Semester II

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17CMU201 **BUSINESS LAW**

Course Objectives

- To know legal frame work governing the business world
- To understand the fundamentals of law relating to commercial activities

Learning Outcome

Business Law represents the understanding of the essential elements of contract law including formation, termination, current issues/changes and the concepts of sale of goods act. This paper presents the basic Act of sale of goods and law of carriage of goods.

Unit I

Indian Contract Act 1872: Contract – Definition – Obligation and Agreement – Nature of Contract and Classification – Components of Valid Contract – Offer and Acceptance – Consideration - Capacity – Free Consent – Unlawful Agreements – Quasi Contracts.

Unit II

Different Modes of Discharge of Contract: Remedies for Breach of Contract – Contract of Indemnity and Guarantee – Rights of Surety – Discharge of Surety- Pawn or Pledge – Rights of Payee – Rights and Liabilities of Finder of Lost Goods - Law of Agency – Kinds of Agency – Ex-Post Facto Agency Requirements – Rights and Liabilities of Principals and Agents.

Unit III

Indian Partnership Act 1932: Definition and Tests of Partnership – Implied Authority of Partners – Limitations – Firms Debts and Private Debts – Priority in Discharge – Rights and Liabilities of Partners – Dissolution of Partnership Firm.

Unit IV

Sale of Goods Act 1930: Definition of Sale and Distinction between Sale and Related Transaction Resembling Sale – Sale and Agreement to Sell – Rules Regarding Passing of Property in Goods – Condition and Warranties – Actual and Implied- Principle of Caveat Emptor - Limitations - Rights of Unpaid Vendor.

Unit V

Common Carriers: Definition - Rights and Duties of Common Carriers – Contract of Carriage of Goods by Sea – Bill of Lading and Charter Party – Distinction- **RTI Act**- Features- Procedures. **Negotiable Instrument Act**: Features- Presumption- Types- Promissory Notes- Bills of Exchange-Cheques- Holder in Due Course - Liability of Parties- Rights of Parties- **Intellectual Property Legislations:** Meaning and scope of Intellectual Properties – Patent Act of 1970 – Patentee – True and first inventor – Procedure for grant of Process and Product Patents – TRIPS.

Suggested Readings

Text Book

1. N.D. Kapoor. (2013). *Elements of Mercantile Law,* S.Chand & Co. Ltd.. New Delhi.

Reference Books:

1. Kuchhal, M.C. & Vivek Kuchhal (2015), *Business Law*, Vikas Publishing House, New Delhi.
2. SN Maheshwari & SK Maheshwari (2013), *Business Law*, National Publishing House, New Delhi.
3. Agarwal S K, (2012), *Business Law*, 3rd edition, Galgotia Publishers Company, New Delhi.
4. P C Tulsian & Bharat Tulsian (2015), *Business Law*, 5th edition McGraw Hill Education
5. Sharma, J.P. & Sunaina Kanojia (2016), *Business Laws,* Ane Books Pvt. Ltd, New Delhi.

KARPAGAM ACADEMY OF HIGHER EDUCATION
(Deemed to be University)
(Established Under section 3 of the UGC Act, 1956)
Pollachi Main Road, Eachanari (Post), Coimbatore – 641 021
DEPARTMENT OF COMMERCE
LECTURE PLAN

Subject Name : Business Law **Subject Code : 17CMU201/17BPU201**
Class : I B.COM / B.COM BPS **Semester : II**

UNIT - I

S. No.	LECTURE DURATION (Periods)	TOPICS TO BE COVERED	SUPPORT MATERIALS
1.	1	Indian contract Act – 1872 ➢ introduction , definition of contract,	T.P:1
2.	1	obligation and agreement	T.P:3
3.	1	Components and elements of valid contract	T.P:4
4.	1	Nature of contract and its classifications ➢ On the basis of validity	T.P:6
5.	1	On the basis of performance	T.P:7
6.	1	On the basis of formation	T.P:8
7.	1	Offer and acceptance ➢ Meaning, Legal rules to offer, tenders	T.P:13-16
8.	1	Acceptance ➢ Meaning and legal rule to acceptance	T.P:18-20
9.	1	Communication of offer and acceptance and revocation	T.P:20
10.	1	Consideration ➢ Definition ➢ Legal rule as to consideration	T.P:30
11.	1	Capacity ➢ Major, Person of sound mind, Other persons	T.P:41
12.	1	Free consent and Unlawful legal agreement	R4.P:42
13.	1	Quasi contract ➢ Meaning, Kinds of quasi contract	R4.P:48
14.	1	Recapitulation and discussion of important questions	
		Total no. of hours planned for unit-1	**14 Hours**

UNIT-II

S. No.	LECTURE DURATION (Periods)	TOPICS TO BE COVERED	SUPPORT MATERIALS
1.	1	Discharge of contract ➢ Meaning ➢ Modes of discharge of contract	T.P:111-122
2.	1	Remedies for breach of contract ➢ Rectification	T.P:125
3.	1	Contract of indemnity ➢ Rights of indemnity holder ➢ Rights of indemnifier	T.P:145
4.	1	Contract of guarantee ➢ Essential feature of contract of guarantee	T.P:147
5.	1	Kinds of guarantee	T.P:147
6.	1	Rights to surety ➢ the creditor, principal debtor, co-sureties ➢ Discharge of surety	T.P:152
7.	1	Bailment and pledge ➢ Meaning ➢ Rights and duties of pawnor and Pawnee	T.P:162
8.	1	Rights of payee and rights and liabilities of finder of lost goods	T.P:162
9.	1	Law of agency ➢ Different of agent and principal	T.P:177
10.	1	Essential relationship of agency, rules of agency	T.P:177
11.	1	Creation of agency ➢ Kinds of agency	T.P:179
12.	1	ex-post facto agency requirements	T.P:179
13.	1	Rights and liabilities of principals and agents	T.P:190
14.	1	Recapitulation and discussion of important questions **Total no. of hours planned for unit-2**	**14 Hours**

UNIT-III

S. No.	LECTURE DURATION (Periods)	TOPICS TO BE COVERED	SUPPORT MATERIALS
1.	1	Indian partnership Act1932 ➢ Introduction ➢ Definition	T.P:265
2.	1	Essential characteristics	T.P:265
3.	1	Test of partnership ➢ Partnership deed	T.P:269
4.	1	Partnership and other association	T.P:269-270
5.	1	procedure for Registration of firm	T.P:273
6.	1	Implied authority of partners ➢ Implied authority of third parties	T.P:285
7.	1	Limitations	T.P:285
8.	1	Firms debt	W1
9.	1	private debt	W1
10.	1	Priority of discharge	W2
11.	1	Rights and duties of partners	T.P:279
12.	1	liabilities of partners	T.P:279
13.	1	Dissolution of partnership firm ➢ Meaning ➢ Modes of dissolution	T.P:302
14.	1	Recapitulation and discussion of important questions	
		Total no. of hours planned for unit-3	**14 Hours**

