Semester I

		L	T	P	C
17PAU102	**CORE – BUSINESS LAW**	**5**	**-**	**-**	**5**

COURSE OUTCOME

Business Law represents the essential Elements of Contract, Formation of Contract and Discharge of Contract. It also represents the concepts of Creation of Agency, Sale of Goods Act, Common Carriers and Negotiable Instruments Act.

LEARNING OUTCOME

- To know the essential elements of contract
- To make the student understand about the creation of agency
- To enhance students knowledge in the Negotiable Instruments Act.

UNIT I

The Indian Contract Act, 1872 - General Principle of Law of Contract - Contract - Meaning - Characteristics and kinds - Essentials of a valid contract - Offer and Acceptance - Consideration - Contractual Capacity - Free Consent - Legality of objects - Void agreements - Discharge of contract - Modes of Discharge - Breach and Remedies against breach of contract - Contingent Contracts - Quasi - Contracts.

UNIT II

Banking Regulation Act 1949 - Origin of the Act - Business of Banking Company - Capital Requirements - Maintenance of Liquid Assets - Licensing of Banks - Powers of the RBI - Winding Up and Amalgamation of Banking Companies - RBI Credit Control Measures - Secrecy of Customer Account.

UNIT III

Contract of Agency - Principle - Agent - The Sale of Goods Act, 1930 - Contract of sale, meaning and difference between sale and agreement to sell. Conditions and warranties - Transfer of ownership in goods including sale by a non-owner - Performance of contract of sale - Unpaid seller - Meaning, rights of an unpaid seller against the goods and the buyer.

UNIT IV

Partnership Law - The Partnership Act, 1932 - Nature and Characteristics of Partnership - Registration of Partnership Firms - Types of Partners - Rights and Duties of Partners - Implied Authority of a Partner - Incoming and outgoing Partners - Mode of Dissolution of Partnership - The Limited Liability Partnership Act, 2008 - Salient Features of LLP - Differences between LLP and Partnership, LLP and Company - LLP Agreement, Partners and Designated Partners - Incorporation Document - Incorporation by Registration Partners and their Relationship

UNIT V

The Negotiable Instruments Act 1881 - Meaning, Characteristics, and Types of Negotiable Instruments : Promissory Note, Bill of Exchange, Cheque - Holder and Holder in Due Course, Privileges of Holder in Due Course. Negotiation: Types of Endorsement - Crossing of Cheque - Bouncing of Cheque

SUGGESTED READINGS:

TEXT BOOKS

1. Kapoor, N.D. (2013). *Elements of Mercantile Law.* New Delhi: S. Chand and Company Ltd.

REFERENCES

1. Kuchhal, M.C., & Vivek Kuchhal. (2011). *Business Law* (6th ed.). New Delhi: Vikas Publishing House.

2. Avtar Singh. (2013). *Business Law* (10th ed.). Lucknow: Eastern Book Company.

3. Ravinder Kumar. (2011). *Legal Aspects of Business* (2nd ed.). Cengage Learning.

4. Maheshwari, S.N., & Maheshwari, S.K.(2011). *Business Law.* New Delhi: Himalaya Publishing House.

5. Aggarwal, S.K. (2012). *Business Law*. New Delhi: Galgotia Publishers Company.

6. Bhushan Kumar Goyal., & Jain Kinneri. (2013). *Business Laws* (2nd ed.). International Book House

7. Akhileshwar Pathak. (2013). *Legal Aspects of Business* (6th ed.). New Delhi: McGraw Hill Education.

8. Tulsian, P.C., & BharatTulsian. (2000). *Business Law* (2nd ed.). New Delhi: McGraw Hill Education.

9. Sharma, J.P., & SunainaKanojia. (2014). *Business Laws*. New Delhi: Ane Books Pvt. Ltd.

10. Shukla, M.C. (2010). *Mercantile Law*. New Delhi: PHI India Pvt., Ltd.

11. Pillai, R.S.N., & Bagavathy. (2007). *Business Laws*, New Delhi: S.Chand and Company Pvt.Ltd.

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LESSION PLAN

DEPARTMENT OF COMMERCE

STAFF NAME: N.SUMATHI
SUBJECT NAME: BUSINESS LAW SUB.CODE :17PAU102
SEMESTER: I CLASS : I B.COM (PA)

Sl No.	Lecture Duration Period	Topics to be Covered	Supported Material
1	1	Contract-Introduction, Meaning, Definition, Objectives,	T : Page No : 1 – 4
2	1	Characteristics and kinds of contract, Indian Contact Act	T : Page No : 4 – 6
3	1	Essential elements of Valid Contract	W1
4	1	Offer-Meaning, Types of Offer, Requirements legal rules to offer,	R_1 : Page No : 11 – 13 T : Page No : 14 – 21
5	1	Acceptance-Meaning, Legal rules to acceptance	
6	1	Consideration-Definition, Need Legal rules as to consideration	T : Page No : 30 – 36
7	1	Contractual Capacity-Minors, Persons of unsound mind, persons disqualified by any law	T : Page No : 41 – 46
8	1	Free Consent-Meaning, Coercison, Undue influence,	T : Page No : 49 – 57
9		Fraud, misrepresentation, mistake	T : Page No :58 – 66
10	1	Legality of objects	R_1: Page No : 99-105
11	1	Void agreements and distinction between void agreement and valid contract	T : Page No : 86-92
12	1	Discharge of contract-Modes of discharge	T : Page No : 111 – 120
13	1	Breach and remedies against breach of contract	T : Page No : 120 – 122, 125-133
14	1	Contingent contract, Quasi Contract	R_2: Page No : 135 – 136 R_1: Page No : 113
15	1	Recapitulation and discussion of important questions	15

Text Books : T : N.D. Kapoor, (2014). Elements of Mercantile Law, 34th Edition , S Chand &Co. Ltd. New Delhi.

Reference Books: R_1: M.C Shukla, (2010). Mercantile Law, 13th Edition, Sultan Chand & Sons,

New Delhi.

R_2: P.C Tulsian, Business Law, 2nd Edition Tata McGraw – Hill Publishing Co Ltd, New Delhi.

Website : W_1: http://www.enwikipedia.org/wiki/indiancontractact1872

UNIT II

Sl No.	Lecture Duration Hours	Topics to be Covered	Supported Material
1	1	Banking Regulation Act 1949- Introduction,	R_3 : Page No : 376-377
		Origin of the Act	R_3 : Page No : 379-380
2	1	Definition of Banking, , Main function,	R_3 : Page No : 380
3		Subsidiary function	R_3 : Page No : 380-381
4		Business of Banking company	R_3 : Page No : 381-382
5	1	Capital Requirement	R_3 : Page No : 382-384
6	1	Management- Banking	R_3 : Page No : 384
7	1	Maintenance of Liquid Asset	R_3 : Page No : 384-385
8	1	Licensing of Banks-Opening of new branches,	R_3 : Page No : 386-387
9		New Licensing policy	R_3 : Page No : 386-387
10	1	Loans and advances inspection of Bank	R_3 : Page No : 387-388
11	1	Powers of the RBI	R_3 : Page No : 388-389
12	1	Winding up and Amalgamation of banking companies	R_3 : Page No : 391-392
13	1	RBI credit control measures	R_3 : Page No : 415-423
14	1	Secrecy of Customer Account	R_3 : Page No : 18-22
15	1	Recapitulation and discussion of important questions	15

Reference Books: R_3: Gordon, Nataraj, (2010). Banking Theory, Law and Practice, 18th Edition, Himalaya Publishing House, Mumbai.

UNIT III

Sl No.	Lecture Duration Hours	Topics to be Covered	Supported Material
1	1	Contract of Agency- Meaning, Principles	T : Page No : 177 – 186
2	1	Creation of Agency	T : Page No : 179 – 184
3	1	Classification of Agent,	R_1: Page No : 141 – 143
4	1	Relation Principles and Agent	T : Page No : 184 – 186 W_2
5	1	The sales of Goods Act 1930 -Contract of Sales, Meaning,	T : Page No : 209 – 210
6	1	Difference between sales and agreement to sell, Essentials of contract of sales	T : Page No : 210 – 211
7	1	Condition and Warranties -Meaning, Distinction between a condition and warranties	T : Page No : 219 – 220
8	1	Express and Implied condition and Warranties	T : Page No : 220 – 227
9	1	Transfer of Ownership in goods- Property	T : Page No : 230 – 231
10	1	Possession and risk, Passing of property	T : Page No : 231 – 237
11	1	Sales of Non owners	T : Page No : 237 – 240
12	1	Performance of Contract, Relieving of goods, Rights and duties of buy	T : Page No : 244 – 250
13	1	Rights of an unpaid seller	T : Page No : 252 – 253
14	1	Rights of Unpaid seller, Against goods, Against buyers personality	T : Page No : 253 – 258
15	1	Recapitulation and discussion of important questions	15

Text Books : T : N.D. Kapoor, (2014). Elements of Mercantile Law, 34th Edition , S Chand &Co. Ltd. New Delhi.

Reference Books: R_1: M.C Shukla, (2010). Mercantile Law, 13th Edition, Sultan Chand & Sons, New Delhi.

Website : W_2: www.investopedia.com

UNIT IV

Sl No.	Lecture Duration Hours	Topics to be Covered	Supported Material
1	1	Partnership Act 1932 - Definition, Nature	T : Page No : 265 – 267
2	1	Characteristics	R_4: Page No : 110-113
3	1	Registration of Partnership firms -Procedure for Registration	T : Page No : 273 – 276
4	1	Time of Registration, Alteration	T : Page No : 277 – 286
5	1	Types of Partners	T : Page No : 289 – 292
6	1	Rights of Partners, Duties of Partners	T : Page No : 279 – 283
7	1	Implied authority of a Partner	T : Page No : 285 – 289
8	1	Mode of Dissolution of firm, Dissolution without order	T : Page No : 302 – 303
9	1	Dissolution by Court	T : Page No : 303 – 305
10	1	Limited Liability Partnership (LLP) Act, 2008 Salient features of LLP	W3
11	1	Difference Between LLP and Partnership	W3
12	1	Difference between LLP and Company	W3
13	1	Distinction between LLP, Agreement and Partners, Designated of Partners	W3
14	1	Incorporation Document -Incorporation by Registration Partners and their relationship	T : Page No : 25 – 27
15	1	Recapitulation and discussion of important questions	15

Text Books : T : N.D. Kapoor, (2014). Elements of Mercantile Law, 34th Edition , S Chand &Co. Ltd. New Delhi.

Reference Books: R_4: P. Saravanavel, Syed Badre Alam. (2009). Fundamentals of Business Law,6th edition. Himalaya Publishing House, Mumbai, Sixth Edition, 2009

UNIT V

Sl No.	Lecture Duration Hours	Topics to be Covered	Supported Material
1	1	Negotiable Instrument Act 1881- Introduction -Meaning, Definition	T : Page No : 313 – 315
2	1	Characteristics of Negotiable Instrument Act	T : Page No : 313 – 315
3	1	Types of Negotiable Instrument,	T : Page No : 315 – 316
4	1	Negotiation by statue and custom	T : Page No : 315 – 316
5	1	Promissory Note, Bill of Exchange	T : Page No : 317 – 320
6	1	Specification of a Bill of Exchange, Essential Elements	R_5: Page No : 437 – 439
7	1	Difference between Bill of Exchange and Promissory note	R_5: Page No : 437 – 439
8	1	Cheque- Meaning, Essential requirements marketing of cheques,	R_5: Page No : 439 – 441
9	1	Holder in due course, Privileges of Holder	R_5: Page No : 439 – 441
10	1	Endorsement- Meaning and definition, Types of endorsements	T : Page No : 326 – 328
11	1	Crossing of Cheques, Types of crossing-General Crossing, Special crossing and bouncing of cheque.	T : Page No : 324 – 326
12	1	Recapitulation and discussion of important questions	
		Total No. of. Hours Planned for Unit V	
13	1	Discussion of Previous year ESE question papers	
14	1	Discussion of Previous year ESE question papers	
15	1	Discussion of Previous year ESE question papers	15

Text Books : T : N.D. Kapoor, (2014). Elements of Mercantile Law, 34th Edition.
S Chand &Co. Ltd. New Delhi.

Reference Books : R_5: P.P.S Gogna,(2008). A Text Book of Mercantile Law, 4th Edition.
S. Chand &Co Ltd, New Delhi.

UNIT-I
SYLLABUS

The Indian Contract Act, 1872 - General Principle of Law of Contract - Contract - Meaning - Characteristics and kinds - Essentials of a valid contract - Offer and Acceptance - Consideration - Contractual Capacity - Free Consent - Legality of objects - Void agreements - Discharge of contract - Modes of Discharge - Breach and Remedies against breach of contract - Contingent Contracts - Quasi - Contracts.

LAW OF CONTRACT

The law of contract is that branch of law which determents the circumstances in which promises made by the parties to a contract shall be legally binding on them. Its rules define the remedies that are available in a court of law against a person who fails to perform his contract, and the conditions under which the remedies are available. In simple words , it may be said that the purpose of the law of contract is to ensure the realization of reasonable expectation of the parties who enter into a contract.

THE INDIAN CONTRACT ACT, 1872

The law relating to contracts is contained in the Indian Contract Act, 1872. The Act deals with (1) the general principles of the law of contract (Secs. 1 to 75), and (2) some special contracts only (Secs. 124 to 238). The Act does not affect any usage or custom of trade. The Act is not exhaustive.

The law relating to contracts in India is contained in Indian Contract Act, 1872. The Act was passed by British India and is based on the principles of English Common Law. It is applicable to all the states of India except the state of Jammu and Kashmir. It determines the circumstances in which promises made by the parties to a contract shall be legally binding on them. All of us enter into a number of contracts everyday knowingly or unknowingly. Each contract creates some rights and duties on the contracting parties. Hence this legislation, Indian Contract Act of 1872, being of skeletal nature, deals with the enforcement of these rights and duties on the parties in India.

It was enacted mainly with a view to ensure reasonable fulfillment of expectation created by the promises of the parties and also enforcement of obligations prescribed by an agreement between the parties. The Third Law commission of British India formed in 1861 under the stewardship of chairman Sir John Romilly, with initial members as Sir Edward Ryan, R. Lowe, J.M. Macleod, Sir W. Erle (succeeded by Sir. W.M. James) and Justice Wills (succeeded by J. Henderson), had presented the report on contract law for India as Draft

Contract Law (1866). The Draft Law was enacted as The Act 9 of 1872 on 25 April 1872 and the Indian Contract Act, 1872 came into force with effect from 1 September 1872.

Before the enactment of the Indian Contract Act, 1872, there was no codified law governing contracts in India. In the Presidency Towns of Madras, Bombay and Calcutta law relating to contract was dealt with the Charter granted in 1726 by King George I to the East India Company. Thereafter in 1781, in the Presidency Towns, Act of Settlement passed by the British Government came into force. Act of Settlement required the Supreme Court of India that questions of inheritance and succession and all matters of contract and dealing between party and party should be determined in case of Hindu as per Hindu law and in case of Muslim as per Muslim law and when parties to a suit belonged to different persuasions, then the law of the defendant was to apply. In outside Presidency Towns matters with regard to contract was mainly dealt with through English Contract Laws; the principle of justice, equity and good conscience was followed.

The Act as enacted originally had 266 Sections, it had wide scope and included.

- General Principles of Law of Contract- Sections 01 to 75
- Contract relating to Sale of Goods- Sections 76 to 123
- Special Contracts- Indemnity, Guarantee, Bailment & Pledge- Sections 124 to 238
- Contracts relating to Partnership- Sections 239 to 266

Indian Contract Act embodied the simple and elementary rules relating to Sale of goods and Partnership. The developments of modern business world found the provisions contained in the Indian Contract Act inadequate to deal with the new regulations or give effect to the new principles. Subsequently the provisions relating to the Sale of Goods and Partnership contained in the Indian Contract Act were repealed respectively in the year 1930 and 1932 and new enactments namely Sale of Goods and Movables Act 1930 andIndian Partnership act 1932 were re-enacted.

At present the Indian Contract Act may be divided into two parts

- Part 1:deals with the General Principles of Law of Contract Sections 1 to 75
- Part 2:deals with Special kinds of Contracts such as

(1) Contract of Indemnity and Guarantee (2)Contract of Bailment and Pledge

(3)Contract of Agency

Definitions:

1. **Offer(i.e. Proposal) [section 2(a)**]:-

When person signifies to another his willingness to do or to abstain from doing

anything, with a view to obtaining the assent of the other person to such act or abstinence, he is said to make a proposal.

2. **Acceptance 2(b)**:-

   When the person to whom the proposal is made, signifies his assent there to, the proposal is said to be accepted.

3. **Promise 2(b)** :-

   A Proposal when accepted becomes a promise. In simple words, when an offer is accepted it becomes promise.

4. **Promisor and promisee 2(c)** :-

   When the proposal is accepted, the person making the proposal is called as promisor and the person accepting the proposal is called as promisee.

5. **Consideration 2(d)**:-

   When at the desire of the promisor, the promisee or any other person has done or abstained from doing something or does or abstains from doing something or promises to do or abstain from doing something, such act or abstinence or promise is called a consideration for the promise. Price paid by one party for the promise of the other Technical word meaning QUID-PRO-QUO i.e. something in return.

6. **Agreement 2(e)** :-

   Every promise and set of promises forming the consideration for each other. In short, agreement = offer + acceptance.

7. **Contract 2(h)** :-

   An agreement enforceable by Law is a contract.

8. **Void agreement 2(g)**:-

   An agreement not enforceable by law is void.

9. **Voidable contract 2(i)**:-

   An agreement is a voidable contract if it is enforceable by Law at the option of one or more of the parties there to (i.e. the aggrieved party), and it is not enforceable by Law at the option of the other or others.

10. **Void contract** :-

    A contract which ceases to be enforceable by Law becomes void when it ceases to be enforceable.

DEFINITION OF CONTRACT

A Contract is an agreement made between two or more parties which the law will enforce. Sec 2(h) defines ―a contract as an agreement enforceable by law.‖

Sir William Anson defines a contract as ― a legally binding agreement between two or more persons by which rights are acquired by one or more to acts or forbearances (abstaining from doing something) on the part of the others.‖

From the above two definitions, we find the contract essentially co9nsists of two elements, i.e., 1. Agreement 2. Enforceability by law. And Agreement = Offer + Acceptance.

ESSENTIAL ELEMENTS OF A VALID CONTRACT

According to Section 10, "All agreements are contracts, if they are made by the free consent of the parties, capacity of parties to contract, for a lawful consideration with a lawful object, and not hereby expressly to be void."

- An Agreement (Offer + Acceptance)
- Intention to create legal relationship
- Lawful Consideration
- Capacity of parties – Competency
  Free and genuine consent
- Lawful Object.
- Agreement not declared void
- Certainty and possibility of performance
- Legal Formalities

1. Proper offer and proper acceptance There must be an agreement based on a lawful offer made by person to another and lawful acceptance of that offer by the letter. Sections 3 to 9 of the Contract Act, 1872 lay down the rules for making valid acceptance.

2. Lawful consideration An agreement to form a valid contract should be supported by consideration. Consideration means **something in return (quid pro quo)**. It can be cash, kind, an act or abstinence. It can be past, present or future. However, consideration should be real and lawful and not fictional.

3. Capacity of parties to Contract In order to make a valid contract the parties to it must be competent to be contracted. According to section 11 of the Contract Act, a person is

considered to be competent to contract if he satisfies the following criterion:

- The person has reached the age of majority.

- The person is of sound mind.
- The person is not disqualified from contracting by any law.

4. Free Consent To constitute a valid contract there must be free and genuine consent of the parties to the contract. It should not be obtained by misrepresentation, fraud, coercion, undue influence or mistake.

5. Lawful Object and Agreement The object of the agreement must not be illegal or unlawful.

6. Agreement not declared void or illegal Agreements which have been expressly declared void or illegal by law are not enforceable at law; hence they do not constitute a valid contract.

7. Intention To Create Legal Relationships When the two parties enter into an agreement, there must be intimate relationship between them to create a legal relationship between them. If there is no such intention on the part of the parties. There is no contract between them. Agreements of a social or domestic nature do not contemplate legal relationship;as such they are not contracts.

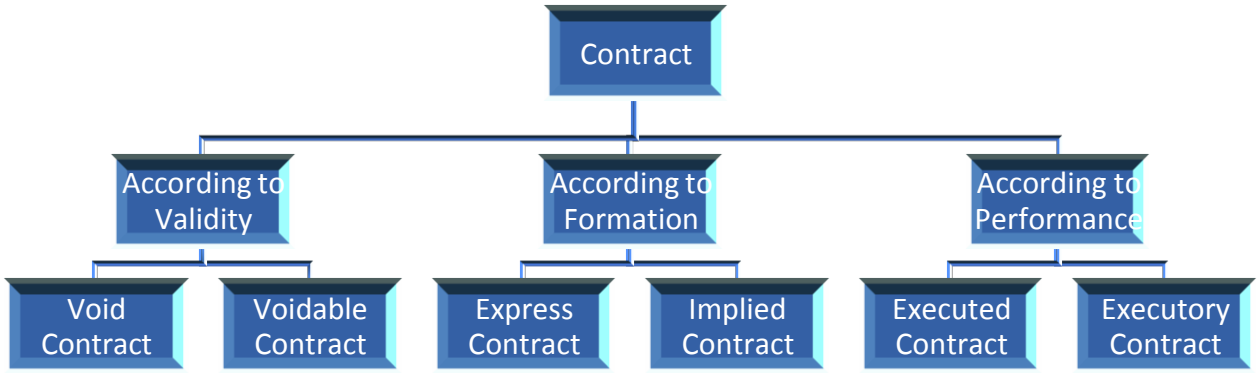
8. Certainty, Possibility Of Performance

9. Legal Formalities

10. By surety

CLASSIFICATION OF CONTRACTS

Contracts may be classified according to their (1) Validity, (2) Formation, (3) Performance . This can be explained in the following chart.



Contracts classified according to Performance

1. Executed Contract.

An executed contract is one where both the parties have performed their obligations or carried out the terms of the contract. In other words, it is a complete contract. For Ex : A sells a TV set to B for rs 20000. B pays the price and A hands over TV set to B.

2.Executory Contract.

Where the contracts yet to be performed either wholly or partially or one or both parties have yet to perform their obligation, the contract is executory contract. Thus, executory contract maybe

(1)Unilateral Contract

(2) Bilateral Contract

(1) Unilateral Contract.

A Unilateral contract is one in which a promise on one side is exchanged for an act on the other side. A Contract is said to be Unilateral where one party has discharged his obligation either before or at time of entering into contract.

(2) Bilateral Contract.

These are the contract where a promise on one side is exchanged for a promise on the part of the other party.

Contracts classified according to formation

1. Express contract.

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

2. Implied contract.

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

3. Constructive or quasi-contract.

It is contract in which there is no intention on either side to make a contract, but the law imposes a contract. In such a contract rights and obligations arise not by any agreement between the parties but by operation of law. Thus, a finder of lost goods is under obligations to find out the true owner and return the goods. Similarly, where certain books are delivered to a wrong addressee, the addressee is under an obligation either to pay for them or return them.

4. E-Com Contracts/Contracts over Internet.

These contracts are entered into between the parties using internet. In electronic commerce, different parties/persons create network which are linked to other network through EDI (Electronic Data Inter-change) This helps in doing business transactions using electronic mode.

Contract classified according to validity or enforceability.

1. Valid Contract.

An agreement enforceable at law is a valid contract. an agreement becomes a contract when all the essentials of a valid contract as laid down in section 10 are fulfilled. A offer to sell his house for 5 lakh to B. B agrees to buy it for the price. it is a valid contract. A contract to enter into a contract is however, not a valid contract.

2.Void Contract.

An agreement which was legally enforceable when entered into but which has become void due to supervening impossibility of performance for example a contract

between a citizen of pakistan and India is a valid contract during peace but if war breaks out between two countries, the agreement will become void contract.

3. Void Agreements.

According to section 2 (g), "An agreement which is not enforceable by law but either of the parties is void." No legal rights or obligations can arise out of a void agreement. It is void an initio. i.e. from its very inception, for example an agreement without consideration or with a minor.

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

5. Unenforceable Contracts.

It is contract which is otherwise valid, but cannot be enforced because of some technical defects like absence of a written form or absence of a proper stamp. Such contracts cannot be proved in court.

6. Illegal Agreements. A contract which is either prohibited by law or otherwise against the policy of law is an illegal agreement. It is void an initio. Thus, a contract to commit dacoity is an illegal contract and cannot be enforced at law. An illegal contract should be distinguished from a void contract. All illegal agreements are void but all void agreements or contract are not necessarily illegal. Every void agreements is not illegal unless its object or consideration is (a) immoral (b) opposed to public policy etc. A void contract does not affect a collateral contract.

Classification of contract

Contracts can be classified into five broad divisions namely

1. The method of formation of a contract
2. The time of performance of contract

3. The parties of the contract
4. The method of formalities of the contract
5. The method of legality of the contract

1. The method of formation of a contract

Under the method of formation of a contract may be three kinds

- Express contract
- Implied contract
- Quasi contract

Express contract: Express contract is one which expressed in words **spoken or written.** When such a contract is formal, there is no difficulty in understanding the rights and obligations of the parties.

Implied contract: The condition of an implied contract is to be understood form the acts, the contract of the parties or the course of dealing between them.

Quasi contract: There are certain dealings which are not contracts strictly, though the parties act as if there is a contract. The contract Act specifies the various situations which come within what is called Quasi contract.

2.The time of performance of contract

Under the method of the time of performance of contract may be two kinds

- Executed Contract
- Executory Contract

Executed Contract: There are contracts where the parties perform their obligations immediately, as soon as the contract is formed.

Executory Contract: In this contract the obligations of the parties are to be performed at a later time.

3. The parties of the contract

Under the method of the parties of the contract may be two kinds

- Bilateral Contract

Unilateral Contract

Bilateral Contract: There must be at last two parties to the contract. Therefore all contracts are bilateral or multilateral.

Unilateral Contract: In certain contracts one party has to fulfill his obligations where as the other party has already performed his obligations. Such a contract is called unilateral contract.

4. The method of formalities of the contract

Under the method of the method of formalities of the contract may be two kinds

- Formal contract
- Informal contract

Formal contract: A formal contract is a contract which is formatted by satisfied all the essentials formalities of a contract.

Informal contract: An informal contract is a contract which is failed to satisfy all or any of the essentials formalities of a contract.

5.The method of legality of the contract

Under the method of the method of legality of the contract may be five kinds

1. Valid Contract
2. Void Agreement
3. Void able Contract
4. Unenforceable Agreement
5. Illegal Agreement

Valid Contract: An agreement which satisfied all the essential of a contract and which is enforceable through the court is called valid contract.

Void Agreement: An agreement which is failed to satisfied all or any of the essential element of a contract and which is not enforceable by the court is called void agreement. An agreement not enforceable by law is said to be void. A void agreement has no legal fact. It confers no right on any person and created no obligation.

Example: An agreement made by a minor. **Void able Contract:** An agreement which is enforceable by law at the open of one or more parties of the contract but not at the open of

the other or others is a void able contract.

A void able contract is one which can be avoided and satisfied by some of the parties to it. Until it is avoided, it is a good contract.

Example: contracts brought about by coercion or undue influence or misrepresentation or fraud.

Unenforceable Agreement: An Unenforceable Agreement is one which cannot be enforcing in a court for its technical and formal defect.

Example: (1) An agreement required by law to register but not resisted. (2) An agreement with not satisfied stamped.

Illegal Agreement: An illegal agreement is one which is against a law enforcing in Bangladesh.

Example: An agreement to compiled madder.

OFFER AND ACCEPTANCE

At the inception of every agreement, there must be a definite offer by one person to another and its unqualified acceptance by the person to whom the offer is made. An offer is a proposal by one party to another to enter into a legally binding agreement with him.

DEFINITION (OFFER)

According to Indian Contract Act 1872 **(Sec. 2 (a))** – A person is said to have made a proposal, when he ― Signifies to another his willingness to do or to abstain from doing anything with a view to obtaining the assent of that other to such act or abstinence.‖

Sec. 2 (c)

The Person making the offer is known as the offeror, proposer, or promisor and the person to whom it is made is called the offeree or propose. When the offeree accepts the offer, he is called the acceptor or promisee .

Examples:

Thus, for a valid offer,the party making it must express his willingness to do or not to do something. But mere expression of willingness does not constitute an offer. The rulesregarding the offer are The offer must show an obvious intention on the part of the offeror. For example "if "A" jokingly offers "B" his scooter for Rs.10/- and "B" knowingly that "A" is not serious, says "I accept "A"s proposal". This does not constitute an offer. Secondly, the terms of offer must be definite, unambiguous, not loose and vague.

For example "A" says to "B". "I will sell you a car" "A" owns three different cars. The offer is not defenite. Third thing regarding offer is, mere declaration of intention and announcement is not an offer. A declaration by a person that he intends to do something, gives no right of action to another. Such a declaration only means that an offer will be made or invited in future and not an offer is made now. An advertisement for a concern for auction sale does not amount to an offer to hold such concern for auction sale. For example an auctioneer advertised in a news paper that a sale of office furniture would be held. A broker came from a distant place to attend the auction, but all the furniture was withdrawn.

The broker thereupon sued the auctioner for his loss of time and expenses. It was held that, a declaration of intention to do something did not create a binding contract with those acted upon it and hence the broker could not recover damages. An offer should be made to obtain the assent of the other. The offer should be communicated to the offeree. Unless an offer is communicated to the offeree by the offerror or his duly agent, there can be no acceptance. The offer must be made with a view to obtain the assent of the other party addressed and not merely with a view to disclose the intention to make an offer.

The offer should not contain a term that, the non compliance of which would amount to acceptance. For example, "A" writes to "B", "i will sell you my horse for Rs.10,000/- and if you do not reply I shall assume you have accepted the offer". There is no contract if "B" does not reply. However if "B" is in possession of "A"s horse and he continues possession thereafter, "B"s silence and his continued use amounts to valid acceptance. A statement of price is not an offer. A mere statement of price is not an offer to sell. For example three telegrams were exchanged between "A" and "B". communication by "B" to "A"- " will you sell your car?". Communication by "A" to "B". "The price of the car is one lakh rupees". Communication from "B" to "A"- "I agree to to buy the car". These 3 communications does not make a valid offer.

KINDS OF OFFER

- An offer may be express words, spoken or written **– Express Offer.**
- An offer may also be implied from the conduct of the parties or the circumstances of the case. **– Implied Offer**
- When an offer is made to a definite person, it is called a

  - Specific offer.
- When an offer is made to the world at large, it is called a

– General Offer

Kinds of offers: Offers or proposals may be classified on the basis of:

1. How an offer is made:

An offer may be either express or implied from the contract of the parties. An express offer is one may be made by words spoken or written such as letter, telegram, telex, fax messages, e-mail or through internet. Thus, where A offers to sell his pen to B for Rs. 20; it is an express offer. An implied offer is one which may be gathered from the conduct of the party or the circumstances of the case.

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

(a) A particular person,

(b) A particular group or body of persons,

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

An offer made to a define person or body of persons is called specific offer. A specific offer can usually be accepted by the person or persons to whom it is made. On the other hand, when an offer is addressed to the whole world, it is called a general offer.

LEGAL RULES AS TO OFFER

- Offer must be such as in law is capable of being accepted and giving rise to legal relationship.
- Terms of offer must be definite, unambiguous and certain and not loose and vague.
- An Offer may be distinguished from
    - A declaration of intention and an announcement.
    - An invitation to make an offer or do business
- An Offer must be communicated
- Offer must be made with a view to obtaining the assent.
- Offer should not contain a term the non-compliance of which may be assumed to amount to acceptance.
- A Statement of price is not an offer.

ACCEPTANCE

A Contract emerges from the acceptance of an offer. Acceptance is the act of

assenting by the offeree to an offer.

DEFINITION

According to Indian Contract Act 1872 **(Sec. 2 (b))** – Acceptance means, –when the offeree signifies his assent, to the offeror, the is said to be accepted. An offer when accepted becomes a promise.‖

KINDS OF ACCEPTANCE

- Acceptance may be express words, spoken or written

  – Express.

- Acceptance may also be implied from the conduct of the parties or the circumstances of the case. **– Implied**

- When Acceptance is made to a definite person, it is called a

  - Specific Acceptance.

- When Acceptance is made to the world at large, it is called a

  – General Acceptance.

LEGAL RULES AS TO ACCEPTANCE

- It must be absolute and unqualified

  If the parties are not in ad idem on all matters concerning the offer and acceptance, there is no valid contract. For example "A" says to "B" "I offer to sell my car fror Rs.50,000/-. "B" replies "I will purchase it for Rs.45,000/-". This is not acceptance and hence it amounts to a counter offer.

- It must be communicated to the offeror

  To conclude a contract between parties, the acceptance must be communicated in some prescribed form. A mere mental determination on the part of offeree to accept an offer does not amount to valid acceptance.

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

  If the acceptance is not according to the mode prescribed or some usual and reasonable mode(where no mode is prescribed) the offeror may intimate to the offeree

within a reasonable time that acceptance is not according to the mode prescribed and may insist that the offer be accepted in the prescribed mode only. If he does not inform the offeree, he is deemed to have accepted the offer. For example "A" makes an offer to "B" says to "B" that "if you accept the offer, reply by voice. "B" sends reply by post. It will be a valid acceptance, unless "A" informs "B" that the acceptance is not according to the prescribed mode.

- It must be given within a reasonable time.

  If any time limit is specified, the acceptance must be given within the time, if no time limit is specified it must be given within a reasonable time.

- It cannot be precede an offer.

  If the acceptance precedes an offer it is not a valid acceptance and does not result in contract. For example in a company shares were allotted to a person who had not applied for them. Subsequently when he applied for shares, he was un aware of the previous allotment . The allotment of share previous to the application is not valid.

- It must show an intention on the part of the acceptor to fulfill terms of the promise.
- It must be given by the party or parties to whom the offer is made.
- It cannot be implied from silence.

  Silence does not per-se amounts to communication- Bank of India Ltd. Vs. Rustom Cowasjee- AIR 1955 Bom. 419 at P. 430; 57 Bom. L.R. 850- Mere silence cannot amount to any assent. It does not even amount to any representation on which any plea of estoppel may be founded, unless there is a duty to make some statement or to do some act free and offeror must be consent.

CONSIDERATION

When a party to an agreement promises to do something, he must get ―something‖ in return. That is Give something and Get something. This something is defined as consideration .

DEFINITION

Sec 2 (d) of Indian Contract Act 1872 defines consideration as follows:

―When at the desire of the promisor, the promise or any other person has done or

abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise.‖ From the above definition we analyse the consideration may be

- An act
- An abstinence or forbearance, and
- A return promise.

LEGAL RULES TO CONSIDERATION

- It must move at the desire of the promisor
- It must move at the desire of the promisee or any other person
- It may be an act, abstinence or forbearance or a return promise.
- It may be past, present or future.
- It need not be adequate.
- It must be real and not illusory.
- It must be something which the promisor is not already bound to do.
- It must not be illegal, immoral or opposed to public policy.

(OR)

- It must move at the desire of the promisor. An act constituting consideration must have been done at the desire or request of the promiser. If it is done at the instance of a third party or without the desire of the promisor, it will not be good considsration. For example

  "A" saves "B"'s goods from fire without being ask him to do so. "A" cannot demand payment for his service.
- Consideration may move from the promisee or any other person. Under Indian law, consideration may be from the promisee of any other person i.e., even a stranger. This means that as long as there is consideration for the promisee, it is immaterial, who has furnished it.
- Consideration must be an act, abstinence or forebearance or a returned promise.
- Consideration may be past, present or future. Past consideration is not consideration according to English law. However it consideration as per Indian law. Example of past consideration is, "A" renders some service to "B" at latter's desire. After a month "B" promises to compensate "A" for service rendered to him earlier. When consideration is

given simultaneously with promise, it is said to be present consideration .. For example "A" receives Rs.50/- in return for which he promises to deliver certain goods to "B". The money "A" receives is the present consideration. When consideration to one party to other is to pass subsequently to the maker of the contract, is said to be future consideration. For example. "A" promises to deliver certain goods to "B" after a week. "B" promises to pay the price after a fortnight, such consideration is future.

- Consideration must be real. Consideration must be real, competent and having some value in the eyes of law. For example "A" promises to put life to "B"'s dead wife, if "B" pay him Rs.1000/-. "A"'s promise is physically impossible of performance hence there is no real consideration.
- Consideration must be something which the promiser is not already bound to do. A promise to do something what one is already bound to do, either by law, is not a good consideration., since it adds nothing to the previous existing legal consideration.
- Consideration need not be adequate. Consideration need not be necessarily be equal to value to something given. So long as consideration exists, the courts are not concerned as to adequacy, provided it is for some value.

The consideration or object of an agreement is lawful, unless and until it is:

1. forbidden by law: If the object or the consideration of an agreement is for doing an act forbidden by law, such agreement are void. for example,"A" promises "B" to obtain an employment in public service and "B" promises to pay Rs one lakh to "A". The agreement is void as the procuring government job through unlawful means is prohibited.

2. If it involves injury to a person or property of another: For example, "A" borrowed rs.100/- from"B" and executed a bond to work for "B" without pay for a period of 2 years. In case of default, "A" owes to pay the principal sum at once and huge amount of interest. This contract was held void as it involved injury to the person.
3. If courts regards it as immoral:An agreement in which consideration ir object of which is immoral is void. For example, An agreement between husband and wife for future separation is void.
4. Is of such nature that, if permitted, it would defeat the provisions of any law:
5. is fraudulent, or involves or implies injury to the person or property of another, or
6. Is opposed to public policy. An agreement which tends to be injurious to the public or against the public good is void. For example, agreements of trading with foreign enemy, agreement to commit crime, agreements which interfere with the

administration of justice, agreements which interfere with the course of justice, stifling prosecution, maintenance and champerty.

7. Agreements in restrained of legal proceedings: This deals with two category. One is, agreements restraining enforcement of rights and the other deals with agreements curtailing period of limitation.
8. trafficking in public offices and titles:agreements for sale or transfer of public offices and title or for procurement of a public recognition like padma vibhushanor padma sree etc. for monetary consideration is unlawful, being opposed to public policy.
9. Agreements restricting personal liberty: agreements which unduly restricts the personal liberty of parties to it are void as being oppposed by public policy.
10. Marriage brokerage contact:Agreements to procure marriages for rewards are void under the ground that marriage ought to proceed with free and voluntary decisions of parties.
11. Agreements interfering marital duties: Any agreement which interfere with performance of marital duty is void being opposed to public policy. An agreement between husband and wife that the wife will never leave her parental house.
12. consideration may take in any form-money,goods, services, a promise to marry, a promise to forbear etc.

IMPORTANCE OF CONSIDERATION

Consideration is the foundation of ever contract. The law insists on the existence of consideration if a promise is to be enforced as creating legal obligations. A promise without consideration is null and void. It is called a naked promise or "Nudum Pactum." Thus if A promise to pay B Rs. 1000 without anything in return, this constitute a bare promise and gives no right of action.

Sir William Anson has brought out the importance of consideration thus, "offer and acceptance brings the parties together, and constitute an outward semblance of a contract, but most systems of law requires some further evidence of the intention of the parties and in default of such evidence, refuse to recognize an obligation.' This further evidence of the intention of the parties is supplied by consideration which is one of the element of a valid contract. Section 25 of the Indian contract Act supports this contention and provides that agreement without consideration is void.

NO CONSIDERATION NO CONTRACT-EXCEPTIONS

Every agreement to be enforceable at law must be supported by valid consideration.

