subsequent annual general meeting must be held by the company each year within six months of the closing of the financial year. In the interval between any two annual general meetings must not

be more than fifteen months. The registrar is empowered to extend the time upto a period to three months except in the case of first annual general meeting.

Notice:

The Board of Directors has to call Annual General Meeting giving 21 days notice to all the members entitled to attend the meeting. However, such a meeting may be called with shorter notice, if it is agreed to by all the members to vote in the meeting.

Certified copies of Profit and Loss Account and Balance Sheet, Directors' Report and Auditor's Report should also be forwarded to the members at least 21 days before the holding of the meeting of the company. Considering the importance of annual general meeting to shareholders it has been held that the directors must call the meeting even though the accounts are not ready or the company is not functioning.

Effect of Non-Compliance:

- i. If default is made in holding the annual general meeting in accordance with the above provisions, the Central Government may on the application of any member of the company, call or direct for the calling of the meeting and give such directions for this purpose as it thinks proper. The directions may include that one member of the company present in person or by proxy shall be deemed to constitute the meeting. (Sec. 167)
- ii. If default is made in holding a meeting of the company in accordance with the above provisions, the company and its every officer who is in default shall be punishable with a fine which may extend to five hundred and in case of continued defaults, with a further fine which may extend to Rs. 250 for every day during which such default continues,

(i) Routine Business:

- a. Adoption of Annual Accounts, Directors' Report and Auditors' Report.
- b. To declare the dividend.
- c. To elect the directors in place of those retiring by rotation.
- d. To appoint auditors and fix their remuneration.

(ii) Special Business:

- a. To increase Authorised Capital.
- b. To alter the Articles of Association, etc.

III. Extraordinary General Meeting:

Extraordinary meeting is a general meeting which is held between two Annual General Meetings. Extraordinary General Meeting is Called to discuss any particular matter of urgent

importance to the company. This meeting is called for the consideration of any specific subject, decision of which cannot be postponed to the next Annual General Meeting.

This meeting may also be called to discuss the following:

- i. Alteration of any clause of Memorandum of Association; or
- ii. Changes in the Articles of Association; or
- iii. Scheme of the reduction of share capital etc.

The Extraordinary General Meeting may be called by the Directors or may be convened by the Shareholders if the Board of Directors does not arrange for it despite their requisition to call it.

Directors may call the Extraordinary General Meeting in accordance with the procedure laid down in the Articles of Association of the company.

Shareholders holding at least one-tenth of the paid-up share capital of the company can make a requisition to the Board of Directors to convene such a meeting.

If due to any reason it is impracticable to hold extraordinary general meeting the Company Law Board may order to call such meeting either on its own initiative or on the application of any director or any member of the company who are entitled to vote at the meeting.

Section 186 of the Companies Act empowers the Company Law Board to call only extraordinary general meeting and not the annual general meeting of the company. If no such meeting is convened within 21 days of their requisition, shareholders may themselves convene the meeting within 3 months from the date of their requisition.

A notice of 21 days has to be given to members indicating the nature and particulars of the resolutions to be discussed. The special resolutions passed at Extraordinary General Meeting have to be filed with the Registrar within 15 days.

IV. Class Meetings:

When the meeting of a particular class of shareholders takes place such as preference shareholder meeting, it is known as class meeting. Such a meeting can be attended only by that class of shareholders. The articles define the procedure for calling such meeting. Such a meeting is called for the alteration in the rights and privileges of the shareholders and for the purpose of conversion of one class of shares into another.

2. Meetings of Directors:

I. Meetings of Board of Directors:

At Least One Meeting in Every Three Months:

The directors of a company exercise most of their powers in a joint meeting called the meeting of the Board.

In the case of every company, a meeting of the Board of Directors must be held:

- i. At least once in every three months, and
- ii. At least four such meetings shall be held in every year. [Sec. 285]

In other words, no three months should pass without directors' meeting being held, and no year should expire without at least four directors' meetings having been held in it.

The object of this section is to ensure that the Board meetings are held at reasonably frequent intervals so that the directors may be in touch with the management of the affairs of the company.