UNIT-IV

S. No.	LECTURE DURATION (Periods)	TOPICS TO BE COVERED	SUPPORT MATERIALS
1.	1	Sale of goods act 1930 ➢ Introduction	T.P:209
2.	1	Contract of sale of goods and Essentials	T.P:209
3.	1	Sale and hire purchase ➢ Difference	R4.P:15.3
4.	1	Sale and agreement to sell	R4.P:15.3
5.	1	Distinction between sale and related transaction resembling in goods	R4.P:15.3
6.	1	Rules regarding passing of property in goods	R4.P:15.21
7.	1	Document of title of goods	T.P:215
8.	1	Condition and warranties ➢ Meaning ➢ Difference between condition and warrant	R4.P:15.15
9.	1	Express and implied conditions and warranties	R4.P:15.15
10.	1	Caveat emptor ➢ Rules ➢ Expectations and principles of caveat emptor vendor	R4.P:15.19
11.	1	Limitations	R4.P:15.19
12.	1	Rights of unpaid vendor Rights against the goods	R4.P:15.38
13.	1	Rights against the buyer personally	R4.P:15.38
14.	1	Recapitulation and discussion of important questions	
		Total no. of hours planned for unit-4	**14 Hours**

UNIT-V

S.No	LECTURE DURATION (Periods)	TOPICS TO BE COVERED	SUPPORT MATERIALS
1	1	Duties of common carrier ➢ Definition, Rights of common carrier	T.P:475 -477
2	1	Common carriage ➢ Private carriage, rights of common carriage	T.P:474
3	1	Carriage of goods by rail ➢ Responsibilities of railway administration	T.P:478
4	1	Carriage of goods by sea ➢ Contract of affreightment ➢ implied conditions	T.P:484
5	1	Kinds of bill of lading	T.P:486
6	1	Charter party ➢ Kinds / clauses of charter party ➢ Distinction between charter party	T.P:485
7	1	RTI Act- Features- Procedures.	W3
8	1	Negotiable Instrument Act: Features- Presumption	R1.P:341-345
9.	1	Types- Promissory Notes	R1.P:346-350
10.	1	Bills of Exchange	R1.P:351-356
11.	1	Letter of credit and Cheques	R1.P:357-358
12.	1	Holder in Due Course - Liability of Parties- Rights of Parties	R1.P:368-373
13.	1	Intellectual Property Legislations: Meaning and scope of Intellectual Properties	W4, J
14.	1	Patent Act of 1970 – Patentee – True and first inventor	W4
15.	1	Procedure for grant of Process and Product Patents – TRIPS.	W4
16.	1	Recapitulation and discussion of important questions	
17.	1	**Revision :** Discussion of ESE question papers	
18.	1	Discussion of ESE question papers	
19.	1	Discussion of ESE question papers	
		Total no. of hours planned for unit-5 & **Question Paper Discussion**	**19 hours**

Text Book

1. N.D. Kapoor. (2013). *Elements of Mercantile Law,* S.Chand & Co. Ltd. New Delhi.

Reference Books:

1. Kuchhal, M.C. & Vivek Kuchhal (2015), *Business Law*, Vikas Publishing House, New Delhi.

2. P C Tulsian & Bharat Tulsian (2015), *Business Law*, 5th edition McGraw Hill Education

Website Reference

1. W1- www.goldingcapital.com/en/investors/**private-debt**.html
2. W2 - www.mca.gov.in/MinistryV2/chapter13.html
3. W3- www.righttoinformation.gov.in
4. W4 – www.ipr.res.in

UNIT I

SYLLABUS

Indian Contract Act 1872: Contract – Definition – Obligation and Agreement – Nature of Contract and Classification – Components of Valid Contract – Offer and Acceptance – Consideration - Capacity – Free Consent – Unlawful Agreements – Quasi Contracts.

INDIAN CONTRACT ACT 1872

INTRODUCTION

Commercial law, also known as business law, is the body of law that applies to the rights, relations, and conduct of persons and businesses engaged in commerce, merchandising, trade, and sales. It is often considered to be a branch of civil law and deals with issues of both private law and public law.

Commercial law includes within its compass such titles as principal and agent; carriage by land and sea; merchant shipping; guarantee; marine, fire, life, and accident insurance; bills of exchange and partnership. It can also be understood to regulate corporate contracts, hiring practices, and the manufacture and sales of consumer goods. Many countries have adopted civil codes that contain comprehensive statements of their commercial law.

In the United States, commercial law is the province of both the United States Congress, under its power to regulate interstate commerce, and the states, under their police power. Efforts have been made to create a unified body of commercial law in the United States; the most successful of these attempts has resulted in the general adoption of the Uniform Commercial Code, which has been adopted in all 50 states (with some modification by state legislatures), the District of Columbia, and the U.S. territories.

Various regulatory schemes control how commerce is conducted, particularly vi employees and customers. Privacy laws, safety laws (e.g., the Occupational Safety and Health Act in the United States), and food and drug laws are some examples.

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.

Definition

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 promise 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 promise.

5. **Consideration 2(d)**:- When at the desire of the promisor, the promise 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.

OBLIGATION AND AGREEMENT

Agreement

According to Sec.2(a) of the Act, the term "**agreement"** refers to "every promise and every set of promises, forming consideration for each other "The term "promise" has been defined in Sec.2(b) of the Act as "When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise". This essentially means that there should be an offer and acceptance to form an agreement.

Offer + Acceptance = Agreement

An agreement is necessarily the outcome of consenting minds consensus ad idem. It means that the two contracting parties must agree the subject matter of the contract at the same time and in the same sense. For example, If A asks B "Will you purchase mu scooter for Rs.15000?" and B says "yes" to it, there is consensus ad idem and an agreement comes into existence.Unless there is consensus ad idem, there can be no contract. For example, A has two flats E and F.A is selling flat E to B.B thinks that he is purchasing flat F. There is no consensus ad idem. Hence no contract.

Obligation

An Agreement to become a contract, must give rise to a legal obligation or duty. The term 'obligation' is defined as a legal tie which imposes upon a definite person or persons the necessity of doing or abstain from doing a definite act or acts. It may relate to social or legal matters.An agreement which gives rise to a social obligation is not a contract.It must give rise to a legal obligation in order to become a contract.

Example:

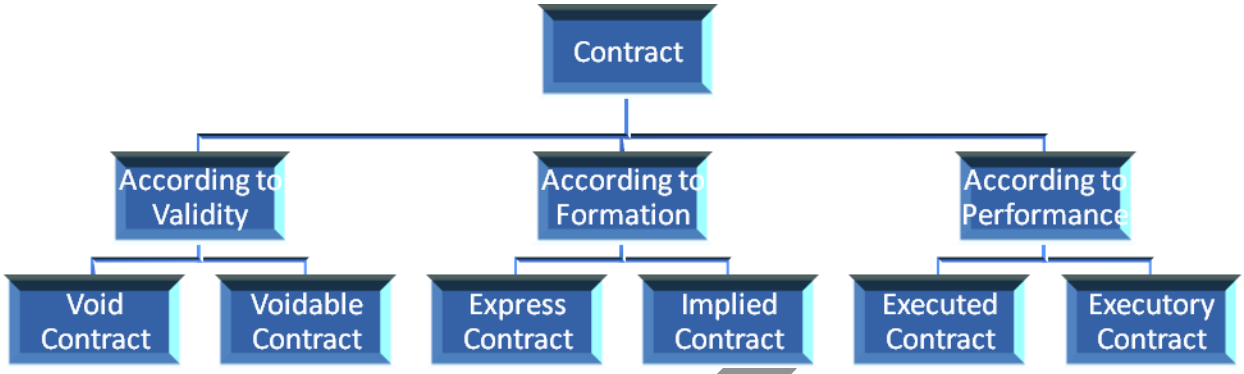
a) A agrees to sell his car to B FOR Rs.10000.The agreement gives rise to an obligation on the part of A to deliver the car to B and on the part of B to pay Rs.10000 to A. This agreement is a contract.

b) A promises to sell his car to B for Rs.10000 received by him as the price of the car. The agreement gives rise to an obligation on the part of A to deliver the car to B.This agreement is also a contract.