An agreement made without consideration is void and is unenforceable except in certain cases. Section 25 specifies the cases where an agreement though made without consideration will be valid. These are as follows

1.Natural love and affection [Sec. 25(1)]

An agreement though made without consideration will be valid if it is in writing and registered and is made on account of natural love and affection between parties standing in a near relation to each other. An agreement without consideration will be valid provided-

(a) it is expressed in writing;

(b) it is registered under the law for the time being in force;

(c) it is made on account of natural love and affection;

(d) it is between parties standing in a near relation to each other.

All these essentials must be present to enforce an agreement made without consideration.

2. Compensation for services rendered [Sec. 25(2)]

An agreement made without consideration will be valid if it is a promise to compensate wholly or in a part a person who has already voluntarily done something for the promisor or something which the promisor was legally compellable to do. To apply this rule, the following essentials must exist:

(a) The act must have been done voluntarily;

(b) for the promisor or it must be something which was the legal obligation of the promiser;

(c) the promisor must be in existence at the time when the act was done;

(d) the promisor must agree now to compensate the promisee.

3. Time-barred debt [Sec. 25(3)]

A promise to pay a time-barred debt is also enforceable. But the promise must be in writing and be signed by the promisor or his agent authorized in that behalf. The promise may be to pay the whole or part of the debt. An oral promise to pay a time-barred debt is unenforceable

4. Completed gifts [Exp. 1 to Sec. 25]

Explanation 1 to section 25 provides that the rule 'No consideration, No contract' shall not affect validity of any gifts actually made between the donor and the donee. Thus if a person gives certain properties to another according to the provision of the Transfer of Property Act, he cannot subsequently demand the property back on the ground that there was no consideration.

5. Agency (Sec. 185)

There is one more exception to the rule. IT is given in section 185 which says that no consideration is needed to create an agency.

6. Guarantee (Sec 127)

A contract of guarantee is made without consideration.

7. Remission (Sec 63)

No consideration is required for an agreement to receive less then what is du. This is called remission in the law.

CAPACITY TO CONTRACT

The parties who enter into a contract must have the capacity to do so. Capacity here means competence of the parties to enter into a valid contract.

DEFINITION

According Sec 10 of Indian Contract Act 1872, An agreement becomes a contract if it is entered into between the parties who are competent to contract. **According Sec 11 of Indian Contract Act 1872,** Every person is competent to contract who (a) is of the age majority according to the law to which he is subject, (b) is of sound mind. and (c) is not disqualified from contracting by any law to which he is subject. Thus Sec 11 declares the following persons to be incompetent to contract:

- Minors,
- Persons of unsound mind, and
- Persons disqualified by any law to which they are subject.

For a valid contract, the parties to a contract must have capacity i.e. competence to enter into a contract. Every person is presumed to have capacity to contract but there are certain persons whose age, condition or status renders them incapable of binding themselves by a contract. Incapacity must be proved by the party claiming the benefit of it and until proved the ordinary presumptions remains.

Section 11 of the Contract Act deals with the competency of parties and provides that "every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind and is not disqualified from disqualified from contracting by any law to which he is subject."

It follow that the following person are incompetent to contract.

(a) minor

(b) person of unsound mind, and

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

Contract entered into by the persons mentioned above are void.

Every person is competent to contract:

(a) Who is of the age of majority.

(b) Who is of sound mind.

(c) Who is not disqualified from making a contract.

Therefore the following persons are not competent to contract

(a) A person who is a minor.

(b) A person of unsound mind.

(c) A person who is disqualified from making a contract.

MINORS

According to sec 3 of the Indian Majority Act, 1875, a minor is a person who has not completed 18 years of age. In the following two cases, he attains majority after 21 years of age.

- Where a guardian of a minor‘s person or property has been appointed under the Guardians and Wards Act, 1890, or
- Where the superintendence of a minor‘s property is assumed by a Court of Wards.

The position of a minor as regards his agreements may be summed up as under

- An agreement with or by a minor is void and inoperative ab initio.
- He can be a promise or a beneficiary
- His agreement cannot be ratified by him on attaining the age of majority.
- If he has received any benefit under a void agreement.
- He can always plead minority.
- There can be no specific performance of the agreements entered into by him as they are void ab initio
- He cannot enter into a contract of partnership.

- He cannot be adjusted insolvent.
- He is liable for necessaries supplied or necessary services rendered to him or anyone whom he is legally bound to support.

PERSONS OF UNSOUND MIND

One of the essential conditions of competency of parties to a contract is that they should be of sound mind. **Sec 12** lays down a test of soundness of mind. It reads as follows**:**

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

A person who is usually of unsound mind but occasionally of sound mind, may make a contract when he is of sound mind.

A person who is usually of sound mind but occasionally of unsound mind, may make a contract when he is of sound mind.‖

OTHER PERSONS

- Alien enemies
- Foreign sovereigns, their diplomatic staff and accredited representatives of foreign states**.**
- Corporations
- Insolvents•

Convicts

FREE CONSENT

It is essential to the creation of a contract that the parties are ad idem, i.e., they agree upon the same thing in the same sense at the same time and that their consent is free and real. Sec.10 also says that –all agreements are contracts if they are made by the free consent of parties…‖

Secs. 13 and 14

Consent : It means acquiescence or act of assenting to an offer. –Two or more persons are said to consent when they agree upon the same thing in the same sense.‖

Sec.13 – Free Consent : Consent it said to be free when it is not caused by ---

Coercion as defined in Sec.15, or

Undue Influence as defined in Sec. 16, or

Fraud as defined in Sec. 17, or

Misrepresentation as defined in Sec. 18, or

Mistake, subject to the provisions of Secs. 20,21 and 22 (Sec. 14)

According to Section 14, " two or more persons are said to be consented when they agree upon the same thing in the same sense (Consensus-ad-idem).

A consent is said to be free when it is not caused by coercion or undue influence or fraud or misrepresentation or mistake.

Elements Vitiating free Consent

1. Coercion (Section 15): "Coercion" is the committing, or threatening to commit, any act forbidden by the Indian Penal Code under(45,1860), or the unlawful detaining, orthreatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement. For example, "A" threatens to shoot "B"if he doesn't release him from a debt which he owes to "B". "B" releases "A" under threat. Since the release has been brought about by coercion, such release is not valid.

2. Undue influence (Section 16): "Where a person who is in a position to dominate the will of another enters into a contract with him and the transaction appears on the face of it, or on the evidence, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in the position to dominate the will of the other."

(Section 16(2)) States that "A person is deemed to be in a position to dominate the will of another;

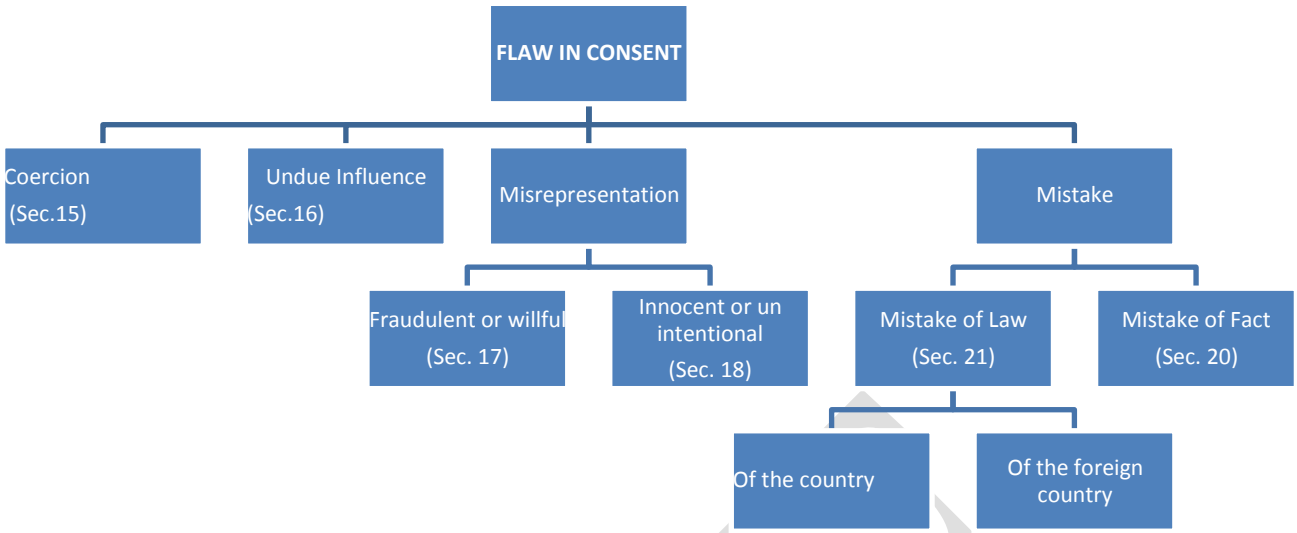
- Where he holds a real or apparent authority over the other. For example, an employer may be deemed to be having authority over his employee. an income tax authority over to the assessee.
- Where he stands in a fiduciary relationship to other, For example, the relationship of Solicitor with his client, spiritual advisor and devotee.
- Where he makes a contract with a person whose mental capacity is temporarily or permanently affected by the reason of age, illness or mental or bodily distress"

3. Fraud (Section 17): "Fraud" means and includes any act or concealment of material fact or misrepresentation made knowingly by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto of his agent, or to induce him to enter into the contract. Mere silence is not fraud. a contracting party is not obliged to disclose each and everything to the other party. There are two exceptions where even mere silence may be fraud, one is where there is a duty to speak, then keeping silence is fraud. or when silence is in itself equivalent to speech, such silence is fraud.

4. Misrepresentation (Section 18): " causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement".

5. Mistake of fact (Section 20): "Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void". A party cannot be allowed to get any relief on the ground that he had done some particular act in ignorance of law. Mistake may be bilateral mistake where both parties to an agreement are under mistake as to the matter of fact. The mistake must relate to a matter of fact essential to the agreement.

FLAW IN CONSENT



COERCION :

When a person is compelled to enter into a contract by the use of force by the other party or under a threat, ― coercion‖ is said to be employed. Consent is said to be caused by coercion when it is obtained by :

- Committing or threatening to commit any act forbidden by the Indian Penal Code, 1860.
- Unlawful detaining or threatening to detain any property.

UNDUE INFLUENCE:

― A Contract is said to be induced by _undue influence‘ where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.‖

A person is deemed to be in a position to dominate the will of another

- Where he holds a real or apparent authority over the other
- Where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness or mental or bodily distress.
- Where he stands in a fiduciary relation (relation of trust and confidence) to the other.

- A poor Hindu widow
- An illiterate eldery woman
- An illiterate villager
- A Minor female.

MISREPRESENTATION AND FRAUD

A Statement of fact which one party makes in the course of negotiations with a view to inducing the other party to enter into a contract is known as a representation.

A representation, when wrongly made, either innocently or intentionally, is a misrepresentation. Misrepresentation may be ____

- An innocent or unintentional misrepresentation, or
- An intentional, deliberate or willful misrepresentation with an intent to deceive or defraud the other party.

The former is called –misrepresentation‖ and the latter –fraud.‖

MISREPRESENTATION

Misrepresentation is a false statement which the person making it honestly believes to be true or which he does not know to be false.

Sec. 18 defines –misrepresentation‖ According to it. There is misrepresentation __

When a person positively asserts that a fact is true when his information does not warrant it to be so, though the believes it to be true.

When there is any breach of duty by a person which brings an advantage to the person committing it by misleading another to his prejudice.

When a party causes, however innocently, the other party to the agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

Requirements of misrepresentation

A misrepresentation is relevant if it satisfies the following requirements:

- It must be a representation of a material fact.
- It must be made before the conclusion of the contract with a view to inducing the other party to enter into the contract.
- It must be made with the intention that it should be acted upon by the person to whom

it is addressed.

- It must actually have been acted upon and must have induced the contract.
- It must be wrong but the person who made it honestly believed it to be true.
- It must be made without any intention to deceive the other party.
- It need not be made directly to the plaintiff.

FRAUD

Fraud exists when it is shown that___

A False representation has been made (a) knowingly, or (b) without belief in its truth, or (c) recklessly, not caring whether it is true or false, and the maker intended the other party to act upon it, or

There is a concealment of a material fact or that there is a partial statement of a fact in such a manner that the withholding of what is not stated makes that which is stated false.

According to Sec 17 –fraud‖ means and includes any of the following acts committed by a party to a contract, or with his connivance (intentional active or passive acquiescence), or by his agent with intent to deceive or to induce a person to enter into a contract:

- The suggestion that a fact is true when it is not true and person making the suggestion does not believe it to be true:
- The active concealment of a fact by a person having knowledge or belief of the fact:
- A promise made without any intention of performing it:
- Any other act fitted to deceive:
- Any such act or omission as the law specially declares to be fraudulent.

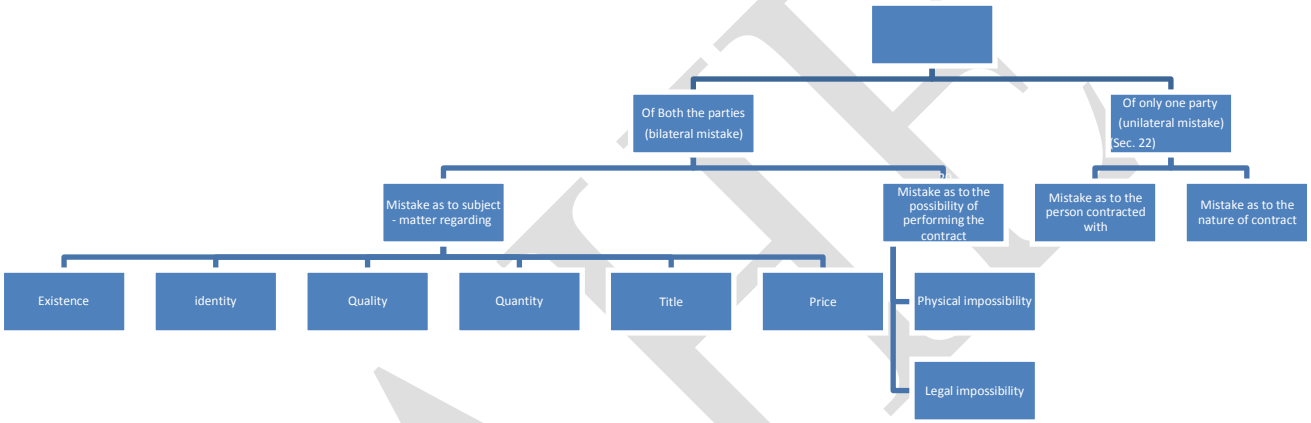
Essential elements of fraud

There must be a representation or assertion and it must be false.

- The representation must relate to a material fact which exists now or existed in the past.
- The representation must have been made before the conclusion of the contract with the intention of inducing the other party to act upon it.
- The representation or statement must have been made with a knowledge of its falsity or without belief in its truth or recklessly, not caring whether it is true or false,

- The other party must have been induced to act upon the representation or assertion.
- The other party must have relied upon the representation and must have been deceived,.
- The other party acting on the representation or assertion, must have subsequently suffered some loss.

MISTAKE



Mistake may be defined as an erroneous belief about something. It may be a mistake of law or a mistake of fact.

Mistake of Law may be___(1) mistake of law of the country , or (2) mistake of law of a foreign country.

Mistake of fact may be (1) a bilateral mistake or (2) a unilateral mistake.

a) A promises to deliver goods to B on a certain day on payment of Rs. 1,000. A dies before that day. A's representatives are bound to deliver the goods to B, and B is bound to pay the Rs. 1,000 to A's representatives. (b) A promises to paint a picture for B by a certain day, at a certain price. A dies before the day. The contract cannot be enforced either by A's representatives or by B.

Effect of refusal to accept offer of performance.-Where a promisor has made an offer of performance to the promisee, and the offer has not been accepted, the promisor is not responsible for non- performance, nor does he thereby lose his rights under the contract. Every such offer must fulfil the following conditions:-

(1) it must be unconditional;

(2) it must be made at a proper time and place, and under such circumstances that the person to whom it is made may have a reasonable opportunity of ascertaining that the person by whom it is made is able and willing there and then to do the whole of what he is bound by his promise to do

(3) if the offer is an offer to deliver anything to the promisee, the promisee must have a reasonable opportunity of seeing that the thing offered is the thing which the promisor is bound by his promise to deliver. An offer to one of several joint promisees has the same legal consequences as an offer to all of them, Illustration A contracts to deliver to B at his warehouse, on the 1st March, 1873, 100 bales of cotton of a particular quality. In order to make an offer of a performance with the effect stated in this section, A must bring the cotton to B's warehouse, on the appointed day, under such circumstances that B may have a reasonable opportunity of satisfying himself that the thing offered is cotton of the quality contracted for, and that there are 100 bales.

Effect of refusal of party to perform promise wholly.-When a party to a contract has refused to perform, or disabled himself from performing, his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by words or conduct, his acquiescence in its continuance. 35 Illustrations (a) A, a singer, enters into a contract with B, the manager of a theatre, to sing at his theatre two nights in every week during the next two months, and B engages to pay her 100 rupees for each night's performance. On the sixth night A willfully absents herself from the theatre. B is at liberty to put an end to the contract. (b) A, a singer, enters into a contract with B, the manager of a theatre, to sing at his theatre two nights in every. week during the next two months, and B engages to pay her at the rate of 100 rupees for each night. On the sixth night A wilfully absents herself. With the assent of B, A sings on the seventh night. B has signified his acquiescence in the continuance of the contract, and cannot now put an end to it, but is entitled to compensation for the damage sustained by him through A's failure to sing on the sixth night. By whom contracts must be performed

Person by whom promise is to be performed.-If it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor. In other cases, the promisor or his representatives may employ a competent person to perform it. Illustrations (a) A promises to pay B a sum of money. A may perform this promise, either by personally paying the money to B or by causing it to be paid to B by another ; and, if A dies

before the time appointed for payment, his representatives must perform the promise, or employ some proper person to do so. (b) A promises to paint a picture for B. A must perform this promise personally.

Effect of accepting performance from third person.-When a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor.

Devolution of joint liabilities.-When two or more persons have made a joint promise, then, unless a contrary intention appears by the contract, all such persons, during their joint lives, and, after the death of any of them, his representative jointly with the survivor or survivors, and, after the death of the last survivor, the representatives of all jointly, must fulfill the promise.

Any one of joint promisors may be compelled to perform.-When two or; more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any of such joint promisors, to perform the whole of the promise. Each promisor may compel contribution. Each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract. Subs. by Act 12 of 1891 for "one Sharing of loss by default in contribution.-If any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares. Explanation.-Nothing in this section shall prevent a surety from recovering from his principal, payments made by the surety on behalf of the principal, or entitle the principal to recover anything from the surety on account of payments made by the principal.

Illustrations (a) A, B and C jointly promise to pay D 3,000 rupees. D may compel either A or B or C to pay him 3,000 rupees. (b) A, B and C jointly promise to pay D the sum of 3,000 rupees. C is compelled to pay the whole. A is insolvent, but his assets are sufficient to pay one-half of his debts. C is entitled to receive 500 rupees from A's estate, and 1,250 rupees from B. (c) A, B and C are under a joint promise to pay D 3,000 rupees. C is unable to pay anything, and A is compelled to pay the whole. A is entitled to receive 1,500 rupees from B. (d) A, B and C are under a joint promise to pay D 3,000 rupees, A and B being only sureties for C. C fails to pay. A and B are compelled to pay the whole sum. They are entitled to recover it from C.

Effect of release of one joint promisor.-Where two or more persons have made a joint promise, a release of one of such joint promisors by the promisee does not discharge the other

joint promisor or joint promisors ; neither does it free the joint promisors so released from responsibility to the other joint promisor or joint promisors.

Devolution of joint rights.-When a person has made a promise to two or more persons jointly, then, unless a contrary intention appears from the contract, the right to claim performance rests, as between him and them, with them during their joint lives, and, after the death of any of them, with the representative of such deceased person. Jointly with the survivor or survivors, and, after the death of the last survivor, with the representatives of all jointly. Illustration A, in consideration of 5,000 rupees, lent to him by B and C, promises B and C jointly to repay them that sum with interest on a day specified. B dies. The right to claim performance rests with B's representative jointly with C during C's life, and after the death of C with the representatives of B and C jointly. See s. 138, infra. 2 For an exception to in case of Government securities, see the Indian Securities Act, 1920 (10 of 1920),

Time for performance of promise, when no application is to be made and no time is specified. Time for performance of promise, when no application is to be made and no time is specified.-Where, by the contract, a promisor is to perform his promise without application by the promisee, and no time for performance is specified, the engagement must be performed within a reasonable time. Explanation.-The question " what is a reasonable time " is, in each particular case, a question of fact. no application to be made.

Time and place for performance of promise, where time is specified and no application to be made.-When 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 day and at the place at which the promise ought to be performed. Illustration A promises to deliver goods at B's warehouse on the first January. On that day A brings the goods to B's warehouse, but after the usual hour for closing it, and they are not received. A has not performed his promise.

Application for performance on certain day to be at proper time and place.-When a promise is to be performed on a certain day, and the promisor has not undertaken to perform it without application by the promisee, it is the duty of the, promisee to apply for performance at a proper place and within the usual hours of business. Explanation.-The question " what is a proper time and place. " is, in each particular case, a question of fact.

Place for performance of promise, where no application to be made and no place fixed for performance.-When a promise is to be performed without application by the promisee, and no place is fixed for the performance of it, it is the duty of the promisor to apply to the

promisee to appoint a reasonable place for the performance of the promise, and to perform it

at such place. Illustration A undertakes to deliver a thousand mounds of jute to B on a fixed day. A must apply to B to appoint a reasonable place for the purpose of receiving it, and must deliver it to him at such place.

Performance in manner or at time prescribed or sanctioned by promisee.-The performance of any promise may be made in any manner, or at any time which the promisee prescribes or sanctions. Illustrations (a) B owes A 2,000 rupees. A desires B to pay the amount to A's account with C, a banker. B, who also banks with C, orders the amount to be transferred from his account to A's credit, and this is done by C. Afterwards, and before A knows of the transfer, C fails. There has been a good payment by B. (b) A and B are mutually indebted. A and B settle an account by setting off one item against another, and B pays A the balance found to be due from him 38 upon such settlement. This amounts to a payment by A and B, respectively, of the sums which they owed to each other. (c) A owes B 2,000 rupees. B accepts some of A's goods in reduction of the debt. The delivery of goods operates as a part payment. (d) A desires B, who owes him Rs. 100, to send him a note for Rs. 100 by post. The debt is discharged as soon as B puts into the post a letter containing the note duly addressed to A.

LEGALITY OF OBJECT

A Contract must not only be based upon mutual assent of competent parties but must also have a lawful object. If the object of an agreement is the performance of an unlawful act, the agreement is unenforceable. As such both the object and the consideration of an agreement must be lawful, otherwise the agreement is void.

When consideration or object is unlawful (Sec.23)

The consideration or object of an agreement is unlawful___

- If it is forbidden by law
- If it is of such a nature that, if permitted, it would defeat the provisions of any law.
- If it is fraudulent
- If it involves or implies injury to the property or person of another.
- If the court regards it as immoral.
- Where the court regards it as opposed to public policy.

UNLAWFUL AND ILLEGAL AGREEMENTS

An unlawful agreement is one which, like a void agreement, is not enforceable by law. An illegal agreement, on the other hand, is not only void as between immediate parties but has this further effect that the collateral transactions to it also become tainted with illegality.

"Every illegal agreement is unlawful, but every unlawful agreement is not necessarily illegal."

Effects of illegality

The collateral transactions to an illegal agreement become tainted with illegality and are treated as illegal even though they would have been lawful by themselves.

No action can be taken (a) for the recovery of money paid or property transferred under an illegal agreement, and (b) for the breach of an illegal agreement.

In cases of equal guilt in an illegal agreement , the position of ht defendant is better than that of the plaintiff.

AGREEMENTS OPPOSED TO PUBLIC POLICY

An agreement is said to be public policy when it is harmful to the public welfare. Public Policy is that principle of law which holds that no subject can lawfully do that which has a mischievous tendency to be injurious to the interests of the public, or which is against the public good or public welfare.

Some of the agreements which are or which have been held to be, opposed to public policy and are unlawful are as follows:

- Agreements of trading with enemy
- Agreements to commit a crime,
- Agreements which interfere with administration of justice.
- Agreements in restraint of legal proceedings
- Trafficking in public offices and titles
- Agreements tending to create interest opposed t duty.
- Agreements in restraint of parental rights.
- Agreements restricting personal liberty.

- Agreements in restraint of marriage
- Agreements in restraint of trade

VOID AGREEMENTS

An Agreement though it might possess all the essential elements of a valid contract, must not have been expressly declared as void by any law in force in the country. The Contract Act specifically declares certain agreements to be void.

A Void Agreement is one which is not enforceable by law (Sec. 2(g)) The following agreements have been expressly declared to be void by the Contract Act:

- Agreements is by incompetent parties (Sec. 11).
- Agreements made under a mutual mistake of fact (Sec. 20).
- Agreements the consideration or object of which is unlawful (Sec. 23).
- Agreements the consideration or object of which is unlawful and part (Sec. 24).
- Agreements made without consideration (Sec. 25).
- Agreements in restraint of marriage (Sec. 26).
- Agreements in restraint of trade (Sec. 27).
- Agreements in restraint of legal proceedings (Sec. 28).
- Agreements the meaning of which is uncertain (Sec. 29).
- Agreements by way of wager (Sec. 30).
- Agreements contingent on impossible events (Sec. 36).
- Agreements to do impossible acts (Sec. 56).
- In case of reciprocal promises to do things legal and also other things illegal, the second set of reciprocal promises is a void agreement (Sec. 57).

Distinction between voidable contract and void agreement

(1) A void agreement has from the very beginning no legal effects. It is unenforceable at law. A voidable contract is one which one of the parties may affirm or reject at his option. It is valid and enforceable till it is repudiated or restricted.

(2) The defect in the case of voidable contract is curable and may be condoned. But a void agreement is void ab initio and its defects are incurable.

(3) In the case of void agreement even claiming under such contract while in the case of a voidable contract, a third party can acquire a valid title from a person claiming under such a contract.

(4) Since a void agreement is unenforceable at law three does not arise may question of compensation on account of non-performance of the agreement. But in case of voidable contract, a person is entitled to compensation for loss or damages suffered by him on account of the non-performance of the contract.

(5) A voidable contract does not affect the collateral transactions. But where the agreement is void on account of illegality of the object, the collateral transaction will also become void.

Effect of Illegality

The general rule is this: courts will not enforce illegal bargains. The parties are left where the court found them, and no relief is granted: it‘s a hands-off policy. The illegal agreement is void, and that a wrongdoer has benefited to the other‘s detriment does not matter.

For example, suppose a specialty contractor, statutorily required to have a license, constructs a waterslide for Plaintiff, when the contractor knew or should have known he was unlicensed. Plaintiff discovers the impropriety and refuses to pay the contractor $80,000 remaining on the deal. The contractor will not get paid. Pacific Custom Pools, Inc. v. Turner Construction, 94 Cal. Rptr. 2d 756 (Calif. 2000).

In another example, a man held himself out to be an architect in a jurisdiction requiring that architects pass a test to be licensed. He was paid $80,000 to design a house costing $900,000. The project was late and over budget, and the building violated relevant easement building-code rules. The unlicensed architect was not allowed to keep his fee.Ransburg v. Haase, 586 N.E. 2d 1295 (Ill. Ct. App. 1992).

Exceptions

As always in the law, there are exceptions. Of relevance here are situations where a court might permit one party to recover: party withdrawing before performance, party protected by statute, party not equally at fault, excusable ignorance, and partial illegality.

Party Withdrawing before Performance

Samantha and Carlene agree to bet on a soccer game and deliver their money to the stakeholder. Subsequently, but before the payout, Carlene decides she wants out; she can get her money from the stakeholder. Ralph hires Jacob for $5,000 to arrange a bribe of a juror. Ralph has a change of heart; he can get his money from Jacob.

Party Protected by Statute

An airline pilot, forbidden by federal law from working overtime, nevertheless does so; she would be entitled to payment for the overtime worked. Securities laws forbid the sale or purchase of unregistered offerings—such a contract is illegal; the statute allows the purchaser rescission (return of the money paid). An attorney (apparently unwittingly) charged his client beyond what the statute allowed for procuring for the client a government pension; the pensioner could get the excess from the attorney.

Party Not Equally at Fault

One party induces another to make an illegal contract by undue influence, fraud, or duress; the victim can recover the consideration conveyed to the miscreant if possible.

Excusable Ignorance

A woman agrees to marry a man not knowing that he is already married; bigamy is illegal, the marriage is void, and she may sue him for damages. A laborer is hired to move sealed crates, which contain marijuana; it is illegal to ship, sell, or use marijuana, but the laborer is allowed payment for his services.

Partial Illegality

A six-page employment contract contains two paragraphs of an illegal non compete agreement. The illegal part is thrown out, but the legal parts are enforceable.

WAGERING AGREEMENTS

Literally the word _wager‘ means a _a bet.: something to be lost or won on the result of a doubtful issue‖ and, therefore, wagering agreements are nothing but ordinary betting

agreements. Thus A and B mutually agree that if it rains today A will pay B Rs 100 it does not rain B will pay A Rs 100 or where C and D enter into agreement that on tossing up a coin, if it falls head upwards C will pay O and if it falls tail upwards D will pay C Rs 50; there is, a wagering agreement

A _wager' can be described as, follows: –The agreement of gaming and wagering' is that one party is to win and the other eupon a future every which at the time C the contract is of an a in nature - that is to say, if the event turns out one way A will lose; I it turns out the other way he will win.‖ Possibly the most expressive and all-encompassing definition of a –was agreement‖ was given by, Hawkins., in Carlill vs Carboli,c Smoke Ball Co.

_A wagering contract is one by which two persons professing to hold opposite views touching the issue of a future uncertain event mutually agree independent upon the determination of that event, one shall win from the and the other shall pay or hand over to him, a sum of money or other neither of the contracting parties having any other interest ill that contract than the sum of stake he will so win or lose, there being _no other real consideration _for the making of such contract by either of the parties. It is essential to a wagering contract that each party may under it either win or lose, whether he will win or lose being dependent on the issue of the event, and, therefore, remaining _uncertain until that issue is known. If either' of the parties may win but cannot lose, or may lose but cannot win, it is not a wagering contract.‖

Certain aspects of the above definition require to be emphasised. In me first place, wager is a game of chance in which the contingency of either gain or loss is wholly dependent on an _uncertain event.' An event may be uncertain., not only because it is a future event, but because it is not yet known to the parties. Thus a wager may be made upon the result of the cricket match which is to take place‖ , next month in Calcutta, or upon the result of an election which is over, if the parties do not know the result. Secondly, the parties to a wager must have no interest in the event's _hap-pening or non-happening except the winning or losing of the bet laid be - twine

Them. It is here that wagering agreements differ from insurance contracts which are valid because parties have an interest to protect the life or property, and have, for that very reason, entered into the contract of insurance.

Essential features of a wager

The essentials of a wagering agreement may thus be summarized as follows:

(a) There must been promise to pay money or money's worth,

(b) The promise must be conditional on an event‘s happening or not happening

(c) The event must be an uncertain one. If one of the parties has the event in his own hands, the transaction is not a wager.

(d) Each party must stand to win or lose under the terms of agreement. An agreement is not a wager

if one party- may only win and cannot lose, or if he may lose but cannot win, or if he can neither

win nor lose.

(e) No party should have a proprietary interest in the event. The stake must be the only interest which

the parties have in the agreement.

An agreement by way of a wager , void. Section 30 lays down that –agreements by way of wager are void; and no suit shall be brought or recovering anything alleged to be won on any wager, or entrusted to any person to abide the result of any game or other uncertain event on which any wager if made.‖

Thus, where A and B enter into an agreement which provides that if England‘s cricket team wins the test match, A will pay B Rs, 100, and if it loses B will pay Rs. 100 to A, nothing can be recovered by the winning party under the agreement, it being a wager. Similarly, where C and D enter into a wagering agreement and each deposits Rs 100 with Z. instructing him to, pay or give the total sum to the winner, no suit can _be brought by the winner for recovering the. bet amount from Z, the stake-holder.

Further, if I.. had paid the sum to the winner, the loser cannot bring a suit. for recovering his Rs 100, either against the winner or against Z, the stake-holder, even if Z had paid after the loser‘s definite instructions not to pay. Of course the loser can recover back, his deposit if he makes the demand before the stake-holder‘ had paid it ovation the winner (Ratnakalli vs Vochalapu). But even such a deposit cannot be recovered by a loser. in the States of Maharashtra and Gujarat. where such an agreement is void and illegal.

The Section makes an exception in favour of certain prizes for horse racing by providing further that –This Section shall not be deemed to render unlawful‘‖ a subscription, or contribution, or agreement to subscribe or con-tribute, made or entered into for or toward any plate, prize or sum of money, of the value or amount of five hundred rupees or upwards, to be awarded to the winner or winners of any horse race.‖ Thus, a bet on a horse race carrying a prize of Rs 500 or more to the winners has been made valid under the exception. But with a view to protecting the poor persons from gambling, a bet on a‘ horse race carrying a prize of less than Rs 500 remains a wager.

It is important to note that in the States of Maharashtra and Gujarat wagering agreements are, by a local statute, not only void but also illegal. As a result in these states the collateral transactions to wagering agreements become tainted with illegality and hence are void.

Special cases. We now turn to certain special cases in order to examine as to whether they are wagers:

Commercial transactions

Agreements for sale and purchase of any commodity or share market transactions, in which there is a genuine intention to _do legitimate business i. e., to give and take delivery of goods or shares, are not wagering agreements. If there is no such genuine intention and parties only want to gamble on the rise or fall of the market by paying or receiving the differences in prices only, the transaction would be a wagering agreement and therefore void. –In order to constitute a wagering contract, neither party should intend to perform the contract itself, but only to pay the differences‖

Lotteries

A lottery is a game of chance. Hence the lottery business is a wagering transaction. Such a transaction is not only void but also illegal because 294-A of the Indian Penal Code declares _conducting of lottery a punishable offence. If a lottery is authorized by the Government, the only effect of such permission is that the persons conducting the lottery (i. e., the persons running the lottery and the buyer of lottery ticket) will not. be guilty of a criminal offence, but the lottery remains a wager alright (Dorabji Tata vs Lance). .

Crossword puzzles

Where prizes depend upon a chance, it is _a lottery and therefore a wagering transaction. Thus a crossword puzzle, in which prizes depend upon correspondence of the

competitor‘s solution with a previously prepared solution, is a wager. But if prizes depend upon skill and intelligence, it is a valid transaction. Thus prize competitions which are games of skill and in which an effort is made to select the best competitor e.g., picture puzzles, literary competitions and athletic competitions are not wagers. Even in such competitions .the amount of prize should not exceed Rs 1,000, otherwise they shall be wagers as per the provisions of the Prize Competition Act, 1955.

Insurance contracts

Insurance contracts are valid contracts even though they provide for payment of money by the insurer, on the happening of a future uncertain event. Such contracts differ from wagering agreements mainly in three respects:

- The holder of an insurance policy must have an _insurable interest‘ in the event upon which the insurance money becomes payable. _Thus con-tracts of insurance are entered into to protect an interest. In a wagering agreement there is no interest to protect and the parties bet exclusively because they can thereby make some easy money.
- Contracts of insurance are based on scientific and actuarial calculation whereas wagering agreements are a gamble without any scientific calculation of risks.
- Contracts of insurance are regarded as beneficial to the public, whereas wagering agreements do not serve any useful purpose.

AGREEMENTS OPPOSED TO PUBLIC POLICY

Certain types of agreements are harmful to Society. Such agreements are called agreements opposed to public policy. Such agreements are declared as Void by Status. The following are the agreements opposed to public policy.

- Agreements in Restraint of Trade
- Agreements in Restraint of Marriage
- Agreements in Restraint of Personal Freedom
- Agreements in Restraint of Parental Rights
- Agreements with regard to Compromise of offence
- Agreements with regard to sale of Public Offices and Titles
- Agreements with Alien Enemy

- Agreements based on Bribes
- Agreements to form Monopoly
- Agreement to Commit a Crime
- Agreements to defraud Creditors
- Agreements to defraud Government

Agreements in Restraint of Trade:

The agreements which restrict trade business or Profession are called agreements in restraint of trade. One citizen cannot restrict lawful business of the other.

- A case on this point is Madhav Vs Raj kumar. A and B enters into a contract according to which B has to close down his business for which he would be paid amount by A. B closes his business but, A fails to pay B the agreed amount. B sues A for recovery and court decides that it is an agreement in restraint of trade and hence void.

Agreements in Restraint of Marriage: The agreements which create restriction on marriage are called agreements in restraint of marriage. One person cannot restrict the other from getting married.

- A case on this point is Lowe Vs Peerless. In this case an agreement gets formed between A and B according to which A should marry B only and B should marry A only. If only one of them breaches the agreement a compensation of $ 2000/- is to be paid. Court decides that the language used in the agreement is creating restriction on marriage and hence void.

Agreements in Restraint of Personal Freedom: The agreements which restrict Personal Freedom are opposed to public policy. For example: An agreement to do slavery falls under this group.

- Related case is Ramasastry Vs Ambela Karen. In this case a contract of loan gets formed between A and B and their Contract Specifies that B has to join as slave at A‘s house till Settlement of debt. Court decides that the contract is void.

Agreements in Restraint of Parental Rights: The agreements which restrict rights of Parents on their Children are called agreements in restraint of Parental Rights. By Virtue of an agreement, Parents cannot waive up their rights. Such agreements are harmful to Children.

- A case on this point is Maharaja of Vijayanagar Vs Secretary of State for India. In this case the king entrusts his children to Court of Wards. On that occasion a deed is executed by

king according to which he is giving absolute Power on his Children to court of Wards. After Sometimes Court of Wards decides to send those Children to England for higher Studies. Then the king Sues for injunction order restricting Court of Wards from Sending the Children to England. Court issues Such injunction order Saying that by means of an agreements

Parental rights cannot be restricted and Court of Wards Cannot gets powers on kings Children.

Agreements with regard to Compromise of Offence: The agreements which are outcomes of Compromise with regards to an offence are opposed to public policy.

- A Case on this point is Venkata Subba Rao Vs Chandanmal. In this A is an Ayurveda doctor and B is a money lender. A Contract of loan gets formed between them according to which A has to pledge his medical instruments with B as Security. But A fills-up a wooden box with bricks etc and pledges the box. It comes under public cheating in accordance with Sec. 420 of IPC. After coming to know about the fraud B wants to file criminal prosecution against A. In the mean while A`s Son-in-law namely C makes a Compromise and executes a deed in support of debt taken by A. There after B sues C for recovery Court decides that the Contract which has got formed between B and C is agreement with regard to Compromise of offence and hence void.

Agreements with regard to sale of Public Offices and Titles:

Titles and positions in Government will be given basing on personal talent. That person who has obtained them cannot transfer them to some other person by means of an agreement.

- A case on this point is Swamynathan Vs Muthu Swamy. In this case a Contract gets formed between A and B according to which A has to transfer his position in govt. to B for certain consideration. It is opposed to Public Policy and hence held to be Void.

Agreements with Alien Enemy: Agreements with aliens are Valid so long as there are good relations between two Countries. When War breaks out between the Countries that Contract becomes opposed to public policy and hence void.

- A case on this point is Metropolitan Water board Vs Dick Kerr And Company. Metropolitan Water board wants to construct a dam and enters into a contract with people who are aliens (other nation engineers). The contract is breached followed by a war in between the two nations. Metropolitan Water board files a case up on breach of contract. But, the case loses its validity since a war broke out in between the two nations.

Agreements based on Bribes: When ever there is involvement of Crime or Corruption, Such agreement is said to be opposed to public policy.