However, the Central Government is empowered to relax the rule with regard to any class of companies (Section 285). The object of this provision is to save smaller companies having insufficient business to be transacted at Board meetings from unnecessary hardships and expenditure involved in holding them.

Notice of the Meeting:

Notice Of every meeting of the Board of Directors must be given in writing to every director in India and at his usual address in India to every other director who is outside India for the time being (Sec. 286). A director has no power to waive his right of notice. Notice must be given to a director, even if he has stated that he will be unable to attend the meeting.

There is no need to send notice, if the articles provide for meetings to be held at regular intervals' e.g., monthly, the time and place being fixed. Also, if all the directors should meet casually, and are willing to hold a meeting, the meeting can be held notwithstanding the absence of notice.

Unless the articles of the company provide a definite period of notice, a reasonable notice must be given of the Board meeting. What is a reasonable notice will depend on any particular case. If a proper notice is not given the proceedings are invalid unless all the directors are present at the meeting.

The notice should mention the place, time and date of the meeting. The day must be a working day and the time should be during business hours unless agreed otherwise by all the directors. It is not necessary to state in the notice the business to be transacted, unless the articles of the company or the Act so require.

Agenda:

The term 'agenda' means things to be done. In the present context it is a statement of the business to be transacted at a meeting. It also sets out the order in which the business is to be dealt with. Though the Companies Act does not make it obligatory on the secretary to send an agenda or to incorporate the same in the notice of Board Meeting, yet by convention it necessarily accompanies the notice calling the meeting.

When the agenda is enclosed with the notice each director gives due consideration to the proposed business and comes with necessary preparations for discussion in the meeting.

Quorum:

There must be a proper quorum for every meeting. The quorum for Board Meeting should be at least two directors or one-third of total strength of the Board of Directors, whichever is more subject to a minimum of two directors. While determining the total strength, the vacancies are not counted.

Again the directors who are interested in any of the resolutions to be passed at the Board Meeting shall not be counted for the purpose of quorum of that resolution. If at any time the number of interested directors exceeds or is equal to two-thirds of the total strength of directors, then the remaining directors who are not interested will be the quorum for that item, provided their number is not less than two [Sec. 283].

If the meeting of the Board could not be held for want of quorum then unless the articles otherwise provide the meeting shall automatically stand adjourned till the same day in the next week and at the same time and place.

Where that day happens to be a public holiday then the meeting stands adjourned to the next succeeding day, at the same time and place. If a meeting could not be held for want of a quorum, it shall all right be counted towards the minimum number of meetings which must be held in every year under Sec. 285. [Sec. 288]

Board meetings are called for the following business:

-  To issue shares and debentures.
-  To make calls on shares.
-  To forfeit the share
-  To transfer, the shares.
-  To fix the rate of dividend.
-  To take loan in addition to debentures.
-  To invest the wealth of the company.
-  To think over the difficulties of the company.
-  To determine the policies of the company.

II. Meetings of the Committees of Directors:

The Board of Directors may form certain committees and delegate some of its powers to them. These committees should consist of only directors. The delegation of powers to such committees is to be authorised by the Articles of Association and should be subject to the provisions of the Companies Act.

In a large company routine matters like Allotment, Transfer, Finance are handled by sub-committees of the Board of Directors. The meetings of such committees are held in the same way as those of Board Meetings.

3. Meetings of Creditors:

The meetings of creditors are called when the company proposes to make a scheme for arrangement with its creditors.

Section, 391 to 393 of the Companies Act not only give powers to the company to compromise with the creditors but also lay down the procedure of doing so.

4. Meetings of Debenture Holders:

Meetings of the debenture holders are held according to the conditions contained in the debenture trust deed.

These meetings are called from time to time where the interests of debenture holders are involved at the time of reconstruction, reorganisation, amalgamation or winding up of the company.

The rules and regulations entered in trust deed relate to the notice of the meeting, appointment of a Chairman of the meeting, passing the resolutions, quorum of the meeting and the writing and signing of minutes.

Winding up and Dissolution of Company

Winding up and Dissolution of a Company are two separate steps in the process of closing a company. Winding Up is a process led by a liquidator under the **Tribunal** of laws where he settles and distributes the assets of the company amongst its creditors and shareholders' before the company is dissolved.