NATURE OF CONTRACT AND CLASSIFICATION

Classification of contracts

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



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.

On the basis of validity:

1. Valid contract:

An agreement which has all the essential elements of a contract is called a valid contract. A valid contract can be enforced by law. In one or more of these elements is are missing ,the contract is either voidable,void,illegal or unenforceable.

2. Void contract [Section 2(g)]:

A void contract is a contract which ceases to be enforceable by law. A contract when originally entered into may be valid and binding on the parties. It may subsequently become void. – There are many judgments which have stated that where any crime has been converted into a "Source of Profit" or if any act to be done under any contract is opposed to "Public Policy" under any contract—than that contract itself cannot be enforced under the law-

It is illogical to talk of a void contract originally entered into, for what is supposed to be a contract is no contract at all.

3. Voidable contract [Section 2(i)]:

An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of other or others, is a voidable contract. If the essential element of free consent is missing in a contract, the law confers right on the aggrieved party either to reject the contract or to accept it. However, the contract continues to be good and enforceable unless it is repudiated by the aggrieved party.

Example:

A Promise to sell his car to B for Rs.2000.His consent is obtained by use of force. This contract is voidable at the option of A. This may avoid the contract or elect to be bound to it.

4. Illegal contract:

A contract is illegal if it is forbidden by law; or is of such nature that, if permitted, would defeat the provisions of any law or is fraudulent; or involves or implies injury to a person or property of another, or court regards it as immoral or opposed to public policy. These agreements are punishable by law. These are void-ab-initio.

"All illegal agreements are void agreements but all void agreements are not illegal."

5. Unenforceable contract:

Where a contract is good in substance but because of some technical defect cannot be enforced by law is called unenforceable contract. These contracts are neither void nor voidable. The technical defect such as absence of writing or where the remedy has been barred by lapse of time. The contract may be carried out by the partied concerned but in the event of breach or repudiation of such a contract, the aggrieved party will not be entitles to the legal remedies.

On the basis of formation:

1. **Express contract**: Where the terms of the contract are expressly agreed upon in words (written or spoken) at the time of formation, the contract is said to be express contract. Where the offer or acceptance of any promise is made in words, the promise is said to be express. An express promise results in an express contract.
2. **Implied contract:** An implied contract is one which is inferred from the acts or conduct of the parties or from the circumstances of the cases. Where a proposal or acceptance is made otherwise than in words, promise is said to be implied.It may also result from a continuing course of conduct of the parties.Where the proposal or acceptance of any promise is made otherwise than in words,the promise is said to be implied.

3. Quasi contract: A quasi contract is created by law. Thus, quasi contracts are strictly not contracts as there is no intention of parties to enter into a contract. It is legal obligation which is imposed on a party who is required to perform it. A quasi contract is based on the principle that a person shall not be allowed to enrich himself at the expense of another. examples

- claim for necessaries supplied to person incapable of contracting or on his account

- Reimbursement of person paying money due to another, in payment of which he is interested
- obligation of person enjoying benefit of non gratuitous act
- Responsibility of finder of goods
- Liability of person to whom money is paid or thing delivered

On the basis of performance:

1. **Executed contract:** An executed contract is one in which both the parties have performed their respective obligation.

   Example: A agrees to paint a picture for B for Rs.100.When A paints the picture and B pays the price, that is when both the parties perform their obligations, the contract is said to be executed.

2. **Executory contract:** An executory contract is one where one or both the parties to the contract have still to perform their obligations in future. Thus, a contract which is partially performed or wholly unperformed is termed as executory contract.

   A contract may sometimes be partly executed and partly executor. Thus if B has paid the price to A and A Has not yet painted the picture, the contract is executed as to B and executor as to A.

3. **Unilateral contract:** A unilateral contract is one in which only one party has to perform his obligation at the time of the formation of the contract, the other party having fulfilled his obligation at the time of the contract or before the contract comes into existence.

   Example. A Permits a railway coolie to carry his luggage and place it in a carriage. A contract comes into existence as soon as the; luggage is placed in the carriage. But by that time the coolie has already performed his obligations. Now only A has to fulfil his obligation. that is to pay the reasonable charges to the coolie.

4. **Bilateral contract:** A bilateral contract is one in which the obligation on both the parties to the contract is outstanding at the time of the formation of the contract. Bilateral contracts are also known as contracts with executory consideration.

COMPONENTS OF A VALID CONTRACT

- **An Agreement (Offer + Acceptance)**

A Contract evolves from an offer by one party and acceptance of the same by the other party. The acceptance should be definite and without any qualification. An offer needs to be clear, definite, complete and final. It should be communicated to the offered.

- **Intention to create legal relationship**

The Intention of the parties to a contract must be to create a legal relationship between them. Agreements of social nature, as they do not contemplate legal relationship are not contracts. For instance, if a father fails to give his daughter the promised pocket money, the daughter cannot sue the father, because it was purely a domestic arrangement.

- **Lawful Consideration**

Consideration means something in return. In every contract, agreement must be supported by consideration. When one party to a contract agrees to give something, they must be benefited by the other party. This concept of benefit is known as consideration. Consideration need not necessarily be in cash or kind.

- **Capacity of parties – Competency**

According to Sec 10 of the Act, an agreement becomes a contract if it is entered between the parties who are competent to contract. The following persons are declared a incompetent to contract: 1.Minors 2.Persons of unsound mind 3.Persons disqualified by any law to which they are subject.

- **Free and genuine consent**

Another essential element of a valid contract is free consent. An agreement must have been made by free consent of the parties. Consent is said to be free when it is not caused by any of the following: 1) Coercion 2) Undue influence 3) Misrepresentation 4) Fraud 5) Mistake.

- **Lawful Object.**

The object of an agreement must be lawful. It must not be illegal or immoral or opposed to public policy. When the object of a contract is not lawful, the contract is void.

For instance, Promises to pay B Rs.50000 for kidnapping C. Here the object of the contract is to kidnap. It is not lawful and therefore the contract becomes void.

- **Agreement not declared void**

  The Agreement must not have been expressly declared void by any law in force in the country.

- **Certainty and possibility of performance**

  The Agreements in which the meaning is not certain or is not capable of being made certain are void. The uncertainty may be due to existence, quality or quantity, price or title of the subject matter.

- **Legal Formalities**

  Legal formalities if any required for particular agreement such as registration, writing, they must be followed. In India, writing is required in case of sale, mortgage, lease and gift of immovable property,etc.,Registration is requiredin cases of deocuments fall within the scope registration act.

OFFER AND ACCEPTANCE

Offer

Proposal is defined under section 2(a) of the Indian contract Act, 1872 as "when one person signifies to another his willingness to do or to abstain from doing anything with a view to obtain the assent of that other to such act or abstinence, he is said to make a proposal/offer". 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 rules regarding 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 definite. 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 auctioneer 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.

Classification of Offer

***1.General Offer*:** Which is made to public in general. This offer is one which made to a definite person, but to the world at large or public in general. A General offer can be accepted by any person by fulfilling the terms of the offer. In case of general offer ,the contract is made with person who having the knowledge of the offer comes forward and acts according to the conditions of the offer.

2**. *Special Offer*:** Which is made to a definite person. A Specific offer is one which is made to a definite person or particular group of persons. A specific offer can be accepted only by that definite person or that particular group of persons to whom it has been made.