- Related case is Pandyan Vs Roy. In this case there is an agreement between A and B according to which B has to pay Rs.15000 to A and for that A has to arrange for admission of A`s Son to a Medical College. Court decides that their agreement is opposed to Public Policy.

Agreements to form Monopoly:

Monopoly is Suitable to several unfair trade practices and to exploit public. So an agreement to create monopoly is harmful to Society.

Agreement to Commit a Crime:

In case where objective of the agreement is to conduct a Crime like murder etc, it becomes opposed to public policy.

Agreements to Defraud Creditors:

If debtors form an agreement to defraud their Creditors, Such agreement is opposed to public policy.

Agreements to Defraud Government:

Agreements to evade taxes etc create loss to government they are opposed to public policy.

RESTITUTION

Restitution is the act of making up for damages or harm, like the time you knocked the ball out of the park, scoring a home run but breaking a house's window in the process. You had to make restitution for the broken window, paying for its replacement.

The noun restitution means both "restoring something to its original state" and "returning something to its rightful owner," like a public apology that leads to the restitution of a person's honor and reputation. Restitution also has a specific legal meaning — an order given by a judge to a convicted criminal to make amends for the crime. For examples, judges often order people to pay restitution for the damage they cause.

CONTINGENT CONTRACTS

A Contract may be

- An absolute contract, or
- A Contingent contract.

An ―absolute contract‖ is one in which the promisor binds himself to performance in any event without any conditions.

―Contingent‖ means that which is dependent on something else. 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 (Sec. 31). There are three essential characteristics of a contingent contract.

- Its performance depends upon the happening or non-happening in future of some event.
- The event must be uncertain.
- The event must be collateral

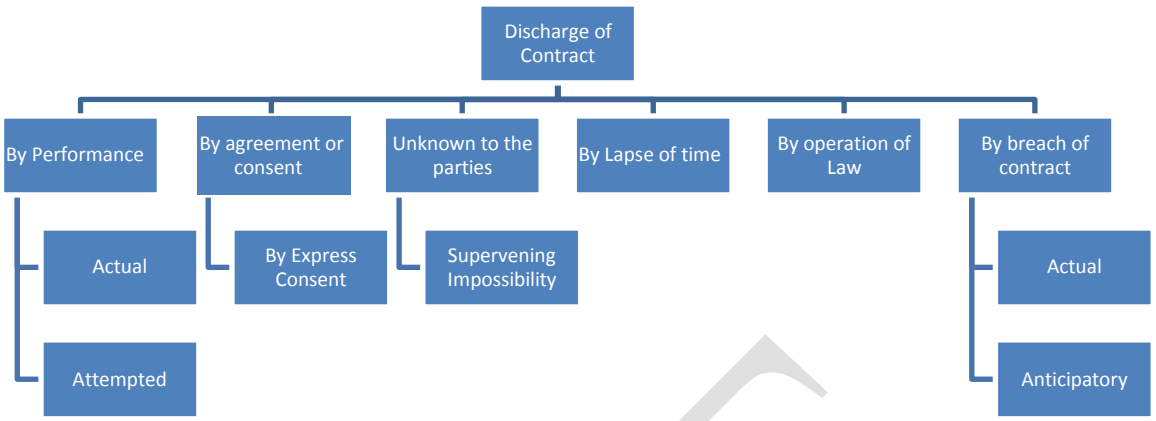
DISCHARGE OF CONTRACT

Discharge of contract means termination of the contractual relationship between the parties. A contract is said to be discharged when it ceases to operate, when the rights and obligations created by it come to an end. In some cases, other rights and obligations may arise as a result of discharge of contract, but they are altogether independent of the original contract.

A Contract may be discharged ___

- By Performance
- By agreement or consent
- By impossibility
- By lapse of time
- By operation of law
- By breach of contract

The above can be explained in the following chart



BREACH OF CONTRACT

Breach of contract is a legal cause of action in which a binding agreement or bargained-for exchange is not honored by one or more of the parties to the contract by non-performance or interference with the other party's performance. If the party does not fulfill his contractual promise, or has given information to the other party that he will not perform his duty as mentioned in the contract or if by his action and conduct he seems to be unable to perform the contract, he is said to breach the contract.

Minor breaches

In a "minor" breach (a partial breach or immaterial breach or where there has been substantial performance), the non-breaching party cannot sue for specific performance, and can only sue for actual damages. Suppose a homeowner hires a contractor to install new plumbing and insists that the pipes, which will ultimately be hidden behind the walls, must be red. The contractor instead uses blue pipes that function just as well. Although the contractor breached the literal terms of the contract, the homeowner cannot ask a court to order the contractor to replace the blue pipes with red pipes. The homeowner can only recover the amount of his or her actual damages. In this instance, this is the difference in value between red pipe and blue pipe. Since the color of a pipe does not affect its function, the difference in value is zero. Therefore, no damages have been incurred and the homeowner would receive nothing. (See Jacob & Youngs v. Kent.)

However, had the pipe colour been specified in the agreement as a condition, a breach of that condition would constitute a "major" breach. For example, when a contract specifies time is of the essence and one party to the contract fails to meet a contractual obligation in a timely fashion, the other party could sue for damages for a major breach.

Material breach

A material breach is any failure to perform that permits the other party to the contract to either compel performance, or collect damages because of the breach. If the contractor in the above example had been instructed to use copper pipes, and instead used iron pipes that would not last as long as the copper pipes would have lasted, the homeowner can recover the cost of actually correcting the breach - taking out the iron pipes and replacing them with copper pipes**.**

There are exceptions to this. Legal scholars and courts often state that the owner of a house whose pipes are not the specified grade or quality (a typical hypothetical example) cannot recover the cost of replacing the pipes for the following reasons:

Economic waste:

The law does not favor tearing down or destroying something that is valuable (almost anything with value is "valuable"). In this case, significant destruction of the house would be required to completely replace the pipes, and so the law is hesitant to enforce damages of that nature.

2. Pricing in.

In most cases of breach, a party to the contract simply fails to perform one or more terms. In those cases, the breaching party should have already considered the cost to perform those terms and thus "keeps" that cost when they do not perform. That party should not be entitled to keep that savings. However, in the pipe example the contractor never considered the cost of tearing down a house to fix the pipes, and so it is not reasonable to expect them to pay damages of that nature.

Most homeowners would be unable to collect damages that compensate them for replacing the pipes, but rather would be awarded damages that compensate them for the loss of value in the house. For example, say the house is worth $125,000 with copper and $120,000 with iron pipes. The homeowner would be able to collect the $5,000 difference, and nothing more.

The Restatement (Second) of Contracts lists the following criteria can be used to determine whether a specific failure constitutes a breach:

In determining whether a failure to render or to offer performance is material, the following circumstances are significant:

the extent to which the injured party will be deprived of the benefit which he reasonably expected; (b) the extent to which the injured party can be adequately compensated for the part of that benefit of which he will be deprived; (c) the extent to which the party failing to perform or to offer to perform will suffer forfeiture; (d) the likelihood that the party failing to perform or to offer to perform will cure his failure, taking account of all the circumstances including any reasonable assurances; (e) the extent to which the behavior of the party failing to perform or to offer to perform comports with standards of good faith and fair dealing.

American Law Institute, Restatement (Second) of Contracts § 241 (1981) Fundamental breach. A fundamental breach (or repudiatory breach) is a breach so fundamental that it permits the aggrieved party to terminate performance of the contract. In addition that party is entitled to sue for damages.

Anticipatory breach

A breach by anticipatory repudiation (or simply anticipatory breach) is an unequivocal indication that the party will not perform when performance is due, or a situation in which future non-performance is inevitable. An anticipatory breach gives the non-breaching party the option to treat such a breach as immediate, and, if repudiatory, to terminate the contract and sue for damages (without waiting for the breach to actually take place).

For example, A contracts with B on January 1 to sell 500 quintals of wheat and to deliver it on May 1. Subsequently, on April 15 A writes to B and says that he will not deliver the wheat. B may immediately consider the breach to have occurred and file a suit for damages for the scheduled performance, even though A has until May 1 to perform. Example: if Company A refuses to pay substantial interim payments to Company B, Company B can begin legal action due to anticipatory breach. Company B could also stop performing its contractual obligation, potentially saving time and or money.

REMEDIES FOR BREACH OF CONTRACTS

A remedy is the means given by law for the enforcement of a right. When a contract

is broken, the injured party has one or more of the following remedies:

- Rescission of the contract
- Suit for damages
- Suit upon quantum merit
- Suit for specific performance of the contract.
- Suit for injunction.

BREACH OF CONTRACT

Nature of breach

A breach of contract occurs where a party to a contract fails to perform, precisely and exactly, his obligations under the contract. This can take various forms for example, the failure to supply goods or perform a service as agreed. Breach of contract may be either actual or anticipatory. Actual breach occurs where one party refuses to form his side of the bargain on the due date or performs incompletely.

For example: Poussard v Spiers and Bettini v Gye.

Anticipatory breach occurs where one party announces, in advance of the due date for performance, that he intends not to perform his side of the bargain. The innocent party may sue for damages immediately the breach is announced. Hochster v De La Tour is an example.

Effects of breach

A breach of contract, no matter what form it may take, always entitles the innocent party to maintain an action for damages, but the rule established by a long line of authorities is that the right of a party to treat a contract as discharged arises only in three situations. The breaches which give the innocent party the option of terminating the contract are:

(a) Renunciation

Renunciation occurs where a party refuses to perform his obligations under the contract. It may be either express or implied. Hochster v De La Tour is a case law example of express renunciation. Renunciation is implied where the reasonable inference from the defendant‘s conduct is that he no longer intends to perform his side of the contract. For example: Omnium D‘Enterprises v Sutherland.

(b) Breach of condition

The second repudiatory breach occurs where the party in default has committed a breach of condition. Thus, for example, in Poussard v Spiers the employer had a right to terminate the soprano's employment when she failed to arrive for performances.

Fundamental breach

The third repudiatory breach is where the party in breach has committed a serious (or fundamental) breach of an innominate term or totally fails to perform the contract. A repudiatory breach does not automatically bring the contract to an end. The innocent party has two options:

He may treat the contract as discharged and bring an action for damages for breach of contract immediately. This is what occurred in, for example, Hochster v De La Tour. He may elect to treat the contract as still valid, complete his side of the bargain and then sue for payment by the other side. For example, White and Carter Ltd v McGregor.

Introduction to remedies

Damages is the basic remedy available for a breach of contract. It is a common law remedy that can be claimed as of right by the innocent party. The object of damages is usually to put the injured party into the same financial position he would have been in had the contract been properly performed. Sometimes damages are not an adequate remedy and this is where the equitable remedies (such as specific performance and injunction) may be awarded.

Damages

Nature:

The major remedy available at common law for breach of contract is an award of damages. This is a monetary sum fixed by the court to compensate the injured party. In order to recover substantial damages the innocent party must show that he has suffered actual loss; if there is no actual loss he will only be entitled to nominal damages in recognition of the fact that he has a valid cause of action n making an award of damages, the court has two major considerations: Remoteness – for what consequences of the breach is the defendant legally responsible.

The measure of damages

The principles upon which the loss or damage is evaluated or quantified in monetary terms. The second consideration is quite distinct from the first, and can be decided by the court only after the first has been determined.

Remoteness of loss

The rule governing remoteness of loss in contract was established in Hadley v Baxendale. The court established the principle that where one party is in breach of contract, the other should receive damages which can fairly and reasonably be considered to arise naturally from the breach of contract itself (_in the normal course of things‘), or which may reasonably be assumed to have been within the contemplation of the parties at the time they made the contract as being the probable result of a breach. Thus, there are two types of loss for which damages may be recovered:

1. what arises naturally; and

2. what the parties could foresee when the contract was made as the likely result of breach.

As a consequence of the first limb of the rule in Hadley v Baxendale, the party in breach is deemed to expect the normal consequences of the breach, whether he actually expected them or not.

Under the second limb of the rule, the party in breach can only be held liable for abnormal consequences where he has actual knowledge that the abnormal consequences might follow or where he reasonably ought to know that the abnormal consequences might follow – Victoria Laundry v Newman Industries.

The measure (or quantum) of damages

In assessing the amount of damages payable, the courts use the following principles:

The amount of damages is to compensate the claimant for his loss not to punish the defendant. Damages are compensatory – not restitutionary. The most usual basis of compensatory damages is to put the innocent party into the same financial position he would have been in had the contract been properly performed. This is sometimes called the _expectation loss‘ basis. In Victoria Laundry v Newman Industries, for example, Victoria Laundry were claiming for the profits they would have made had the boiler been installed on the contractually agreed date.

Sometimes a claimant may prefer to frame his claim in the alternative on the _reliance loss' basis and thereby recover expenses incurred in anticipation of performance and wasted as a result of the breach – Anglia Television v Reed.

In a contract for the sale of goods, the statutory (Sale of Goods Act 1979) measure of damages is the difference between the market price at the date of the breach and the contract price, so that only nominal damages will be awarded to a claimant buyer or claimant seller if the price at the date of breach was respectively less or more than the contract price.

In fixing the amount of damages, the courts will usually deduct the tax (if any) which would have been payable by the claimant if the contract had not been broken. Thus if damages are awarded for loss of earnings, they will normally be by reference to net, not gross, pay. Difficulty in assessing the amount of damages does not prevent the injured party from receiving them: Chaplin v Hicks.

In general, damages are not awarded for non-pecuniary loss such as mental distress and loss of enjoyment. Exceptionally, however, damages are awarded for such losses where the contract's purpose is to promote happiness or enjoyment, as is the situation with contracts for holidays – Jarvis v Swan Tours. The innocent party must take reasonable steps to mitigate (minimize) his loss, for example, by trying to find an alternative method of performance of the contract: Brace v Calder.

Liquidated damages clauses and penalty clauses

If a contract includes a provision that, on a breach of contract, damages of a certain amount or calculable at a certain rate will be payable, the courts will normally accept the relevant figure as a measure of damages. Such clauses are called liquidated damages clauses.

The courts will uphold a liquidated damages clause even if that means that the injured party receives less (or more as the case may be) than his actual loss arising on the breach. This is because the clause setting out the damages constitutes one of the agreed contractual terms – Cellulose Acetate Silk Co Ltd v Widnes Foundry Ltd. However, a court will ignore a figure for damages put in a contract if it is classed as a penalty clause – that is, a sum which is not a genuine pre-estimate of the expected loss on breach. This could be the case where:

1. The prescribed sum is extravagant in comparison with the maximum loss that could follow from a breach.

2. The contract provides for payment of a certain sum but a larger sum is stipulated to be payable on a breach.

3. The same sum is fixed as being payable for several breaches which would be likely to cause varying amounts of damage.

All of the above cases would be regarded as penalties, even though the clause might be described in the contract as a liquidated damages clause. The court will not enforce payment of a penalty, and if the contract is broken only the actual loss suffered may be recovered (Ford Motor Co (England) Ltd v Armstrong).

Equitable remedies - Specific performance

This is an order of the court requiring performance of a positive contractual obligation.

Specific performance is not available in the following circumstances:

Damages provide an adequate remedy.

Where the order could cause undue hardship.

Where the contract is of such a nature that constant supervision by the court would be required, eg, Ryan v Mutual Tontine Association.

Where an order of specific performance would be possible against one party to the contract, but not the other.

Where the party seeking the order has acted unfairly or unconscionably. He is barred by the maxim _He who comes to Equity must come with clean hands‘.

Where the order is not sought promptly the claimant will be barred by the maxims _Delay defeats the Equities‘ and _Equity assists the vigilant but not the indolent‘.

In general the court will only grant specific performance where it would be just and equitable to do so.

Injunction

An injunction is an order of the court requiring a person to perform a negative obligation.

Injunctions fall into two broad categories:

Prohibitory injunction, which is an order that something must not be done.

Mandatory injunction, which is an order that something must be done, for example to pull down a wall which has been erected in breach of contract.

Like specific performance it is an equitable remedy and the court exercises its discretion according to the same principles as with specific performance.

eg, Records Ltd v Britton and Warner Brothers v Nelson.

QUASI CONTRACT

A quasi-contract (or implied-in-law contract or constructive contract) is fictional contract created by courts for equitable, not contractual, purposes. A quasi-contract is not an actual contract, but is a legal substitute formed to impose equity between two parties. The concept of a quasi contract is that of a contract that should have been formed, even though in actuality it was not. It is used when a court finds it appropriate to create an obligation upon a non-contracting party to avoid injustice and to ensure fairness. It is invoked in circumstances and is connected with the concept of restitution.

Generally the existence of an actual or implied-in-fact contract is required for the defendant to be liable for services rendered, and a person who provides a service uninvited is an officious intermeddler who is not entitled to compensation. "Would-be plaintiffs cannot deliver unordered goods or services and demand payment for the benefit....A corollary is that one who does have an enforceable contract is bound by the contract's terms: subject to a few controversial exceptions, she cannot sue for restitution of the value of benefits conferred." However, in many jurisdictions under certain circumstances plaintiffs may be entitled to restitution under quasi-contract (as in the example of Oklahoma below).

They are used as remedies for unjust enrichment, management of another's affairs, or "restitution of the undue". Quasi-contracts are defined to be "the lawful and purely voluntary acts of a man, from which there results any obligation whatever to a third person, and sometime a reciprocal obligation between the parties." One authority defines a quasi-contract as "A licit and voluntary act from which derives obligations subject to a regime close to the contractual one imposing on the author of the act and a third party, not-bound by a contract".

Under certain circumstances a person may receive a benefit to which the law regards

another person as getter entitled, or for which the law considers he should pay to the other person, even though there is no contract between the parties. Such relationships are termed quasi contracts.

KINDS OF QUASI-CONTRACTS

- Supply of necessaries (Sec.68)
- Payment by interested person (Sec. 69)
- Obligation to pay for non-gratuitous acts (Sec. 70)
- Responsibility of finder of goods (Sec. 71)
- Mistake or Coercion (Sec. 72).

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Quasi-contracts are defined to be "the lawful and purely voluntary acts of a man, from which there results any obligation whatever to a third person, and sometime a reciprocal obligation between the parties." Quasi-contracts are stipulated in the 3rd Book, Title IV, Chapter 1 of the French Civil Code (articles 1371-1381). One authority defines a quasi-

contract as "A licit and voluntary act from which derives obligations subject to a regime close to the contractual one imposing on the author of the act and a third party, not-bound by a contract".

POSSIBLE QUESTION

Part B

1. Define contract.
2. What is quasi –contract?
3. What is an implied offer?
4. What is consideration?
5. Who are the persons incompetent to contract?
6. Define Coercion.
7. Give two examples of agreements forbidden by law.
8. What is a wagering agreement?
9. What is discharge of contract?
10. What is injunction?

Part C

1. Explain the essential elements of a valid Contract.
2. Briefly explain the classification of contract with suitable example.
3. Define Consideration and explain legal rules as to consideration.
4. –All Agreements are not contracts but all contracts are agreements.‖ - Discuss the statement.
5. State and explain the law relating to contract by minors.
6. Enumerate the term Flaw in consent.
7. Explain the Capacity to Contract in detail
8. Enumerate about the remedies for breach of contract.
9. What are the various ways in which a contract may be discharged?
10. Enumerate the Quasi contracts dealt under the Indian Contract Act, 1872.
11. Enumerate the various solutions to Breach of Contract.

12. Explain the classification of mistake?

UNIT I

S.No	Questions	Opt 1	Opt 2	Opt 3	Opt 4	Answer
1	The -------- introduced definiteness in business transaction	Indian Partnership Act	Law of contract	Sale of Goods Act	Law of Agency	Law of contract
2	The Indian Contract Act --------	1972	1962	1852	1872	1872
3	The law relating to contract is contained in the ------	Indian Contract Act	Sale of goods Act	Law of Agency	Indian Partnership Act	Indian Contract Act
4	------- deals with the general principles of the law of contract	Law of Agency	Indian Partnership Act	Sale of Goods Act	Indian Contract Act	Indian Contract Act
5	Law of contract creates -----	Jus in rem	contractual relation	consensus ad idem	Jus in personam	Jus in personam
6	------- means a right against or in a respect of a thing	Void	Jus in rem	Jus in personam	Consesus aidem	Jus in rem
7	A representation, when wrongly made, either innocently or intentionally is a----	Mistake	Coercion	Misrepresentation	Undue influence	Coercion
8	A ------- is available against the world at large	Jus in rem	Jus in personam	Consesus ad idem	Obligation	Jus in rem
9	A --------- is available only against particular persons	Consensus ad idem	obligation	Jus in personam	Jus in rem	Jus in personam
10	A --------- is an agreement made between two or more parties	Offer	Contract	Acceptance	Obligation	Contract
11	A contract is an ------ made between two or more parties	Acceptance	Obligation	Offer	Agreement	Agreement
12	A contract is an agreement made between ----------parties	two or more	Two	Three	Four	two or more

13	------ means termination of the contractual relationship between the parties	Rejection of offer	Revocation of offer	Discharge of contract	Lapse of time	Discharge of contract
14	An ------ is one of the essential elements of a contract	Obligation	Agreement	Promise	Subject matter	Agreement
15	A -------- is one of the essential elements of a contract	Enforceability by law	Obligation	Subject matter	Promise	Enforceability by law
16	An --------- is defined as every promise and every set of promise forming consideration for each other	Offer	Acceptance	Obligation	Agreement	Agreement
17	Agreement = --------	Offer + Acceptance	Offer - Acceptance	Acceptance	Offer	Offer + Acceptance
18	,--------- = Offer + Acceptance	Contract	Consideration	Agreement	Legal object	Agreement
19	Agreement = ------- + Acceptance	Contract	Offer	Consideration	Object	Offer
20	Agreement = Offer + Acceptance	Object	Contract	Consuderation	Acceptance	Acceptance
21	. -------- refers to the meeting of the minds of the parties in full	Jus in personam	Consensus ad idem	Jus in rem	Obligation	Consensus ad idem
22	A agreement to become a contract must give rise to a legal ------	Obligation	Offer	Acceptance	Object	Obligation
23	Lawful consideration is according to ----------	Section 13	Section 23	Section 24	Section 53	Section 23
24	. ------- is not enforceable in a court of law	legal Agreement	Social Agreement	Valid Contract	Executory contract	Social agreement
25	Contract = ----------	Agreement	Enforceability at law	Agreement – Enforceability at law	Agreement + Enforceability at law	Agreement + Enforceability at law
26	. ------- = Agreement + Enforceability at law	Offer	Acceptance	Contract	Promise	Contract

27	Contract = -------- + Enforceability at law	Acceptance	Offer	Obligation	Agreement	Agreement
28	Contract = Agreement + ----------	Enforceability at law	Acceptance	coffer	Obligation	Enforceability at law
29	------- is also known as the law of restitution	Law of contract	Law of Quasi contract	Law of agency	carriers law	Law of Quasi contract
30	------- are the goods which are also not in existence at the time of contract of sale	Contingent goods	Specific goods	Existing goods	Future goods	Contingent goods
31	------- means an advantage or benefit moving from one party to the other	Consideration	offer and acceptance	object	capacity	Consideration
32	Consideration means -----	Enforceable by law	subject matter	something in return	Promise	something in return
33	The ------- of the parties is said to be free when they are of the same mind on all the material terms of the contract	Consent	Object	Contratual relationship	Subject matter	Consent
34	The ------ of the agreement must be lawful	Subject Matter	Obligation	Object	Offer	Object
35	. ------- is the first essential element of a valid contract	Consideration	Intention to create legal relationship	Lawful Object	Offer and Acceptance	Offer and Acceptance
36	. ---------- is the third essential elements of a valid contract	Lawful object	Lawful Consideration	Free Consent	Legal Formalities	Lawful Consideration
37	.--------- is the fourth essential elements of a valid contract	Offer and Acceptance	Lawful Object	Consideration	Capacity of parties	Capacity of parties
38	Contract may be classified into ------	Three	Two	Four	Five	Three
39	An agreement becomes a contract when all the ------ are	Offer and acceptance	Lawful object	Essential elements	Consideration	Essential elements

	present					
40	When all the essential elements are present it is referred as a -----	Void contract	Valid contract	Void agreement	illegal contract	Valid contract
41	When the essential element of free consent is missing it is known as ----	Void contract	illegal contract	Voidable contract	Valid contract	Voidable contract
42	An agreement not enforceable by law is said to be -----	Void Agreement	Void Contract	Valid contract	Voidable contract	Void contract
43	A ------ is one which transgresses some rule of basic public policy or which is criminal in nature	Void agreement	Illegal agreement	Voidable contract	Valid contract	Illegal agreement
44	------ is one which cannot be enforced in a court of law because of some technical defect	Valid contract	Executory Contract	Unenforceable contract	Quasi contract	Unenforceable contract
45	An express promise results in a ----	Implied contract	Express contract	Quasi contract	Bilateral contract	Express contract
46	An -------- is one which is inferred from the acts or conduct of the parties	Implied contract	Quasi contract	Express contract	Unilateral contract	Implied contract
47	A -------- is not a contract at all	Executed contract	Void contract	Quasi contract	Valid contract	Quasi contract
48	An -------- is one in which both the parties have preformed their respective obligations	Void contract	Quasi contract	Executory contract	Executecontract	Executed contract
49	An ------- is one in which both the parties have yet to perform their obligation	Executory contract	Executed contract	Quasi contract	void contract	Executory contract

50	a ------- is one in which the obligation on the part of the parties to the contract are outstanding at the time of the formation of the contract	Executed contract	Bilateral contract	Quasi contract	Void contract	Bilateral contract
51	Unilateral contract is also known as ------	Bilateral contract	Executed contract	Executory Contract	One-sided contract	One-sided contract
52	Gets into a public bus is an example for -----	Express contract	Quasi contract	Implied Contract	valid contract	Quasi contract
53	An ------ is a proposal by one party to another to enter into a legally binding agreement with him	Acceptance	Offer	Object	subject matter	Offer
54	The person making the offer is known as the -----	Promisee	Acceptor	Offeree	Offeror	Offeror
55	The person to whom an offer is made is called as the ------	Offeree	Offeror	Proposer	Promisor	Offeree
56	When the offeree accepts the offer he is called the -------	Promisor	Acceptor	Proposer	Offeror	Acceptor
57	Offeror is also known as ------	Proposee	Promisee	Proposer	Promisee	Proposer
58	Capacity of Parties come under----------	Section 9	Section 10	Section 11	Section 12	Section 11
59	An offer may be made by express words, spoken or written is known as an -----	Express offer	Implied offer	Specific offer	General offer	Express offer
60	An offer may also be implied from the conduct of the parties is known as an ---	Specific offer	Express offer	Implied offer	General offer	Implied offer
61	When an offer is made to a definite person it is called a ------	Implied offer	Specific offer	General offer	Express offer	Specific offer

UNIT-II

SYLLABUS

Banking Regulation Act 1949 - Origin of the Act - Business of Banking Company - Capital Requirements - Maintenance of Liquid Assets - Licensing of Banks - Powers of the RBI - Winding Up and Amalgamation of Banking Companies - RBI Credit Control Measures - Secrecy of Customer Account.

Banking Reforms and Regulations

Bank is the main confluence that maintains and controls the "flow of money" to make the commerce of the land possible. Government uses it to control the flow of money by managing Cash Reserve Ratio (CRR) and thereby influencing the inflation level. The functions of the bank include accepting deposits from the public and other institutions and then to direct as loans and advances to parties mainly for growth and development of industries. It extends loans for the purpose of education, housing etc. and as a part of social duty, some percentage to Agricultural sector as decided by the RBI. The banks take the deposit at the lower rate of interest and give loans at the higher rates of interest. The difference in this transaction constitutes in number of banks the main source of income.

Banking in India has undergone startling changes in terms of growth and structure. Organized Banking was active in India since the establishment of The General Bank of India in 1786. The Reserve Bank of India (RBI) was established as the central bank and in 1955. The Imperial bank of India, the biggest bank at that time, was taken over by the government to form State owned State Bank of India (SBI). RBI undertook an exercise to reduce the fragmentation in the Indian Banking Industry post-independence by merging weaker banks with stronger banks. The total number of banks reduced from 566 in 1951 to 85 in 1969.With the objective of reaching out to the masses and servicing credit needs of all sections of people, the government nationalized 14 large banks in 1969 followed by another six banks in 1980. This period saw the enormous growth in the number of branches and the bank's branch network became wide enough to reach the weaker section of the society in a vast country like India.

The economic reforms unleashed by the government in early nineties included banking sector too, to a significant extent. Entry of new private banks was permitted by RBI under specific guidelines. A number of liberalization and deregulation measures like efficiency, asset quality, capital adequacy and profitability have been introduced by the RBI to bring Indian banks in line with International best practices. With a view of giving the State owned banks operational flexibility and functional autonomy, partial privatization has been authorized as a first step, enabling them to reduce the stake of the government to 51%. Beside that a number of the legislation aims at protecting the interests of the depositors, ensuring control over the volume of credit, streamlining procedure, evolving uniform banking practices and developing banking on sound lines. The central banking enquiry committee

stated that the banking institutions of a country serve as a repository of the cash resources of all classes of individuals and exercise a very powerful influence on the economic life of the people. Since banking business has come to be regarded as quasi-public in its nature warranting legislation to safeguard the interest of depositors, on whose confidence rests the entire banking structure of a nation and for ensuring and fostering the growth of banking on sound lines.

Legislation for safeguarding the business of banking companies most intensively was undertaken after the failure of the Travancore National and Quilon Bank. Between January 1937 and September 1948, three amendments to the Indian Companies Act were promoted. Meanwhile, a bill regulating the business of banking introduced in November 1944 lapsed in October 1945. Another bill introduced in March 1946 was withdrawn because of numerous amendments which were found necessary and reintroduced in March 1948. This final version of the bill as modified by the select committee became law, which effect from March 16, 1949.

(A) Banking Regulation Act 1949

Banking regulation act came in existence in 1949 with numerous provisions which may be classified into two categories: (i) built in safeguards and (ii) power and consequential functions and responsibilities of the Reserve Bank of India. The other important set of provisions pertains to the suspension of business by and winding up of banking companies.

The provisions which fall in first category namely of built in safeguard relate to the organization management and operation of a banking company. The power and function of the RBI cover the entire gamut of operations of a bank and vest with adequate control and authority in this behalf.

The organizational, managerial and operations safeguard can be further categorized and examined under the following subheads:

I) Organizational Safeguard:

i) Business of banking companies: In addition to the business of banking, banking company may engage in any one or more of the following forms of business (U/s 6), namely:

(a) The borrowing, raising, or taking up of money; the lending or advancing of money either upon or without security; the drawing, making, accepting, discounting, buying, selling, collecting and dealing in bills of exchange, *hundis* promissory notes, coupons, drafts, bills of lading, railway receipts, warrants, debentures, certificates, scripts and other instruments, and securities whether transferable or negotiable or not; the granting and issuing of letters of credit, traveller'scheques and circular notes; the buying, selling and dealing in bullion and specie; the buying and selling, of foreign exchange including foreign bank notes; the acquiring holding, issuing on commission, underwriting and dealing in stock, funds, shares debentures, debenture stock, bonds, obligations, securities and investments of all kinds; the purchasing and selling of bonds, scrips or other forms of securities on behalf of constituents or others, the negotiating of loans and advances; the receiving of all kinds of bonds, scrips or

valuables on deposit or for safe custody or otherwise; the providing of safe deposit vaults; the collecting and transmitting of money and securities.

(b) Acting as agents for any Government or local authority or any other person or persons; the carrying on of agency business of any description including the clearing and forwarding of goods, giving of receipts and discharges and otherwise acting as an attorney on behalf of customers, but excluding the business of a 1[managing agent or secretary and treasurer] of a company.

(c) Contracting for public and private loans and negotiating and issuing the same;

(d) The effecting, insuring, guaranteeing, underwriting, participating in managing and carrying out of any issue, public or private, of State, municipal or other loans or of shares, stock, debentures, or debenture stock of any company, corporation or association and the lending of money for the purpose of any such issue;

(e) Carrying on and transacting every kind of guarantee and indemnity business;

(f) Managing, selling and realizing any property which may come into the possession of the company in satisfaction or part satisfaction of any of its claims;

(g) Acquiring and holding and generally dealing with any property or any right, title or interest in any such property which may form the security or part of the security for any loans or advances or which may be connected with any such security;

(h) Undertaking and executing trusts;

(i) Undertaking the administration of estates as executor, trustee or otherwise;

(j) Establishing and supporting or aiding in the establishment and support of association, institutions, funds, trusts and conveniences calculated to benefit employees or ex-employees of the company or the dependents or connections of such persons; granting pensions and benevolent objects or for any exhibition or for any public, general or useful object;

(k) The acquisition, construction, maintenance and alteration of any building or works necessary or convenient for the purposes of the company;

(l) selling, improving, managing, developing, exchanging, leasing, mortgaging, disposing of or turning into account or otherwise dealing with all or any part of the property and rights of the company;

(m) Acquiring and undertaking the whole or any part of the business of any person or company, when such business is of nature enumerated or described in this sub-section;

(n) Doing all such other things as are incidental or conducive to the promotion or advancement of the business of the company;

(o) Any other forms of business which the Central Government may by notification in the Official Gazette, specify as a form of business in which it is lawful for a banking company to engage.

Section 6 further provides that a banking company cannot engage itself in any other type of business. The rigidity ;of this provisions is strengthened by those of section 8 which specifically prohibit a banking company from engaging itself in any trade or buying and selling of goods except for realization of any security held by it. These in brief are the limitations which the act provides in respect of the business that a banking company may or may not transact.

Disposal of non-banking assets **-** Notwithstanding anything contained in Sec. 6, no banking company shall hold any immovable property, howsoever acquired, except such as is required for its own use, for any period exceeding seven years from the acquisition thereof or from the commencement of this Act, whichever is later or any extension of such period as in this section provided, and such property shall be disposed of within such period or extended period, as the case may be: Provided that the banking company may, within the period of seven years as aforesaid, deal or trade in any such property from the purpose of facilitating the disposal thereof. Provided further that the Reserve Bank may in any particular case extend the aforesaid period of seven years by such period not exceeding five years where it is satisfied that such extension would be in the interests of the depositors of the banking company.

A **bankers' bank** is a US bank that provides financial services to community banks. It is owned by several community banks and provides services just to community banks (not to members of the public or companies).

Thanks to bankers' banks, community banks receive many services that would otherwise be available only to large national or multinational institutions.

These services mean than community banks are able to offer them to their customers, i.e. the smaller independent financial institutions can compete more effectively with the bigger banks.

"bank", "banker", "banking" or "banking company"

(1) No company other than a banking company shall use as part of its name 15[or, in connection with its business] any of the words "bank", "banker" or "banking" and no company shall carry on the business of banking in India unless it uses as part of its name at least one of such words.

(2) No firm, individual or group of individuals shall, for the purpose of carrying on any business, use as part of its or his name any of the words "bank", "banking" or "banking company".

(3) Nothing in this section shall apply to-

(a) a subsidiary of a banking company formed for one or more of the purposes mentioned in sub-section (1) of section 19, whose name indicates that it is a subsidiary of that banking company;

(b) any association of banks formed for the protection of their mutual interests and registered under section 25 of the Companies Act, 1956 (1 of 1956).

Requirement as to minimum paid-up capital and reserves

(1) Notwithstanding anything contained in [section 149 of the Companies Act, 1956], no banking company in existence on the commencement of this Act, shall, after the expiry of three years from such commencement or of such further period not exceeding one year as the Reserve Bank, having regard to the interests of the depositors of the company, may think fit in any particular case to allow, carry on business 11[in India], and no other banking company shall, after the commencement of this Act, commence or carry on business 11[in India], unless it complies with such of the requirements of this section as are applicable to it.]

(2) In the case of a banking company incorporated outside India-

(a) the aggregate value of its paid-up capital and reserves shall not be less than fifteen lakhs of rupees and if it has a place or places of business in the city of Bombay or Calcutta or both, twenty lakhs of rupees; and

(b) [the banking company shall deposit and keep deposited with the Reserve Bank either in cash or in the form of unencumbered approved securities, or partly in cash and partly in the form of such securities-

(i) an amount which shall not be less than the minimum required by clause (a); and

(ii) as soon as may be after the expiration of each 40[***] year, an amount calculated at twenty per cent of its profit for that year in respect of all business transacted through its branches in India, as disclosed in the profit and loss account prepared with reference to that year under section 29:]

PROVIDED that any such banking company may at any time replace-

(i) any securities so deposited by cash or by any other unencumbered approved securities or partly by cash and partly by other such securities, so however, that the total amount deposited is not affected;

(ii) any cash so deposited by unencumbered approved securities of an equal value.]

[(2A) Notwithstanding anything contained in sub-section (2), the Central Government may, on the recommendation of the Reserve Bank, and having regard to the adequacy of the amounts already deposited and kept deposited by a banking company under sub-section (2), in relation to its deposit liabilities in India declare by order in writing that the provisions of sub-clause (ii) of clause (b) of sub-section (2) shall not apply to such banking company for such period as may be specified in the order.]

(3) In the case of any banking company to which the provisions of sub-section(2) do not apply, the aggregate value of its paid-up capital and reserves shall not be less than -

(i) if it has places of business in more than one State, five lakh of rupees, and if any such place or places of business is or are situated in the city of Bombay or Calcutta or both, ten lakhs of rupees;

(ii) if it has all its places of business in one State none of which is situated in the city of Bombay or Calcutta, one lakh of rupees in respect of its principal place of business, plus ten thousand rupees in respect of each of its other places of business, situated in the same district in which it has its principal place of business, plus twenty-five thousand rupees in respect of each place of business situated elsewhere in the State otherwise than in the same district:

PROVIDED that no banking company to which this clause applies shall be required to have paid-up capital and reserves exceeding an aggregate value of five lakhs of rupees:

PROVIDED FURTHER that no banking company to which this clause applies and which has only one place of business, shall be required to have paid-up capital and reserves exceeding an aggregate value of fifty thousand rupees:

[**PROVIDED FURTHER** that in the case of every banking company to which this clause applies and which commences banking business for the first time after the commencement of the Banking Companies (Amendment) Act, 1962 (36 of 1962), the value of its paid-up capital shall not be less than five lakhs of rupees;]

(iii) if it has all its places of business in one State, or more of which is or are situated in the city of Bombay or Calcutta, five lakhs of rupees, plus twenty-five thousand rupees in respect of each place of business situated outside the city of Bombay or Calcutta, as the case may be:

PROVIDED that no banking company to which this clause applies shall be required to have paid-up capital and reserves exceeding an aggregate value of ten lakhs of rupees.

Explanation: For the purposes of this sub-section, a place of business situated 42[in a State] other than that in which the principal place of business of the banking company is situated shall, if it is not more than twenty-five miles distant from such principal place of business, be deemed to be situated within the same State as such principal place of business.

(4) Any amount deposited and kept deposited with the Reserve Bank under 43[*subsection (2) by any banking company incorporated 44[outside India] shall, in the event of the company ceasing for any reason to carry on banking business 11 [in India], be an asset of the company on which the claims of all the creditors of the company 11[in India] shall be a first charge.

(5) For the purposes of this section-

(a) "place of business" means any office, sub-office, sub-pay office and any place of

business at which deposits are received, cheques cashed or moneys lent;

(b) "value" means the real or exchangeable value, and not, the nominal value which may be shown in the books of the banking company concerned.]

(6) If any dispute arises in computing the aggregate value of the paid-up capital and reserves of any banking company, a determination thereof by the Reserve Bank shall be final for the purposes of this section.

LICENSING OF BANKING COMPANIES

(1) Save as hereinafter provided, no company shall carry on banking business in India unless it holds a license issued in that behalf by the Reserve Bank and any such license may be issued subject to such conditions as the Reserve Bank may think fit to impose.] .