After the winding-up process is complete the National Company Law Tribunal may pass the order of dissolution of the company that is the company ceases to be in the state of existence and its name shall be struck off from the register of Companies and shall be published in the Official Gazette.

Wind Up of Company

Winding Up is defined as the liquidation of the company in the Insolvency and Bankruptcy Code, 2016, and the type of Wind up of the company is as follows:

Compulsory winding up of Company

- Compulsory winding up of a Company could be a compulsory winding up as enforced by the creditors of the company

Voluntary winding up of Company

- Voluntary winding up of Company of private limited company procedure as brought in by the corporate person.

Wind up of a Company is a two-step process, first Insolvency Resolution Process takes place and then **liquidation** of the company occurs. While the winding of the company is taking place the corporate entity still exists however after dissolution, the existence of the corporate entity is put to an end.

A Winding Up petition can be submitted by the company itself, by its contributors, by a Registrar, or by the Central or State Government.

A company may still be running its business during the procedure for winding up of a company in India if it instils that it will be beneficial for the winding-up process however after dissolution the company ceases to exist anymore to run its business.

Dissolution of Company

The Dissolution of a company may take place in two ways.

First in which the company is transferred to another company under the scheme of reconstruction or amalgamation. In such a case, the transfer of the company will be dissolved by an order of the Tribunal without it being wound up.

In the second scenario, the company shall undergo a winding-up process where the assets of the company shall be realized and proceeds shall be used to pay its liabilities. Once the debts have been settled, the remaining amount, if any, shall be distributed amongst the stakeholders, and Tribunal shall pass the order of dissolution of the company and strike its name off the register of the Registrar of the Companies.

Process of Winding up and Dissolution of Company

The winding-up of a company is judged by the Tribunal and the procedure for winding up of a company in India is purely a judicial function. There is a liquidator who carries off and administers the winding-up process. After winding up, the dissolution process takes place.

The dissolution of a company is recorded by the registrar of companies. This is a purely administrative function and does not involve any role for the liquidator. Dissolution is a necessary step following the winding up of a company.

For a better understanding of the difference, refer to the following table:

Particulars	Winding-up	Dissolution
Meaning	Winding up means appointing a liquidator to sell off the assets of the company, divide the proceeds among creditors, and file to the NCLT for dissolution.	Dissolution means to dissolve the company completely. Any further operations cannot be done in the company name.
Process	Winding up is one of the methods through which the dissolution of a company is carried on.	Dissolution is the end process/result of winding up and getting the name struck off from the Register of Companies.
Existence of Company	The legal entity of the company continues and exists at the commencement and during the winding-up process.	The dissolution of the company brings an end to its legal entity status.
Continuation of Business	A company can be allowed to continue its business during the winding-up process if it is required for the beneficial winding up of the company.	The company ceases to exist upon its dissolution.
Moderator	The liquidator carries out the process of winding up.	The NCLT passes the order of dissolution.
Activities Included	Filing of winding up resolution or petition, the appointment of the liquidator, receiving declarations, preparation of reports, disclosures to ROC, and filing for dissolution to the NCLT.	Filing of resolutions, declarations, and other required documents to the NCLT to pass dissolution order.

Introduction to Ethics

Ethics is very significant in the world of business. It is the study of morally appropriate behaviour and decisions, and examining what should be done. Ethics helps to mould and shape human behaviour. It aids employees to perform their roles.

*However, ethics cannot be instilled unless we ‘**practice what we preach**’. Otherwise, the effect of preaching will last only as long as a house of cards.*

Ethics – Definition and Characteristics

“Ethics is the science of judging specifically human ends and the relationship of means to those ends. In some way it is also the art of controlling means so that they will serve human ends.”

— **Thomas Garret**

“Ethics refer to a set of moral principles which should play a very significant role in guiding the conduct of managers and employees in the operation of any enterprise.”

— **Dale S. Beach**

“Ethics is that discipline which deals with what is good and bad and also deal with moral duty and obligation. Ethics are set of moral principles or values.”

— **Carol Buchholtz**

“Ethics is a conception of right and wrong conduct. Ethics tell us when our behaviour is moral and when it is moral. Ethics deal with fundamental human relationship how we think and behave towards others and how we want them to think and behave towards us.”