3. ***Cross Offer*:** Exchange of identical offer in ignorance of each other. Two offers which are similar in all respects made by two parties to each other, in ignorance of each other's offer are

known as 'cross offers'. Cross offers do not amount to acceptance of one's offer by the other.Hence,no contract is entered into on cross offers.

4. ***Counter Offer*:** Modification and Variation of Original offer, do not amount to acceptance of one's offer by the other.Hence, no contract is entered into on cross offers.

5. ***Standing, Open or Continuing Offer*:** Which is open for a specific period of time.The offer must be distinguished from an invitation to offer. ***Invitation to offer*** "An invitation to offer" is only a circulation of an invitation to make an offer, it is an attempt to induce offers and precedes a definite offer. Acceptance of an invitation to an offer does not result in formation of a contract and only an offer emerges in the process of negotiation. A statement made by a person who does not intend to bound by it but, intends to further act, is an invitation to 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

According to Section 2(b), "When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted."'A proposal is said to be accepted when the person to whom the proposal is made signifies his assent thereto:A proposal when accepted becomes a promise:

Legal Rules:

1. Acceptance 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.

2. It should 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

.**3. Acceptance must be in the mode prescribed.** 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.

4. Acceptance must be given within a reasonable time before the offer lapses. 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.

5. It cannot 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.

6. Acceptance by the way of conduct.

7. Mere silence is no acceptance. **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 offer er must be consent

8.Acceptance must be unambiguous and definite.

CONSIDERATION

When a party to an agreement promises to do something, he must get “something” in return. 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 promise, 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

Lawful consideration

According to Section 2(d), Consideration is defined as: "When at the desire of the promisor, the promisee has done or abstained from doing, or does or abstains from doing, or promises to do or abstain something, such an act or abstinence or promise is called consideration for the promise. "Consideration" means to do something in return.

In short, Consideration means *quid pro quo* i.e. something in return.

An agreement must be supported by a lawful consideration on both sides. Essentials of valid considerations are

- 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 promise 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 forbearance 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 regard 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 opposed 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.

Contract Opposed to Public Policy can be Repudiated by the Court of law even if that contract is beneficial for all of the parties to the contract- What considerations and objects are lawful and what not-Newar Marble Industries Pvt. Ltd. Vs. Rajasthan State Electricity Board, Jaipur, 1993 Cr. L.J. 1191 at 1197, 1198 - Agreement of which object or consideration was opposed to public policy, unlawful and void- – What better and what more can be an admission of the fact that the consideration or object of the compounding agreement was abstention by the board from criminally prosecuting the petitioner-company from offense under Section 39 of the act and that the Board has converted the crime into a source of profit or benefit to itself. This consideration or object is clearly opposed to public policy and hence the compounding

agreement is unlawful and void under Section 23 of the Act. It is unenforceable as against the Petitioner-Company.

Competent to contract

Section 11 of The Indian Contract Act specifies that every person is competent to contract provided:

1. He should not be a minor i.e. an individual who has not attained the age of majority i.e. 18 years in normal case and 21 years if guardian is appointed by the Court.
2. He should be of sound mind while making a contract. A person who is usually of unsound mind, but occasionally of sound mind, can make a contract when he is of sound mind. Similarly if a person is usually of sound mind, but occasionally of unsound mind, may not make a valid contract when he is of unsound mind.
3. He is not a person who has been personally disqualified by law to which he is subject.

CAPACITY TO CONTRACT

The term capacity to contract is defined in the section 11 of Indian Contract Act 1872. Every person is competent to contract who is of the age of the majority according to the law to which he is subject and who is a sound mind and is not disqualified from contracting by any law to which he is subject. If we analyse the definition of section 11 given in Indian Contract Act 1872, then we find that a person who is major, who is of sound mind and is not debarred by law is competent to enter into the contract. If we otherwise look into definition or if we interpret it on the other side, then we find that if a person is a minor, if he is of unsound mind and is debarred by law then he cannot create a valid contract.

(i) . Definition of Minor

A person should be major, he should not be minor. If we enter into the contract with the person who is a minor then that contract will not be enforceable in the eyes of law. Now to understand the meaning of the minor we will try to dwell upon the definition of the minor which is given in the section 3 of the Indian Majority Act 1875, "A minor is a person who has not completed 18 years of the age". There are two more provisions which I would like to mention here related to the minor. There are some judicial decisions which have given a list that these things will be included from the basic necessaries. I would like to mention those basic necessaries in points.

1. The fund supplies to the minor for the marriage of a female minor in the family are held necessaries and the money lender may get himself reimburse from the property of a minor.

2. Expenses incurred for performing fuller ceremonies of the father of a minor are held necessaries.

3. The cost incurred for defending the minor in criminal cases against him can be recovered from minor's property.

4. The money advance to say minor's property from sale in execution is necessary use.

5. Certain services render to minor have been held to be necessaries that is education, training for trade, Medical care, legal advice etc.

So these are the basic necessaries if any person is supplying these necessaries to the minor, he can get back the money from the property of the minor.

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.

FREE CONSENT

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, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement. 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 asessee.
- 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.

Agency

In law, the relationship that exists when one person or party (the principal) engages another (the agent) to act for him, e.g. to do his work, to sell his goods, to manage his business. The law of agency thus governs the legal relationship in which the agent deals with a third party on behalf of the principal. The competent agent is legally capable of acting for this principal vis-à-vis the third party. Hence, the process of concluding a contract through an agent involves a twofold relationship. On the one hand, the law of agency is concerned with the external business relations of an economic unit and with the powers of the various representatives to affect the legal position of the principal. On the other hand, it rules the internal relationship between principal and agent as well, thereby imposing certain duties on the representative (diligence, accounting, good faith, etc.).

Under section 201 to 210 an agency may come to an end in a variety of ways:

(i)By the principal revoking the agency –

However, principal cannot revoke an agency coupled with interest to the prejudice of such interest. Such Agency is coupled with interest. An agency is coupled with interest when the agent himself has an interest in the subject-matter of the agency, e.g., where the goods are consigned by an upcountry constituent to a commission agent for sale, with poor to recoup

himself from the sale proceeds, the advances made by him to the principal against the security of the goods; in such a case, the principal cannot revoke the agent's authority till the goods are actually sold, nor is the agency terminated by death or insanity. (Illustrations to section 201)

(ii) By the agent renouncing the business of agency;

(iii) By the business of agency being completed;

(iv) By the principal being adjudicated insolvent (Section 201 of The Indian Contract Act. 1872)

The principal also cannot revoke the agent's authority after it has been partly exercised, so as to bind the principal (Section 204), though he can always do so, before such authority has been so exercised (Sec 203).

Further, as per section 205, if the agency is for a fixed period, the principal cannot terminate the agency before the time expired, except for sufficient cause. If he does, he is liable to compensate the agent for the loss caused to him thereby. The same rules apply where the agent, renounces an agency for a fixed period. Notice in this connection that want of skill continuous disobedience of lawful orders, and rude or insulting behaviour has been held to be sufficient cause for dismissal of an agent. Further, reasonable notice has to be given by one party to the other; otherwise, damage resulting from want of such notice, will have to be paid (Section 206). As per section 207, the revocation or renunciation of an agency may be made expressly or impliedly by conduct. The termination does not take effect as regards the agent, till it becomes known to him and as regards third party, till the termination is known to them (Section 208).

UNLAWFUL AGREEMENTS

An **illegal agreement**, under the common law of contract, is one that the courts will not enforce because the purpose of the agreement is to achieve an illegal end. The illegal end must result from performance of the contract itself. The classic example of such an agreement is a contract for murder.