(2) Every banking company in existence on the commencement of this Act, before the expiry of six months from such commencement, and every other company before commencing banking business 11 [in India], shall apply in writing to the Reserve Bank for a license under this section:

PROVIDED that in the case of a banking company in existence on the commencement of this Act, nothing in sub-section (1) shall be deemed to prohibit the company from carrying on banking business until it is granted a license in pursuance of 55[this section] or is by notice in writing informed by the Reserve Bank that a license cannot be granted to it:

PROVIDED FURTHER that the Reserve Bank shall not give a notice as aforesaid to be a banking company in existence on the commencement of this Act before the expiry of the three years referred to in sub-section (1) of section 11 or of such further period as the Reserve Bank may under that sub-section think fit to allow.

(3) Before granting any license under this section, the Reserve Bank may require to be satisfied by an inspection of the books of the company or otherwise that 56[***] the following conditions are fulfilled, namely:-

(a) that the company is or will be in a position to pay its present or future depositors in full as their claims accrue;

(b) that the affairs of the company are not being, or are not likely to be, conducted in a manner detrimental to the interests of its present or future depositors;

(c) that the general character of the proposed management of the company will not be prejudicial to the public interest of its present or future depositors;

(d) that the company has adequate capital structure and earning prospects;

(e) that the public interest will be served by the grant of a license to the company to carry on banking business in India;

(f) that having regard to the banking facilities available in the proposed principal area of operations of the company, the potential scope for expansion of banks already in existence in the area and other relevant factors the grant of the license would not be prejudicial to the operation and consolidation of the banking system consistent with monetary stability and economic growth;

(g) any other condition, the fulfillment of which would, in the opinion of the Reserve Bank, be necessary to ensure that the carrying on of banking business in India by the company will not be prejudicial to the public interest or the interests of the depositors.]

(3A) Before granting any license under this section to a company incorporated outside India, the Reserve Bank may require to be satisfied by an inspection of the books of the company or otherwise that the conditions specified in sub-section (3) are fulfilled and that the carrying on of banking business by such company in India will be in the public interest and that the government or law of the country in which it is incorporated does not discriminate in any way against banking companies registered in India and that the company complies with all the provisions of this Act applicable to banking companies incorporated outside India.]

(4) The Reserve Bank may cancel a license granted to a banking company under this section:

(i) if the company ceases to carry on banking business in India; or

(ii) if the company at any time fails to comply with any of the conditions imposed upon it under sub-section (1); or

(iii) if at any time, any of the conditions referred to in sub-section (3) 15 [and sub-section (3A)] is not fulfilled:

PROVIDED that before canceling a license under clause (ii) or clause (iii) of this sub-section on the ground that the banking company has failed to comply with or has failed to fulfill any of the conditions referred to therein, the Reserve Bank, unless it is of opinion that the delay will be prejudicial to the interests of the company's depositors or the public, shall grant to the company on such terms as it may specify, and opportunity of taking the necessary steps for complying with or fulfilling such condition.

(5) Any banking company aggrieved by the decision of the Reserve Bank canceling a license under this section may, within thirty days from the date on which such decision is communicated to it, appeal to the Central Government.

(6) The decision of the Central Government where an appeal has been preferred to it under sub-section (5) or of the Reserve Bank where no such appeal has been preferred shall be final.

Further powers and functions of Reserve Bank

(1) The Reserve Bank may:

(a) caution or prohibit banking companies generally or any banking company in particular against entering into any particular transaction or class of transactions, and generally give advice to any banking company;

(b) on a request by the companies concerned and subject to the provisions of section 44A, assist, as intermediary or otherwise, in proposals for the amalgamation of such

banking companies;

(c) give assistance to any banking company by means of the grant of a loan or advance to it under clause (3) of sub-section (1), of section 18 of the Reserve Bank of India Act, 1934 (2 of 1934)

[(d) at any time, if it satisfied that in the public interest or in the interest of banking company or its depositors it is necessary so to do,] by order in writing and on such terms and conditions as may be specified therein:

(i) require the banking company to call a meeting of its Directors for the purpose, of considering any matter relating to or arising out of the affairs of the banking company, or require an officer of the banking company to discuss any such matter with an officer of the Reserve Bank.

(ii) depute one or more of its officers to watch the proceedings at any meeting of the Board of Directors of the banking company or of any committee or of any other body constituted by it; require the banking company to give an opportunity to the officers so deputed to be heard at such meetings and also require such officers to send a report of such proceedings to the Reserve Bank;

(iii) require the Board of Directors of the banking company or any committee or any other body constituted by it to give in writing to any officer specified by the Reserve Bank in this behalf at his usual address all notices of, and other communications relating to, any meeting of the Board, committee or other body constituted by it;

(iv) appoint one or more of its officers to observe the manner in which the affairs of the banking company or of its officers or branches are being conducted and make a report thereon;

(v) require the banking company to make, within such time as may be specified in the order, such changes in the management as the Reserve Bank may consider necessary

(2) The Reserve Bank shall make an annual report of the Central Government on the trend

and progress of banking in the country, with particular reference to its activities under clause (2) of section 17 of the Reserve Bank of India Act, 1934 (2 of 1934), including in such report its suggestions, if any, for the strengthening of banking business throughout the country.

(3) The Reserve Bank may appoint such staff at such places as it considers necessary for the scrutiny of the returns, statements and information furnished by banking companies under this Act, and generally to ensure the efficient performance of its functions under this Act.

Principal Provisions of Banking Regulation Act, 1949

The following important principal provisions of banking regulation act, 1949 i.e.,

(1) Prohibition of Trading,

(2) Non-Banking Assets,

(3) Management,

(4) Minimum Capital,

(5) Capital Structure,

(6) Payment of Commission,

(7) Payment of Dividend, and Others

1. Prohibition of Trading (Sec. 8):

According to Sec. 8 of the Banking Regulation Act, a banking company cannot directly or indirectly deal in buying or selling or bartering of goods. But it may, however, buy, sell or barter the transactions relating to bills of exchange received for collection or negotiation.

2. Non-Banking Assets (Sec. 9):

According to Sec. 9 "A banking company cannot hold any immovable property, howsoever acquired, except for its own use, for any period exceeding seven years from the date of acquisition thereof. The company is permitted, within the period of seven years, to deal or

trade in any such property for facilitating its disposal". Of course, the Reserve Bank of India may, in the interest of depositors, extend the period of seven years by any period not exceeding five years.

3. Management (Sec. 10):

Sec. 10 (a) states that not less than 51% of the total number of members of the Board of Directors of a banking company shall consist of persons who have special knowledge or practical experience in one or more of the following fields:

(a) Accountancy;

(b) Agriculture and Rural Economy;

(c) Banking;

(d) Cooperative;

(e) Economics;

(f) Finance;

(g) Law;

(h) Small Scale Industry.

The Section also states that at least not less than two directors should have special knowledge or practical experience relating to agriculture and rural economy and cooperative. Sec. 10(b) (1) further states that every banking company shall have one of its directors as Chairman of its Board of Directors.

4. Minimum Capital and Reserves (Sec. 11):

Sec. 11 (2) of the Banking Regulation Act, 1949, provides that no banking company shall commence or carry on business in India, unless it has minimum paid-up capital and reserve of such aggregate value as is noted below:

(a) Foreign Banking Companies:

In case of banking company incorporated outside India, aggregate value of its paid-up capital and reserve shall not be less than Rs. 15 lakhs and, if it has a place of business in Mumbai or Kolkata or in both, Rs. 20 lakhs.

It must deposit and keep with the R.B.I, either in Cash or in unencumbered approved securities:

(i) The amount as required above, and

(ii) After the expiry of each calendar year, an amount equal to 20% of its profits for the year in respect of its Indian business.

(b) Indian Banking Companies:

In case of an Indian banking company, the sum of its paid-up capital and reserves shall not be less than the amount stated below:

(i) If it has places of business in more than one State, Rs. 5 lakhs, and if any such place of business is in Mumbai or Kolkata or in both, Rs. 10 lakhs.

(ii) If it has all its places of business in one State, none of which is in Mumbai or Kolkata, Rs. 1 lakh in respect of its principal place of business plus Rs. 10,000 in respect of each of its other places of business in the same district in which it has its principal place of business, plus Rs. 25,000 in respect of each place of business elsewhere in the State.

No such banking company shall be required to have paid-up capital and reserves exceeding Rs. 5 lakhs and no such banking company which has only one place of business shall be required to have paid- up capital and reserves exceeding Rs. 50,000.

In case of any such banking company which commences business for the first time after 16th

September 1962, the amount of its paid-up capital shall not be less than Rs. 5 lakhs.

(iii) If it has all its places of business in one State, one or more of which are in Mumbai or Kolkata, Rs. 5 lakhs plus Rs. 25,000 in respect of each place of business outside Mumbai or

Kolkata? No such banking company shall be required to have paid-up capital and reserve excluding Rs. 10 lakhs.

5. Capital Structure (Sec. 12):

According to Sec. 12, no banking company can carry on business in India, unless it satisfies the following conditions:

(a) Its subscribed capital is not less than half of its authorized capital, and its paid-up capital is not less than half of its subscribed capital.

(b) Its capital consists of ordinary shares only or ordinary or equity shares and such preference shares as may have been issued prior to 1st April 1944. This restriction does not apply to a banking company incorporated before 15th January 1937.

(c) The voting right of any shareholder shall not exceed 5% of the total voting right of all the shareholders of the company.

6. Payment of Commission, Brokerage etc. (Sec. 13):

According to Sec. 13, a banking company is not permitted to pay directly or indirectly by way of commission, brokerage, discount or remuneration on issues of its shares in excess of 2½% of the paid-up value of such shares.

7. Payment of Dividend (Sec. 15):

According to Sec. 15, no banking company shall pay any dividend on its shares until all its capital expenses (including preliminary expenses, organisation expenses, share selling commission, brokerage, amount of losses incurred and other items of expenditure not represented by tangible assets) have been completely written-off.

But Banking Company need not:

(a) Write-off depreciation in the value of its investments in approved securities in any case where such depreciation has not actually been capitalized or otherwise accounted for as a loss;

(b) Write-off depreciation in the value of its investments in shares, debentures or bonds (other than approved securities) in any case where adequate provision for such depreciation has been made to the satisfaction of the auditor;

(c) Write-off bad debts in any case where adequate provision for such debts has been made to the satisfaction of the auditors of the banking company.

Floating Charges:

A floating charge on the undertaking or any property of a banking company can be created only if RBI certifies in writing that it is not detrimental to the interest of depositors — Sec. 14A. Similarly, any charge created by a banking company on unpaid capital is invalid — Sec. 14.

8. Reserve Fund/Statutory Reserve (Sec. 17):

According to Sec. 17, every banking company incorporated in India shall, before declaring a dividend, transfer a sum equal to 20% of the net profits of each year (as disclosed by its Profit and Loss Account) to a Reserve Fund.

The Central Government may, however, on the recommendation of RBI, exempt it from this requirement for a specified period. The exemption is granted if its existing reserve fund together with Securities Premium Account is not less than its paid-up capital.

If it appropriates any sum from the reserve fund or the securities premium account, it shall, within 21 days from the date of such appropriation, report the fact to the Reserve Bank, explaining the circumstances relating to such appropriation. Moreover, banks are required to transfer 20% of the Net Profit to Statutory Reserve.

9. Cash Reserve (Sec. 18):

Under Sec. 18, every banking company (not being a Scheduled Bank) shall, if Indian, maintain in India, by way of a cash reserve in Cash, with itself or in current account with the Reserve Bank or the State Bank of India or any other bank notified by the Central Government in this behalf, a sum equal to at least 3% of its time and demand liabilities in India.

The Reserve Bank has the power to regulate the percentage also between 3% and 15% (in case of Scheduled Banks). Besides the above, they are to maintain a minimum of 25% of its

total time and demand liabilities in cash, gold or unencumbered approved securities. But every banking company's asset in India should not be less than 75% of its time and demand liabilities in India at the close of last Friday of every quarter.

10. Liquidity Norms or Statutory Liquidity Ratio (SLR) (Sec. 24):

According to Sec. 24 of the Act, in addition to maintaining CRR, banking companies must maintain sufficient liquid assets in the normal course of business. The section states that every banking company has to maintain in cash, gold or unencumbered approved securities, an amount not less than 25% of its demand and time liabilities in India.

This percentage may be changed by the RBI from time to time according to economic circumstances of the country. This is in addition to the average daily balance maintained by a bank.

Again, as per Sec. 24 of the Banking Regulation Act, 1949, every scheduled bank has to maintain 31.5% on domestic liabilities up to the level outstanding on 30.9.1994 and 25% on any increase in such liabilities over and above the said level as on the said date.

But w.e.f. 26.4.1997 fortnight the maintenance of SLR for inter-bank liabilities was exempted. It must be remembered that at the start of the preceding fortnights, SLR must be maintained for outstanding liabilities.

11. Restrictions on Loans and Advances (Sec. 20):

After the Amendment of the Act in 1968, a bank cannot:

(i) Grant loans or advances on the security of its own shares, and

(ii) Grant or agree to grant a loan or advance to or on behalf of:

(a) Any of its directors;

(b) Any firm in which any of its directors is interested as partner, manager or guarantor;

(c) Any company of which any of its directors is a director, manager, employee or guarantor, or in which he holds substantial interest; or

(d) Any individual in respect of whom any of its directors is a partner or guarantor.

Note:

(ii)(c) Does not apply to subsidiaries of the banking company, registered under Sec. 25 of the Companies Act or a Government Company.

12. Accounts and Audit (Sees. 29 to 34A):

The above Sections of the Banking Regulation Act deal with the accounts and audit. Every banking company, incorporated in India, at the end of a financial year expiring after a period of 12 months as the Central Government may by notification in the Official Gazette specify, must prepare a Balance Sheet and a Profit and Loss Account as on the last working day of that year, or, according to the Third Schedule, or, as circumstances permit.

At the same time, every banking company, which is incorporated outside India, is required to prepare a Balance Sheet and also a Profit and Loss Account relating to its branch in India also. We know that Form A of the Third Schedule deals with form of Balance Sheet and Form B of the Third Schedule deals with form of Profit and Loss Account.

It is interesting to note that a revised set of forms have been prescribed for Balance Sheet and Profit and Loss Account of the banking company and RBI has also issued guidelines to follow the revised forms with effect from 31st March 1992.

According to Sec. 30 of the Banking Regulation Act, the Balance Sheet and Profit and Loss Account should be prepared according to Sec. 29, and the same must be audited by a qualified person known as auditor. Every banking company must take previous permission from RBI before appointing, reappointing or removing any auditor. RBI can also order special audit for public interest of depositors.

Moreover, every banking company must furnish their copies of accounts and Balance Sheet prepared according to Sec. 29 along with the auditor's report to the RBI and also the Registers of companies within three months from the end of the accounting period.

RBI Credit Control Instruments:

The quantitative measures of credit control are :

Bank Rate Policy:

The bank rate is the Official interest rate at which RBI rediscounts the approved bills held by commercial banks. For controlling the credit, inflation and money supply, RBI will increase the Bank Rate. Current Bank Rate is 6%.

Open Market Operations:

OMO The Open market Operations refer to direct sales and purchase of securities and bills in the open market by Reserve bank of India. The aim is to control volume of credit. Cash

Reserve Ratio:

Cash reserve ratio refers to that portion of total deposits in commercial Bank which it has to keep with RBI as cash reserves. The current Cash reserve Ratio is 6%.

Statutory Liquidity Ratio:

It refers to that portion of deposits with the banks which it has to keep with itself as liquid assets(Gold, approved govt. securities etc.) . the current SLR is 25%. If RBI wishes to control credit and discourage credit it would increase CRR & SLR.

Qualitative measures:

Qualitative credit is used by the RBI for selective purposes. Some of them are

Margin requirements:

This refers to difference between the securities offered and and amount borrowed by the banks.

Consumer Credit Regulation:

This refers to issuing rules regarding down payments and maximum maturities of installment credit for purchase of goods. Guidelines: RBI issues oral, written statements, appeals, guidelines, warnings etc. to the banks.

Rationing of credit: The RBI controls the Credit granted / allocated by commercial banks.

Moral Suasion:

psychological means and informal means of selective credit control.

Direct Action:

his step is taken by the RBI against banks that don't fulfill conditions and requirements. RBI may refuse to rediscount their papers or may give excess credits or charge a penal rate of interest over and above the Bank rate, for credit demanded beyond a limit.

POSSIBLE QUESTIONS

Part B

1. Definition of Banking.
2.List out the classification of Banking companies.
3. State the salient features of Banking Regulation Act,1949.
4. What do you know about „Bank Charges"?
5. What is the period of limitation for a banking debt?

Part C

1. Enumerate the Banking Regulation Act,1949.
2. Outline the provisions of the Banking Regulation Act regarding the licensing and amalgamation of banking companies.
3. State the provison of the Banking Regulation Act regarding-Opening of new branches.
4. State the provison of the Banking Regulation Act regarding-Inspection of Bnaking Companies.
5. State the provison of the Banking Regulation Act regarding-Licensing of banks
6. State the provison of the Banking Regulation Act regarding-Minimum paid up capital and reserve.
7. Discuss the powers of Reserve Bank of India under Banking Regulation Act.
8. Explain the main functions of Banking companies?
9. State the provison of the Banking Regulation Act regarding-Winding up of Banking Companies.
10. State the provison of the Banking Regulation Act regarding- Amalgamation of Banking Companies.
11. Explain the banker's duty to maintain secrecy of customers' accounts?

UNIT II

S.No	Questions	Opt 1	Opt 2	Opt 3	Opt 4	Answer
1	The Banking Regulation Act……	1939	1949	1959	1969	1949
2	The primary relationship between a banker and customer starts from the time……..	when customer visits that bank	when customer opens the account	when customer visits that bank to made queries	When customers do the transactions	when customer opens the account
3	The primary relationship between banker and customer is a ---------- relationship	Mutual	Contractual	Personal	Friendly	Contractual
4	Which one of the following is the most important relationship between banker and customer……	Debtor and Creditor	Bailee and Bailor	Agency and Principal	Trustee and Beneficiary	Debtor and Creditor
5	Banking Companies shall have minimum paid up capital not less than Rs. …….	50 lakhs	25 lakhs	75 lakhs	5 lakhs	5 lakhs
6	A foregin bank setting up of business of in India is required to bring in a minimum of …….. Capital.	$20	$30	$10	$40	$10
7	…….% of the Board of Directors of a banking company must consits of who have special Economy and banking knowledge	20	30	40	51	51
8	When banker received deposits from the customer, then the banker becomes ---------- of the customer	Debtor	Creditor	Bailee	Trustee	Debtor
9	Banking Management comes under section of……	25 (A)	20 (A)	10 (A)	5 (A)	10 (A)

10	Which section comes licensing of banks in India……?	Section 11	Section 22	Section 25	Section 19	Section 22
11	Which body gives license to bank?	Central Government	State Government	RBI	State Bank of India	RBI
12	Which of the following public sector banks has highest number of branches in India?	Bank of india	Allahabad Bank	State bank of India	Punjab National Bank	State bank of India
13	Which bank has received Banking licenses by Reserve Bank of India in 2014 ?	Aditya Birla Nuvo Ltd	IDFC and Bandhan	HDFC	ICICI	IDFC and Bandhan
14	What is the full-form of HDFC?	Housing Department Finance Corporation	Housing Development Financial Corporation	Housing Development Finance Corporation	Housing Development Finance Company	Housing Development Finance Corporation
15	Who was was the first Indian to become governor of RBI?	Liaquat Ali Khan	T. T. Krishnamachari	John Mathai	C. D. Deshmukh	C. D. Deshmukh
16	RBI will grant permission for opening a new branches for bank…….	concern about society	Providing job opportunities	capital structure is adequate	Reputation of the bank	capital structure is adequate
17	As per new licensing policy banks with good……	Financial health	Network	Brand name	Relation with customer	Financial health
18	As per new licensing policy, how many years banks have to show their profits?	1	3	5	7	3
19	The capital adequacy ratio is atleast……..	2%	4%	6%	8%	6%
20	How much fund bank's requireto open branches withour RBI prior permission?	Rs.10 Cr	Rs. 100 Cr	Rs.150 Cr	Rs.200 Cr	Rs. 100 Cr
21	Who would inspect the bank?	SBI	RBI	Central Government	State Government	RBI

22	Which section contains the provision for inspection of banks?	Section 15	Section 23	Section 35	Section 38	Section 35
23	Who would determine the credit policy of the bank?	SBI	RBI	Central Bank	State Government	RBI
24	Section 36AB indicates that…….	Rules and Regulation	Policy framing	Removal of Chairman	Appoint the additional directors	Appoint the additional directors
25	Removal of any chairman/Directors/Officer from the bank under section of……..	38AA	40AA	45AA	30 AA	38AA
26	Section 36 AE to 36 AJ provides that……	RBI Guidelines	Framing new policies	Acquisition of banking companies	Liquadation	Acquisition of banking companies
27	The word customer signifies a relationship in which ……is of no essence.	Commitment	dedication	duration	trust	duration
28	The banker has a statutory obligation to…..	honour customers cheques	exercise lien	maintain secrecy of his customer's accounts	honour customer's bill	honour customers cheques
29	…….accepts the bailment of certain things on the condition that the things bailed will not utilised	Bailor	Trustee	Bailee	Beneficiary	Bailee
30	It is a ---------- obligation of a banker to honour the cheques of the customer drawn against current account.	Mutual	Statutory	Unstatutory	deficit	Statutory
31	Which bank have given the instructions to the commercial banks regarding the immediate credit of outstation cheques?	Reserve Bank of India	Central Bank	World Bank	SBI	Reserve Bank of India
32	Special damages refers to damages payable by a banker to his customer for	Financial	Special	Unpecuniary	Unfinancial	Financial

	the actual ---------- loss suffered by customers.					
33	Who signs One rupee note in India?	RBI Governor	RBI Deputy Governor	Finance Secretary	Prime Minister	Finance Secretary
34	First printing press for bank notes in India was established at __?	Calcutta	Surat	Nasik	Aurangabad	Nasik
35	In how many languages, the amount of a banknote is written on it……..	15	17	18	19	17
36	RBI provides Ways and Means Advances (WMA) to __:	Central Government	State Government	Local Bodies	Public companies	State Government
37	Which of the following is not a function / power of Reserve Bank of India?	To assume the responsibility of meeting directly or indirectly all reasonable demands for accommodation	To hold cash reserves of the commercial banks and make available financial accommodation to them	To assume responsibility of all banking operations of the government	To assume the responsibility of statistical analysis of data related to macro economy of India	To assume the responsibility of statistical analysis of data related to macro economy of India
38	What will be the impact on the cash reserves of commercial banks if RBI conducts a sale of securities ?	Increase	Decrease	Remain constant	Flexible	Decrease
39	RBI takes certain steps to curb the menace of Inflation. In this context, which among the following will not help RBI in controlling the inflation in the country?	An increase in the Bank Rate	An increase in the Reserve Ratio Requirements	A purchase of securities in the open market	Increasing the Repo Rate	A purchase of securities in the open market
40	Who works as RBI's agent at places where it has no office of its own?	State Bank of India	Ministry of Finance	Government of India	International Monetary Fund	State Bank of India

41	Which among the following is incorrect?	RBI is the Bank of Issue	RBI acts as Banker to the Government	RBI is Banker's Bank	RBI does not regulate the flow of credit	RBI does not regulate the flow of credit
42	Which of the following is true about the restrictions on RBI? (A) It is not to compete with the commercial banks. (B) It is not allowed to pay interest on its deposits. (C) It cannot acquire or advice loans against immovable property. (D) It cannot acquire or advice loans against immovable property. company or granting loans on such security.	Only A	Only B & C	Only B &D	A,B,C,& D	A,B,C,& D
43	According to which guidelines did the Government pick up the entire SBI shares held by the RBI?	National Stock Exchange of India	Securities Commission	Financial Regulations	Securities and Exchange Board of India (SEBI)	Securities and Exchange Board of India (SEBI)
44	What is the full form of CBS?	Core Banking Solution	Core Banking Software	Core Banking System	Core Banking Service	Core Banking Solution
45	Which among the following is called the rate of interest charged by RBI for lending money to various commercial banks by rediscounting of the bills in India?	Bank Rate	Discount Window	Monetary Policy	Overnight Rate	Bank Rate
46	Which of the following are to be followed by Commercial Banks for risk management?	Basel II norms	Basel III norms	Basel I norms	Solvency II norms	Basel II norms
47	What is the full form of CRR?	Cash Reserve Rate	Cash Reserve Ratio	Cash Recession Ratio	Core Reserve Rate	Cash Reserve Ratio
48	Which one of the following is the rate at which the RBI lends money to commercial banks in the event of any	Benchmark Prime Lending Rate	Annual Percentage Rate	Bank Rate	Repo Rate	Repo Rate

	shortfall of funds?					
49	Who sets up 'Base Rate' for Banks?	Individual Banks Board	Interest Rate Commission of India	RBI	World Bank	RBI
50	The credit control methods adopted by RBi includes:……..	Quantitative & Qualitative control	Trail & error control	Fixed control	Flexible control	Quantitative & Qualitative control
51	Which of the following are qualitative control methods….. (i) Margins (ii) Maximum limit of credit for specific purpose (iii) Differential rate on certain types of advancement	only (i)	Only (i) and (iii)	Only (ii) and (iii)	(i) (ii) & (iiii)	(i) (ii) & (iiii)
52	Which act has given control & supervision powers to RBI over commercial banks……	RBI Act 1934	Banking Regulation act 1949	Both RBI Act 1934 & Banking Regulation act 1949	Banking Regulation Act 1960	Both RBI Act 1934 & Banking Regulation act 1949
53	Central Bank_____ Credit	Create	controls	Restrict	unlimit	controls
54	…….. policy refers to policy measure taken by RBI to control & regulate money supply	Credit	Monetary	Fiscal	Financial	Monetary
55	When RBI is the lender of last resort what does it mean?	RBI advances necessary credit against eligible securities	Commercial banks give funds to RBI	RBI advances money to public whenever there is an emergency	World bank offers fund	RBI advances necessary credit against eligible securities
56	Bank rate means……..	Rate at which commercial banks lend	Rate at which RBI lends to commercial	Rate of interest paid by banks to its	Rate of interest paid by Government to its	Rate at which RBI lends to commercial bank

		money	bank	depositors	depositors	
57	Which of the following statement is incorrect…….	Every country has only one central which is managed by government officials	RBI is a profit making institution acting in the interest of government	RBI does not perform any ordinary commercial banking functions	RBI has adopted minimum reserve system of note issue	RBI is a profit making institution acting in the interest of government
58	RBI pays interest on CRR balances of banks at……..	Bank Rate	Repo Rate	Bank Rate minus 2%	Zero %	Zero %
59	The National Housing Bank (NHB) was set up in India as a wholly-owned subsidiary of…….	SBI	RBI	Axis Bank	Indian Bank	RBI
60	Which one among the following formulates the fiscal policy in India ?	Planning Commission	Finance Commission	The Reserve Bank of India	Ministry of Finance	Ministry of Finance

SALE OF GOODS ACT, 1930

Sale of Goods Act is one of very old mercantile law. Sale of Goods is one of the special types of Contract. Initially, this was part of Indian Contract Act itself in chapter VII (sections 76 to 123). Later these sections in Contract Act were deleted, and separate Sale of Goods Act was passed in 1930.

The Sale of Goods Act is complimentary to Contract Act. Basic provisions of Contract Act apply to contract of Sale of Goods also. Basic requirements of contract i.e. offer and acceptance, legally enforceable agreement, mutual consent, parties competent to contract, free consent, lawful object, consideration etc. apply to contract of Sale of Goods also.

CONTRACT OF SALE

A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. There may be a contract of sale between one part-owner and another. [section 4(1)]. A contract of sale may be absolute or conditional. [section 4(2)].

Thus, following are essentials of contract of sale –

* It is contract, i.e. all requirements of 'contract' must be fulfilled
* It is of 'goods' * Transfer of property is required
* Contract is between buyer and seller
* Sale should be for 'price'
* A part owner can sale his part to another part-owner
* Contract may be absolute or conditional.

HOW CONTRACT OF SALE IS MADE

A contract of sale is made by an offer to buy or sell goods for a price and the acceptance of such offer. The contract may provide for the immediate delivery of the goods or immediate payment of the price or both, or for the delivery or payment by instalments, or that the delivery or payment or both shall be postponed. [section 5(1)]. Subject to the provisions of any law for the time being in force, a contract of sale may be made in writing or by word of mouth, or partly in writing and partly by word of mouth or may be implied from the conduct of the parties. [section 5(2)]. Thus, credit sale is also a 'sale'. A verbal contract or

contract by conduct of parties is valid. e.g. putting goods in basket in super market or taking food in a hotel.

TWO PARTIES TO CONTRACT

Two parties are required for contract. "Buyer" means a person who buys or agrees to buy goods. [section 2(1)]. "Seller" means a person who sells or agrees to sell goods. [section 2(13)]. A part owner can sale his part to another part-owner. However, if joint owners distribute property among themselves as per mutual agreement, it is not 'sale' as there are no two parties.

CONTRACT OF SALE INCLUDES AGREEMENT TO SALE

Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell. [section 4(3)]. An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred. [section 4(4)]. The provision that contract of sale includes agreement to sale is only for the purposes of rights and liabilities under Sale of Goods Act and not to determine liability of sales tax, which arises only when actual sale takes place.

TRANSFER OF PROPERTY

"Property" means the general property in goods, and not merely a special property. [section 2(11)]. In layman's terms 'property' means 'ownership'. 'General Property' means 'full ownership'. Thus, transfer of 'general property' is required to constitute a sale. If goods are given for hire, lease, hire purchase or pledge, 'general property' is not transferred and hence it is not a 'sale'.

POSSESSION AND PROPERTY

Note that 'property' and 'possession' are not synonymous. Transfer of possession does not mean transfer of property. e.g. - if goods are handed over to transporter or godown

keeper, possession is transferred but 'property' remains with owner. Similarly, if goods remain in possession of seller after sale transaction is over, the 'possession' is with seller, but 'property' is with buyer.

GOODS

"Goods" means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale. [section 2(7)].

PRICE

"Price" means the money consideration for a sale of goods. [section 2(10)]. Consideration is required for any contract. However, in case of contract of sale of goods, the consideration should be 'price' i.e. money consideration.

ASCERTAINMENT OF PRICE

The price in a contract of sale may be fixed by the contract or may be left to be fixed in manner thereby agreed or may be determined by the course of dealing between the parties. [section 9(1)]. Where the price is not determined in accordance with the foregoing provisions, the buyer shall pay the seller a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case. [section 9(2)].

CONDITIONS AND WARRANTIES

Opening para of section 16 makes it clear that there is no implied warranty or condition as to quality of fitness of goods for any particular purpose, except those specified in Sale of Goods Act or any other law. - - This is the basic principle of caveat emptor' i.e. buyer be aware. However, there are certain stipulations which are essential for main purpose of the contract of sale of goods. These go the root of contract and non-fulfilment will mean loss of foundation of contract. These are termed as 'conditions'. Other stipulations, which are not essential are termed as 'warranty'. These are collateral to contract of sale of goods. Contract

cannot be avoided for breach of warranty, but aggrieved party can claim damages. - - A breach of condition can be treated as breach of warranty, but vice versa is not permissible.

A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty. [section 12(1)]. 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. [section 12(2)]. 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 as repudiated. [section 12(3)]. Whether a stipulation in a contract of sale is a condition or a warranty depends in each case on the construction of the contract. A stipulation may be a condition, though called a warranty in the contract. [section 12(4)].

Where a particular stipulation in contract is a condition or warranty depends on the interpretation of terms of contract. Mere stating 'Conditions of Contract' in agreement does not mean all stipulations mentioned are 'conditions' within meaning of section 12(2).

When condition to be treated as warranty - Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition or elect to treat the breach of the condition as a breach of warranty and not as a ground for treating the contract as repudiated. [section 13(1)]. Where a contract of sale is not severable and the buyer has accepted the goods or part thereof, the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty and not as a ground for rejecting the goods and treating the contract as repudiated, unless there is a term of the contract, express or implied, to that effect. [section 13(2)]. Nothing in this section shall affect the case of any condition or warranty fulfillment of which is excused by law by reason of impossibility or otherwise. [section 13(3)].

TIME OF PAYMENT IS NOT ESSENCE OF CONTRACT BUT TIME OF DELIVERY OF GOODS IS, UNLESS SPECIFIED OTHERWISE

Unless a different intention appears from the terms of the contract, stipulations as to time of payment are not deemed to be of the essence of a contract of sale. Whether any other stipulation as to time is of the essence of the contract or not depends on the terms of the

contract. [section 11]. As a general rule, time of payment is not essence of contract, unless there is specific different provision in Contract. In other words, time of payment specified is 'warranty'. If payment is not made in time, the seller can claim damages but cannot repudiate the contract.

CAVEAT EMPTOR

The principle termed as 'caveat emptor' means 'buyer be aware'. Generally, buyer is expected to be careful while purchasing the goods and seller is not liable for any defects in goods sold by him. This principle in basic form is embodied in section 16 that subject to provisions of Sale of Goods Act and any other law, there is no implied condition or warranty as to quality or fitness of goods for any particular purpose. As per section 2(12), "Quality of goods" includes their state or condition.

TRANSFER OF PROPERTY AS BETWEEN SELLER AND BUYER

Transfer of general property is required in a sale. 'Property' means legal ownership. It is necessary to decide whether property in goods has transferred to buyer to determine rights and liabilities of buyer and seller. Generally, risk accompanies property in goods i.e. when property in goods passes, risk also passes. If property in goods has already passed on to buyer, seller cannot stop delivery of goods even if in the meanwhile buyer has become insolvent. Where there is a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer unless and until the goods are ascertained. [section 18].

PROPERTY PASSES WHEN INTENDED TO PASS

Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred. [section 19(1)]. For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case. [section 19(2)]. Unless a different intention appears, the rules contained in sections 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer. [section 19(3)].

SPECIFIC GOODS IN A DELIVERABLE STATE

Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment of the price or the time of delivery of the goods, or both, is postponed. [section 20].

AUCTION SALE

Auction sale is special mode of sale. The sale is made in open after making public announcement. Buyers assemble and make offers on the spot. Person offering to pay highest price gets the goods. Usually, auctioneer is appointed to conduct auction. Higher and higher bids are offered and sale is complete when auctioneer accepts a bid.- - - In the case of a sale by auction— (1) where goods are put up for sale in lots, each lot is *prima facie* deemed to be the subject of a separate contract of sale; (2) the sale is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner; and, until such announcement is made, any bidder may retract his bid; (3) a right to bid may be reserved expressly by or on behalf of the seller and, where such right is expressly so reserved, but not otherwise, the seller or any one person on his behalf may, subject to the provisions hereinafter contained, bid at the auction; (4) where the sale is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person; and any sale contravening this rule may be treated as fraudulent by the buyer; (5) the sale may be notified to be subject to a reserved or upset price; (6) if the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer. [section 64].

DELIVERY OF GOODS TO BUYER

The Act makes elaborate provisions regarding delivery of goods to buyer. It is the duty of the seller to deliver the goods and of the buyer to accept and pay for them, in accordance with the terms of the contract of sale. [section 31]. Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say, the seller shall be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer shall be ready and willing to pay the price in exchange for possession

of the goods. [section 32]. - - Note that this is 'unless otherwise agreed', i.e. buyer and seller can agree to different provisions in respect of payment and delivery.

ACCEPTANCE OF GOODS BY BUYER

Contract of Sale is completed not by mere delivery of goods but by acceptance of goods by buyer. 'Acceptance' does not mean mere receipt of goods. It means checking the goods to ascertain whether they are as per contract. 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 has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract. [section 41(1)]. Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, he is bound, on request, to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract. [section 41(2)].

Buyer's and Seller's duties - The Act casts various duties and grants certain rights on both buyer and seller.

RIGHTS OF UNPAID SELLER AGAINST THE GOODS

After goods are sold and property is transferred to buyer, the only remedy with seller is to approach Court, if the buyer does not pay. Seller has no right to take forceful possession of goods from buyer, once property in goods is transferred to him. However, the Act gives some rights to seller if his dues are not paid.

SUITS FOR BREACH OF THE CONTRACT

Unpaid seller can exercise his rights to the extent explained above. In addition, seller can exercise following rights in case of breach of contract. Buyer has also rights in case of breach of contract.

MEASURE FOR COMPENSATION AND DAMAGES

The Sale of Goods Act does not specify how to measure damages. However, since the Act is complimentary to Contract Act, measure of compensation and damages will be as provided in sections 73 and 74 of Contract Act.

SALE AND AGREEMENT TO SELL

1. A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. There may be a contract of sale between one part-owner and another.
2. A contract of sale may be absolute or conditional
3. Where under a contract of sale the property in the goods in transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.
4. An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

Contract of Sale how made.

- A contract of sale is made by an offer to buy or sell goods for a price and the acceptance of such offer. The contract may provide for the immediate delivery of the goods or immediate payment of the price or both, or for the delivery or payment by installments, or that the delivery or payment or both shall be postponed.
- Subject to the provisions of any law for the time being in force, a contract of sale may be made in writing or by word of mouth, or partly in writing and partly by word of mouth or may be implied from the conduct of the parties.

RIGHTS OF UNPAID SELLER AGAINST THE GOODS

"Unpaid seller" defined.-

1. The seller of goods is deemed to be an "unpaid seller" within the meaning of this Act-
    a. When the whole of the price has not been paid or tendered.
    b. When a bill of exchange or other negotiable instrument has been received as conditional payment, and the conditions on which it was received has not been fulfilled by reason of the dishonor of the instrument or otherwise.
2. In this Chapter, the term "seller" includes any person who is in the position of a seller, as, for instance, an agent of the seller to whom the bill of lading has been endorsed, or a consignor or agent who has himself paid, or is directly responsible for, the price.

Termination of lien.-

1. The unpaid seller of goods losses his lien thereon -
    a. When he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods.
    b. When the buyer or his agent lawfully obtains possession of the goods
    c. By waiver thereof.
2. The unpaid seller of goods, having a lien thereon, not lose his lien by reason only that he has obtained a decree for the price of the goods.

Right of stoppage in transit.-

Subject to the provisions of this Act, when the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transit, that is to say, he may resume possession of the goods as long as they are in the course of transit, and may retain them until payment or tender of the price.

How stoppage in transit is effected.-

- The unpaid seller may exercise his right to stoppage in transit either by taking actual possession of the goods, or by giving notice of his claim to the carrier or other bailee in whose possession the goods are. Such notice may be given either to the person in actual possession of the goods or to his principal. In the later case the notice, to be effectual, shall be given at such time and in such circumstances, that the principal, by the exercise of reasonable diligence, may communicate is to his servant or agent in time to prevent a delivery to the buyer.
- Whether notice of stoppage in transit is given by the seller to the carrier or other bailee in possession of the goods, he shall re-deliver the goods to, or according to the directions of, the seller. The expenses of such re-delivery shall be borne by the seller.

The law relating to sale of goods is contained in the Sale of Goods Act, 1930. It has to be read as part of the Indian Contract Act, 1872 [Sections 2(5) and (3)].

Contract of Sale of Goods

According to Section 4, a contract of sale of goods is a contract whereby the seller:

(i) transfers or agrees to transfer the property in goods

(ii) to the buyer,

(iii) for a money consideration called the price.

It shows that the expression "contract of sale" includes both a sale where the seller transfers the ownership of the goods to the buyer, and an agreement to sell where the ownership of goods is to be transferred at a future time or subject to some conditions to be fulfilled later on.

The following are thus the essentials of a contract of sale of goods:

(i) Bilateral contract: It is a bilateral contract because the property in goods has to pass from one party to another. A person cannot buy the goods himself.

(ii) Transfer of property: The object of a contract of sale must be the transfer of property (meaning ownership) in goods from one person to another.