— **Post, Frederick, and Lawrence**

The British Philosopher W.D. Gross has listed six basic duties of a person:

-  **Fidelity** – doing no harm to others
-  **Reparation** – making amends to those we have hurt
-  **Gratitude** – repaying those who have helped us
-  **Justice** – treating people as well as they deserve

- ✚ **Beneficence** – helping others when we can
- ✚ **Self-improvement** – bettering ourselves but not at the cost of others

Ethics – Guidelines for Ethical Behaviour

Though each individual or group has his own sets of ethical values, a few guideline have been prescribed to be followed:

1. **Obey the Law** – Obeying the legal practices prevalent in a country is conforming to the ethical values.
2. **Tell the Truth** – Disclosing the fair accounting results to the concerned parties and telling the truth is also an ethical behaviour on the part of managers.
3. **Respect for People** – Management ethics requires managers to show respect towards whomsoever he comes in contact with.
4. **The Golden Rule** – The golden business principle is “Treat others as you would want to be treated”. This, if followed, will always result in ethical behaviour.
5. **Above All, Do No Harm** – Even if law does not prohibit the use of chemicals in producing certain products, managers must avoid using them if their use happens to be an environmental pollutant.
6. **Practice Participation – Not Paternalism** – Managers should not decide on their own as to what is good or bad for the different stakeholders. They must assess their needs, analyse them in the light of business needs, and integrate the two needs by allowing the various stakeholders to participate in the decision making processes.

BUSINESS EHTICS

The two issues - an organization’s social responsibility and responsiveness- ultimately depend on the ethical standards of mangers. The term ethics commonly refers to the rules or principles that define right and wrong conduct. Ethics is defined as the “discipline dealing with what is good and bad and with moral duty and obligation”. Business ethics is concerned with truth and justice

and has a variety of aspects such as expectations of society, fair competition, advertising, public relations, social responsibilities, consumer autonomy, and corporate behavior in the home country as well as abroad.

TYPES OF BUSINESS ETHICS

Moral management

Moral management strives to follow ethical principles and precepts, moral managers strive for success, but never violate the parameters of ethical standards. They seek to succeed only within the ideas of fairness, and justice.

Moral managers follow the law not only in letter but also in spirit. The moral management approach is likely to be in the best interests of the organization, long run.

Amoral management

This approach is neither immoral nor moral. It ignores ethical considerations. Amoral management is broadly categorized into two types – intentional and unintentional.

- ✓ Intentional amoral managers exclude ethical issues because they think that general ethical standards are not appropriate to business.
- ✓ Unintentional amoral managers do not include ethical concerns because they are inattentive or insensitive to the moral implications.

Immoral management

Immoral management is synonymous with “unethical” practices in business. This kind of management not only ignores concerns, it is actively opposed to ethical behavior.

NEED FOR BUSINESS ETHICS

- Ethics corresponds to basic human needs. It is human trait that man desires to be ethical, not only in his private life but also in his business. These basic ethical need compel the organizations to be ethically oriented.
- Values create credibility with public. A company perceived by the public to be ethically and socially responsive will be honored and respected. The management has credibility with its employees precisely because it has credibility with the public.

- An ethical attitude helps the management make better decisions, because ethics will force a management to take various aspects- economic, social, and ethical in making decisions.
- Value driven companies are sure to be successful in the long run, though in the short run, they may lose money.
- Ethics is important because the government, law and lawyers cannot do everything to protect society.

TOOLS FOR ETHICAL MANAGEMENT

- **Top management commitment:** Managers can prove their commitment and dedication for work and by acting as role models through their own behaviors.
- **Codes of Ethics:** A formal document that states an organization's primary values and the ethical rules it expects employees to follow. The code is helpful in maintaining ethical behavior among employees.
- **Ethics committees:** Appointment of an ethics committee, consisting of internal and external directors is essential for institutionalizing ethical behavior.
- **Ethics Audits:** Systematic assessment of conformance to organizational ethical policies, understanding of those policies, and identification of serious deviations requiring remedial action.
- **Ethics training:** Ethical training enables managers to integrate employee behavior in ethical arena with major organizational goals.
- **Ethics Hotline:** A special telephone line that enables employees to bypass the normal chain of command in reporting their experiences, expectations and problem. The line is usually handled by an executive appointed to help resolve the issues that are reported.