However, a contract that requires only legal performance on the part of each party, such as the sale of packs of cards to a known gambler, where gambling is illegal, will nonetheless be enforceable. A contract directly linked to the gambling act itself, such as paying off gambling debts (see proximate cause), however, will not meet the legal standards of enforceability. Therefore an employment contract between a blackjack dealer and a speakeasy manager, is an

example of an illegal agreement and the employee has no valid claim to his anticipated wages if gambling is illegal under that jurisdiction.

A famous example in the United States is Board v. American Horse Enterprises (1988), in which the California Court of Appeal for the Third District refused to enforce a contract for payment of promissory notes used for the purchase of a company that manufactured drug paraphernalia. However, the items sold in this contract were not actually illegal, but the court refused to enforce the contract for public policy concerns.

In Canada, one cited case of lack of enforceability based on illegality is Royal Bank of Canada v. Newell, 147 D.L.R (4th) 268 (N.S.C.A.), in which a woman forged her husband's signature on 40 cheques, totalling over $58,000. To protect her from prosecution, her husband signed a letter of intent prepared by the bank in which he agreed to assume "all liability and responsibility" for the forged cheques. However, the agreement was unenforceable, and struck down by the courts, because of its essential goal, which was to "stifle a criminal prosecution." Because of the contract's illegality, and as a result voided status, the bank was forced to return the payments made by the husband.

Contracts in restraint of trade are a variety of illegal contracts and generally will not be enforced unless they are reasonable in the interests of the contracting parties and the public.

Contracts in restraint of trade if proved to be reasonable can be enforced. When restraint is placed on an ex-employee, the court will consider the geographical limits, what the employee knows and the extent of the duration. Restraint imposed on a vendor of business must be reasonable and is binding if there is a genuine seal of goodwill. Under common law, contracts to fix prices are legal. Solus agreements are legal if reasonable. Contracts which contravene public policy are void.

Persons of Unsound mind:-

According to section 12 of the Indian contract act “A Person is said to be of sound mind for the purpose of making a contract ,if at the time when he makes it, is capable,

(a)To understand the terms of the contract

(b)To form a rational judgement as to its effect upon his interests.

If a person is not capable of both, he is said to have suffered from unsoundmind.The examples of persons having an unsound mind include idiots, lunatics and drunken persons. A person affected by lunacy is said to be lunatic. A person can become lunatic at any stage of his life.

QUASI CONTRACT

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".

A **quasi-contract** (or **implied-in-law contract** or **constructive contract**) is a 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 of 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 inter meddler 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. They are used as remedies for unjust enrichment, management of another's affairs or payment of a thing not due.

Contract compared

In contracts, it is the consent of the contracting parties which produces the obligation; in quasi-contracts no consent is required, and the obligation arises from the law or natural equity, on the facts of the case. These acts are called quasi-contracts, because, without being contracts,

they bind the parties as contracts do. "A quasi-contract is not really a contract at all in the normal meaning of a contract," according to one scholar, but rather is "an obligation imposed on a party to make things fair."

The Oklahoma Supreme Court has described the distinction between a contract and a quasi-contract in T & S Inv. Co. v. Coury, 593 P.2d 503 (Okla. 1979), as follows:

A "quasi" or constructive contract is an implication of law. An "implied" contract is an implication of fact. In the former the contract is a mere fiction, imposed in order to adapt the case to a given remedy. In the latter, the contract is a fact legitimately inferred. In one the intention is disregarded; in the other, it is ascertained and enforced. In one, the duty defines the contract; in the other, the contract defines the duty.

Liability

The defendant's liability under quasi-contract is equal to the value of the benefit conferred by the plaintiff. The value is the fair market value of the benefit and not necessarily the subjective value that the defendant enjoys. A traditional measure of the fair market value is called quantum merit, for "as much as is deserved. For example, accountant prepares tax-payer's taxes, finding a way to get him an unusually large refund. Tax-payer doesn't pay accountant. Assuming a court finds no contract, tax-payer is only liable for the fair market value of tax preparation services, which is not inflated up to account for the unusually large refund he enjoyed.

The measure of damages in a quasi-contract action is the amount which will compensate the party aggrieved for the detriment proximately caused thereby, and, if the obligation is to pay money, the detriment caused by the breach in the amount due by the terms of the obligation.

The party to be charged is any defendant, or in the case of a guarantee or surety, a co-defendant, in a breach of contract lawsuit.

Kinds of Quasi contracts:-

The Indian contract Act provides for the following types of quasi contracts:-

1. Supply of Necessaries:-

Sometimes, the necessaries are supplied to a person who is in capable of contracting or to anyone who is legally bound to support. The persons who are in capable to enter in to contract may be minors and persons of unsound mind, In such cases, the persons supplying the

necessaries is entitled to recover the cost of necessaries from the property of such in competent person.

2. Payment by an Interested Person:-

Payment if any made by an interested person on behalf of the actual party in pursuance of his own interest is entitled to be reimbursed by the other party. The payment so made must be such that the other party is bound by law to pay the amount.

3. Obligation to pay for Non-gratuitous Acts:-

If any person lawfully does anything for another person without any intention to do it gratuitously, such other person has to reimburse the amount through there is no formal contract.

4. Responsibility of finder of Goods:-

Finder of goods has the same responsibility as that of a bailee without any formal contract.Such finder of goods should try to find the owner of goods and also take proper caution, as far as possible, to retain them in the condition it was found.

5. Mistake or coercion:-

A Person to whom money has been paid or anything delivered by mistake or coercion must repay or return

POSSIBLE QUESTIONS

PART A – (ONE MRK)

(ONLINE EXAMINATION)

PART B – (TWO MARKS)

1.Define contract.

2. What is misrepresentation?

3. Define Quasi contract.

4. What you meant by obligation and agreement.

5. Write short note on quasi contract.

6. Who can be a acceptor in the contract?

7. What is agreement?

8. What is free consent?

9. Write a short note on unlawful contract.

10. Define Indian contract Act 1872.

11. Explain the nature of contract.

12. Write a note on obligation and agreement

13. Write a short note on obligation and agreement.

14. Write a note on offer in the contract.

15. Who are all under persons of unsound mind in contract?

PART C (SIX MARKS)

1. Explain the classification of contract?

2. Illustrate the components of valid contract.

3. Briefly explain about offer and acceptance.

4. Explain about obligation and agreement.

5. Explain briefly about quasi contract.

6. Explain briefly about the essentials of contract.

KARPAGAM ACADEMY OF HIGHER EDUCATION
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(ESTABLISHED UNDER SEC 3 OF UGC ACT 1956)
DEPARTMENT OF COMMERCE
I - B.COM AND BPS BUSINESS LAW (17CMU201)
UNIT I (INDIAN CONTRACT ACT 1872)

S.NO.	QUESTIONS	OPTION I	OPTION II	OPTION III	OPTION IV	ANSWER
1	The Law of Contract is that branch of _____	Agreement	Main Contract	Law	void contract	Law
2	The Purpose of the law of contract is to ensure the realization of reasonable _____ of the parties	Expectation	Arrangements	Execution	agreements	Expectation
3	The Law relating to contracts is contained in the _____	Indian Regulation Act 1990	Indian Law Act 1945	Indian contract Act, 1872	Indian Contract Act, 1782	Indian contract Act, 1872
4	A contract is an agreement made between _____ parties	Two or More	Only Two	Buyer and Seller	seller	Two or More
5	Sec ____ defines a contract as an agreement enforceable by law.	2(h)	2(E)	2(F)	2 (G)	2(h)
6	Every agreement and Promise enforceable at law is a _____	Breach	Contract	Main agreement	Anticipartory	Contract
7	In the Offer and Acceptance there must be _____ Parties	Two or more	Only one	Different	two	Two or more
8	Consideration means "_____"	Exchange	Contract	Something in return	Get something	Something in return
9	Every person is _____ to contract	Competent	Challenge	Related to contract	Agreements	Competent