(iii) Goods: The subject matter must be some goods.

(iv) Price or money consideration: The goods must be sold for some price, where the goods are exchanged for goods it is barter, not sale.

(v) All essential elements of a valid contract must be present in a contract of sale.

Distinction between Sale and Agreement to Sell

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

(a) In a sale, the property in the goods sold passes to the buyer at the time of contract so that he becomes the owner of the goods. In an agreement to sell, the ownership does not pass to the buyer at the time of the contract, but it passes only when it becomes sale on the expiry of certain time or the fulfilment of some conditions subject to which the property in the goods is to be transferred.

(b) An agreement to sell is an executory contract, a sale is an executed contract.

(c) An agreement to sell is a contract pure and simple, but a sale is contract plus conveyance.

(d) If there is an agreement to sell and the goods are destroyed by accident, the loss falls on the seller. In a sale, the loss falls on the buyer, even though the goods

are with the seller.

(e) If there is an agreement to sell and the seller commits a breach, the buyer has only a personal remedy against the seller, namely, a claim for damages. But if there has been a sale, and the seller commits a breach by refusing to_ deliver the goods, the buyer has not only a personal remedy against him but also the other remedies which an owner has in respect of goods themselves such as a suit for conversion or detinue, etc.

Sale and Bailment

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

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

Sale and Contract for Work and Labour

The distinction between a "sale" and a "contract for work and labour" becomes important when question of passing of property arises for consideration.

However. these two are difficult to distinguish. The test generally applied is that if a,s a result of the contract, property in an article is transferred to one who had no property therein previously, for a money consideration, it is.a sale. where it is otherwise it is a contract for work and labour.

Sale and Hire Purchase Agreement

"Sale", is a contract by which property in goods passes from the seller fb the buyer for a price.

A "hire purchase agreement' is basically a contract of hire, but in addition, it g!ves the hirer an option to purchase the goods at the end of the hiring period. Consequently, until the final payment, the hirer is merely a bailee of goods and ownership remains vested in the

bailor. Under such a contract, the owner of goods delivers the goods to person who agrees to pay certain stipulated periodical payments as hire charges. Though the possession is with the hirer, the ownership of the goods remains with the original owner. The essence of hire purchase agreement is that there is no agreement to buy, but only an option is given to the hirer to buy by paying all the instalments or put an end to the hiring and return the goods to the owner, at any time before the exercise of the option.

Since the hirer does not become owner of the goods until he has exercised his option to buy, he cannot pass any title even to an innocent and bona fide purchaser.

The transaction of hire-purchase protects the owner of the goods against the insolvency of the buyer, for if the buyer becomes insolvent or fails to pay the instalments, he can take back the goods, as owner. And if the hirer declines to take delivery of the goods, the remedy of the owner will be in damages for non-hiring and not for rent for the period agreed.

It is important to note the difference between a hire purchase agreement and mere payment of the price by instalments, because the latter is a sale, only the payment of price is to be made by instalments.

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

Subject matter of Contract of Sale of Goods

Goods

The subject matter of the contract of sale is essentially goods. Acc9rding to Section 2(7) "goods'" means every kind of movable property' other than actionable claims and money and includes stock and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be served before sale or

under the contract of sale.

Actionable claims and money are not goods and cannot be brought and sold under this Act. Money means current money, i.e., the recognised currency in circulation in the country,

but not old and rare coins which may be treated as goods. An actionable claim is what a person cannot make a present use of or enjoy, but what can be recovered by him by means of a suit or an action. Thus, a debt due to a man from another is an actionable claim and cannot be sold as goods, although it can be assigned. Under the provisions of the Transfer of Property Act, 1882, goodwill, trade marks, copyrights, patents are all goods, so is a ship. As regards water, gas, electricity, it is doubtful whether they are goods (Rash Behari v. Emperor, (1936) 41 C.W.N.225; M.B. Electric Supply Co. Ltd. v. State of Rajasthan, AIR (1973) RaJ. 132).

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

Existing Goods

Existing goods are goods which are either owned or possessed by the seller at the time of the contract. Sale of goods possessed but not owned by the seller would' be by an agent or pledgee.

Existing goods are specific goods which are identified and agreed upon at the time of the contract of sale. Ascertained goods are either specific goods at the time of the contract or are ascertained or identified to the contract later on i.e. made specific.

Generic or unascertained goods are goods which are not specifically identified but are indicated by description. If a merchant agrees to supply a radioset from his stock of radio sets, it is a contract of sale of unascertained goods because it is not known which set will be delivered. As soon as a particular set is separated or identified for delivery' and the buyer has notice of it, the goods are ascertained and become specific goods.

Future Goods

Future goods are goods to be manufactured or produced or acquired by the seller after the making of the contract of sale. A agrees to sell all the mangoes which will be produced in his garden next season. This is an agreement for the sale of future goods. [Section 2(6)]

Contingent Goods

Where there is a contract for the sale of goods, the acquisition of which by the seller depends upon a contingency which mayor may not happen - such goods are known as

contigent goods. Contigent goods fall in the class of future goods. A agrees to sell a certain TV set provided he is able to get it from its present owner. This is an agreement to sell contigent goods. In such a case, if the contingency- does not happen for no fault of the seller, he will not be liable for damages.

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

There can be an agreement to sell only in respect of future or contingent goods.

Effect of Perishing of Goods

In a contract of sale of goods, the goods may perish before sale is complete. Such a stage may arise in the following cases:

(i) Goods perishing before making a contract

Where in a contract of sale of specific goods, the goods without the knowledge of the seller have, at the time of making the contract perished or become so damagedas no longer to their description in the contract, the contract is void. This is based on the rule that mutual mistake of fact essential to the contract renders the contract void. (Section 7)

If the seller was aware of the destruction and still entered into the contract, he is estopped from disputing the contract. Moreover, perishing of goods not only includes loss by theft but also where the goods have lost their commercial value.

(ii) Goods perishing atter agreement to sell

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

Price

No sale can take place without a price. Thus, if there is no valuable consideration to support a voluntary surrender of goods by the real owner to another person, the transaction is

a gift, and is not governed by the Sale of Goods Act. Therefore, price. which is money consideration for the sale of goods, constitutes the essence for a contract of sale. It may be money actually paid or promised to b/3 paid. If a consideration other than money is to be given, it is not a sale.

Modes of Fixing Price (Sections 9 and 10)

The price may be fixed:

(i) at the time of contract by the parties themselves, or

(ii) may be left to be determined by the course of dealings between the parties, or

(iii) may be left to be fixed in some way stipulated in the contract, or

(iv) may be left to be fixed by some third-party.

Where the contract states that the price is to be fixed by a third-party and he fails to do so, the contract is void. But if the buyer has already taken the benefit of the goods, he must pay a reasonable price for them. If the third-party's failure to fix the price is due to the fault of one of the parties, then that party is liable for an action for damages.

Where nothing is said by the parties regarding price, the buyer must pay a reasonable price, and the market price would be a reasonable price.

Conditions and Warranties (Sections 10-17)

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

The stipulation may either be a condition or a warranty. Section 12 draws a clear distinction between a condition and a warranty. Whether a stipulation is a condition or only a warranty is a matter of substance rather than the form of the words used. A stipulation may be a condition though called a warranty and vice versa.

Conditions

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

Warranties

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

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

When condition sinks to the level of warranty

In some cases a condition sinks or descends. to the level of a warranty. The first two cases depend upon the will of the buyer. but the third is compulsory and acts as estoppel against him.

(a) A condition will become a warranty where the buyer waives the condition, or

(b) A cond ition will sink to the level of a warranty where the buyer treats the breach of condition as a breach of warranty; or

(c) Where the contract is indivisible and the buyer has accepted the goods or part thereof. the breach of condition can only be treated as breach of warranty: The buyer can only claim damages and cannot reject the goods or treat the contract as repudiated.

Sometimes the seller may be excused by law from fulfilling any condition or warranty and the buyer will not then have a remedy in damages.

Implied Warranties/Conditions

Even where no definite representations have been made, the law implies certain

representations as having been made which may be warranties or conditions. An express warranty or condition does not negative an implied warranty or condition unless inconsistent therewith.

There are two implied warranties:

Implied Warranties [Section 14(b), 14(c) and 16(3)]

(a) Implied warranty of quiet possession: If the circl!mstances of the contract are such as there is an implied warranty that the buyer shall have and enjoy quiet possession of the goods.

(b) Implied warranty against encumbrances: There is a further warranty that the goods are not subject to any right in favour of a third-party, or the buyer's possession shall not be disturbed by reason of the existence of encumbrances.

This means that if the buyer is required to, and does discharge the amount of the encumbrance, there is breach of warranty, and he is entitled to claim damages from the seller.

Implied Conditions [Sections 14(a), 15(1), (2), 16(1) and Proviso 16(2), and Proviso 16(3) and 12(b) and 12(c)].

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

Implied Conditions as to title

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

In Rowland v. Divali (1923) 2 K.B. SOD, 'A' had bought a second hand motor car from 'B' and paid for it. After he had used it for six months, he was deprived of it because the seller had no title to it. It was held that 'A' could recover the full price from 'B' even though he had used the car for six months, as the consideration had totally failed.

Implied conditions under a sale by description

In a sale by description there are the following implied conditions:

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

In a sale by description, the buyer relies for his information on the description of the goods giVen by the seller, e.g. in the contract or in the preliminary negotiations.

Where 'A' buys goods which he has not seen, it must be sale by description, e.g., where he buys a 'new Fiat car' from 'B' and the car is not new, he can reject the car.

Even if the buyer has seen the goods, the goods must be in accordance with the description (Beale v. Taylor (1967) All E.R. 253).

(b) Goods must also be of merchantable quality: If they are bought by description from dealer of goods of that description. [Section 16(2)].

Merchantable quality means that the goods must be such as would be acceptable to a reasonable person, having regard to prevailing conditions. They are not merchantable if they have defects which make them unfit for ordinary use, or are such that a reasonable person knowing of their condition would not buy them. 'P' bought black yarn from' '0' and, when delivered, found it damaged by the white ants. The condition of merchantability was broken.

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

The buyer is given a right to examine the goods before accepting them. But a mere opportunity without an actual examination, however, cursory, would not suffice to deprive him of this right.

(c) Condition as to wholesomeness: The provisions, (i.e., eatables) supplied must not only answer the description, but they must also be merchantable and wholesome or sound. 'F' bought milk from 'A' and the milk contained typhoid. germs. 'F's wife became infected and died. 'A' was liable for damages. Again, 'C' bought a bun at 'M's bakery, and broke one of his teeth by biting on a stone present in the bun. 'M' was held liable.

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

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

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

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

In Priest v. Last (1903) 2 K.B. 148, a hot water bottle was bought by the plaintiff, a draper, who could not be expected to have special skill knowledge with regard to hot water bottles, from a chemist, who sold such articles. While being used by the plaintiff's wife, the bottle bursted and injured her. Held, the seller was responsible for damages.

In Grant v. Australian Knitting Mills (1936) 70 MLJ 513, 'G' purchased woollen underpants from 'M' a retailer whose business was to sell gCJods of that description. After wearing the underpants, G developed some skin diseases. Held, the goods were not fit for their only use and 'G' was entitled to avoid the contract and claim damages.

Implied conditions under a sale by sample (Section 15)

In a sale by sample:

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

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

(c) it is further an implied condition of merchantability, as regards latent or hidden defects in the goods which would not be apparent on reasonable examination of the sample. "Worsted coating" quality equal to sample was sold to tailors, the cloth was found

to have a defect in the fixture rendering 'the same unfit for stitching into coats. The seller

was held liable even though the same defect existed in the sample, which was examined.

Implied conditions in sale by sample as well as by description

In a sale by sample as well as by description, the goods supplied must correspond both with the samples as well as with the description. Thus, in Nichol v. Godis (1854) 158 E.R. 426, there was a sale of "foreign refined rape-oil having warranty only equal to sample". The oil tendered was the same as the sample, but it was not "foreign refined rape-oil" having a mixture.of it and other oil. It was held that the seller was liable, and the buyer could refuse to accept.

Implied Warranties

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

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

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

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

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

Doctrine of Caveat Emptor

The term caveat emptor is a Latin word which means "let the buyer beware". This principle states that it is for the buyer to satisfy himself that the goods which he is purchasing are of the quality which he requires. If he buys goods for a particular purpose, he must satisfy himself that they are fit for that purpose. Section 6 provides that "subject to the provisions of this Act and of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale". In simple words, it is not the seller's duty to give to the buyer the goods which are fit for a suitable purposeof the buyer. If he makes a wrong selection, he cannot blame the seller if the goods turn out to be defective or do not serve his purpose. The principle was applied in the case of Ward v. Hobbs. (1878) 4 A.C. 13, where certain pigs were sold by auction and no warranty was given by seller in respect of any fault or error of description. The buyer paid the price for healthy pigs. But they were ill and all but one died of typhoid fever. They also infected some of the buyer's own pigs. It was held that there was no implied condition or warranty that the pigs were of good health. It was the buyer's duty to satisfy himself regarding the health of the pigs.

Exceptions to the doctrine of Caveat Emptor:

(1) Where the seller makes a false representation and the buyer relies on it.
(2) When the seller actively conceals a defect in the goods which is not visible on a reasonable examination of the same.
(3) When the buyer, relying upon the skill and judgement of the seller, has expressly or impliedly communicated to him the purpose for which the goods are required.
(4) Where goods are bought by description from a seller who deals in goods of that description.

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

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

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

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

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

(d) In case of insolvency of either the seller or the buyer, it is necessary to know whether the goods can be taken over by the official assignee or the official receiver. It will depend upon whether the property in the goods was with the party adjudged insolvent.

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

Passing of property in specific goods

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

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

the intention of the parties:

(a) Where there is an unconditional contract fC?r the sale of specific goods in a deliverable state, the property passes to the buyer when the contract is made. Deliverable state means such a state that the buyer would be bound to take delivery of the goods. The fact that the time of delivery or the time of payment is postponed does not prevent the property from passing at once. (Section 20)

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

A certain quantity of oil was brought. The oil was to be filled into casks by the seller and then taken away by the buyer. Some casks were filled in the presence of buyer but, before the remained could be filled, a fire broke out and the entire quantity of oil has destroyed, Held, the buyer must bear

the loss of the oil which was put into the casks (i.e., put in deliverable state) and. the seller must bear the loss of the remainder (Rugg v. Minett (1809) 11 East ~10).

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

(d)When goods are delivered to the buyer on approval or "on sale.of return", the property therein passes to the buyer:

(i) when he signified his approval or acceptance to the seller, or does any other act adopting the transaction;

(ii) if he retains the goods, without giving notice of rejection, beyond the time fixed for the return of goods, or if no time is fixed, beyond a reasonable time.

Ownership in unascertained goods

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

Unascertained goods are goods defined by description only, for example, 100 quintals of wheat, and not goods identified and agreed upon when the contract is made.

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

(a) The property in unascertained or future goods sold by description passes to the buyer when goods of that description and in deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller. Such assent may be express~ or implied and may be given either before or after the appropriation is made. (Section 23)

(b) If there is a sale of a quantity of goods out of a large quantity, for example, 50 quintals of rice out of a heap in B's godown, the property will pass on the appropriation of the specified quantity by one party with the assent of the other.

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

(d) The property in goods, whether specific or unascertained, does not pass if the seller reserves a right of disposal of the goods. Apart from an express reservation of the right of disposal, the seller is deemed to reserve the right of disposal in the following two cases:

(i) where goods are shipped and by the bill of lading of the goods deliverable to the order or the seller or his agent.

(ii) when the seller sends the bill of exchange for the price of the goods to the buyer for this acceptance, together with the bill of lading, the property in the goods does not pass to the buyer unless he accepts the bill qf exchange.

Passing of Risk (Section 26)

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

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

But the parties may agree that risk will pass at the time different from the time when ownership passed. For eg. the seller may agree to be responsible for the goods even after the ownership is passed to the buyer or vice versa.

In Consolidated Coffee Ltd. v. Coffee Board, (19803 see 358), one of the terms adopted by coffee board for auction of coffee was the property in the coffee',knocked down to a bidder would not pass until the p~yment of price and in the F1)eantime the . goods would remain with the seller but at the risk of the buyer, In such cases, risk and property passes on at diffenmt stages.

In Multanmal Champalal v. Shah & Co., AIR (1970) Mysore 106, goods were despatched by the seller from Bombay to Bellary through a public carrier. According to the terms of the contract, the goods were to remain the property of the seller till the price was paid though the risk was to pass to the buyer when they were delivered to public carrier for despatch. When the goods were subsequently lost before the payment of the price (and the consequent to the passing of the property to the buyer), the Court held that the loss was to be borne by the buyer.

It was further held in the same case that the buyer was at fault in delaying delivery unreasonably and therefore on that ground also he was liable for the loss, because such loss would not have arisen but for such delay.

Thus, where delivery has been delayed through the fault of either the buyer or the seller, the goods are at the risk of the party at fault, as regards any loss which might not have occurred but for such fault.

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

The general rule is that only the owner of goods. can sell the goods. Conversely, the sale of an article by a person who is not or who has not the authority of the owner, gives no title to ttie buyer. The rule is expressed by the maxim; "Nemo dot quod non habet" Le. no one can pass a better title than what he himself has. As applied to the sale of goods, the rule means that a seller of goods cannot give a better title ~o the buyer than he himself possess. Thus, even bona fide buyer who buys stolen goods from a thief or from a transfree from such a thief can get no valid title to them, since the thief has no title, nor could he give one to any transferee.

Example:

1. A, the hirer of goods under a hire purchase agreement, sells them to B, then B though, a bonafide purchaser, does not acquire the property in the goods. At most he can acquire such an interest as the hirer had.
2. A finds a ring of B and sells it to a third person who purchases it for value and in good faith. The true owner, Le. B can recover from that person, for A having no title to the ring could pass none the better.

Exception to the General Rule

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

(a) Sale by a mercantile agent: A buyer will get a good title if he buys in good faith from a mercantile agent who is in posession either of the goods or' documents of title of goods with the consent of the owner, and who sells the goods in the ordinary course of his business.

(b) Sale by a co-owner: A buyer who bliss in good faith from one of the several joint owners who is in sale possession of the good with the permission of his co-owners will get good title to the goods.

(c) Sale by a person in possession under a voidable contract: A buyer buys in good faith from a person in possession of goods under a contract which is voidable, but has not

been. rescinded at the time of the sale.

(d) Sale by seller in possession after sale: Where a seller, after having sold the goods, continues in possession of goods, or documents of title to the goods and again sells them by himself or through his mercantile agent to a person who buys in good faith and without notice of the previous sale, such a buyer gets a good title to the goods.

(e) Sale by buyer in possession: If a person has brought or agreed to buy goods obtains, with the seller's consent, possession of the goods or of the documents of title to them, any sale by him or by his mercantile agent to a buyer who takes in good faith without notice of any lien or other claim of the original seller against the goods, will give a good title to the buyer. In any of the above cases, if the transfer is by way of pledge or pawn only, it will be valid as a pledge or pawn.

(f) Estoppel: If the true owner stands by and allows an innocent buyer to pay over money to a third-party, who professes to have the right to sell an article, the true owner will be estopped from denying the third-party's right to sell.

(g) Sale by an unpaid seller: Where an unpaid seller has exercised his right of lien or stoppage in transit and is in possession of the goods, he may resell them and the second buyer will get absolute right to the goods.

(h) Sale by person under other laws: A pawnee, on default of the pawnee to repay, has a right to sell the goods, pawned and the buyer gets a good title to the goods. The finder of lost goods can also sell under certain circumstances. The Official Assignee or Official Receiver, Liquidator, Officers of Court selling under a decree, Executors, and Administrators, all these persons are not owners, but they can convey better title than they have.

12. **Performance of the Contract of Sale**

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

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

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

Delivery (Sections 33-39)

Delivery is the voluntary transfer of possession from one person to another. Delivery may be actual, constructive or symbolic. Actual or physical delivery takes place where the goods are handed over by the seller to the buyer or his agent authorised to take possession of the goods. Constructive delivery takes place when the person in possession of the goods acknowledges that he holds the goods on behalf of and at the disposal of the buyer. For example, where the seller, after having sold the goods,may hold them as bailee for the buyer, there is constructive delivery. Symbolic delivery is made by indicating or giving a symbol. Here the goods themselves are not delivered. but the "means of obtaining possession" of goods is delivered, e.g, by delivering the key of the warehouse where the goods are stored, bill of lading which will entitle the holder to receive the goods on the arrival of the ship.

Rules as to delivery

The following rules apply regarding delivery of goods:

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

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

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

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

(e) The seller should tender delivery so that the buyer ca~ take the goods. It is no duty of the seller to send or carry the goods to the buyer unless the contract so provides. But the goods must be in a deliverable state at the time of delivery or tender of delivery. If by the contract the seller is bound to send the goods to the buyer, but no time is fixed, the seller is bound to send them within a reas9nable time.

(f) The place of delivery is usually stated in the contract. Where it is so stated, the goods must be delivered at the specified place during working hours on a working day.

Where no place is mentioned, the goods are to be delivered at a place at which they happen to be at the time of the contract. of sale and if not then in existence they are to be delivered at the price they are produced.

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

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

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

Acceptance of Goods by the Buyer

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

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

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

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

(a) reject the whole; or

(b) accept the whole; or

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

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

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

Installment Deliveries

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

Suits for Breach of Contract

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

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

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

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

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

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

Anticipatory Breach

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

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

(a) his right of performance on the due date in spite of his prior repudiation or

(b) his rights to set up any defence for non-performance which might have actually arisen after the date of the prior repudiation.

Measure of Damages

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

Unpaid Seller (Sections 45-54)

Who is an unpaid seller? (Section 45)

The seller of goods is deemed to be unpaid seller:

(a) When the whole of the price has not been paid or tendered; or

(b) When a conditional payment was made by a bill of exchange or other negotiable instrument, and the instrument has been dishonoured.

Rights of an Ui7paid Seller against the Goods

An unpaid seller's right against the goods are:

(a) A lien or right of retention

(b) The right of stoppage in transit.

(c) The right of resale.

(d) The right to withhold delivery.

(a) Lien (Sections 47-49 and 54) An unpaid seller in possession of goods sold, may exercise his lien on the goods, i.e., keep the goods in his possession and refuse to deliver them to the buyer until the fulfillment or tender of the price in cases where:

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

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

the buyer becomes insolvent.

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

A lien is lost

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

disposal of the goods;

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

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

(b) Stoppage in transit (Sections 50-52) The right of stoppage in transit is a right of stopping the goods while they are in transit, resuming possession of them and retaining possession until payment of the price.

The right to stop goods is available to an unpaid seller

(i) when the buyer becomes insolvent; and

(ii) the goods are in transit.

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

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

The transit comes to an end in the following cases:

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

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

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

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

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

The seller's right of lien or stoppage ,in transit is not affected by any sale on the part of

the buyer unless the seller has assented to it. A transfer, however, of the bill of lading or other document of seller to a bona fide purchaser for value is valid against the seller's right.

(c) Right of re-sale (Section 54): The unpaid seller may re-sell:

(i) where the goods are perishable;

"

(ii) where the right is expressly reserved in the contract;

(iii) where in exercise of right of lien or stoppage in transit, the seller gives notice to the buyer of his intention to re-sell, and the buyer, does not payor tender the price within a reasonable time. '

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

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

Rights of an unpaid seller against the buyer (Sections 55 and 56)

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

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

Under Section 56, the seller may sue the buyer for damages or breach of contract where the buyer wrongfully neglects or refuses to accept and pay for the goods.

Thus an unpaid sellers rights against the buyer personally are:

(a) a suit for the price.

(b) a :suit for damages.

Auction Sales (Section 64)

A sale by auction is a public sale where goods are offered to be taken by bidders. It is a

proceeding at which people are invited to complete for the purchase of property by successive offer of advancing sums.

Section 64 lays down the rules regulating auction sales. Where goods are put up for sale in lots, each, lot is prima facie deemed to be the subject of a separate contract of sale. The sale is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner. Until such announcement is made, any bidder may retract his bid.

A right to bid may be reserved expressly by or on behalf of the seller. Where such right is expressly so reserved, the seller or any other person on his behalf may bid at the auction. Where the sale is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person. Any sale in contravention of this rule may be treated as fraudulent by the buyer. The sale may be notified to be subject to a reserved price. Where there is such notification, every bid is a conditional offer subject to its being up to the reserve price. Where an auctioneer inadvertently knocks down to a bidder who has bid less than the reserved price, there is no contract of sale. If the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.

Trading Contracts involving rail or Sea Transit

In the case of a contract for the sale of goods which are to be shipped by sea a number of conditions are attached by the parties or by custom and practice of merchants. Some of the important types of such contracts are given below:

(a) F.O.B(Free on Board): Under an F.O.B. contract, it is the duty of the seller to put the goods on board a ship at his own expenses. The property in goods passes to the buyer only after the goods have been put on board the ship, usually named by the buyer. The seller must notify the buyer immediately that the goods have been delivered on board, so that the buyer may insure them. If he fails to do so the goods shall be deemed to be at seller's risk during such sea transit.

(b) F.O.R.(Free on Rail): Similar position prevails in these contracts as in the case of F.O.B contracts.

(C) C .I.F. or C.F.I. (Cost insurance and freight): A CIF contract is a contract for the sale of insured goods lost or not lost to be implemented by transfer of proper documents.

In such types of contracts, the seller not only bears all the expenses of putting the goods on board the ship as in an F.O.B. contract but also to bear the freight and insurance charges. He will arrange for an insurance of the goods for the benefit of the buyer. On the tender of documents, the buyer is required to pay and then take delivery. He has a right to reject the goods if they are not according to the contract.

(d) Ex-Ship: Here the seller is bound to arrange the shipment of the goods to the port of destination, and to such further inland destination as the buyer may stipulate. The buyer is not bound to pay until the goods are ready for unloading from the ship and all freight charges paid. The goods travel at the seller's risk but he is not bound to insure them.

Creation of Agency

A person who has capacity to contract can enter into contract either by himself or though some other person. If he adopts the first method there is no question of agency. If he adopts the second method, then there is agency. The person who represents another in his dealing with third parties is called agent and that person who is so represented by agent is called principal.

The following are different modes of creation of agency.

1. Agency by Express agreement.
2. Agency by Operation of law.
3. Agency by Ratification.
4. Agency by Implied authority.

Agency by Express agreement: Number of agency contract come into force under this method. It may be Oral or documentary or through power of attorney.

Agency by operation of law: At times contract of agency comes into operation by virtue of law.

For example: According to partnership act, every partner is agent of the firm as well as other parties. It is implied agency. On account of such implied agency only a partner can bind over firm as well as other partners, to his activities. In the same way according to companies act promoters are regarded as agents to the company.

Agency by Ratification: Ratification means subsequent adoption of an activity. Soon after ratification principal – agent relations will come into operation. The person who has done the activity will become agent and the person who has given ratification will become principal.

Ratification can be express or implied. In case where adoption of activity is made by means of expression, it is called express ratification. For example: Without A`s direction, B has purchased goods for the sake of A. There after A has given his support (adoption) to B`s activity, it is called Ratification. Now A is Principal and B is agent.

The ratification where there is no expression is called implied ratification. For example: Mr. Q has P`s money with him. Without P`s direction Q has lent that money to R. There after R has paid interest directly to P. Without any debate P has taken that amount from R. It implies that P has given his support to Q`s activity. It is implied ratification.

Agency by implied authority: This type of agency comes into force by virtue of relationship between parties or by conduct of parties.

For example: A and B are brothers, A has got settled in foreign country without any request from A, B has handed over A`s agricultural land on these basis to a farmer and B is collecting and remitting the amount of rent to A. Here automatically A becomes principal and B becomes his agent.

Agency by implied authority is of three types as shown below;

- Agency by Necessity
- Agency by Estoppel
- Agency by Holding out.

By Necessity: At times it may become necessary to a person to act as agent to the other. For example: A has handed over 100 quintals of butter for transportation, to a road transport company. Actually it is bailment contract, assume that in the transit all vehicles has got

stopped where it takes one week for further movement. So the transport company authorities have sold away the butter in those nearby villages. Here agency by necessity can be seen.

By Estoppel: In presence of A , B says to C that he (B) is A`s agent though it is not so actually. A has not restricted B from making such statement. Here agency by Estoppel can be seen

By Holding out: B is A`s servant and A has made B accustomed to bring good on credit from C. On one occasion A has given amount to B to bring goods from C on cash basis. B has misappropriated that amount and has brought goods on credit as usually, Here is agency by holding out and therefore A is liable to pay amount to C.

the rights and duties of the buyer and seller?

Rights of a Buyer:

1. He has the right to have delivery of the goods as per the contract.

2. If the seller does not send, as per the contract, the right quantity of goods to the buyer, the buyer can reject the goods.

3. The buyer has a right not to accept delivery of the goods by installments by the seller.

4. If the goods are sent by sea route by the seller, the buyer has a right to be informed by the seller so that he may get the goods insured.

5. The buyer has a right to examine the goods which he has not seen earlier before giving his acceptance for the same.

6. If the seller wrongfully refuses to deliver the goods to the buyer as per the contract, the buyer may sue the seller for damages for non delivery. The amount of damages will be the difference between the contract price and the market price of the goods.

7. If the buyer has already paid the price and the seller has not delivered the goods as per the contract, the buyer can recover the amount paid.

8. If the contract is for the sale of specific or ascertained goods, the buyer may sue the seller for the specific performance of the contract in case of breach of contract by the latter.

9. The buyer may sue the seller for damages for the breach of any implied warranty as per the provisions of this Act.

10. If the seller rejects the contract before the date of delivery, the buyer may either treat the contract as still existing and wait till the date of delivery or he may treat the contract as cancelled and sue the seller for damages for the breach. The second case is known as the *anticipatory breach* of contract.

11. If, in view of the breach of contract by the seller, the price has to be refunded to the buyer, the buyer has a right to claim interest on the amount.

Duties of Buyer:

1. It is the duty of the buyer to accept the goods and pay for them in accordance with the terms of the contract.

2. It is the duty of the buyer to apply for delivery.

3. It is the duty of the buyer to demand delivery of the goods within a reasonable time.

4. If the contract specifically provides for the delivery of the goods by the seller by installments, the buyer shall accept such a delivery.

5. It is the duty of the buyer to take the risk of deterioration in the goods which is necessarily incident to the course of transit. Example: Rusting of iron.

6. If the buyer refuses to accept the goods, it is his duty to inform the seller about it.

7. If the seller delivers the goods as per the contract, it becomes the duty of the buyer to take delivery of the same within a reasonable time. He remains liable to the seller for any loss arising on account of his refusal to take delivery.

8. If the ownership rights have already been passed on to the buyer by the seller, the former has the duty to pay the price as per the terms of the contract.

9. If the buyer wrongfully refuses to accept and pay for the goods, he will have to compensate the seller for damages for non-acceptance.

	RIGHT		**DUTIES**
1.	To reserve the right of disposal of the goods until certain conditions are	1	To make the arrangement for transfer of property in the goods to the buyer.

	fulfilled. (sec 25 (1)		
2.	To assume that the buyer has accepted the goods , where the buyer (i) Conveys his acceptance; (ii) Does an act adopting the sale; or (iii) Retains the goods without giving a notice of rejection, beyond the specified date (or reasonable time), in a sale on approval. (sec 24)	2.	To ascertain and appropriate the goods to the contract of sale
3.	To deliver the goods only when applied for by the buyer (sec 35)	3.	To pass an absolute and effective title to the goods, to the buyer.
4.	To make delivery of the goods in installments, when so agreed (sec 39 (1)	4.	To deliver the goods in accordance with the terms of the contract (sec 31)
5.	To exercise lien and retain possession of the goods, until payment of the price (sec 47 (1)	5.	To ensure that the goods supplied conform to the implied / express conditions and warranties.
6.	To stop the goods in transit and resume possession of the goods, until payment of the price (sec 49 (2) and 50	6.	To put the goods in a deliverable state and to deliver the goods as and when applied for by the buyer (sec 35)
7	To resell the goods under certain circumstances (sec 54)	7	To deliver the goods within the time specified in the contract or within a reasonable time and a reasonable hour. [sec 36 (2) and (4)]
8	To withhold delivery of the goods when the property in the goods has not passed to the buyer (sec 46 (2)	8	To bear all expenses of and incidental to making a delivery (i.e. upto the stage of putting the goods into a deliverable sate 0 (sec 36 (5)
9	To sue the buyer for price when the property in the goods has passed to the buyer or when the price is payment on a certain day, in terms of the contract, and the buyer fails to make the	9	To deliver the goods in the agreed quantity. (Sec. 37 (1).

	payment (sec 55)		
		10	To deliver the goods in installments only when so desired by the buyer. (Sec 38 (1))
		11	To arrange for insurance of the goods while they are in transmission or custody of the carrier. (Sec. 39 (2).
		12	To inform the buyer in time, when the goods are sent by a sea route, so that he may get the goods insured [Sec. 39 (3)]

Express conditions and warranties are which, are expressly provided in the contract. Implied conditions and warranties are those which are implied by law or custom; these shall prevail in a contract of sale unless the parties agree to the contrary.

i) Condition as to title -- In every contract of sale, unless the circumstances of the contract are such as to show a different intention, there is an implied condition on the part of the seller, that :

a. In case of a sale, he has a right to sell the goods, and
b. In case of an agreement to sell, he will have a right to sell the goods at the time whenthe property is to pass.
   The words 'right to sell' contemplate not only that the seller has the title to what he purports to sell, but also that the seller has the right to pass the property. If the seller's title turns out to be defective, the buyer may reject the goods.

ii) Condition as to Description -- In a contract of sale by description, there is an implied condition that the goods shall correspond with the description. The term ' sale by description' includes the following situation ;

a. Where the buyer has not seen the goods and buys them relying on the description given by the seller.

b. Where the buyer has seen the goods but he relies not on what he has seen but what was stated to him and the deviation of the goods from the description is not apparent.

c. Packing of goods may sometimes be a part of the description. Where the goods do not conform to be method of packing described (by the buyer or the seller) in the contract, the buyer can reject the goods.

iii) Condition as to Quality or Fitness -- Where the buyer, expressly or by implication, makes known the seller the particular purpose for which goods are required, so as to show that the buyer relies on the seller's skill or judgment and the goods are of a description which it is in the course of the seller's business to supply (whether or not as the manufacturer of producer), there is an implied condition that the goods shall be reasonably fit for such purpose. In other words, this condition of fitness shall apply, if:

a. The buyer makes known to the seller the particular purpose for which the goods are required,

b. The buyer relies on the seller's skill or judgment,

c. The goods are of a description which he sellers ordinarily supplies in the course of his business, and

d. The goods supplied are not reasonably fit for the buyer's purpose.

iv) Condition as to Merchantability -- Where the goods are bought by description from a seller, who deals in goods of that description (whether or not as the manufacturer or producer) there is an implied condition that the goods shall be of merchantable quality.

Merchantable quality ordinarily means that the goods should be such as would be commercially saleable under the description by which they are known in the market at their full value.

v) Condition as to Wholesomeness -- In case of sale of eatable provisions and foodstuff, there is another implied condition that the goods shall be wholesome. Thus, the provisions or foodstuff must not only correspond to their description, but must also be merchantable and wholesome. By 'wholesomeness' it means that goods must be for human consumption.

vi) Condition Implied by Custom or Trade Usage: An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade. In certain sale contracts, the purpose for which the goods are purchased may be implied from the conduct of the parties or from the nature or description of the goods. In such cases, the parties enter into the contract with reference to those known usage. For instance, if a person buys a perambulator or a medicine the purpose for which it is purchased is implied from the thing itself; the buyer need not disclose the purpose to the seller.

vii) Conditions in a Sale by Sample: A contract of sale is a contract for sale by sample where there is a term in the contract, express or implied to that effect. Usually, a sale by sample is implied when a sample is shown and the parties intend that the goods should be of he kind and quality as the sample is.

viii) Conditions in a sale by Sample as well as by Description: A vast majority of cases where samples are shown, are sales by sample as well as by description. In a contract for sale by sample as well as by description, the goods supplied must correspond both with the sample as well as with the description.

ImpliedWarranties

A condition becomes a warranty when --

a) the buyer waives the conditions or opts to treat the breach of the condition as a breach of warranty ; or

b) The buyer accepts the goods or a part thereof, or is not in a position to reject the goods.

i. Implied Warranty of Quiet Possession -- In every contract of sale, unless there is a contrary intention, there is implied warranties that the buyer's shall have and enjoy quiet possession of the goods. If the buyer's right to possession and enjoyment of the

goods is in any way disturbed as consequences of the seller's defective title, the buyer may sue the seller for damages for breach of this warranty.

ii. Implied Warranty of Freedom from Encumbrances -- The buyer is entitled to a further warranty that the goods shall be free from any charge or encumbrance in favor of any third party not declared or known to buyer before or at the time when the contract is made. If the buyer is required to discharge the amount of the encumbrance it shall be a breach of this warranty and the buyer shall be entitled to damages for the same.

POSSIBLE QUESTIONS

Part B

1. Define a contract of slae of goods.
2. What is Agency?
3. Who is substituted agent?
4. **When unpaid seller can resell the goods?**
5. Define an Agent and a Principal.

Part C

1. What is performance of contract of slae? Discuss the rules relating to delivery of goods?
2. Explain the rights and duties of the buyer and seller?
3. Who is an unpaid seller? What are his rights?
4. Discuss the rules relating to delivery of goods?
5. "A Seller can not convey a better title to the buyer than he himself has". Discuss the rule of law and point out exceptions.
6. Explain the various ways of creation of an agency?
7. What is a contract of sale of goods and what are its essential features?
8. Distinguish between sub agent and substituted agent?
9. Explain the implied conditions and warrenties in a contract of sale of goods?

Describe the different kinds of agent?