Role of Ethics in Organizational Functioning

An organization is generally defined as a group, in number from two people to tens of thousands of people, who intentionally aims to accomplish a shared common goal or a set of goals. In order to achieve shared goals, the organization acts as a system composed of

- ✚ Inputs such as resources both human and monetary,
- ✚ Processes such as strategies to accomplish goals,
- ✚ Outputs such as products and services
- ✚ Outcomes such as end results or benefits to consumers.

The ethics of the organization refers to the active attempt of the organization to define its mission and core principles, to identify values which can cause tension, to seek best solutions to these tensions, and to manage the operations which maintain its values.

The six core ethical values of the organizational ethics which influences the ethical behaviour are given below

1. **Trustworthiness** – It is the broadest and most complicated of the core ethical values. It is a broad value concerned with all the qualities and behaviours which makes a person worthy of trust especially integrity, honesty, promise keeping, and loyalty.
2. **Respect** – Respect focuses on the moral obligation to honour the essential worth and dignity of the individual. It is expressed in terms of positive qualities such as civility, courtesy, dignity, autonomy, tolerance, and acceptance. It also involves prohibitions against such conduct as violence, humiliation, manipulation, and exploitation etc.
3. **Responsibility** – It speaks of the moral obligations to be accountable, perusal of excellence, and exercising of self-restraint.
4. **Fairness and justice** – Fairness and justice embodies concern with equity, equality, impartiality, proportionality, openness, and due process.
5. **Caring** – It is the central value relating to sincere and abiding concern for the well being of others. Concepts of charity, kindness, compassion, empathy, and sharing are included under caring.
6. **Citizenship** – The concept of citizenship includes civic virtues and duties which prescribe how the organization ought to behave as part of a community. The exercise of good citizenship requires doing one's share to make society work and demonstrating a concern for future generations. A good citizen, for example, respects the regulatory norms, reports crimes, serves on juries, votes, pays taxes, and protects the environment.



Ethics – Importance of Ethics in Various Management Functions

Business ethics comprises various traits, such as – trustworthiness and transparency in customer services. Ethical business practices strengthen customer relationship that is of prime importance for long-term organizational success. It deals with retaining and creating a long-lasting impression in the minds of customers.

Such impressions help the enterprise to win the trust of customers and get more business. Business ethics plays a very crucial role in various management functions.

Let us now discuss the importance of ethics in various management functions:

1. Ethics in Finance:

It deals with various ethical dilemmas and violations in day to-day financial transactions. An example of ethical violations is data fudging in which enterprises present a fabricated statement of accounts and other records, which are open to investigation. Ethics in financial transactions gained importance when due to their insufficiency nations suffered massive economic meltdowns.

The following are the ethics in finance:

1. Following truthfulness and authenticity in business transactions
2. Seeking the fulfillment of mutual interests
3. Getting the economies and financial units freed from greed-based methodologies.

2. Ethics in Human Resource Management:

It deals with the enforcement of the rights of employees in an enterprise.

Such rights are as follows:

1. Having a right to work and be compensated for the same
2. Possessing a right for free association and participation
3. Enjoying a right for fair treatment in an enterprise
4. Holding a right to work in a hazard-free environment.
5. Blowing whistle (an activity where an employee can raise voice against any wrong practice of anyone in an enterprise).

3. Ethics in Marketing:

It deals with a number of issues, which are as follows:

1. Misinforming the customers about the products or services
2. Deciding high prices for the products and services
3. Creating false impression on the customers/consumers about the features of products
4. Promoting sexual attitudes through advertising; thus, affecting the young generation and children.

4. Ethics in Production:

It deals with the responsibility of an organization to make sure that products and processes of production is not causing harm to the environment.

It throws light on the following issues:

1. Avoiding rendering services or producing products that are hazardous to health. For example, tobacco and alcohol
2. Maintaining ethical relations with the environment and avoiding environmental pollution.