S.NO.	QUESTIONS	OPTION I	OPTION II	OPTION III	OPTION IV	ANSWER
10	In every contract that there must be a free and genuine _____ of the parties	Consent	Reasons	Contract	Agreements	Consent
11	The Object of the agreement must be _____	Contract	Lawful	Important	Void	Lawful
12	The Classification of contract according to _____,_____ and _____	Validity, formation and Performance	Validity , Agreement and Breach	Agreement, contract and Performance	Agreement, Contract and Breach	Validity, formation and Performance
13	When all the essential elements are present. In that situation the contract is a _____	Agreement	Valid Contract	Exact contract	Void Agreement	Valid Contract
14	An unenforceable contract is one which cannot be enforced in a _____	Company	Corporation	Court of Law	Both a and b	Court of Law
15	A contract is based on _____.	Party	Parties	An Agreement	Something in return	An Agreement
16	An agreement which is enforceable by law at the option is called _____	Contract	Agreement	Voidable Contract	Void Agreement	Voidable Contract
17	A contract which ceases to be enforceable by law becomes _____	Contract	Agreement	Voidable Contract	Void	Void
18	An illegal agreement is one which _____ some rule of basic public policy.	Transgresses	Encourage	Support	not support	Transgresses
19	The Contract are expressly agreed upon at the time of the formation of the contract, the contract is said to be an _____	Express Contract	Implied Contract	Unlawful contract	Lawful Contract	Express Contract

S.NO.	QUESTIONS	OPTION I	OPTION II	OPTION III	OPTION IV	ANSWER
20	In the Implied Contract the promise is said to be _____	Express	Not Express	Implied	Void	Implied
21	An Executed contract is one in which both the parties have _____	Not performed	Performed	Participate	Executed	Performed
22	An Executory contract is one in which both the parties have _____	Yet to perform	Not to perform	Performed	Executed	Yet to perform
23	Offer Plus Acceptance is equal to _____	Agreement	Contract	Sales Deed	Agreement	Agreement
24	An Offer is also known as a _____	Proposal	Acceptor	Offeree	Promisee	Proposal
25	The Person making the offer is called the _____	Acceptor	Offeree	Offeror	Promisee	Offeror
26	The person to whom the offer is made is called the _____	Acceptor	Offeree	Offeror	Promisee	Offeree
27	An Offer made by express words spoken or written is known as _____	Implied Offer	Express Offer	Express Agreement	Proposal	Express Offer
28	The Offer by a cinema theater to screen films is always an _____	Implied Offer	Express Offer	Express Agreement	Proposal	Express Offer
29	An Offer made to a specific person or group is known as a _____	Implied Offer	Express Offer	Specific Offer	Proposal	Specific Offer

S.NO.	QUESTIONS	OPTION I	OPTION II	OPTION III	OPTION IV	ANSWER
30	When an offer is made to the common, it is known as a _____	Implied Offer	Express Offer	Specific Offer	General Offer	General Offer
31	_____offers take place when two persons make identical offers to each other.	Implied Offer	Express Offer	Specific Offer	Cross Offer	Cross Offer
32	Offer instead of accepting the terms of the offeror, desires modification of the same is called----.	Implied Offer	Counter Offer	Specific Offer	Cross Offer	Counter Offer
33	A _____ offer is of a continuous in nature	Standing Offer	Express Offer	Specific Offer	Cross Offer	Standing Offer
34	An Offer, when accepted must create legal relationship between the _____	contract	Parties	Agreement	Proposal	Parties
35	A proposal when accepted becomes a _____	Agreeement	Contract	Promise	Cross Offer	Promise
36	“QUID PRO QUO means _____	Something Express	Something in return	Something In Agreement	Cross Offer	Something in return
37	The something in return is what is called _____	Agreement	Contract	Promise	Consideration	Consideration
38	Consideration provided already in the past by a party for a present promise is called ____	Present Consideration	Past Consideration	Express Consideration	Agreement	Past Consideration
39	All agreements are contracts if they are made by the _____ of parties	Free Consent	Free Agreements	Free Contract	Cross Offer	Free Consent

S.NO.	QUESTIONS	OPTION I	OPTION II	OPTION III	OPTION IV	ANSWER
40	___ means willingness the willingness of the parties to a contract must come freely.	Consent	Illegal	Something Express	Something Express	Consent
41	When a party to an agreement makes a false representation of fact deliberately is called _	Fraud	Lawful	Consent	Something Express	Fraud
42	Legal capacity means _____of the parties	Consent	Competence	Lawful	Something Express	Competence
43	Both parties have performed what they agree to do under the contract is called _____	Performance to Contract	Agreement of Contract	Legal Contract	Something Express	Performance to Contract
44	Promises which form consideration or part of the consideration for each other are called _	General Promises	Specific Promises	Reciprocal Promises	Something Express	Reciprocal Promises
45	An agreement is void if it is opposed to public policy. Which of the following is not covered by heads of public policy?	Trading with an enemy	Trafficking in public offices	Marriage brokerage contracts	Contract to do an impossible acts	Contract to do an impossible acts
46	A offers for the sale of his car in local news paper. It is	General offer	specific offer	cross offer	counter offer	General offer
47	Which of the following is false? An offer to be valid must	Intend to create legal relations	Have certain and unambiguous terms	Contain a term the non-compliance of which would amount to	Be communicated to the person to whom it is made	Contain a term the non-compliance of which would amount to acceptance
48	Which of the following is true?	Consideration must result in a benefit to both parties	Past consideration is no consideration in India	Consideration must be adequate	Consideration must be something which a promisor is not already bound to do	Consideration must be something which a promisor is not already bound to do
49	Which of the following is not an exception to the rule no consideration no contract?	Compensation for voluntary service	Love and affection	Contract of agency	Gift	Compensation for voluntary service

S.NO.	QUESTIONS	OPTION I	OPTION II	OPTION III	OPTION IV	ANSWER
50	A,B and C jointly promised to pay Rs.60,000 to D. Before performance of the contract, C dies. Here, the contract, A. Becomes void on Cs death	Becomes void on Cs death	Should be performed by A and B along with Cs legal representatives	Should be performed by A and B alone	Should be renewed between A,B and C	Should be performed by A and B along with Cs legal representatives
51	An agreement is void if it is opposed to public policy. Which of the following is not covered by heads of public policy?	Trading with an enemy	Trafficking in public offices	Marriage brokerage contracts	Contract to do an impossible acts	Contract to do an impossible acts
52	Which of the following person can perform the contracts?	Promisor alone	Legal representative of promisor	Agent of the promisor	Promisee	All these above
53	An agreement which is enforceable by law at the option of one or more of the parties thereon but not at the option of the other is a	Valid contract	Void contract	Voidable contract	Illegal contract	Voidable contract
54	When the consent of a party is not free, the contract is.....	Void	Valid	Voidable	Illegal	Voidable
55	Ordinarily a minors agreement is.....	Void ab initio	Voidable	Valid	Unlawful	Void ab initio
56	The threat to commit suicide amount to	Coercion	Undue influence	Misrepresentation	Fraud	Coercion
57	A contingent contract is	Void	Valid	Voidable	Illegal	Valid
58	A agrees to sell his car worth Rs.1,00,000 to B for Rs.20,000 only, and consent of A was obtained by coercion. Here the agreement is	Void	Valid	Voidable	Illegal	Voidable
59	A agrees to pay Rs.5,00,000 to B if B procures an employment for A in income tax department. This agreement is	Void	Valid	Voidable	Illegal	Illegal