UNIT III

S.No	Questions	Opt 1	Opt 2	Opt 3	Opt 4	Answer
1	Sale of goods Act is _____	1940	1930	1942	1952	1930
2	The first essential element of a contract of sale is ---------	Three Parties	Four Parties	Five Parties	Two Parties	Two Parties
3	The ------ for the contract of sale called price	Offer	Consideration	Acceptance	Consent	Consideration
4	Sale is an……	excuted contract	excutory contract	implied contract	expressed contract	excuted contract
5	Contract of Sale of goods Act is……	Section 1	Section 2	Section 3	Section 4	Section 4
6	Transfer of Property Act is…….	1882	1892	1872	1992	1882
7	Aution Sale is a……	Personal Sale	Public Sale	Private sale	quoted price sale	Public Sale
8	Unpaid Seller…….	Section 35	Section 40	Section 45	Section 55	Section 45
9	A -------- is a stipulation which is essential to the main purpose of the contract	Warranty	Condition	Guarantee	Surety	Condition
10	A------- is a stipulation which is collateral to the main purpose of the contract	Warranty	Condition	Guarantee	Surety	Warranty

11	When there is a contract for the -------- is an implied condition that the goods should correspond with the description	As to title	As to quality	Sale by description	Sale by merchantability	Sale by description
12	An implied condition as to --------- for a particular purpose may be annexed by the usage of trade	Custom	Wholesomeness	Title	Description	Custom
13	-------- means let the buyer beware	Lien	Caveat Emptor	Rem	Consensus aidem	Caveat Emptor
14	Ownership is transferred from the seller to the ------- only when a certain agreed number of installments is paid	Bailee	Buyer	Seller	Hire Purchase	Hire Purchase
15	The goods which are owned or passed by the seller at the time of sale is known as ----------	Specific goods	Existing goods	Future goods	Contingent goods	Existing goods
16	--------- goods which are identified and agreed upon at the time a contract of sale is made	Specific goods	Existing goods	Future goods	Contingent goods	Specific goods
17	-------- which become ascertained subsequent to the formation of a contract of sale	Specific goods	Existing goods	Ascertained goods	Contingent goods	Ascertained goods
18	---------- are the goods which are not identified and agreed upon at the time of the contract of sale	Unascertained goods	Existing goods	Ascertained goods	Contingent goods	Unascertained goods
19	Unascertained goods is also known as -------	Unascertained goods	Existing goods	Generic goods	Contingent goods	Generic goods

20	The goods which a seller does not possess at the time of the time of the contract but which will be manufactured by him after making of the contract of sale is known as -----	Future goods	Existing goods	Ascertained goods	Contingent goods	Future goods
21	Generic goods is also known as --------	Future goods	Existing goods	Ascertained goods	Unascertainegoods	Unascertained goods
22	The acquisition of which by the seller depends upon a contingency which may or may not happen is known as ----------	Future goods	Contingentgoods	Ascertained goods	Unascertainegoods	Contingentgoods
23	---------- form the subject matter of contract of sale	Goods	Price	Property	Consent	Goods
24	------- means voluntary transfer of possession of goods one person to another	Transfer	Condition	Delivery	Warranty	Delivery
25	When the goods are handed over by the seller to the buyer or his duly authorized agent, the delivery is said to be ---------	Symbolic delivery	Constructive delivery	Delivery by attornment	Actual delivery	Actual delivery
26	When goods are bulky and incapable of bulky delivery, then it may be -------	Symbolic delivery	Constructive delivery	Delivery by attornment	Actual delivery	Symbolic delivery
27	Constructive delivery is also known as ------	Actual delivery	Symbolic delivery	Delivery by attornment	Specific delivery	Delivery by attornment
28	There are ------- modes of delivery	Two	Three	Four	Five	Three
29	A --------- is a right to retain possession of goods until payment of the price	Stoppage in transit	Re-sale	Lien	Withholding	Lien

30	The unpaid seller can exercise -------- against the goods	Rights	Liability	Lien	Re-sale	Rights
31	The sale of goods act was passed in ----------	1929	1928	1930	1927	1930
32	The person who sells or agrees to sell the goods is called the -----	Bailor	Seller	Buyer	Bailee	Seller
33	The person who buys or agrees to buy the goods is called the --------	Buyer	Seller	Bailor	Bailee	Buyer
34	The ownership of the goods is transferred immediately from a seller to a buyer is known as contract of -------	Pledge	Hire purchase	Bailment	Sale	Sale
35	When the ownership of the goods is transferred at a future date is called ------	Pledge	Agreement to sell	Bailment	Sale	Agreement to sell
36	--------- are goods that will be manufactured or acquired by the seller after making the contract of sale	Future goods	Existing goods	Specifigoods	Contingent goods	Future goods
37	The existing goods may be classified into ------ type	Two	Four	Three	Five	Three
38	------- are the goods which are also not in existence at the time of contract of sale	Contingent goods	Specific goods	Existing goods	Future goods	Contingent goods
39	--------- means the money consideration for sale of goods	Goods	Property	Price	Earnest	Price
40	-------- is the money which is paid in advance by one party to another party as a security for the proper performance of his part of the contract	Goods	Property	Price	Earnest money	Earnest money

41	The ------- isfulfilled the main contract cannot be completed	Warranty	Condition	Transfer	Performance	Condition
42	The ------ is not fulfilled the main contract can be completed	Warranty	Condition	Transfer	Performance	Warranty
43	A breach of ------ cannot be treated as a breach of condition	Condition	Transfer	Performance	Warranty	Warranty
44	A breach of -------- cannot be treated as a breach of contract	Condition	Transfer	Performance	Warranty	Condition
45	A breach of -------- can be treated as a breach of warranty	Condition	Transfer	Performance	Warranty	Performance
46	Conditions are of --------- type	Three	Four	Two	Five	Four
47	There are -------- exceptions to the doctrine of caveat emptor	Three	Four	Two	Five	Two
48	The word ------- means the legal ownership or title to the goods	Transfer of property	Movement of property	Property in the goods	Performance of contract	Movement of property
49	The main purpose of a contract of sale is the transfer of ownership of the goods from a seller to a -------	Bailor	Buyer	Bailee	Pledge	Pledge
50	The rules relating to the transfer of ownership in case of sale of specific goods are contained in --------	Sec 24 to 26	Sec 15 to 27	Sec 12 to 15	Sec 20 to 22	Sec 24 to 26
51	---------- is a sale in which the buyer may retain the goods within a reasonable period if the goods do not serve his purpose	Sale on approval	Usage of trade	Sale by description	Sale by sample	Sale by description

52	The term transfer means a voluntary transfer of …….. from one person to another	possession	wealth	cash	goods	possession
53	Sale or return is also known as	Sale on approval	Usage of trade	Sale by description	Sale by sample	Sale on approval
54	The term ------ means a voluntary transfer of possession from one person to another	Delivery	Performance	Transfer	Movement	Transfer
55	When goods are physically handed over to the buyer is known as --------	Symbolic delivery	Construtive delivery	Actual delivery	Market avert	Symbolic delivery
56	Delivery of the key of the warehouse where the goods are shared is a example for ----------	Symbolic delivery	Construtive delivery	Actual delivery	Market avert	Market avert
57	------- of the sale of goods act, has defined the term unpaid seller	Sec 40	Sec 32	Sec 30	Sec 45	Sec 30
58	An --------- is a method of selling property by bids usually to the highest bidder by public competition	Contract of sale	Hire purchase	Auction sale	Agreement to sell	Contract of sale
59	In auction sale a contract is formed between the ------ and a buyer	Auctioneer	Seller	Bailor	Pledgee	Pledgee
60	---------- is an unlawful act by which an intending purchaser is prevented from bidding or raising the price at an auction sale	Auction	Hire purchase	Pledge	Dumping	Pledge

UNIT-IV

SYLLABUS

Partnership Law - The Partnership Act, 1932 - Nature and Characteristics of Partnership - Registration of Partnership Firms - Types of Partners - Rights and Duties of Partners - Implied Authority of a Partner - Incoming and outgoing Partners - Mode of Dissolution of Partnership - The Limited Liability Partnership Act, 2008 - Salient Features of LLP - Differences between LLP and Partnership, LLP and Company - LLP Agreement, Partners and Designated Partners - Incorporation Document - Incorporation by Registration Partners and their Relationship

INDIAN PARTNERSHIP ACT, 1932

The Indian Partnership Act, 1932 is an act enacted by the Parliament of India to regulate partnership firms in India. It received the assent of the Governor-General on 8 April 1932 and came into force on 1 October 1932. Before the enactment of this act, partnerships were governed by the provisions of the Indian Contract Act. The act is administered through the Ministry of Corporate Affairs. The act is not applicable to Limited Liability Partnerships, since they are governed by the Limited liability Partnership Act, 2008.

The term partneer is defined under section 4 of "Indian partnership act 1932 as under "patnership is an agreement between two or more persons who have agreed to share profits and losses of the business carried on by all or anyone of them acting upon all"

Partnership refers to an agreement between persons to share their profits or losses arising on account of actions carried by all or one of them acting on behalf of all. The persons who have entered such an agreement are called partners and give their collective business a name, which is necessarily their firm-name. This relation between partners arises out of a contract or an agreement, which means a husband and wife carrying on a business or members of a Hindu undivided family re not into partnership. The share of profits received by any individual from the firm, money received by a lender of money, salary received by a worker or a servant, annuity received by a widow or a child of a deceased partner, does not make them a partner of the firm.

Definition of partnership, partner, firm and firm name

Partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.

Persons who have entered into partnership with one another are called individually partners and collectively a firm, and the name under which their business is carried on is called the firm name.

THE NATURE OF PARTNERSHIP

Definition of partnership, partner, firm and firm name

Partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.

Persons who have entered into partnership with one another are called individually partners and collectively a firm, and the name under which their business is carried on is called the firm name.

5. Partnership not created by status

The relation of partnership arises from contract and not from status; and, in particular, the members of a Hindu undivided family carrying on a family business as such, or a Burmese Buddhist husband and wife carrying business as such, are not partners in such business.

6. Mode of determining existence of partnership

In determining whether a group of persons is or is not a firm, or whether a person is or is not a partner in a firm, regard shall be had to the real relation between the parties, as shown by all relevant facts taken together.

Explanation 1 : The sharing of profits or of gross returns arising from property by persons holding a joint or common interest in that property does not of itself make such persons partners.

Particular partnership

A person may become a partner with another person in particular adventures or undertakings.

General duties of partners

Partners are bound to carry on the business of the firm to the greatest common advantage, to be just and faithful to each other, and to render true accounts and full information of all things affecting the firm to any partner or his legal representative

Determination of rights and duties of partners by contract between the partners

1. Subject to the provisions of this Act, the mutual rights, and duties of the partners of a firm

may be determined by contract between the partners, and such contract may be expressed or may be implied by a course of dealing.

Such contract may be varied by consent of all the partners, and such consent may be expressed or may be implied by a course of dealing.

2. Agreements in restraints of trade-Notwithstanding anything contained in section 27 of the

Indian Contract Act, 1872 (9 of 1872), such contracts may provide that a partner shall not carry on any business other than that of the firm while he is a partner.

Rights and duties of partners

Subject to contract between the partners-

a. after a change in the firm-where a change occurs in the constitution of a firm, the mutual rights and duties of the partners in the reconstituted firm remain the same as they were immediately before the change, as far as may be;
b. after the expiry of the term of the firm, and - where a firm constituted for a fixed term continues to carry on business after the expiry of that term, the mutual rights and duties of the partners remain the same as they were before the expiry, so far as they may be consistent with the incidents of partnership at will; and
c. where additional undertakings are carried out-where a firm constituted to carry out one or more adventures or undertakings, the mental rights and duties of the partners in respect of the other adventures or undertakings are the same as those in respect of the original adventures or undertakings.

Introduction of a partner

1. Subject to contract between the partners and to the provisions of section 30, no person shall be introduced as a partner into a firm without the consent of all the existing partners.
2. Subject to the provisions of section 30, a person who is introduced as a partner into a

firm does not thereby become liable for any act of the firm done before he became a

Retirement of a partner

1. A partner may retire-
    a. with the consent of all the other partners,
    b. in accordance with an express agreement by the partners, or
    c. where the partnership is at will, by giving notice in writing to all the other partners of his intention to retire.
2. A retiring partner may be discharged from any liability to any third party for acts of the firm done before his retirement by an agreement made by him with such third party and the partners of the reconstituted firm, and such agreement may be implied by a course of dealing between such third party and the reconstituted firm after he had knowledge of the retirement.
3. Notwithstanding the retirement of a partner from a firm, he and the partners continue to be liable as partners to third parties for any act done by any of them which would have been an act of the firm if done before the retirement, until public notice is given of the retirement: Provided that a retired partner is not liable to any third party who deals with the firm without knowing that he was a partner.
4. Notices under sub-section (3) may be given by the retired partner or by any partner of the reconstituted firm.

Registration

When the Registrar is satisfied that the provisions of section 58 have been duly complied with, he shall record an entry of the statement in a register called the Register of Firms, and shall file the statement 9 .

Dissolution of a firm

The dissolution of partnership between all the partners of a firm is called the dissolution of the firm An Act to define and amend the law relating to partnership. Whereas it is expedient to define and amend the law relating to partnership it is hereby enacted as follows. For Statement of Objects and Reasons and for Report of Special Committee, see Gazette of lndia, 1931 Pt. V, p. 3, for Report of Select Committee, see ibid., 1932, Pt. V. p. 1. The Act has been applied to Berar by the Berar Laws Act, 1941 (4 of 1941). The Act has

been extended to Dadra and Nagar Haveli by Reg. 6 of 1963, Sec. 2 and Sch. I, to Pondicherry by Reg. 7 of 1963, Sec. 3 and Sch. 1, to Goa, Daman and Diu by Reg. 11 of 1963, Sec. 3 and Schedule, Bombay by Act 4 of 1950, Sec. 3 and Punjab by Act 5 of 1950, Sec. 3, Laccadive, Minicoy and Amindivi Islands by Reg. 8 of 1965, Sec. 3 and Schedule.

DEFINITIONS. ---In this Act, unless there is anything repugnant in the subject or context, -

(a) An "act of a firm" means any act or omission by all the partners, or by any partner or agent of the firm which gives rise to a right enforceable by or against the firm:

(b) "Business" includes every trade, occupation and profession;

(c) "Prescribed" means prescribed by rules made under this Act;

(d) "Third party" used in relation to a firm or to a partner therein means any person who is not a partner in the firm; and

(e) Expression used but not defined in this Act and defined in the Indian Contract Act, 1872 (9 of 1872), shall have the meanings assigned to them in that Act.

State Amendment

The Nature of Partnership

DEFINITION OF " PARTNERSHIP", "FIRM", AND FIRM" NAME" -

- Partnership" is the relation between persons who have agreed to, share the profits of a business carried on by all or any of them acting for all. Persons who have entered into partnership with one another are called individually "partners" and Collectively "a firm", and the name under which their business is carried on is called the "firm name".

PARTNERSHIP NOT CREATED BY STATUS. -The relation of partnership arises from contract and not from status;

And, in particular, the members of a Hindu undivided family carrying on a family business as such, or a Burmese Buddhist husband and wife carrying business as such, are not partners in such business.

MODE OF DETERMINING EXISTENCE OF PARTNERSHIP. -In determining

whether a group of persons is or is not a firm, or whether a person is or is not a partner in a firm, regard shall be had to the real relation between the parties, as shown by all relevant facts taken together.

EXPLANATION-1. -The sharing of profits or of gross returns arising from property by persons holding a joint or common interest in that property does not of itself make such persons partners.

EXPLANATION- 2. -The receipt by a person of a share of the profits of a business, or of a payment contingent upon the earning of profits or varying with the profits earned by a business, does not of itself make him a partner with the persons carrying on the business;

And, in particular, the receipt of such share or payment, -

(a) By a lender of money to persons engaged or about to engage in any business,

(b) By a servant or agent or remuneration,

(c) By the widow or child of a deceased partner, as annuity, or

(d) By a previous owner or part owner of the business, as consideration for the sale of goodwill or share thereof, does not of itself make the receiver a partner with the person‟ s carrying on the business.

PARTNERSHIP AT WILL- where no provision is made by contract between the partners for the duration of their partnership, or for the determination of their partnership, the partnership is "partnership-at-will".

PARTICULAR PARTNERSHIP. - A person may become a partner with another person in particular adventures or undertakings.

Relations of Partners To One Another

GENERAL DUTIES OF PARTNERS -Partners are bound to carry on the business of the firm to the greatest common advantage, to be just and faithful to each other, and to render true accounts and full information of all things affecting the firm to any partner or his legal representative.

DUTY TO INDEMNIFY FOR CAUSED BY FRAUD. - Every partner shall indemnity the firm for any loss caused to it by his fraud in the conduct of the business of the firm.

DETERMINATION OF RIGHTS AND DUTIESLFS OF PARTNERS BY CONTRACT BETWEEN THE PARTNERS. –

(1) Subject to the provisions of this Act, the mutual rights and duties of the partners of a firm may be determined by contract between the partners, and such contract may be express or may be implied by a course of dealing. Such contract may be varied by consent of all the partners, and such consent may be express or may be implied by a course of dealing.

(2) AGREEMENTS IN RESTRAIN7S OF TRADE. -Notwithstanding anything contained in Sec. 27 of the Indian Contract Act, 1872 (9 of 1872), such contracts may provide that a partner shall not carry on any business other than that of the firm while he is a partner.

THE CONDUCT OF THE BUSINESS. -Subject to contract between the partners-

(a) Every partner has a right to take part in the conduct of the business;

(b) Every partner is bound to attend diligently to his duties in the conduct of the business;

(c) Any difference arising as to ordinary matters connected with the business may be decided by a majority of the partners, and every partner shall have the right to express his opinion before the matter is decided, but no change may be made in the nature of the business without the consent of all the partners-, and

(d) Every partner has a right to have access to and to inspect any copy and of the books of the firm.

MUTUAL RIGHTS AND LIBILITIES -Subject to contract between the partners-

(a) A partner is not entitled receive remuneration for taking part in the conduct of the business;

(b) The partners are entitled to share equally in the profits earned, and shall contribute equally to the losses sustained by the firm,

(c) Where a partner is entitled to interest on the capital subscribed by him such interest shall be payable only out of profits-,

(d) A partner making, for the purposes of the business, any payment or advance beyond the amount of capital he has agreed to subscribe is entitled to interest thereon at the rate of six per cent. Per annum;

(e) The firm shall indemnify a partner in respect of payments made and liabilities incurred by him-

(i) In the ordinary and proper conduct of the business, and

(ii) In doing such act, in an emergency, for the purpose of protecting the firm from loss, as would be done by a person of ordinary prudence, in his own case, under similar circumstances: - and

(f) A partner shall indemnify the firm for any loss caused to it by his wilful neglect in the conduct of the business of the firm.

THE PROPERTY OF THE FIRM--Subject to contract between the partners, the property of the firm includes all property and rights and interest in property originally brought into the stock of the firm, or acquired, by the purchase or other-wise, by or for the firm, or for the purposes and in course of the business of the firm and includes also the goodwill of the

business.

Unless the contrary intention appears, property and rights and interests in property acquired with money belonging to the firm are deemed to have been acquired for the firm.

APPLICATION OF THE PROPERTY OF THE FIRM. -Subject to contract between the partners, the property of the firm shall be held and used by the partners exclusively for the purposes of the business.

PERSONAL PROFITS EARNED BY PARTNERS. -Subject to contract between the partners,-

(a) If a partner derives any profits for him from any transaction of the firm, or from the use of the property or business connection of the firm or the firm name, he shall account for that profit and pay it to the firm;

(b) If a partner carries on any business of the same nature as and competing with that of the firm, he shall account for and pay to the firm all profits made by him in that business.

Features of Partnership Firm

The essential features of a partnership firm are discussed below:-

(i) Two or More Persons: There must be at least two persons to form a Partnership. The partnership Act fixes no maximum limit on the number of partners of a partnership firm. But the Companies Act, 1956 lays down that any partnership or association of more than 10 persons in case of banking business and 20 persons in other business operations as illegal unless registered as a Joint Stock Company. Thus, the maximum limit on the number of partners is ten in case of banking business and 20 in case of other lines of business.

(ii) Contractual Relation: The relation of partnership is created by contract and not by status as in case of Joint Hindu Family. There must be an agreement between two or more persons to enter into partnership. Such an agreement may be oral, written or implied. Since partnership is an out-come of a partnership the persons who enter into an agreement of partnership must be competent to enter into contract. Minors, lunatics, insolvent and other persons incompetent to enter into a valid contract cannot enter into a partnership agreement.

(iii) Lawful Business: The partners must agree to carry some lawful business. Mere holding

of property in joint ownership cannot be considered as partnership unless it is accompanied by certain business activities and possesses other features of partnership.

(iv) Sharing of Profit: There must be an agreement to share the profits and losses of the business of the partnership firm. This is at the very root of bringing the persons together to carry on a business. However, sharing of profit is not a conclusive proof of partnership. Employees or creditors who share profits of the firm cannot be called partners in the absence of any agreement of partnership.

(v) Agency Relationship: There must be an agency relationship between the partners. This is the crucial test of the existence of a partnership firm? Every partner is a proprietor as well as an agent of the firm. The business of the firm may be carried on by all or any of them acting for all unless otherwise agreed. Every partner is entitled to take part in management of day-to-day operations of the firm and to represent the firm and other partners in dealing with other parties.

(vi) Unlimited Liability: As a result of contractual relationship between the partners of a firm, all the partners are liable jointly and severally for all debts and obligations of the firm to an unlimited concern. That means if the assets of the firm are not sufficient to meet the obligations of creditors of the firm, the private assets of the partners can be attached to satisfy their claims. The creditors may even realize the whole of their dues from one of the partners. The partner from whose property the dues are recovered is entitled in law to obtain rateable contribution from the other partners of the firm.

(vii) Non-Transferability of Interest: A partner cannot transfer his proprietary interest to any person (except those who are already the partners) without the unanimous consent of other partners. The restriction on transfer of interest is based on the principle that the partner he being an agent of the partnership firm cannot delegate his proprietary interest to outsider.

Kinds of Partnership Firms

Partnership firms can be classified as below:

(I) Partnership-at-Will: A partnership is called partnership-at-will when (a) the partnership is formed to carry on business without specifying any period of time, and (b) no provision is made as to when and how the partnership will come to an end. The life of such a partnership continues as long as the partners are willing to continue it as such. It can be dissolved by any

partner giving a notice to the firm withdrawing from the partnership or terminating the partnership.

(ii) Particular Partnership: A partnership established for a stipulated period or for the completion of a specified venture comes to an automatic end with the expiry of the stipulated period or on the completion of the specified venture, as the case may be.

(iii) Joint Venture: It is organized for completing a specific task or venture during a specific period. A joint venture is a partnership without the use of a firm name, limited to particular venture in which the persons concerned agree to contribute capital and to share profits or losses. It may involve joint consignment of goods, an underwriting transaction, and a speculation in shares, construction of a building, or any similar form of enterprise.

(iv) Limited Partnership: In limited partnership, the liability of the partners is limited except that of one or more partners. The partner whose liability is limited to the extent of capital contributed by them is referred as „limited partners" or „special partners." There is no provision for the formation of limited partnership in India. Such a partnership can be found in U.K., U.S.A. and some of the European countries. There must be at least one partner with

unlimited liability in case of a limited of the business. He cannot act as an agent of the firm or of the other partners. However, he can assign his interest in the firm to another person with the consent of the partners with unlimited liability.

Kinds of Partners

Partners can be classified from different start points-on the basic of business interest, on the basic of public liabilities and, on the basic of managerial responsibilities. The important categories of partners are as follows:-

(I) Active or Actual Partner: Partners who take an active part in the conduct of the partnership business is called „actual" or „ostensible" partners. They are full-fledged partners in the real sense of the term, such a partner must give public notice of his retirement from the firm in order to free himself from liability for acts after retirement.

(ii) Sleeping or Dormant Partner: Sometimes, however, there are persons who merely put in their capital (or even without capital they may become partners) and do not take active part in the conduct of the partnership business. They are known as „sleeping" or „dormant"

partners. They do share profits and losses (usually less then proportionately), have a voice in management, but their relationship with the firm is not disclosed to the general public. They are liable to the third parties for all acts of the firm just like an undisclosed principal. They are, however, not required to give public notice of their retirement from the firm.

(iii) Partner in Profits Only: A partner who has stipulated with other partners that he will be entitle to a certain share of profits, without being liable for the losses, is known as „partner in profits only" . As a rule, such a partner has no voice in the management of the business. However, his liability vis-à-vis third parties will be unlimited because in India we cannot have „limited partnership" .

(iv) Sub-Partner: When a partner agrees to share of profits in a partnership firm with an outsider such an outsider is called a sub-partner. Such a sub-partner has no rights against neither firm nor he is liable for the debts of the firm.

(v) Partner by Estoppels: If a person represents the outside world, by words spoken or written or by his conduct or by lending his name that he is a partner in a certain partnership firm, he is then stopped from denying his being partner, and is liable as a partner in that firm to anyone who has on the faith of such representation granted credit to the firm.

RIGHTS AND DUTIES OF PARTNERS. -Subject to contract between the partners, -

(a) After a change in the firm-Where a change occurs in the constitution of a firm, the mutual rights and duties of the partners in the reconstituted firm remain the same as they were immediately before the change, as far as may be;

(b) After the expiry of the term of the firm and---Where a firm constituted for a fixed term continues to carry on business after the expiry of that term, the mutual rights and duties of the partners remain the same as they were before the expiry, so far as they may be consistent with the incidents of partnership-at-will; and

(c) Where additional undertakings are carried ---where a firm constituted to carry out one or more adventures or undertakings carries out other adventures or undertakings, the mutual rights and duties of the partners in respect of the other adventures or undertakings are the same as those in respect of the original adventures or undertakings.

Relations Of Partners To Third Parties

18. PARTNERS TO BE AGENT OF THE FIRM.-Subject to the provisions of this Act, a partner is the agent of the firm for the purpose of the business of the firm.

IMPLIED AUTHORITY OF PARTNERS AS AGENT OF THE FIRM: -(1) Subject to the provisions of Sec. 22, the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm the authority of a partner to bind the firm conferred by this section is called his "implied authority".

(2) In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to-

(a) Submit a dispute relating to the -business of the firm to arbitration,

(b) Open a banking account on behalf of the firm in his own name,

(c) Compromise or relinquish any claim or portion of a claim by the firm"

(d) Withdraw a suit or proceeding filed on behalf of the firm,

(e) Admit any liability in a suit or proceeding against the firm,

(f) Acquire immoveable property on behalf of the firm,

(g) Transfer immoveable property belonging to the firm, or

(h) Enter into partnership on behalf of the firm.

20. EXTENSIONS AND RESTRICTION OF PARTNERS AUTHORITY. - The partners in a firm may, by contract between the partners, extend or restrict the implied authority of any partner. Notwithstanding any such restriction, any act done by a partner on behalf of the firm, which falls within his implied authority, binds the

firm, unless the person with whom he is dealing knows of the restriction or does not know or believe that partner to be a partner.

21. PARTNER'S AUTHORTY IN AN EMERGENCY. -A partner has authority, in an emergency, to do all such acts for the, purpose of protecting the firm from loss as would be done by a person of ordinary prudence, in his own case, acting under similar circumstances, and such acts bind the firm.

22. MODE OF DOING ACT TO BIND FIRM-In order to bind a firm an act or instrument done or executed by a partner or other person on behalf of the firm shall be done or executed in the firm name, or in any other manner expressing or implying an

intention to bind the firm.

23. EFFECT OF ADMISSION BY A PARTNER-An admission on representation made by a partner concerning the affairs of the firm is evidence against the firm, if it is made in the ordinary course of business.

24. EFFECT OF NOTICE TO ACTING PARTNER. -Notice to a partner who habitually acts in the business of the firm of any matter relating to the affairs of the firm operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner.

25. LIBILITY OF THE PARTNER FOR ACTS OF THE FIRM. -Every partner is liable jointly with all the other partners and also severally, -for all acts of the firm while he is a partner.

26. LIBILITY OF THE FIRM FOR WRONGFUL ACTS OF A PARTNER. -Where, by the wrongful act or omission of a partner acting in the ordinary course of the business of a firm, or with the authority of his partners, loss or injury is caused to any third party, or any penalty is incurred, the firm is liable therefore to the same extent as the partner.

27. LIBILITY OF FIRM FOR MISAPPLICATION BY PARTNERS. -Where -(a) A partner acting within his apparent authority receives money or property from a third party and misapplies it, or

(b) A firm in the course of its business receives money or property from a third-party, and the money or property is misapplied by any of the partners while it is in the custody of the firm, the firm is liable to make good the loss.

28. HOLDING OUT. –

(1) Any one who by words spoken or written or by conduct represents himself, or knowingly permits himself to be represented to be a partner in a firm, is liable as a

partner in that firm to any one who has on the faith of any such representation given credit to the firm, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the persons giving credit.

(2) Where after a partner‟ s death the business is continued in the old firm name,

the continued use of that name or of the deceased partner‟ s name, as a part thereof shall not of itself make his representative or his estate liable for any act of the firm done after his death.

29. RIGHT OF THE TRANSFEREE OF A PARTNER'S INTEREST---

(1) A transfer by a partner of his interest in the firm, either absolute or by mortgage, or by the creation by him of a charge on such interest does not entitle the transferee, during the continuance of the firm, to interfere in the conduct of the business, or to require accounts or to inspect the books of the firm, but entitles the transferee only to receive the share of profits of the transferring partner, and the transferee shall accept the account of profits agreed to by the partners.

(2) If the firm is dissolved or if the transferring partner ceases to be a partner, the transferee is entitled as against the remaining partners to receive the share of the assets of the firm to which the transferring partner is entitled, and, for the purpose of ascertaining that share, to an account as from the date of the dissolution.

30 MINORS ADMITTED TO THE BENEFITS OF PARTNERSHIP---

(1) A person who is a minor according to the law to which he is subject may not be a partner in a firm, but, with the consent of all the partners for the time being, he may be admitted to the benefits of partnership.

(2) Such minor has a right to such share of the property and of the profits of the firm as may be agreed upon, and he may have access to and inspect and copy any of the accounts of the firm.

(3) Such minor‟ s share is liable for the acts of the firm, but the minor is not personally liable for any such act.

(4) Such minor may not sue the partners for an account or payment of his share of the property or profits of the firm, save when severing his connection with the firm, and in such case the amount of his share shall be determined by a valuation made as far as possible in accordance with the rules contained in Sec. 48: Provided that all the partners acting together or any partner entitled to dissolve the firm upon notice to other partners may elect in such suit to dissolve the firm, and there upon the Court shall proceed with the suit as one for dissolution and for

settling accounts between the partners, and the amount of the share of the minor shall be determined along with the shares of the partners.

(5) At any time within six months of his attaining majority, or of his obtaining knowledge that he had been admitted to the benefits of partnership, whichever date is later, such person may give public notice that he has elected to become or that he has elected not to become a partner in the firm; and such notice shall determine his position as regards the firm: Provided that, if he fails to give such notice, he shall become a partner in the firm on the expiry of the said six months.

(6) Where any person has been admitted as a minor to the benefit of partnership in a firm, the burden of proving the fact that such person had no knowledge of such admission until a particular date after the expiry of six months of his attaining majority shall lie on the persons asserting that fact.

(7) Where such person becomes a partner, -

(a) His rights and liabilities as a minor continue up to the date on which he becomes a partner, but he also becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership, and.

(b) His share in the property and profits of the firm shall be the share to which he was entitled as a minor.

(8) Where such person elects not to become a partner, -

(a) His rights and liabilities shall continue to be those of a minor under this section up to the date on which he gives public notice;

(b) His share shall not be liable for any acts of the firm done after the date of the notice, and

(c) He shall be entitled to sue the partners for his share of the property and profits in accordance with sub-section (4).

(9) Nothing in sub-sections (7) and (8) shall affect the provisions of the Sec. 28.

Incoming And Outgoing Partners

31. INTRODUCTION OF A PARTNER.

(1) Subject to contract between the partners and to the provisions of Sec. 30, no person shall be introduced as a partner into a firm without the consent of all the

existing partners.

(2) Subject to the provisions of Sec. 30, a person who is introduced as a partner into a firm does not thereby become liable for any act of the firm done before he became a partner.

32. RETIREMENT OF A PARTNER. –

(1) A partner may retire-

(a) With the consent of all the other partners,

(b) In accordance with an express agreement by the partners, or

(c) Where the partnership is at will, by giving notice in writing to all the other partners of his intention to retire.

(2) A retiring partner may be discharged from any liability to any third party for acts of the firm done before his retirement by an agreement made by him with such third party and the partners of the reconstituted firm and such agreement may be implied by a course of dealing between such third party and the reconstituted firm after he had knowledge of the retirement.

(3) Notwithstanding the retirement of a partner from a firm, he and the partners continue to be liable as partners to third parties for any act done by any of them, which would have been an act of the firm if done before the retirement, until public notice is given of the retirement:

Provided that a retired partner is not liable to any third party who deals with the firm without knowing that he was partner.

(4) Notices under sub-section (3) may be given by the retired partner or by any partner of the reconstituted firm.

33. EXPULSION OF A PARTNER. –

(1) A partner may not be expelled from a firm by any majority of the partners, save in the exercise in good faith of powers conferring by contract between the partners.

(2) The provisions of sub-sections (2), (3) and (4) of Sec. 32 shall apply to an expelled partner as if he were a retired partner.

34. INSOLVENCY OF A PARTNER. –

(1) Where a partner in a firm is adjudicated an insolvent he ceases to be a partner

on the date on which the order of adjudication is made, whether or not the firm is thereby dissolved.

(2) Where under a contract between the partners the firm is not dissolved by the adjudication of a partner as an insolvent, the estate of a partner so adjudicated is not liable for any act of the firm and the firm is not liable for and act of the insolvent, done after the date on which the order of adjudication is made.

35. LIABILITY OF ESTATE OF DECEASED PARTNER. -Where under a contract between the partners the firm is not dissolved by the death of a partner, the estate of deceased partner is not liable for any act of the firm done after his death.

36. RIGHTS OF OUTGOING PARTNER TO CARRY ON COMPETING BUSINESS. –

(1) An outgoing partner may carry on a business with that of the firm and he may advertise such business, but subject to contract to the contrary, he may not-

(a) Use the firm name,

(c) Represent himself as carrying on the business of the firm, or

(c) Solicit the custom of persons who were dealing with the firm before he ceased to be a partner.

(2) **AGREEMENT IN RESTRAINT OF TRADE. -**A partner may make an agreement with his partners that on ceasing to be a partner he will not carry on any business similar to that of the firm within a specified period or within specified local limits; and, notwithstanding anything contained in Sec. 27 of the Indian Contract Act, 1872 (9 of 1872), such agreement shall be valid if the restriction imposed are reasonable.

37. RIGHTS OF OUTGOING PARTNER IN CERTAIN CASES TO SHARE SUBSEQUENT PROFIT. --Where any member of a firm has died or otherwise ceased to be a partner, and the surviving or -continuing partners carry on the business of the firm with the property of the firm without any final settlement of accounts as between them and the outgoing partner or his estate, in the absence of a contract to the contrary, the outgoing partner or his estate, is entitled at the option of himself or his representatives to such share of the profits made since he ceased to be a partner as

may be attributable to the use of his share of the property of the firm or to interest at the rate of six per cent. per annum on the amount of his share in the property of the firm:

Provided that where by contract between the partners an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner, and that option is duly exercised, the estate of the deceased partner, or the outgoing partner or his estate, as the case may be, is not entitled to any further or other share of profits; but if any partner assuming to act in exercise of the option does not in all material respects comply with the terms thereof, he is liable to account under the foregoing provisions of this section.

38. REVOCATION OF CONTINUING GUARANTEE BY CHANGE IN FIRM. -A continuing guarantee given to a firm, or to a third party in respect of the transactions of a firm, is, in the absence of agreement to the contrary, revoked as to future transactions from the date of any change in the constitution of the firm.

Dissolution of A Firm

DISSOLUTION OF A FIRM. -The dissolution of a partnership between all the partners of a firm is called the "Dissolution of the firm".

DISSOLUTION BY AGREEMENT -A firm may be dissolved with the consent of all the partners or in accordance with a contract between the partners.

COMPULSORY DISSOLUTION.-A firm is dissolved-

(a) By the adjudication of all the partners or of all the partners but one as insolvent, or

(b) By the happening of any event which makes it unlawful for the business of the firm to be carried on or of the partners to carry it on in partnership

Provided that, where the firm carries on more than one separate adventure or undertaking, the illegality of one or more shall not of itself cause the dissolution of the firm in respect of its lawful adventures and undertakings.

DISSOLUTION ON THE HAPPENING OF CERTAIN CONTINGENCIES-

Subject to contract between the partners a firm is dissolved-

(a) If constituted for a fixed term, by the expiry of that term; -

(b) If constituted to carry out one or more adventures or undertakings, by the completion thereof,

(c) By the death of partner and

(d) By the adjudication of a partner as an insolvent.

DISSOLUTION BY NOTICE OF PARTNERSHIP-AT-WILL

(1) Where the partnership is at will, the firm may be dissolved by any partner giving notice in writing to all the other partners of his intention to dissolve the firm.

(2) The firm is dissolved as from the date mentioned in the notice as the date of dissolution of the notice.

DISSOLUTION BY THE COURT- At the suit of a partner, the Court may dissolve a firm on any of the following grounds, namely:

(a) That a partner has become of unsound mind, in which case the suit may be brought as well by the next friend of the partner who has become of unsound mind as by any other partner,

(b) That a partner, other than the partner suing, has become in any way permanently incapable of performing his duties as partner;

(c) That a partner, other than the partner suing, is guilty of conduct which is likely to affect prejudicially the carrying on of the business, regard being had to the nature of the business;

(d) That a partner, other than the partner suing, willfully or persistently commits breach of agreements relating to the management of the affairs of the fin-n or the conduct of its business, or otherwise so conducts himself in matters relating to the business that it is riot reasonably practicable for the other partners to carry on the business in partnership with him,

(e) That a partner, other than the partner suing has in any way transferred the whole of his interest in the firm to a third party, or has allowed his share to be charged under the provisions of rule 49 of Order XXI of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908), or has allowed it to be sold in the recovery of

arrears of land revenue or of any dues recoverable as arrears of land revenue due by the partner;

(f) That the business of the firm cannot be carried on save at a loss; or

(g) On any other ground which renders it Just and equitable that the firm should be dissolved.

LIABILITY FOR ACTS OF PARTNERS DONE AFTER DISSOLUTION-

(1) Notwithstanding the dissolution of a firm, the partners continue to be liable as such to third parties for any act done by any of them, which would have been an act of the firm if done before the dissolution, until public notice is given of the dissolution: Provided that the estate of a partner who dies, or who is adjudicated an insolvent, or of a partner who, not having been known to the person dealing with the firm to be a partner, retires from the firm, is not liable under this section for acts done after the date on which he ceases to be a partner.

RIGHT OF PARTNERS TO HAVE BUSINESS WOUND UP AFTER DISSOLUTION:-On the dissolution of a firm every partner or his representative is entitled, as against all the other partners or their representatives, to have the property of the firm applied in payment of the debts and liabilities of the firm, and to have the surplus distributed among the partners or their representatives according to their rights.

CONTINUING AUTHORITY OF PARTNERS FOR PURRPOSES OF WINDING UP: -After the dissolution of a firm the authority of each partner to bind the firm, and the other mutual rights and obligations of the partners, continue notwithstanding the dissolution, so far as may be necessary to wind up the affairs of the firm and to complete transactions begun but unfinished at the time of the dissolution. but not otherwise. Provided that the firm is in no case bound by the acts of a partner who has been adjudicated insolvent; but this proviso does not affect the liability of any person who has after the adjudication represented himself or, knowingly permitted himself to be represented as a partner of the insolvent.

MODE OF SETTLEMENT OF ACCOUNTS BETWEEN PARTNERS. -In settling the accounts of a firm after dissolution, the following rules shall, subject to

agreement by the partners, be observed:

(a) Losses, including deficiencies of capital, shall be paid first out of profit, next out of capital, and, lastly, if necessary, by the partners individually, in the proportions, in which they were entitled to share profits:

(b) The assets of the firm, including any sums contributed by the partners to make up deficiencies of capital, shall be applied in the following manner and order:

1. In paying the debts of the firm to third parties;
2. In paying to each partner rate ably what is due to him from the firm for advances as distinguished from capital;
3. In paying to each partner rate ably what is due to him on account, of capital; and
4. The residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits.

PAYMENT OF FIRM DEBTS AND OF SEPARATE DEBTS: --Where there are joint debts due from the firm and also separate debts due from any partner, the property of the firm shall be applied in the first instance in payment of the debts of the firm, and if, there is any surplus, then the shares of each partner shall be applied in payment of his separate debts, or

paid to him. The separate property of any partner shall be applied first in the payment of his separate debts, and the surplus (if any) in the payment of the debts of the firm.

PERSONAL PROFITS EARNED AFTER DISSOLUTION: --Subject to contract between the partners, the provisions of Cl. (a) of Sec. 16, shall apply to transactions by any surviving partner or by the representatives of a deceased partner, undertaken after the firm is dissolved on account of the death of a partner and before its affairs have been completely wound up: Provided that where any partner or his representative has brought the goodwill of the firm, nothing ii i this section shall affect his right to use the firm name.

RETURN OF PREMIUM ON PREMATURE DISSOLUTION:-Where a partner has paid a premium on entering into partnership for fixed term, and the firm is dissolved before the expiration of that term otherwise than by the death of a partner, he shall be entitled to repayment of the premium or of such part thereof as may be reasonable, regard being had to the terms upon which he became a partner and to the length of time during which he was a partner, unless,-

(a) The dissolution is mainly due to his own misconduct, or

(b) The dissolution is in pursuance of an agreement containing no provision for the return of the premium or any part of it.

RELATIONS OF PARTNERS TO ONE ANOTHER

General duties of partners

Partners are bound to carry on the business of the firm to the greatest common advantage, to be just and faithful to each other, and to render true accounts and full information of all things affecting the firm to any partner or his legal representative.

Duty to indemnify for loss caused by fraud

Every partner shall indemnify the firm for any loss caused to it by his fraud in the conduct of the business of the firm.

Determination of rights and duties of partners by contract between the partners

(1) Subject to the provisions of this Act, the mutual rights, and duties of the partners of a firm may be determined by contract between the partners, and such contract may be expressed or may be implied by a course of dealing.

Such contract may be varied by consent of all the partners, and such consent may be expressed or may be implied by a course of dealing.

Agreements in restraints of trade-Notwithstanding anything contained in section 27 of the Indian Contract Act, 1872 (9 of 1872), such contracts may provide that a partner shall not carry on any business other than that of the firm while he is a partner.

The conduct of the business

Subject to contract between the partners,-

(a) every partner has a right to take part in the conduct of the business;

(b) every partner is bound to attend diligently to his duties in the conduct of the business;

(c) any difference arising as to ordinary matters connected with the business may be decided by a majority of the partners, and every partner shall have the right to express his opinion, before the matter is decided, but no change may be made in the nature of the business without

the consent of all the partners; and

(d) every partner has a right to have access to and to inspect and copy any of the books of the firm.

Mutual rights and liabilities

Subject to contract between the partners,-

(a) a partner is not entitled to receive remuneration for taking part in the conduct of the business;

(b) the partners are entitled to share equally in the profits earned, and shall contribute equally to the losses sustained by the firm;

(c) where a partner is entitled to interest on the capital subscribed by him such interest shall be payable only out of profits;

(d) a partner making, for the purposes of the business, any payment or advance beyond the amount of capital he has agreed to subscribe, is entitled to interest thereon at the rate of six per cent per annum;

(e) the firm shall indemnify a partner in respect of payments made and liabilities incurred by him-

(i) in the ordinary and proper conduct of the business, and

(ii) in doing such act, in an emergency, for the purpose of protecting the firm from loss, as would be done by a person of ordinary prudence, in his own case, under similar circumstances; and

(f) a partner shall indemnify the firm for any loss caused to it by his wilful neglect in the

conduct of the business of the firm.

The property of the firm

Subject to contract between the partners, the property of the firm includes all property and rights and interests in property originally brought into the stock of the firm, or acquired, by purchase or otherwise, by or for the firm, or for the purposes and in the course of business of the firm, and includes also the goodwill of the business.

Unless the contrary intention appears, property and rights and interests in property acquired with money belonging to the firm are deemed to have been acquired for the firm.

Application of the property of the firm

Subject to contract between the partners, the property of the firm shall be held and used by the partners exclusively for the purposes of the business.

Personal profits earned by partners

Subject to contract between the partners-

(a) if a partner derives any profit for himself from any transaction of the firm, or from the use of the property or business connection of the firm or the firm name, he shall account for that profit and pay it to the firm;

(b) if a partner carries on any business of the same nature as and competing with that of the firm, he shall account for and pay to the firm all profits made by him in that business.

RIGHTS AND DUTIES OF PARTNERS

Subject to contract between the partners-

(a) after a change in the firm-where a change occurs in the constitution of a firm, the mutual rights and duties of the partners in the reconstituted firm remain the same as they were immediately before the change, as far as may be;

(b) after the expiry of the term of the firm, and - where a firm constituted for a fixed term continues to carry on business after the expiry of that term, the mutual rights and duties of the partners remain the same as they were before the expiry, so far as they may be consistent with the incidents of partnership at will; and

(c) where additional undertakings are carried out-where a firm constituted to carry out one or more adventures or undertakings, the mental rights and duties of the partners in respect of the other adventures or undertakings are the same as those in respect of the original adventures or undertakings.

RELATIONS OF PARTNERS TO THIRD PARTIES

Partner to be agent of the firm

Subject to the provisions of this Act, a partner is the agent of the firm for the purpose of the business of the firm.

Implied authority of partner as agent of the firm

(1) Subject to the provisions of section 22, the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm.
The authority of a partner to bind the firm conferred by this section is called his implied authority.
(2) In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to-

(a) submit a dispute relating to the business of the firm to arbitration,

(b) open a banking account on behalf of the firm in his own name,
(c) compromise or relinquish any claim or portion of a claim by the firm,
(d) withdraw a suit or proceeding filed on behalf of the firm,
(e) admit any liability in a suit or proceeding against the firm,
(f) acquire immovable property on behalf of the firm,
(g) transfer immovable property belonging to the firm, or
(h) enter into partnership on behalf of the firm.

Extension and restriction of partners implied authority
The partners in a firm may, by contract between the parties, extend or restrict the implied authority of any partner.
Notwithstanding any such restriction, any act done by a partner on behalf of the firm which falls within his implied authority binds the firm, unless the person with whom he is dealing knows of the restriction or does not know or believe that partner to be a partner.

21. Partner$s authority in an emergency
A partner has authority, in an emergency, to do all such acts for the purpose of protecting the firm from loss as would be done by a person of ordinary prudence, in his own case, acting under similar circumstances, and such acts bind the firm.

Mode of doing act to bind firm

In order to bind a firm, an act or instrument done or executed by a partner or other person on behalf of the firm shall be done or executed in the firm name, or in any other manner expressing or implying an intention to bind the firm.

Effect of admissions by a partner

An admission on representation made by a partner concerning the affairs of the firm is evidence against the firm, if it is made in the ordinary course of business.

Effect of notice to acting partner

Notice to a partner, who habitually acts in the business of the firm of any matter relating to the affairs of the firm operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner.

Liability of a partner for acts of the firm

Every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner.

Liability of the firm for wrongful acts of a partner

Where, by the wrongful act or omission of a partner acting in the ordinary course of the business of a firm, or with the authority of his partners, loss or injury is caused to any third party, or any penalty is incurred, the firm is liable therefor to the same extent as the partner.

Liability of firm for misapplication by partners

Where-

(a) a partner acting within his apparent authority receives money or property from a third party and misapplies it, or

(b) a firm in the course of its business receives money or property from a third party, and the money or property is misapplied by any of the partners while it is in the custody of the firm, the firm is liable to make good the loss.

Holding out

(1) Anyone who by words spoken or written or by conduct represents himself or knowingly permits himself to be represented, to be a partner in a firm, is liable as a partner in that firm to any one who has on the faith of any such representation given credit to the firm, whether the person representing himself or represented to be a partner does or does not know that the

representation has reached the person so giving credit.

(2) Where after a partner$s death the business is continued in the old firm name, the continued use of that name or of the deceased partner$s name as a part thereof shall not of itself make his legal representative or his estate liable for any act of the firm done after his death.

Rights of transferee or a partners interest

(1) A transfer by a partner of his interest in the firm, either absolute or by mortgage, or by the creation by him of a charge on such interest, does not entitle the transferee, during the continuance of the firm, to interfere in the conduct of the business, or to require accounts, or to inspect the books of the firm, but entitles the transferee only to receive the share of profits of the transferring partner, and the transferee shall accept the account of profits agreed to by the partners.

(2) If the firm is dissolved or if the transferring partner ceases to be a partner, the transferee is entitled as against the remaining partners to receive the share of the assets of the firm to which the transferring partner is entitled, and, for the purpose of ascertaining that share, to an account as from the date of the dissolution.

Minors admitted to the benefits of partnership

(1) A person who is a minor according to the law to which he is subject may not be a partner in a firm, but, with the consent of all the partners for the time being, he may be admitted to the benefits of partnership.

(2) Such minor has a right to such share of the property and of the profits of the firm as may be agreed upon, and he may have access to and inspect and copy any of the accounts of the firm.

(3) Such minor$s share is liable for the acts of the firm, but the minor is not personally liable for any such act.

(4) Such minor may not sue the partners for an account or payment of his share of the property or profits of the firm, save when severing his connection with the firm, and in such case the amount of his share shall be determined by a valuation made as far as possible in accordance with the rules contained in section 48:

PROVIDED that all the partners acting together or any partner entitled to dissolve the firm upon notice to other partners may elect in such suit to dissolve the firm, and thereupon the

court shall proceed with the suit as one for dissolution and for settling accounts between the partners, and the amount of the share of the minor shall be determined along with the shares of the partners.

(5) At any time within six months of his attaining majority, or of his obtaining knowledge that he had been admitted to the benefits of partnership, whichever date is later, such person may give public notice that he has elected to become or that he has elected not to become a partner in the firm, and such notice shall determine his position as regards the firm:

PROVIDED that, if he fails to give such notice, he shall become a partner in the firm on the expiry of the said six months.

Where any person has been admitted as a minor to the benefits of partnership in a firm, the burden of proving the fact that such person had no knowledge of such admission until a

particular date after the expiry of six months of his attaining majority shall lie on the persons asserting that fact.

Where such person becomes a partner-

(a) his rights and liabilities as a minor continue up to the date on which he becomes a partner, but he also becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership, and

(b) his share in the property and profits of the firm shall be the share to which he was entitled as a minor.

(8) Where such person elects not to become a partner,-

(a) his rights and liabilities shall continue to be those of a minor under this section up to the date on which he gives public notice,

(b) his share shall not be liable for any acts of the firm done after the date of the notice, and

(c) he shall be entitled to sue the partners for his share of the property and profits in accordance with sub-section (4).

(9) Nothing in sub-sections (7) and (8) shall affect the provisions of section 28.

INCOMING AND OUTGOING PARTNERS

Introduction of a partner

(1) Subject to contract between the partners and to the provisions of section 30, no person

shall be introduced as a partner into a firm without the consent of all the existing partners.

(2) Subject to the provisions of section 30, a person who is introduced as a partner into a firm does not thereby become liable for any act of the firm done before he became a partner.

Retirement of a partner

(1) A partner may retire-

(a) with the consent of all the other partners,

(b) in accordance with an express agreement by the partners, or

(c) where the partnership is at will, by giving notice in writing to all the other partners of his intention to retire.

(2) A retiring partner may be discharged from any liability to any third party for acts of the firm done before his retirement by an agreement made by him with such third party and the partners of the reconstituted firm, and such agreement may be implied by a course of dealing between such third party and the reconstituted firm after he had knowledge of the retirement.

(3) Notwithstanding the retirement of a partner from a firm, he and the partners continue to be liable as partners to third parties for any act done by any of them which would have been an act of the firm if done before the retirement, until public notice is given of the retirement:

PROVIDED that a retired partner is not liable to any third party who deals with the firm without knowing that he was a partner.

(4) Notices under sub-section (3) may be given by the retired partner or by any partner of the reconstituted firm.

Expulsion of a partner

(1) A partner may not be expelled from a firm by any majority of the partners, save in the exercise in good faith of powers conferred by contract between the partners.

(2) The provisions of sub-sections (2), (3) and (4) of section 32 shall apply to an expelled partner as if he were a retired partner.

Insolvency of a partner

(1) Where a partner in a firm is adjudicated an insolvent he ceases to be a partner on the date on which the order of adjudication is made, whether or not the firm is hereby dissolved.

(2) Where under a contract between the partners the firm is not dissolved by the adjudication of a partner as an insolvent, the estate of a partner so adjudicated is not liable for any act of

the firm and the firm is not liable for any act of the insolvent, done after the date on which the order of adjudication is made.

Liability of estate of deceased partner

Where under a contract between the partners the firm is not dissolved by the death of a partner, the estate of a deceased partner is not liable for any act of the firm done after his death.

Right of outgoing partner to carry on competing business

(1) An outgoing partner may carry on a business competing with that of the firm and he may advertise such business, but, subject to contract to the contrary, he may not-

(a) use the firm name,

(b) represent himself as carrying on the business of the firm, or

(c) solicit the custom of persons who were dealing with the firm before he ceased to be a partner.

(2) Agreements in restraint of trade-A partner may make an agreement with his partners that on ceasing to be a partner he will not carry on any business similar to that of the firm within a specified period or within a specified local limits; and, notwithstanding anything contained in section 27 of the Indian Contract Act, 1872 (9 of 1872), such agreement shall be valid if the restrictions imposed are reasonable.

Right of outgoing partner in certain cases to share subsequent profits

Where any member of a firm has died or otherwise ceased to be a partner, and the surviving or continuing partners carry on the business of the firm with the property of the firm without any final settlement of accounts as between them and the outgoing partner of his estate, then, in the absence of a contract to the contrary, the outgoing partner or his estate is entitled at the option of himself or his representatives to such share of the profits made since he ceased to be a partner as may be attributable to the use of his share of the property of the firm or to interest at the rate of six per cent per annum on the amount of his share in the property of the firm: PROVIDED that where by contract between the partners an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner, and that option is duly exercised, the estate of the deceased partner, or the outgoing partner or his estate, as the case may be, is not entitled to any further or other share of profits; but if any partner

assuming to act in exercise of the option does not in all material respects comply with the terms thereof, he is liable to account under the foregoing provisions of this section.

Revocation of continuing guarantee by change in firm

A continuing guarantee given to a firm, or to a third party in respect of the transactions of a firm, is, in the absence of agreement to the contrary, revoked as to future transactions from the date of any change in the constitution of the firm.

Limited Liability Partnership Act, 2008:

The Limited Liability Partnership Act, 2008 was enacted by the Parliament of India to introduce and legally sanction the concept of LLP in India. Unlike the general partnerships in India, LLP is a body corporate and legal entity separate from its partners, have Perpetual succession and any change in the partners of a LLP shall not affect the existence, rights or liabilities of the LLP.

Foreign Limited Liability Partnership: A LLP formed, incorporated or registered outside India which establishes a place of business within India.

Partner: Partner means any person who becomes a partner in the LLP in accordance with the LLP agreement.

Financial Year: The period from the 1st day of April of a year to the 31st day of March of the following year. In the case of a LLP incorporated after the 30th day of September of a year, the financial year may end on the 31st day of March of the next following year.

Salient Features of LLP

1. **LLP Agreement**

Any written agreement between the partners of the LLP or between the LLP and its partners which determines the mutual rights and duties of the partners and their rights and duties in relation to that LLP. It is not necessary to enter into an LLP agreement as per LLP Act,2008. In the absence of LLP agreement, the mutual rights of partners & in relation to LLP will be determined as per schedule I of the LLP Act,2008.

2. **Foreign Direct Investment in LLPs**

Foreign Direct Investment in LLP is allowed, with the specific approval of the government, in those sectors/activities where 100% FDI is otherwise allowed under

the automatic route and there are no FDI-linked performance related conditions.

3. Minimum number of partners

Every LLP shall have at least two partners. If at any time the number of partners of a LLP is reduced below two and the LLP carries on business for more than six months, the person, who is the only partner of the LLP carries on business after those six months shall be liable personally for the obligations of the LLP incurred during that period.

4. Designated Partner

Every limited liability partnership shall have at least two designated partners who are individuals and at least one of them shall be a resident in India. In case if no partner is designated or if at any time there is only one designated partner, each partner shall be deemed to be a designated partner of the LLP.

In case of a limited liability partnership in which all the partners are bodies corporate or in which one or more partners are individuals and bodies corporate, at least two individuals who are partners of such limited liability partnership or nominees of such bodies corporate shall act as designated partners.

5. Accounts and Audit

LLP is required to maintain books of accounts for each year on cash basis or on accrual basis. Accounts shall be audited by Auditors appointed by the LLP. Audit of accounts is compulsory if turnover exceeds Rs. 40 lakhs in any financial year or contribution by partners exceed Rs. 25 lakhs. The Statement of Accounts and Solvency for the year ended 31st March is required to be filed with the Registrar before 30th October in each year.

6. Penalty

Any person guilty of an offence under this Act for which no punishment is expressly provided shall be liable to a fine which may extend to five lakh rupees but which shall not be less than five thousand rupees and which may extend to fifty rupees for every day after the first day after which the default continues.

Differences between Partnership Firm, Limited Liability Partnership (LLP), Private

Limited Company :

Category	Partnership	Company	LLP
Registration	Registration is optional	Registration with Registrar of Companies required.	Registration with Registrar of LLP required.
Distinct entity	Not a separate legal entity	Is a separate legal entity under the Companies Act, 2013.	Is a separate legal entity under the Limited Liability Partnership Act, 2008.
Cost of Formation	The Cost of Formation is negligible	Minimum Statutory fee for incorporation of Private Company is Rs.6,000/- and minimum Statutory fee for incorporation of Public Company is Rs. 19,000/-	Minimum cost of Formation of LLP is Rs. 800 only, comparatively much lesser than the cost of formation of Company
Common Seal	There is no concept of common seal in partnership	It denotes the signature of the company and every company shall have its own common seal	It denotes the signature and LLP may have its own common seal, dependant upon the terms of the Agreement
Number of Members	2 to 20 members in case of Non-Banking Company, and 2 to 10 members in case of Banking Company.	2 to 200 members in case of Private Company and Minimum 7 members in case of Public Company.	Minimum 2 partners and there is no limitation of maximum number of partners.
Ownership of Assets	Partners have joint ownership of all the assets belonging to partnership firm	The company independent of the members has ownership of assets	The LLP independent of the partners has ownership of assets

Tax Liability	Income of Partnership is taxed at a Flat rate of 30% plus education cess as applicable.	Income of Company is Taxed at a Flat rate of 30% Plus surcharge as applicable.	Income of LLP is taxed at a Flat rate of 30% plus education cess as applicable.

"Designated partner"

"Designated partner" in reference to Limited Liability Partnership means any partner designated as such pursuant to section 7 of Limited Liability Partnership Act 2008. Every limited liability partnership shall have at least two designated partners who are individuals and at least one of them shall be a resident in India. In case if no partner is designated as such, or if at any time there is only one designated partner, each partner shall be deemed to be a designated partner of the LLP.

Provided that in case of a limited liability partnership in which all the partners are bodies corporate or in which one or more partners are individuals and bodies corporate, at least two individuals who are partners of such limited liability partnership or nominees of such bodies corporate shall act as designated partners.

An individual cannot become a designated partner in any limited liability partnership unless he has given his prior consent to act as such to the limited liability partnership in such form and manner as may be prescribed and he is also required to obtain a Director Identification Number.

The role of Designated Partners in case of LLP is on same footage as of Directors in case of Company. The Designated Partners as provided under Section 8 are directly responsible for the compliances of all provisions provided under LLP Act, 2008 and the provisions specified in the LLP Agreement.

Rights of Designated Partner are same as of other Partners. Alike other partners they are not entitled to any remuneration for their participation in management of LLP unless otherwise specifically provided in the LLP Agreement they , yet they have additional responsibilities to comply with.

A designated partner shall be

a. responsible for the doing of all acts, matters and things as are required to be done by the limited liability partnership in respect of compliance of the provisions of this Act

including filing of any document, return, statement and the like report pursuant to the provisions of this Act and as may be specified in the limited liability partnership agreement; and

b. liable to all penalties imposed on the limited liability partnership for any contravention of those provisions.

Major duties of Designated Partner

- Notify any changes in the LLP's to Registrar of Companies.
- Notify any changes in the Partners names & residential addresses to Registrar of Companies.
- Notify any change in Registered Office Address to Registrar of Companies.
- Filing of any Annual return, Statement of Accounts and other documents specified under the provisions of LLP Act with the Registrar of Companies.
- Statement of Accounts & Solvency to be signed by the Designated Partners of the Company.
- to preserve and to produce before an inspector or any person authorized by him in this behalf with the previous approval of the Central Government, all books and papers of, or relating to, the limited liability partnership or, as the case may be, the other entity, which are in their custody or power
- Responsible for signing all the e -forms filed with the Registrar of Companies.

Certificate of incorporation

A certificate of incorporation is a legal document relating to the formation of a company or corporation. It is a license to form a corporation issued by state government. Its precise meaning depends upon the legal system in which it is used.

INCORPORATION DOCUMENTS

The corporation's 'articles of incorporation' (sometimes referred to as the 'charter'), bylaws, and other documents created when the corporation is established.

Usually does not include subsequent corporate documents like minutes, amendments to articles and bylaws, yearly officer/director reports, etc. Although all of these are official corporate documents or records.

Incorporation by registration

1. When the requirements imposed by clauses (b) and (c) of sub-section (1) of section 11

have been complied with, the Registrar shall retain the incorporation document and, unless the requirement imposed by clause (a) of that sub-section has not been complied with, he shall, within a period of fourteen days--

a. register the incorporation document; and

b. give a certificate that the limited liability partnership is incorporated by the name specified therein.

2. The Registrar may accept the statement delivered under clause (c) of sub-section (1) of section 11 as sufficient evidence that the requirement imposed by clause (a) of that sub-section has been complied with.
3. The certificate issued under clause (b) of sub-section (1) shall be signed by the Registrar and authenticated by his official seal.
4. The certificate shall be conclusive evidence that the limited liability partnership is incorporated by the name specified therein.

Relationship of partners

1. Save as otherwise provided by this Act, the mutual rights and duties of the partners of a limited liability partnership, and the mutual rights and duties of a limited liability partnership and its partners, shall be governed by the limited liability partnership agreement between the partners, or between the limited liability partnership and its partners.
2. The limited liability partnership agreement and any changes, if any, made therein shall be filed with the Registrar in such form, manner and accompanied by such fees as may be prescribed.
3. An agreement in writing made before the incorporation of a limited liability partnership between the persons who subscribe their names to the incorporation document may impose obligations on the limited liability partnership, provided such agreement is ratified by all the partners after the incorporation of the limited liability partnership.
4. In the absence of agreement as to any matter, the mutual rights and duties of the partners and the mutual rights and duties of the limited liability partnership and the partners shall be determined by the provisions relating to that matter as are set- out in the First Schedule

Registration of changes in partners

1. Every partner shall inform the limited liability partnership of any change in his name or address within a period of fifteen days of such change.
2. A limited liability partnership shall--

a. where a person becomes or ceases to be a partner, file a notice with the Registrar within thirty days from the date he becomes or ceases to be a partner; and

b. where there is any change in the name or address of a partner, file a notice with the Registrar within thirty days of such change.

3. A notice filed with the Registrar under sub-section (2)--

a. shall be in such form and accompanied by such fees as may be prescribed;

b. shall be signed by the designated partner of the limited liability partnership and authenticated in a manner as may be prescribed; and

c. if it relates to an incoming partner, shall contain a statement by such partner that he consents to becoming a partner, signed by him and authenticated in the manner as may be prescribed.

4. If the limited liability partnership contravenes the provisions of sub-section (2), the limited liability partnership and every designated partner of the limited liability partnership shall be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty-five thousand rupees.
5. If any partner contravenes the provisions of sub-section (1), such partner shall be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty-five thousand rupees.
6. Any person who ceases to be a partner of a limited liability partnership may himself file with the Registrar the notice referred to in sub-section (3) if he has reasonable cause to believe that the limited liability partnership may not file the notice with the Registrar and in case of any such notice filed by a partner, the Registrar shall obtain a confirmation to this effect from the limited liability partnership unless the limited liability partnership has also filed such notice:

Provided that where no confirmation is given by the limited liability partnership within fifteen days, the registrar shall register the notice made by a person ceasing to be a partner under this section.

POSSIBLE QUESTIONS

Part B

1. State briefly the rights and obligations of a partner after dissolution of a partnership?
2. State the difference between a „partnership" and a „firm" .
3. List out mode of forming incorporated company.
4. What is meant by dissolution of a firm?
5. Define Partnership.

Part C

1. "The law of partnership is but an extension of the law of principal and agent".

   Explain?
2. Define Partnership. What are its essentuial characteristics?
3. Distinguish between LLP and Partnership?

4. Describe the documents to be filed with the Registrar of Companies prior to incorporation?
5. State the General nature of Partnership under the Partnership Act, 1932?
6. Explain the salient features of Limited Liability Partnership Act, 2008?
7. Discuss the rules relating to the rights, duties and obligations of partners?
8. What are the various circumstances in which a firm may be dissolved?
9. Describe the various classifications of Partners?
10. Describe the various things under the formation of partnership?

UNIT IV

S.No	Questions	Opt 1	Opt 2	Opt 3	Opt 4	Answer
1	A partnership firm comes into existence by an agreement called_____	Express agreement	Implied Agreement	Express or Implied	Registered	Express or Implied
2	Which of the following statement is incorrect?	A person who receives the profits is always a partner	A person who receives the profits is not necessarily a partner	The true test of partnership is the mutual agency	The partnership comes into existence only on an agreement	A person who receives the profits is always a partner
3	A, a contractor, appointed B to manage his entire work. It was agreed that B would receive 50% of the profits as his remuneration and would bear all the losses, if any. Here, B is	A's partner	A's agent	Sole proprietor	No Role	A's agent
4	A partnership where its duration is fixed and cannot be dissolved by any partner at his will, is known as	Particular partnership	General partnership	Partnership for fixed period	Partnership at will	Partnership for fixed period
5	In a partnership firm, the difference of opinion over some 'fundamental matter' can be settled by	All the partners	Majority of partners	Senior partners	Managing partner	All the partners
6	In the absence of any agreement, the interest to partners on the amount of loan advanced to the firm, is allowed at _____	4% per annum	6% per annum	8% per annum	Market rate	6% per annum

7	Where the money received from a third party by the firm, in the ordinary course of its business, is miasapplied by one of the partners to its own use, then the ……..	Defaulting partner alone is liable for the same	Firm is liable for the same	Firm is not liable for the same	Third party has no remedy	Firm is liable for the same
8	An incoming partner, who has been validly admitted in the firm, is	Liable for the past debts of the firm	Not liable for the past debts of the firm	Liable for debts of the firm incurred after his admission	Liable for debts of the firm incurred after his admission and for the past debts	Liable for debts of the firm incurred after his admission and for the past debts
9	On the death of a partner, public notice of death is not given and the firm continues the business, then for the acts of firm done after his death, the estate of the deceased partner is	Liable	Not liable	Treated as security	Proportionately liable	Not liable
10	The term 'partnership' has been defined under……	section 3	section 4	section 5	section 6	section 4
11	Under section 4 of the Indian Partnership Act, partnership is a……..	compulsory legal relation	creation of the choice and voluntarily agreement between the concerned parties	a relation arising from status	either compulsory legal relation or of a Status	creation of the choice and voluntarily agreement between the concerned parties
12	The relation of partnership arises from contract and not from status, has been prescribed under……..	section 4	section 5	section 6	section 7	section 4

13	The minimum number of persons required for a partnership is……	two	five	ten	twenty	two
14	Which of the following is not a feature of partnership?	Two or more members	Sharing of profit	Limited Liability	Agreement among the partners	Limited Liability
15	The maximum number of partners allowed in the banking business are	Twenty	Ten	No limit	Two	Ten
16	The maximum number of partners allowed in the business are	Twenty	Ten	No limit	Two	Twenty
17	A partner whose association with the firm is unknown to the general public is called	Active partner	Sleeping partner	Nominal partner	Secret partner	Secret partner
18	A partner who invests money into the business of the firm, actively participates in the functioning and management of the business and shares its profits or losses……..	Ostensible Partner	Dormant Partner	Nominal Partner	Partner by estoppel	Ostensible Partner
19	A partner who invests money in the firm's business and shares profits but does not participate in the functioning and management of the business…….	Ostensible Partner	Dormant Partner	Nominal Partner	Partner by estoppel	Dormant Partner

20	A partner who does not invest or participate in the management of the firm but only give their name to the business or firm.	Ostensible Partner	Dormant Partner	Nominal Partner	Partner by estoppel	Nominal Partner
21	A partner who is entitled to share the profits of a partnership firm without being liable to share the losses.	Ostensible Partner	Dormant Partner	Nominal Partner	Partner in Profits Only	Partner in Profits Only
22	Where a partner agrees to share his profits in the firm with a third person, that third person is called a ……...	Ostensible Partner	Dormant Partner	Sub partner	Nominal Partner	Sub partner
23	A firm is a _____	Legal entity	Person	Corporation	Collective name of the members of a partnership	Collective name of the members of a partnership
24	_____ must be the purpose of agreement of a business.	Loss	Profit	Charity	Donation	Profit
25	The first element in a partnership firm is_____	Voluntary Contract	Compulsory Contract	General Contract	Ordinary Contract	Voluntary Contract
26	Persons who have entered into collective business with one another are _____.	Firm	Partners	Company	Organization	Partners
27	The collection of partners in business is called_____.	Firm	Company	Organization	Incorporation	Firm

28	_____ form the basis of legal existence of a firm.	Company	Partners	Firm	Organization	Partners
29	_____ is the collective name of the members of a partnership	Incorporation	Plc	GMB	Firm	Firm
30	A partnership firm cannot use_____ as part of its name.	Limited	Public	International	Private	Limited
31	_____ is essential for a partnership firm.	Offer	Acceptance	Agreement	Consideration	Agreement
32	The excess of returns over advances is called_____.	Contribution	Donation	Profits	Excess Capital	Profits
33	Sharing of profits include sharing of_____.	Capital	Interest Money	Dividends	Losses	Losses
34	The agreement to share profits shall be in_____ in partnership firms.	Constant sums	Specific Sums	Definite sums	Unspecific sums	Specific Sums
35	A person having a _____ in the profits may not be a partner of the firm	Liability	Share	Debt	Credit	Share
36	_____ is the foundation of partners liability.	Individual Agency	Mutual Agency	Mutual Trust	Individual Trust	Mutual Agency
37	Each person alleged to be a partner is_____ of another.	An Agent	A Representative	A Head	A Boss	An Agent

38	The law of partnership is the extension of the law of _____.	Agency	Group	Association	Confidence	Agency
39	_____is not required to create a partnership firm.	Agreement	Consideration	Deed	Rules	Consideration
40	_____is put in writing before partnership is started.	Partnership list	Partnership powers	Partnership deed	Partnership duties	Partnership deed
41	The Partnership deed is also called as_____.	Partnership document	Constitution of Partnership	Collection of Partnership	Certificate of Partnership	Constitution of Partnership
42	_____ is the association of two or more persons for a specific adventure.	Specific partnership	General partnership	Common partnership	Partnership at large	Specific partnership
43	_____ is the association of two or more persons without duration in a partnership firm.	Partnership at will	Common partnership	General partnership	Specific partnership	Partnership at will
44	The firm with partnership at will may be _____by any partner through a written notice.	Formed	Started	Initiated	Dissolved	Dissolved
45	Co-ownership of a firm arises out of _____.	Consent of Partners	Status of Partners	Difference of Partners	Income of Partners	Status of Partners
46	In a Co-ownership, the transfer of rights to strangers is _____.	Impossible	Possible	Dependent on the Deed	Obsolete	Possible

47	A HUF arises out of _____.	Status through Birth	Status through Achievement	Status through Association	Status through Education	Status through Birth
48	_____ is personally liable in a HUF.	Copercener	First son	Karta	All sons	Karta
49	There is _____ to the number of partners in a firm.	Freedom	Liberty	Limit	No Specification	Limit
50	A HUF business is governed by _____.	Karta	Hindu Law	Partnership Act	Specific Laws	Hindu Law
51	A company after incorporation becomes _____ of/from its members.	Integrated	Distinct	United	Defined	Distinct
52	Members of a company are _____ liable for its Debts.	Personally	Not Personally	Responsible	Bound to be	Not Personally
53	Partners' liability in a partnership firm is_____	Limited	Defined	Unlimited	Concrete	Unlimited
54	When a partner retires from a firm, there is change of _____ of the firm.	Policies	Procedures	Liabilities	Constitution	Constitution
55	Property of a firm in a partnership firm is decided by_____.	Any partner	Majority of partners	All partners	Any authority	All partners

56	The property of the partnership firm belongs to _____.	All partners	Firm only	Any partner	Specific partners	Firm only
57	A _____ cannot enter into a partnership deed.	Major	Minor	AOP	BOI	Minor
58	Under _____ a minor can be admitted to the benefits of partnership with the consent of all the partners.	Section 31	Section 32	Section 33	Section 30	Section 30
59	An authority of a partner is _____ when given by words, spoken or written.	Implied	Express	Implicit	Explicit	Express
60	Partnership may come into existence……..	By the operation of law	By an express agreement	By an express or implied agreement	By inheritance of property	By an express agreement

UNIT V

SYLLABUS

The Negotiable Instruments Act 1881 - Meaning, Characteristics, and Types of Negotiable Instruments : Promissory Note, Bill of Exchange, Cheque - Holder and Holder in Due Course, Privileges of Holder in Due Course. Negotiation: Types of Endorsement - Crossing of Cheque - Bouncing of Cheque

INTRODUCTION

The Negotiable Instruments Act was enacted, in India, in 1881. Prior to its enactment, the provision of the English Negotiable Instrument Act were applicable in India, and the present Act is also based on the English Act with certain modifications. It extends to the whole of India except the State of Jammu and Kashmir. The Act operates subject to the provisions of Sections 31 and 32 of the Reserve Bank of India Act, 1934. Section 31 of the Reserve Bank of India Act provides that no person in India other than the Bank or as expressly authorised by this Act, the Central Government shall draw, accept, make or issue any bill of exchange, hundi, promissory note or engagement for the payment of money payable to bearer on demand. This Section further provides that no one except the RBI or the Central Government can make or issue a promissory note expressed to be payable or demand or after a certain time. Section 32 of the Reserve Bank of India Act makes issue of such bills or notes punishable with fine which may extend to the amount of the instrument. The effect or the consequences of these provisions are: 1. A promissory note cannot be made payable to the bearer, no matter whether it is payable on demand or after a certain time. 2. A bill of exchange cannot be made payable to the bearer on demand though it can be made payable to the bearer after a certain time. 3. But a cheque {though a bill of exchange} payable to bearer or demand can be drawn on a person‘s account with a banker.

MEANING OF NEGOTIABLE INSTRUMENTS

According to Section 13 (a) of the Act, –Negotiable instrument means a promissory note, bill of

exchange or cheque payable either to order or to bearer, whether the word ‒order‖ or ‒bearer‖ appear on the instrument or not.‖ In the words of Justice, Willis, ―A negotiable instrument is one, the property in which is acquired by anyone who takes it bonafide and for value notwithstanding any defects of the title in the person from whom he took it‖ . Thus, the term, negotiable instrument means a written document which creates a right in favour of some person and which

is freely transferable. Although the Act mentions only these three instruments (such as a promissory note, a bill of exchange and cheque), it does not exclude the possibility of adding any other instrument which satisfies the following two conditions of negotiability: 1. the instrument should be freely transferable (by delivery or by endorsement. and delivery) by the custom of the trade; and 2. the person who obtains it in good faith and for value should get it free from all defects, and be entitled to recover the money of the instrument in his own name. As such, documents like share warrants payable to bearer, debentures payable to bearer and dividend warrants are negotiable instruments. But the money orders and postal orders, deposit receipts, share certificates, bill of lading, dock warrant, etc. are not negotiable instruments. Although they are transferable by delivery and endorsements, yet they are not able to give better title to the bonafide transferee for value than what the transferor has.

CHARACTERISTICS OF A NEGOTIABLE INSTRUMENT

A negotiable instrument has the following characteristics:

1. Property: The prossessor of the negotiable instrument is presumed to be the owner of the property contained therein. A negotiable instrument does not merely give possession of the instrument but right to property also. The property in a negotiable instrument can be transferred without any formality. In the case of bearer instrument, the property passes by mere delivery to the transferee. In the case of an order instrument, endorsement and delivery are required for the transfer of property.

2. Title: The transferee of a negotiable instrument is known as ‗holder in due course.‘ A bona

fide transferee for value is not affected by any defect of title on the part of the transferor or of any of the previous holders of the instrument.

3. Rights: The transferee of the negotiable instrument can sue in his own name, in case of dishonour. A negotiable instrument can be transferred any number of times till it is at maturity. The holder of the instrument need not give notice of transfer to the party liable on the instrument to pay.

4. Presumptions: Certain presumptions apply to all negotiable instruments e.g., a presumption that consideration has been paid under it. It is not necessary to write in a promissory note the words ‗for value received' or similar expressions because the payment of consideration is presumed. The words are usually included to create additional evidence of consideration.

5. Prompt payment: A negotiable instrument enables the holder to expect prompt payment because a dishonour means the ruin of the credit of all persons who are parties to the instrument.

PRESUMPTIONS AS TO NEGOTIABLE INSTRUMENT

Sections 118 and 119 of the Negotiable Instrument Act lay down certain presumptions which the court presumes in regard to negotiable instruments. In other words these presumptions need not be proved as they are presumed to exist in every negotiable instrument. Until the contrary is proved the following presumptions shall be made in case of all negotiable instruments:

1. Consideration: It shall be presumed that every negotiable instrument was made drawn, accepted or endorsed for consideration. It is presumed that, consideration is present in every negotiable instrument until the contrary is presumed. The presumption of consideration, 6 however may be rebutted by proof that the instrument had been obtained from, its lawful owner by means of fraud or undue influence.

2. Date: Where a negotiable instrument is dated, the presumption is that it has been made or drawn on such date, unless the contrary is proved.

3. Time of acceptance: Unless the contrary is proved, every accepted bill of exchange is presumed to have been accepted within a reasonable time after its issue and before its maturity. This presumption only applies when the acceptance is not dated; if the acceptance bears a date, it will prima facie be taken as evidence of the date on which it was made.

4. Time of transfer: Unless the contrary is presumed it shall be presumed that every transfer of a negotiable instrument was made before its maturity.

5. Order of endorsement: Until the contrary is proved it shall be presumed that the endorsements appearing upon a negotiable instrument were made in the order in which they appear thereon.

6. Stamp: Unless the contrary is proved, it shall be presumed that a lost promissory note, bill of exchange or cheque was duly stamped.

7. Holder in due course: Until the contrary is proved, it shall be presumed that the holder of a negotiable instrument is the holder in due course. Every holder of a negotiable instrument is presumed to have paid consideration for it and to have taken it in good faith. But if the instrument was obtained from its lawful owner by means of an offence or fraud, the holder has to prove that he is a holder in due course.

8. Proof of protest: Section 119 lays down that in a suit upon an instrument which has been dishonoured, the court shall on proof of the protest, presume the fact of dishonour, unless and until such fact is disproved.

TYPES OF NEGOTIABLE INSTRUMENT

Section 13 of the Negotiable Instruments Act states that a negotiable instrument is a promissory note, bill of exchange or a cheque payable either to order or to bearer. Negotiable instruments recognised by statute are:

(i) Promissory notes
(ii) (ii) Bills of exchange
(iii) (iii) Cheques.

Negotiable instruments recognised by usage or custom are:

(i) Hundis

(ii) Share warrants

(iii) Dividend warrants

(iv) Bankers draft

(v) Circular notes

(vi) Bearer debentures

(vii) Debentures of Bombay Port Trust

(viii) Railway receipts

(ix) Delivery orders.

This list of negotiable instrument is not a closed chapter. With the growth of commerce, new kinds of securities may claim recognition as negotiable instruments. The courts in India usually follow the practice of English courts in according the character of negotiability to other instruments.

Promissory notes Section 4 of the Act defines, –A promissory note is an instrument in writing (note being a bank-note or a currency note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money to or to the order of a certain person, or to the bearer of the instruments.‖

Essential elements

An instrument to be a promissory note must possess the following elements:

1. It must be in writing:

   A mere verbal promise to pay is not a promissory note. The method of writing (either in ink or pencil or printing, etc.) is unimportant, but it must be in any form that cannot be altered easily.
2. It must certainly an express promise or clear understanding to pay:

   There must be an express undertaking to pay. A mere acknowledgment is not enough.