S.NO.	QUESTIONS	OPTION I	OPTION II	OPTION III	OPTION IV	ANSWER
60	A void agreement is one which is	Valid but not enforceable	Enforceable at the option of both the parties	Enforceable at the option of one the parties	Not enforceable in a court of law	Not enforceable in a court of law

UNIT II

SYLLABUS

Different Modes of Discharge of Contract: Remedies for Breach of Contract – Contract of Indemnity and Guarantee – Rights of Surety – Discharge of Surety- Pawn or Pledge – Rights of Payee – Rights and Liabilities of Finder of Lost Goods - Law of Agency – Kinds of Agency – Ex-Post Facto Agency Requirements – Rights and Liabilities of Principals and Agents.

DIFFERENT MODES OF 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 co By impossibility
- By lapse of time
- By operation of law
- By breach of contract

REMEDIES FOR BREACH OF CONRACT

1 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 repudiators 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.

(c) Fundamental breach

The third repudiators breach is where the party in breach has committed a serious (or fundamental) breach of an in nominate 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 are 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.

In making an award of damages, the court has two major considerations: Remoteness – for what consequences of the breach is the defendant legally responsible is to measure the 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 (minimise) 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, e.g., 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’.

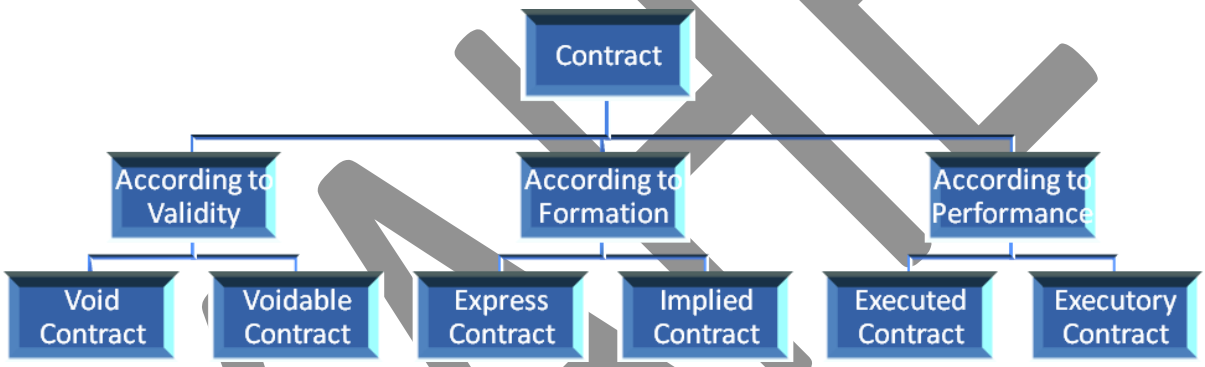
Where the order is not sought promptly the claimant will be barred by the maxims ‘Delay defeats the Equities’ and ‘Equity assists the vigilant but not the indolent’.

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, Page One Records Ltd v Britton and Warner Brothers v Nelson.



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.

Quasi-contracts

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).

CONTRACT OF INDEMNITY AND GUARANTEE

1. Introduction

2. Meaning of Indemnity

. When one person promises to another person that in case another person suffers from some loss the first person will compensate the loss.

3. Contract of Indemnity

There the names of the parties were promiser and the promisee. In the contract of indemnity the name of the parties are indemnifier and indemnity holder. Indemnifier is a person who promises to the indemnity holder that in case the indemnity holder suffers from some loss, the indemnifier will compensates the loss. Now this is the contract of indemnity. We presume as in the beginning of the lecture I mentioned, we presume that all the essentials of the valid contract are present in the contract of indemnity.

Contract by which one party promises to save the other from loss cost to him by the conduct of the promise himself or by the conduct of any other person is called a contract of indemnity.

Indemnifier has promised to the indemnity holder that in case indemnity holder suffers from some loss, because of the conduct of the indemnifier or because of the conduct of the third party. Then indemnifier will compensate to the indemnity holder. Suppose the loss to the indemnity holder is caused by his own act then in that case indemnifier will not compensate the indemnity holder. Therefore let us elaborate it with the help of an

Therefore the definition is broader and the liability of indemnifier arises when indemnity holder suffer from some loss

4. Essentials for Contract of Indemnity

Contract of indemnity can also be expressed and implied. Another essential of contract of indemnity is the loss should be caused to the indemnity holder because of the behaviour of the promise or the third party. The last but not the least is that promise is promising with the promisee who is

Indemnity holder in this contract to save him from the loss. The indemnifier is entering into the contract with the indemnity holder to save him from the loss. Meaning thereby indemnity holder if he suffers from some loss he will be brought back again in the same situation, Meaning thereby making good to the loss.

5. Rights of Indemnity Holder

Indemnity holder act within the authority given to him .So indemnifier's duties will become the rights of the indemnity holder. So one party's duty are the rights of the other party. So when we are discussing about the rights of the indemnity holder. We had to look at the duties of the indemnifier.

The duties of an indemnifier and automatically from that we can drive the rights of indemnity holder as we have mentioned in it that all damages suffered by the indemnity holder are recoverable from the indemnifier or all cost can be recovered by the indemnity holder from indemnifier and all sums. When we say all sums meaning thereby when indemnity holder file a suit on the third party and if a compromise is taking between indemnity holder and the third party. Then during the compromise if the indemnity holder has to pay something to the third party, that amount can also be recovered by the indemnity holder from the indemnifier. So in the brief I wish to mention that indemnity holder has got right to recover all sums, all damages, all cost from the indemnifier. And it is a duty of the indemnifier to compensate that to indemnity holder provided indemnity holder is working within the authority granted to him by the indemnifier.

So this is all about the contract of indemnity and I sum up by saying that this has been mentioned in section 124 the definition of the contract of indemnity has been explained. Then we moved on study the essentials of the contract of the indemnity and then we went-on to study the rights of the indemnity holder and we have explained it that the section 124 is very Page 5 of 9narrow as far as the definition is concerned because of it includes the loss should be caused to

be indemnity holder by the human being. But we now include the broader definition in which it is mentioned that any loss caused to the indemnity holder can be from the act of God also. With this we finish the topic of the contract of indemnity.

6. Contract of Guarantee

The term contract of guarantee is defined in section 126 of Indian Contract Act. It says the contract of guarantee is a contract to perform the promise or discharge the liability of the third person in case of default. If we analyse the definition we find that in the contract of guarantee there is a promise by one party. One party undertake a promise that in case the debtor makes a default, he will compensate or he will fulfil the promise.

Contract of guarantee the surety promises to the creditor that in case the debtor makes a default in the making the payment on a due date the surety will make the payment to the creditor. So first of all we had to understand that there is a major and first of all contract is between the debtor and the creditor, one contract is between the debtor and the creditor ,another one between the creditor and the surety and the third is between the surety and the debtor. So there are three parties and there are three contracts.