The following are not promissory notes as there is no promise to pay.

If A writes: (a) –Mr. B, I.O.U. (I owe you) Rs. 500‖ (b) –I am liable to pay you Rs. 500‖ . (c) –I have taken from you Rs. 100, whenever you ask for it have to pay‖ . The following will be taken as promissory notes because there is an express promise to pay:

If A writes: (a) –I promise to pay B or order Rs. 500‖ (b) –I acknowledge myself to be indebted to B in Rs. 1000 to be paid on demand, for the value received‖ .

(3) Promise to pay must be unconditional:

A conditional undertaking destroys the negotiable character of an otherwise negotiable instrument. Therefore, the promise to pay must not depend upon the happening of some outside contingency or event. It must be payable absolutely.

(4) It should be signed by the maker:

The person who promise to pay must sign the instrument even though it might have 9 been written by the promisor himself. There are no restrictions regarding the form or place of signatures in the instrument. It may be in any part of the instrument. It may

be in pencil or ink, a thumb mark or initials. The pronote can be signed by the authorised agent of the maker, but the agent must expressly state as to on whose behalf he is signing, otherwise he himself may be held liable as a maker. The only legal requirement is that it should indicate with certainty the identity of the person and his intention to be bound by the terms of the agreement.

(5) The maker must be certain:

The note self must show clearly who is the person agreeing to undertake the liability to pay the amount. In case a person signs in an assumed name, he is liable as a maker because a maker is taken as certain if from his description sufficient indication follows about his identity. In case two or more persons promise to pay, they may bind

themselves jointly or jointly and severally, but their liability cannot be in the alternative.

(6) The payee must be certain:

The instrument must point out with certainty the person to whom the promise has been made. The payee may be ascertained by name or by designation. A note payable to the maker himself is not pronate unless it is indorsed by him. In case, there is a mistake in the name of the payee or his designation; the note is valid, if the payee can be ascertained by evidence. Even where the name of a dead person is entered as payee in ignorance of his death, his legal representative can enforce payment.

(7) The promise should be to pay money and money only:

Money means legal tender money and not old and rare coins. A promise to deliver paddy either in the alternative or in addition to money does not constitute a promissory note.

(8) The amount should be certain:

One of the important characteristics of a promissory note is certainty—not only regarding the person to whom or by whom payment is to be made but also regarding the amount. However, paragraph 3 of Section 5 provides that the sum does not become indefinite merely because (a) there is a promise to pay amount with interest at a specified rate. (b) the amount is to be paid at an indicated rate of exchange. (c) the amount is payable by installments with a condition that the whole balance shall

fall due for payment on a default being committed in the payment of anyone installment.

(9) Other formalities:

The other formalities regarding number, place, date, consideration etc. though usually found given in the promissory notes but are not essential in law. The date of instrument is not material unless the amount is made payable at a certain time after date.

Even in such a case, omission of date does not invalidate the instrument and the date

of execution can be independently ascertained and proved. On demand (or six month after date) I promise to pay Peter or order the sum of rupees one thousand with interest at 8 per cent per annum until payment.

Bill of exchange

Section 5 of the Act defines, –A bill of exchange is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of a certain person or to the bearer of the instrument‖ . A bill of exchange, therefore, is a written acknowledgement of the debt, written by the creditor and accepted by the debtor. There are usually three parties to a bill of exchange drawer, acceptor or drawee and payee. Drawer himself may be the payee. Essential conditions of a bill of exchange

(1) It must be in writing.

(2) It must be signed by the drawer.

(3) The drawer, drawee and payee must be certain.

(4) The sum payable must also be certain.

(5) It should be properly stamped.

(6) It must contain an express order to pay money and money alone.

For example, In the following cases, there is no order to pay, but only a request to pay. Therefore, none can be considered as a bill of exchange:

- –I shall be highly obliged if you make it convenient to pay Rs. 1000 to Suresh‖ .
- –Mr. Ramesh, please let the bearer have one thousand rupees, and place it to my account and oblige‖ However, there is an order to pay, though it is politely

made, in the following examples: (a) –Please pay Rs. 500 to the order of _A‘. (b) _Mr. A will oblige Mr. C, by paying to the order of‘ P‖ . (7) The order must be unconditional.

(b) Distinction Between Bill of Exchange and Promissory Note

1. Number of parties: In a promissory note there are only two parties – the maker (debtor) and the payee (creditor). In a bill of exchange, there are three parties; drawer, drawee and payee;

although any two out of the three may be filled by one and the same person,

2. Payment to the maker: A promissory note cannot be made payable the maker himself, while in a bill of exchange to the drawer and payee or drawee and payee may be same person.

3. Unconditional promise: A promissory note contains an unconditional promise by the maker to pay to the payee or his order, whereas in a bill of exchange, there is an unconditional order to the drawee to pay according to the direction of the drawer.

4. Prior acceptance: A note is presented for payment without any prior acceptance by the maker. A bill of exchange is payable after sight must be accepted by the drawee or someone else on his behalf, before it can be presented for payment.

5. Primary or absolute liability: The liability of the maker of a promissory note is primary and absolute, but the liability of the drawer of a bill of exchange is secondary and conditional.

6. Relation: The maker of the promissory note stands in immediate relation with the payee, while the maker or drawer of an accepted bill stands in immediate relations with the acceptor and not the payee. 7. Protest for dishonour: Foreign bill of exchange must be protested for dishonour when such protest is required to be made by the law of the country where they are drawn, but no such protest is needed in the case of a promissory note.

8. Notice of dishonour: When a bill is dishonoured, due notice of dishonour is to be given by the holder to the drawer and the intermediate indorsers, but no such notice need be given in the case of a note.

Classification of Bills Bills can be classified as:

(1) Inland and foreign bills.

(2) Time and demand bills.

(3) Trade and accommodation bills.

(1) Inland and Foreign Bills Inland bill: A bill is, named as an inland bill if:

(a) it is drawn in India on a person residing in India, whether payable in or outside India, or

(b) it is drawn in India on a person residing outside India but payable in India.

The following are the Inland bills (i) A bill is drawn by a merchant in Delhi on a merchant in Madras. It is payable in Bombay. The bill is an inland bill. (ii) A bill is drawn by a Delhi merchant on a person in London, but is made payable in India. This is an inland bill.

A bill is drawn by a merchant in Delhi on a merchant in Madras. It is accepted for payment in Japan. The bill is an inland bill. Foreign Bill: A bill which is not an inland bill is a foreign bill.

The following are the foreign bills:

1. A bill drawn outside India and made payable in India.
2. A bill drawn outside India on any person residing outside India.
3. A bill drawn in India on a person residing outside India and made payable outside India.
4. A bill drawn outside India on a person residing in India
5. A bill drawn outside India and made payable outside India.

Bills in sets (Secs. 132 and 133): The foreign bills are generally drawn in sets of three, and each sets is termed as a _via'. As soon as anyone of the set is paid, the others becomes inoperative. These bills are drawn in different parts. They are drawn in order to avoid their loss or miscarriage during transit. Each part is despatched separately. To avoid delay, all the parts are sent on the same day; by different mode of conveyance.

Rules: Sections 132 and 133 provide for the following rules:

(i) A bill of exchange may be drawn in parts, each part being numbered and containing a provision that it shall continue payable only so long as the others remain unpaid. All parts make one bill and the entire bill is extinguished, i.e. when payment is made on

one part- the other parts will become inoperative (Section 132).

(ii) The drawer should sign and deliver all the parts but the acceptance is to be conveyed only on one of the parts. In case a person accepts or endorses different parts of the bill in favour of different persons, he and the subsequent endorsers of each part are liable on such part as if it were a separate bill (Sec. 132).

(iii) As between holders in due course of the different parts of the same bill, he who first acquired title to anyone part is entitled to the other parts and is also entitled to claim the money represented by bill (Sec. 133).

(2) Time and Demand Bill Time bill: A bill payable after a fixed time is termed as a time bill. In other words, bill payable –after date‖ is a time bill. Demand bill: A bill payable at sight or on demand is termed as a demand bill.

(3) Trade and Accommodation Bill Trade bill: A bill drawn and accepted for a genuine trade transaction is termed as a –trade bill‖ . Accommodation bill: A bill drawn and accepted not for a genuine trade transaction but only to provide financial help to some party is termed as an –accommodation bill‖ .

Example: A, is need of money for three months. He induces his friend B to accept a bill of exchange drawn on him for Rs. 1,000 for three months. The bill is drawn and accepted. The bill is an –accommodation bill‖ . A may get the bill discounted from his bankers immediately, paying a small sum as discount. Thus, he can use the funds for three months and then just before maturity he may remit the money to B, who will meet the bill on maturity. In the above example A is the –accommodated party‖ while B is the –accommodating party‖ . It is to be noted that an recommendation bill may be for accommodation of both the drawer arid acceptor. In such a case, they share the proceeds of the discounted bill.

Rules regarding accommodation bills are:

(i) In case the patty accommodated continues to hold the bill till maturity, the accommodating party shall not be liable to him for payment of, the bill since

the contract between them is not based on any consideration (Section 43).

(ii) But the accommodating party shall be liable to any subsequent holder for value who may be knowing the exact position that the bill is an accommodation bill and that the full consideration has not been received by the acceptor. The accommodating party can, in turn, claim compensation from the accommodated party for the amount it has been asked to pay the holder for value.

(iii) An accommodation bill may be negotiated after maturity. The holder or such a bill after maturity is in the same position as a holder before maturity, provided he takes it in good faith and for value (Sec. 59)

In form and all other respects an accommodation bill is quite similar to an ordinary bill of exchange. There is nothing on the face of the accommodation bill to distinguish it from an ordinary trade bill.

Cheques

Section 6 of the Act defines ―A cheque is a bill of exchange drawn on a specified banker, and not expressed to be payable otherwise than on demand‖ .

A cheque is bill of exchange with two more qualifications, namely, (i) it is always drawn on a specified banker, and (ii) it is always payable on demand. Consequently, all cheque are bill of exchange, but all bills are not cheque. A cheque must satisfy all the requirements of a bill of exchange; that is, it must be signed by the drawer, and must contain an unconditional order on a specified banker to pay a certain sum of money to or to the order of a certain person or to the bearer of the cheque. It does not require acceptance.

Distinction Between Bills of Exchange and Cheque

1. A bill of exchange is usually drawn on some person or firm, while a cheque is always drawn on a bank.

2. It is essential that a bill of exchange must be accepted before its payment can be claimed A cheque does not require any such acceptance.

3. A cheque can only be drawn payable on demand, a bill may be also drawn payable on demand, or on the expiry of a certain period after date or sight.

4. A grace of three days is allowed in the case of time bills while no grace is given in the case of a cheque.

5. The drawer of the bill is discharged from his liability, if it is not presented for payment, but the drawer of a cheque is discharged only if he suffers any damage by delay in presenting the cheque for payment.

6. Notice of dishonour of a bill is necessary, but no such notice is necessary in the case of cheque.

7. A cheque may be crossed, but not needed in the case of bill.

8. A bill of exchange must be properly stamped, while a cheque does not require any stamp.

9. A cheque drawn to bearer payable on demand shall be valid but a bill payable on demand can never be drawn to bearer.

10. Unlike cheques, the payment of a bill cannot be countermanded by the drawer.

PARTIES TO NEGOTIABLE INSTRUMENTS

Parties to Bill of Exchange

1. **Drawer:** The maker of a bill of exchange is called the _drawer‘.
2. **Drawee:** The person directed to pay the money by the drawer is called the _drawee‘,
3. **Acceptor**: After a drawee of a bill has signed his assent upon the bill, or if there are more parts than one, upon one of such pares and delivered the same, or given notice of such signing to the holder or to some person on his behalf, he is called the _ acceptor‘.
4. **Payee:** The person named in the instrument, to whom or to whose order the money is directed to be paid by the instrument is called the _payee‘. He is the real beneficiary under the instrument. Where he signs his name and makes the instrument payable to some other person, that other person does not become the payee.
5. **Indorser:** When the holder transfers or indorses the instrument to anyone else, the holder

becomes the _indorser'.

6. **Indorsee:** The person to whom the bill is indorsed is called an _indorsee'.

7. **Holder:** A person who is legally entitled to the possession of the negotiable instrument in his own name and to receive the amount thereof, is called a _holder'. He is either the original payee, or the indorsee. In case the bill is payable to the bearer, the person in possession of the negotiable instrument is called the _holder'.

8. **Drawee in case of need:** When in the bill or in any endorsement, the name of any person is given, in addition to the drawee, to be resorted to in case of need, such a person is called _drawee in case of need'. In such a case it is obligatory on the part of the holder to present the bill to such a drawee in case the original drawee refuses to accept the bill. The bill is taken to be dishonoured by non-acceptance or for nonpayment, only when such a drawee refuses to accept or pay the bill.

9. **Acceptor for honour:** In case the original drawee refuses to accept the bill or to furnish better security when demanded by the notary, any person who is not liable on the bill, may accept it with the consent of the holder, for the honour of any party liable on the bill. Such an acceptor is called

Parties to a Promissory Note

1. **Maker.** He is the person who promises to pay the amount stated in the note. He is the debtor.
2. **Payee.** He is the person to whom the amount is payable i.e. the creditor.
3. **Holder.** He is the payee or the person to whom the note might have been indorsed.
4. The indorser and indorsee (the same as in the case of a bill).

Parties to a Cheque

1. **Drawer.** He is the person who draws the cheque, i.e., the depositor of money in the bank.
2. **Drawee**. It is the drawer's banker on whom the cheque has been drawn.
3. **Payee.** He is the person who is entitled to receive the payment of the cheque.
4. The holder, indorser and indorsee (the same as in the case of a bill or note).

1.7 NEGOTIATION

Negotiation may be defined as the process by which a third party is constituted the holder of the instrument so as to entitle him to the possession of the same and to receive the amount due thereon in his own name. According to section 14 of the Act, _when a promissory note, bill of exchange or cheque is transferred to any person so as to constitute that person the holder thereof, the instrument is said to be negotiated.' The main purpose and essence of negotiation is to make the transferee of a promissory note, a bill of exchange or a cheque the holder there of.

Negotiation thus requires two conditions to be fulfilled, namely:

1. There must be a transfer of the instrument to another person; and
2. The transfer must be made in such a manner as to constitute the transferee the holder of the instrument. Handing over a negotiable instrument to a servant for safe custody is not negotiation; there must be a transfer with an intention to pass title.

Modes of negotiation

Negotiation may be effected in the following two ways:

1. Negotiation by delivery (Sec. 47): Where a promissory note or a bill of exchange or a cheque is payable to a bearer, it may be negotiated by delivery thereof.

Example: A, the holder of a negotiable instrument payable to bearer, delivers it to B's agent to keep it for B. The instrument has been negotiated.

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

ENDORSEMENT

The word _endorsement' in its literal sense means, writing on the back of an instrument. But under the Negotiable Instruments Act it means, the writing of one's name on the back of the instrument or any paper attached to it with the intention of transferring the rights therein.

Thus, endorsement is signing a negotiable instrument for the purpose of negotiation. The person who effects an endorsement is called an _endorser', and the person to whom negotiable instrument is transferred by endorsement is called the _endorsee'.

Essentials of a valid endorsement

The following are the essentials of a valid endorsement:

1. It must be on the instrument. The endorsement may be on the back or face of the instrument and if no space is left on the instrument, it may be made on a separate paper attached to it called allonage. It should usually be in ink.

2. It must be made by the maker or holder of the instrument. A stranger cannot endorse it.

3. It must be signed by the endorser. Full name is not essential. Initials may suffice. Thumb-impression should be attested. Signature may be made on any part of the instrument. A rubber stamp is not accepted but the designation of the holder can be done by a rubber stamp.

4. It may be made either by the endorser merely signing his name on the instrument (it is a blank endorsement) or by any words showing an intention to endorse or transfer the instrument to a specified person (it is an endorsement in full). No specific form of words is prescribed for an endorsement. But intention to transfer must be present. When in a bill or note payable to order the endorsee's name is wrongly spelt, he should when he endorses it, sign the name as spelt in the instrument and write the correct spelling within brackets after his endorsement.

5. It must be completed by delivery of the instrument. The delivery must be made by the endorser himself or by somebody on his behalf with the intention of passing property therein. Thus, where a person endorses an instrument to another and keeps it in his papers where it is found after his death and then delivered to the endorsee, the latter gets no right on the instrument.

6. It must be an endorsement of the entire bill. A partial endorsement i.e. which purports to transfer to the endorse a part only of the amount payable does not operate as a valid endorsement.

If delivery is conditional, endorsement is not complete until the condition is fulfilled.

Who may endorse?

The payee of an instrument is the rightful person to make the first endorsement. Thereafter the instrument may be endorsed by any person who has become the holder of the instrument. The maker or the drawer cannot endorse the instrument but if any of them has become the holder thereof he may endorse the instrument. (Sec. 51).

The maker or drawer cannot endorse or negotiate an instrument unless he is in lawful possession of instrument or is the holder there of. A payee or indorsee cannot endorse or negotiate unless he is the holder there of.

Classes of endorsement

An endorsement may be:

(1) Blank or general.

(2) Speical or full.

(3) Partial.

(4) Restrictive.

(5) Conditional.

(a) Blank or general endorsement (Sections 16 and 54).

It is an endorsement when the endorser merely signs on the instrument without mentioning the name of the person in whose favour the endorsement is made. Endorsement in blank specifies no endorsee. It simply consists of the signature of the endorser on the endorsement. A negotiable instrument even though payable to order becomes a bearer instrument if endorsed in blank. Then it is transferable by mere delivery. An endorsement in blank may be followed by an endorsement in full.

Example: A bill is payable to X. X endorses the bill by simply affixing his signature. This is an endorsement in blank by X. In this case the bill becomes payable to bearer. There is no difference between a bill or note indorsed in blank and one payable to bearer. They can both be

negotiated by delivery.

(b) Special or full endorsement (Section 16) When the endorsement contains not only the signature of the endorser but also the name of the person in whose favour the endorsement is made, then it is an endorsement in full. Thus, when endorsement is made by writing the words –Pay to A or A's order,‖ followed by the signature of the endorser, it is an endorsement in full. In such an endorsement, it is only the endorsee who can transfer the instrument.

Conversion of endorsement in blank into endorsement in full:

When a person receives a negotiable instrument in blank, he may without signing his own name, convert the blank endorsement into an endorsement in full by writing above the endorser's signature a direction to pay to or to the order of himself or some other person. In such a case the person is not liable as the endorser on the bill. In other words, the person transferring such an instrument does not incur all the liabilities of an endorser. (Section 49).

Example: A is the holder of a bill endorsed by B in blank. A writes over B's signature the words –Pay to C or order.‖ A is not liable as endorser but the writing operates as an endorsement in full from B to C. Where a bill is endorsed in blank, or is payable to bearer and is afterwards endorsed by another in full, the bill remains transferable by delivery with regard to all parties prior to such endorser in full. But such endorser in full cannot be sued by any one except the person in whose favour the endorsement in full is made. (Section 55).

Example: C the payee of a bill endorses it in blank and delivers it to D, who specially endorses it to E or order. E without endorsement transfers the bill to F. F as the bearer is entitled to receive payment or to sue the drawer, the acceptor, or C who endorsed the bill in blank but he cannot sue D or E.

(c) Partial endorsement (Section 56)

A partial endorsement is one which purports to transfer to the endorsee a part only of the amount payable on the instrument. Such an endorsement does not operate as a negotiation of the instrument.

Example: A is the holder of a bill for Rs.1000. He endorses it –pay to B or order Rs.500.‖ This is a partial endorsement and invalid for the purpose of negotiation.

(d) Restrictive endorsement (Section 50)

The endorsement of an instrument may contain terms making it restrictive. Restrictive endorsement is one which either by express words restricts or prohibits the further negotiation of a bill or which expresses that it is not a complete and unconditional transfer of the instrument but is a mere authority to the endorsee to deal with bill as directed by such endorsement.

–Pay C,‖ –Pay C for my use,‖ –Pay C for the account of B‖ are instances of restrictive endorsement. The endorsee under a restrictive endorsement acquires all the rights of the endoser except the right of negotiation.

Conditional or qualified endorsement

It is open to the endorser to annex some condition to his owner liability on the endorsement. An endorsement where the endorsee limits or negatives his liability by putting some condition in the instrument is called a conditional endorsement. A condition imposed by the endorser may be a condition precedent or a condition subsequent. An endorsement which says that the amount will become payable if the endorsee attains majority embodies a condition precedent. A conditional endorsement unlike the restrictive endorsement does not affect the negotiability of the instrument. It is also some times called qualified endorsement. An endorsement may be made conditional or qualified in any of the following forms:

(i) 'Sans recourse' endorsement: An endorser may be express word exclude his own liability thereon to the endorser or any subsequent holder in case of dishonour of the instrument. Such an endorsement is called an endorsement sans recourse (without recourse). Thus _Pay to A or order sans recourse, _pay to A or order without recourse to me,' are instances of this type of endorsement. Here if the instrument is dishonoured, the subsequent holder or the indorsee cannot look to the

indorser for payment of the same.

An agent signing a negotiable instrument may exclude his personal liability by using words to indicate that he is signing as agent only. The same rule applies to directors of a company signing instruments on behalf of a company. The intention to exclude personal liability must be clear.

Where an endorser so excludes his liability and afterwards becomes the holder of the instrument, all intermediate endorsers are liable to him.

Example: A is the holder of a negotiable instrument. Excluding personal liability by an endorsement without recourse, he transfers the instrument to B, and B endorses it to C, who endorses it to A. A can recover the amount of the bill from B and C.

(ii) Facultative endorsement: An endorsement where the endorser extends his liability or abandons some right under a negotiable instrument, is called a facultative endorsement.

–Pay A or order, Notice of dishonour waived‖ is an example of facultative endorsement.

(iii) 'Sans frais' endorsement: Where the endorser does not want the endorsee or any subsequent holder, to incur any expense on his account on the instrument, the endorsement is _sans frais'.

(iv) Liability dependent upon a contingency: Where an endorser makes his liability depend upon the happening of a contingent event, or makes the rights of the endorsee to receive the amount depend upon any contingent event, in such a case the liability of the endorser will arise only on the

happening of that contingent event. Thus, an endorser may write _Pay A or order on his marriage with B'. In such a case, the endorser will not be liable until the marriage takes place and if the marriage becomes impossible, the liability of the endorser comes to an end.

Effects of endorsement

The legal effect of negotiation by endorsement and delivery is:

(i) to transfer property in the instrument from the endorser to the endorsee.

(ii) to vest in the latter the right of further negotiation, and

(iii) a right to sue on the instrument in his own name against all the other parties (Section 50).

Cancellation of endorsement

When the holder of a negotiable instrument, without the consent of the endorser destroys or impairs the endorser‘s remedy against prior party, the endorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity (Section 40).

Negotiation back

_Negotiation back‘ is a process under which an endorsee comes again into possession of the instrument in his own right. Where a bill is re-endorsed to a previous endorser, he has no remedy against the intermediate parties to whom he was previously liable though he may further negotiate the bill.

Crossing of Cheque

A cheque is a negotiable instrument. During the process of circulation, a cheque may be lost, stolen or the signature of payee may be done by some other person for endorsing it. Under these circumstances the cheque may go into wrong hands.

Different Types of Crossing ↓

1. General Crossing :-

Generally, cheques are crossed when There are two transverse parallel lines, marked across its face orThe cheque bears an abbreviation "& Co. "between the two parallel lines or
The cheque bears the words "Not Negotiable" between the two parallel lines or
The cheque bears the words "A/c. Payee" between the two parallel lines.
A crossed cheque can be made bearer cheque by cancelling the crossing and writing that the crossing is cancelled and affixing the full signature of drawer.

2. Special or Restrictive Crossing :-

When a particular bank's name is written in between the two parallel lines the cheque is said to be specially crossed. In addition to the word bank, the words "A/c. Payee Only", "Not Negotiable" may also be written. The payment of such cheque is not made unless the bank

named in crossing is presenting the cheque. The effect of special crossing is that the bank makes payment only to the banker whose name is written in the crossing. Specially crossed cheques are more safe than a generally crossed cheques.

Bounce The Cheque:

When there are insufficient funds in an account, the bank will "bounce the check" (refuse to honor it). Banks and vendors frequently charge fees for bounced checks, sometimes exceeding the amount for which the check was written.

POSSIBLE QUESTIONS

Part B

1. What is Payment in due course?
2. Define negotiable instrument.
3. Define Endrosement.
4. Define bill of exchange.
5. What do you mean by crossing a crossing of a cheque?

Part C

1. Draw out the specimen of promissory note and bring out its essentials?
2. Define the term Negotiable Instrument and explain the types of negotiable instruments?

3. Draw the specimen of bill of exchange? Distinguish between a bill of exchange and promissory note?
4. What are the main requisities of ‚Payment in due course as envisaged under section 10 of the Negotiable Instrument Act‘?
5. Explain the concept of bill of lading and charter party and how it is differ from each other?
6. What are the special privileges of a holder in due course under the Negotiable Instrument Act?
7. Discuss about the types of crossing cheques?
8. Describe the various types of bills of exchange used in commercial transaction?
9. Define the term Negotiable Instrument and explain its essentials?
10. Define Endorsement. What are the different types of endorsements? Give examples.

UNIT V

S.No	Questions	Opt 1	Opt 2	Opt 3	Opt 4	Answer
1	The carriers Act ---------	1855	1845	1865	1835	1865
2	The Railways Act -------	1989	1969	1979	1984	1989
3	French word of 'Echecs' meaning……	Check	Cheque	Chess	Cross	Chess
4	Section 6 of the Negotiable Instrument Act defines……..	Promissory note	Cheque	Bill of Exchange	Trade	Cheque
5	The (Indian) Bills of lading Act ----------	1936	1946	1856	1926	1856
6	The following one is a negotiable instrument, negotiable by usage or custom…….	Bill of Exchange	Accomdation bill	Promissory note	Share warrant	Share warrant
7	The document drawn by a debtor on thecreditor agreeing to pay a certain sum is called…….	Cheque	Promissory note	Bill of Exchange	Draft	Promissory note
8	The most important feature of a negotiable instrument act is……..	Free transfer	Transfer free from defects	Right to sue	Free transfer and transfer free from defects	Free transfer and transfer free from defects
9	In the caseof a negotiable instrument, the following person generally gets a good title……..	Finder of the lost instrument	Holder of a stolen instrument	Holder in due course	Holder of a forged instrument	Holder in due course
10	The law relating to carriage by air is ----------	The carriers act	The carriage by air act	The marine insurance act	The merchant shipping act	The carriage by air act
11	The document which can be used only for making a local payment is…….	A cheque	A bill of exchange	A banker's cheque	A draft	A banker's cheque

12	A right on holder to sue in his own name is…….	Right to sue	Transfer free from defects	Credit of the party	Free transfer	Right to sue
13	Negotiable instruments Act is --------	Sec 11	Sec 12	Sec 13	Sec 14	Sec 13
14	The law relating to carriage by sea is ----	The marine insurance act	The carriers act	The railway act	The (Indian) Bill of lading act	The (Indian) Bill of lading act
15	Carriers may be classified into ------	Three	Four	Two	Five	Two
16	A ---------- is one who undertaken for hire to transport from one place to another by land , sea or air	Private carrier	Gratutious carrier	Marine carrier	Common carrier	Common carrier
17	--------- is one who carriers his own goods	Private carrier	Gratutious carrier	Marine carrier	Common carrier	Private carrier
18	"All cheques are bills of exchange but all bills of exchange are not cheques"	Statement is true	State is false	Partial true or false	neither true nor false	Statement is true
19	Negotiable Instrument Act defines a cheque……	Section 7	Section 11	Section 8	Section 6	Section 6
20	A cheque is always drawn on a …….	digital form	electronic form	printed form	tangible form	printed form
21	Who introduced 'Cheque'……..	Adam Smith	Taylor	Markus	Gilbart	Gilbart
22	-------- are those which are enumerated in a schedule to the carrier act	Existing goods	Future goods	Non-scheduled goods	Scheduled goods	Scheduled goods
23	---------- are those which are not enumerated in a schedule to the carriers act	Existing goods	Future goods	Non-scheduled goods	Scheduled goods	Non-scheduled goods
24	A ------- goods of dangerous character	Existing goods	Future goods	Non-scheduled goods	Dangerous	Dangerous
25	Every person entrusting any goods to a railway administration for carriage shall execute a ----------	Railway receipt	Forwarding note	Rate books	Bill of lading	Forwarding note

26	Every railway administration shall maintain ---------- at each station and at such other place where goods are received for carriage	Rate books	Railway receipt	Bill of lading	Forwarding note	Rate books
27	------- is a document issued by the railway acknowledging receipts of goods	Bill of lading	Dock warrant	Railway receipt	Delivery order	Railway receipt
28	A contract of carriage of goods by sea is called a contract of -------	Sale	Partnership	Affreightment	Hire purchase	Affreightment
29	The reasonable period allowed in Indiafor the presentation of a cheque is……..	1 year	6 months	9 months	depending upon banking custom	6 months
30	---------- of the act states that every railway administration shall maintain rate books and other documents	Sec 50	Sec 21	Sec 61	Sec 71	Sec 61
31	A -------- is a contract providing for the hiring of a whole ship	Charter party	Bill of lading	Clean bill of lading	Dirty bill of lading	Charter party
32	A cheque is an instrument for…….	Cash on delivery	Late payment	immediate payment	non payment	immediate payment
33	A ---------- is an agreement where by a ship is based to the exclusive use of one shipper either for a particular voyage	Bill of lading	Charter party	Clean bill of lading	Dirty bill of lading	Charter party
34	When the vessel is charter as for a particular voyage it is called as --------	Time charterparty	Clean bill of lading	Dirty bill of lading	Voyage charter party	Voyage charter party
35	When the ship is chartered for a particular period it is called --------	Time charterparty	Clean bill of lading	Dirty bill of lading	Voyage charter party	Time charterparty

36	The following one is absolutely essential for a special crossing……..	Two parallel transverse lines	Words 'And Company'	Words 'Not Negotiable'	Name of a banker	Name of a banker
37	When the ship owner admits in the bill of lading that the goods shipped are in good order and condition it is called as -------	Dirty bill of lading	Received bill of lading	Through bill of lading	Clean bill of lading	Clean bill of lading
38	When the goods are to be carried partly by sea and partly by land it is called ----------	Dirty bill of lading	Through bill of lading	Received bill of lading	Clean bill of lading	Through bill of lading
39	When qualified statement say goods shipped in dump condition are contained in a bill of lading it is called as ---------	Dirty bill of lading	Through bill of lading	Received bill of lading	Clean bill of lading	Dirty bill of lading
40	-------- acknowledges receipt of goods by the shipowner for shipment in a particular ship	Dirty bill of lading	Through bill of lading	Received bill of lading	Clean bill of lading	Received bill of lading
41	One of the following endorsements is not a valid one…….	Partial Endorsement	Restrictive Endorsement	Facultative Endorsement	Conditional Endorsement	Partial Endorsement
42	------- is a document containing an order by the owner of the goods to the holder of the goods on his behalf asking him to deliver them	Bill of lading	Dock warrant	Railway receipt	Delivery order	Delivery order

43	A ---------- is an acknowledgment of receipt of goods	Bill of lading	Charter party	Mate receipt	Dock warrant	Bill of lading
44	_____ is a document issued by a dock owner giving details of the goods	Bill of lading	Dock warrant	Railway receipt	Delivery order	Dock warrat
45	A cheque which is not crossed is called……..	Uncrossed cheque	Open cheque	Order Cheque	Bearer cheque	Open cheque
46	--------- is transferable by endorsement and delivery	Railway receipt	Dock warrant	Charter party	Bill of lading	Bill of lading
47	The safest form of crossing is ……	General crossing	Special crossing	Double crossing	A/c payee crossing	A/c payee crossing
48	------- means right to retain the cargo until its charges are received	Lien	Consensus	Void	Valid	Lien
49	For carriage of passengers, the carrier must deliver a -------	Mate receipt	Dock warrant	Passenger ticket	Luggage ticket	Passenger ticket

50	The carrier must deliver a ------- for a carriage of luggage other than small personal objects of which the passenger takes charge himself	Bill of lading	Charter party	Dock warrant	Luggage ticket	Luggage ticket
51	Goods carried by air must be covered by an airway bill or an air is known as ----	Luggage ticket	Consignment note	Dock warrant	Railway receipt	Consignment note
52	The liability of the drawer continous for……months	3	6	9	12	6
53	A cheque is free from……	stamp duty	cash	non payment	payment	stamp duty
54	A bill is subject to……..	stamp duty	cash	ad valorem duty	payment	ad valorem duty
55	Negotiable Instruments Act is --------	1881	1984	1872	1870	1881
56	The ------- is however liable for the acts of such an agent	Pawnor	Principal	Pawnee	Agent	Principal
57	------- arises from the conduct, situation or relationship of parties	Implied Agency	Express Agency	Ratification	Operation of law	Implied Agency
58	Negotiability gives to the transferee…….title of the transferor.	the same title	no title	no better title	better title	better title
59	------- is not an acknowledgement	Bill of lading	Dock warrant	Charter party	Railway receipt	Charter party
60	------- is a document issued by a warehouse –keeper stating that the goods specified in the document are in his warehouse	Warehouse Receipt	Dock warrant	Railway receipt	Delivery order	Warehouse Receipt

Reg. No.....

[15CMU303]

KARPAGAM UNIVERSITY

Karpagam Academy of Higher Education
(Established Under Section 3 of UGC Act 1956)
COIMBATORE – 641 021
(For the candidates admitted from 2015 onwards)

B.Com., DEGREE EXAMINATION, NOVEMBER 2016

Third Semester

COMMERCE

BUSINESS LAW

Time: 3 hours Maximum : 60 marks

PART – A (20 x 1 = 20 Marks) (30 Minutes)
(Question Nos. 1 to 20 Online Examinations)

PART B (5 x 8 = 40 Marks) (2 ½ Hours)
Answer ALL the Questions

21. a. Explain briefly about quasi contract and its types

Or

b. Who are treated as person of unsound mind? State the legal position of contracts with such persons.

22. a. Define Agency? Explain in detail about various kinds of Agency?

Or

b. Explain about contract of indemnity and guarantee and its types.

23. a. Explain the essentials of partnership?

Or

b. Explain the rights and obligations of partners after the resolution of partnership

24. a. Define an Unpaid Seller. What are his rights?

Or

b. Illustrate the implies conditions in the contract of sale of goods

25. a. Distinguish between common carriers and private carrier?

Or

b. Explain the Clauses of charter party.

Reg. No.....

[16PAU102]

KARPAGAM UNIVERSITY
Karpagam Academy of Higher Education
(Established Under Section 3 of UGC Act 1956)
COIMBATORE – 641 021
(For the candidates admitted from 2016 onwards)

B.Com., DEGREE EXAMINATION, JANUARY 2017
First Semester

COMMERCE (PROFESSIONAL ACCOUNTING)

BUSINESS LAW

Time: 1 hours Maximum : 60 marks

PART – A (20 x 1 = 20 Marks) (30 Minutes)
Answer ALL the Questions

Agreement = _____
a. Offer + Acceptance b. Offer – Acceptance c. Acceptance d. O

The Indian Contract Act _____
a. 1972 b. 1962 c. 1852 d. 1872

A _____ is one of the essential elements of a contract.
a. Enforceability by law b. Obligation c. Subject matter d. Promise

Capacity of Parties come under_____
a. Section 9 b. Section 10 c. Section 11 d. Section 12

Who would determine the credit policy of the bank?
a. SBI b. RBI c. Central Bank d. State Government

Section 36AB indicates that_____
a. Rules and Regulation b. Policy framing c. Removal of Chairman
d. Appoint the additional directors

Removal of any chairman/Directors/Officer from the bank under section of_____
a. 38AA b. 40AA c. 45AA d. 30 AA

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8. Section 36 AE to 36 AJ provides that_____
a. RBI Guidelines b. Framing new policies
c. Acquisition of banking companies d. Liquadation

9. The rules relating to the transfer of ownership in case of sale of specific goods are contained in_____
a. Sec 24 to 26 b. Sec 15 to 27 c. Sec 12 to 15 d. Sec 20 to 22

10. The term _____means a voluntary transfer of possession from one person to another.
a. Delivery b. Performance c. Transfer d. Movement

11. _____ is an unlawful act by which an intending purchaser is prevented from bidding or raising the price at an auction sale.
a. Auction b. Hire purchase c. Pledge d. Dumping

12. A breach of _____ cannot be treated as a breach of condition.
a. Condition b. Transfer c. Performance d. Warranty

13. A partner who does not invest or participate in the management of the firm but only give their name to the business or firm"_____
a. Ostensible Partner b. Dormant Partner c. Nominal Partner
d. Partner by estoppels

14. Persons who have entered into collective business with one another are_____
a. Firm b. Partners c. Company d. Organization

15. A person having a _____in the profits may not be a partner of the firm.
a. Liability b. Share c. Debt d. Credit

16. _____ is the association of two or more persons for a specific adventure.
a. Specific partnership b. General partnership c. Common partnership
d. Partnership at large

17. _____ is a document issued by a warehouse keeper stating that the goods specified in the document are in his warehouse .
a. Warehouse Receipt b. Dock warrant c. Railway receipt d. Delivery order

18. A cheque is an instrument for_____
a. Cash on delivery b. Late payment c. immediate payment d. non payment

19. The following one is absolutely essential for a special crossing_____
a. Two parallel transverse lines b. Words 'And Company'
c. Words 'Not Negotiable d. Name of a banker

20. Negotiable Instruments Act is _____
a. 1881 b. 1984 c. 1872 d. 1870

PART B (5 x 2 = 10 Marks) (2 ½ Hours)
Answer ALL the Questions

21. Define Coercion.
22. What is the period of limitation for a banking debt?
23. When unpaid seller can resell the goods?
24. What is meant by dissolution of a firm?
25. Define bill of exchange.

PART C (5 x 6 = 30 Marks)
Answer ALL the Questions

26. a. Explain the Capacity to Contract in detail?
(OR)
b. Enumerate about the remedies for breach of contract?

27. a. State the provison of the Banking Regulation Act relating to opening of new branches.
(OR)
b. Explain salient features of Banking Regulation Act,1949?

28. a. What is a contract of sale of goods and what are its essential features?
(OR)
b. Distinguish between sub agent and substituted agent?

29. a. Discuss the rules relating to the rights, duties and obligations of partners?
(OR)
b. What are the various circumstances in which a firm may be dissolved?

30. a. Discuss about the types of crossing cheques?
(OR)
b. Describe the various types of bills of exchange used in commercial transaction?

Reg. No.....

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B.Com., DEGREE EXAMINATION, NOVEMBER 2016
First Semester

COMMERCE (PROFESSIONAL ACCOUNTING)

BUSINESS LAW

Time: 3 hours Maximum : 60 marks

PART – A (20 x 1 = 20 Marks) (30 Minutes)
(Question Nos. 1 to 20 Online Examinations)

PART B (5 x 2 = 10 Marks) (2 ½ Hours)
Answer ALL the Questions

21. What is meant by agreement?
22. What is meant by bank?
23. What is meant by warranty?
24. What is partnership?
25. What is promissory note?

PART C (5 x 6 = 30 Marks)
Answer ALL the Questions

26. a. Describe the general principle of law of contract.
Or
b. Enumerate the essentials of valid contract.

27. a. Describe the functions of RBI in the Banking Regulation Act, 1949.
Or
b. State the procedures of winding up of banking company.

28. a. Differentiate the sale and agreement to sell.
Or
b. Who is called as unpaid seller? Explain their rights.

29. a. Describe the modes of dissolution of partnership.
Or
b. State the procedures of registration of partnership.

30. a. Explain the characteristics of negotiable instruments.
Or
b. Describe the types of endorsement.