And the surety promises to the Take an example, A goes to the B to get a loan of 10,000/- rupees. And B says to the A that you bring the surety of somebody and then I will give you the loan. A goes to the C that please give the surety for my loan, and on the request of the A who is a debtor, on the request of the A, C who is a surety gives an undertaking or promises with the B. B is a principal creditor or creditor. C promises with the B that in case A does not make the payment on the due date he will make the payment meaning thereby C will fulfil the word which is supposed to be fulfilled by the A on the due date. So in the contract of guarantee there is always a request from the debtor to the surety to give the surety. Because surety how he will come to know that he has to give a guarantee of somebody, until and unless somebody doesn't come to him with the request.

He has not seen the things in the dreams. Somebody will come to surety and principal debtor is somebody he will come to the surety that please gives the guarantee. At the request of the debtor, surety is giving the guarantee to the creditor. Now suppose on the due date A is not able to fulfil his word. And on the guarantee C has given the guarantee and B has given the loan to the A, and on the due date A back out from the words or he is not in position to fulfil the words he is a defaulter. At the default of the principal debtor it is the prime duty of surety that he

now will make the payment to the creditor. So this is known as the contract of the guarantee. So in the contract of guarantee the surety gives the guarantee to the creditor that in case debtor makes a default surety will make the payment.

7. Kinds of Guarantee

The guarantee of this Advantage of the continuous guarantee is the surety can revocate his guarantee at anytime. If surety comes to know that principal debtor is not utilising money in a proper manner and if he or for some other reason if he feels that he should withdraw his guarantee then in continuous guarantee. The surety is in advantageous position as he can withdraw the guarantee after some transaction, say for example, A was given the loan by the B of 1, 00,000/- rupees and C promised that he gives the guarantee 1, 00,000/- rupees but the loan should be given to him in the 10 transaction or after every end of the month he should be given the 10,000/- rupees. Suppose the B has the given the loan of 40,000/- rupees in 4 transaction.

After 4 transactions the C who is a surety comes to know that A is not utilising the money in productive purpose. Then C can withdraw the guarantee after the 4th transaction. He can say to the B that now I would like to revocate my guarantee because now I will not be responsible. But C will be responsible to the B for the 4 transaction which have already taken place.

8. Essentials of Contract of Guarantee

What are the essentials of the contract of guarantee? As we mentioned they are the special contracts and we have derived the special contract from the general principal of the law. They must fulfil all the valid essentials for the first in the foremost essential of the contract of guarantee is the contract of guarantee must have all the essentials of the valid contract. Second is the party should be competent to contract.

The parties to contract should be competent to enter into the contract. In the contract of guarantee, party also be competent to contract, because if the surety is not competent to contract and if he gives the guarantee and suppose the principal debtor commits a fault then who will be at the disadvantageous position, very simple creditor will be a at disadvantageous position, because when creditor will go to the debtor to get the money. Debtor will say I am not in position to return the money. Creditor comes to the surety, surety makes the payment. And when surety goes to get the money from the debtor, he says 'I am a minor'. Who will be the looser? The surety will be the looser but therefore we mention the parties to the contract in the contract of

guarantee should be competent to contract and in the interest of the creditor better it is that surety is competent to enter into the contract. Another essential is that this contract should be supported by the consideration. We have studied the meaning of consideration. Consideration means something in exchange. Let us take an example. Debtor goes to the creditor to get the money. Say for example 1 lakh rupees have been given by the creditor to debtor at the rate of 2%, interest rate is 2% and surety is giving the guarantee.

The consideration for the creditor is rate of interest which he is earning on the loan, the consideration for the debtor is he is getting the loan. The consideration for the surety of Law here presumes the consideration for the surety is that when he gave the guarantee because of his guarantee the debtor got the loan that is the consideration for him. But remember consideration has to be present.

There cannot be any contract of guarantee where the consideration is absolutely not available. Another essential element of the contract of guarantee is that it should not be obtained by the misrepresentation. The misrepresentation here does not mean the creditor and debtor should disclose all the facts of the contract of guarantee. But here the misrepresentation means those materials facts for which surety will be liable. The matters which are related to the surety, the matter related to his interest that should not be misrepresented. So in the contract of guarantee there should not be any misrepresentation.

The contract of guarantee should not conceal anything. There is a difference between misrepresentation and concealment of fact. Sometime it is the prime duty of the creditor to mention certain things to the surety when he is getting the surety for the loan which he has sanctioned to the debtor. And he deliberately avoids certain things, he conceals certain things which are necessary to be mentioned to the surety if he conceals something that contract will be an invalid. The promise to pay must be conditional is another essential in the contract of guarantee. This says that the payment by the surety should be conditional meaning thereby when on the due date the debtor commits a fault, then the surety comes into the picture. If the surety wants to make the payment for that the debtor should commit the default. It is the condition that on the default of the debtor the surety will make the payment to the creditor. On the due date the creditor cannot directly go to the surety.

He has to go to the debtor and will ask for the loan and if the debtor commits a fault then he will go to the surety. Though he can file a suit on the debtor. He can file a suit on a

surety or he can file a suit on both of them. But surety blame liability to pay will be a conditional and that will be the default on the debtor. The last but not the least is the contract of guarantee should be written or oral but it is always in the interest of the parties that contract should be written.

RIGHTS & LIABILITY OF SURETY

Surety has got rights against debtor. But sometime in a contract of guarantee, the surety is not all alone. There are more than one surety or there are more than two sureties. Then sometime one surety can exercise his rights against the other co sureties. So the point of the co sureties will also be touched. So the surety's rights against the creditor, rights against debtor and rights against co sureties

Right of subrogation says that when a surety makes the payment to the creditor and creditor is out of the scene now, therefore now surety will deal with the debtor in a manner as if he is a creditor.

Surety's Rights against Debtor:

The surety after making the payment to the creditor will step into the shoes of the creditor. Because after making the payment to the creditor, the creditor is out of the scene now. Surety have given the guarantee to the creditor and creditor after getting the payment is out of scene and now the surety will step into the shoes. He will occupy the same position which was available with the creditor. He will step into the shoes of the creditor and will deal with the debtor as if he is a creditor. So his role will change he will not remain simply as a surety.

He will become now creditor for the debtor. So stepping into the shoes of somebody is a right of the subrogation.

Rights of a Surety Against Creditor

Surety has got a right against the debtor he has got certain rights against the creditor also. The first and the foremost right is that he can claim certain securities from the creditor. At the time of entering into the contract of guarantee, if debtor has given certain securities to the creditor to get the loan he has pledge certain things with the creditor. Though pledge words which using will explain it, elaborate it when we will talk about the contract of bailment and the pledge. But here the pledge means for the security of the loan if the debtor has kept certain securities with the creditor and when surety is making a payment to the creditor, creditor at the time of getting the payment when he is getting the payment the automatically, it gives a rise to

the sureties right and that is surety can say to the creditor that those securities which were kept with him is to be released now because he is getting the complete loan so his right is to claim those securities

DISCHARGE OF SURITIES

When the liability of the surety is extinguished, he is said to be discharged; A surety may be discharged:

(i) By revocation.

(ii) By the act or conduct of the creditor.

(iii) By invalidation of the contract of guarantee.

I. Discharge of surety by revocation:

(a) Revocation by notice (Sec. 130):

A continuing guarantee may, at any time, be revoked by the surety, as to future transactions, by notice to the creditor. But a specific guarantee cannot be revoked if the creditor has given the loan.

(b) Revocation by death (Sec. 131):

The death of the surety operates, in the absence of any contract to contrary, as a revocation of continuing guarantee for future transactions. The estate of the deceased surety will not be liable for any transactions entered between the creditor and the principal-debtor even if the creditor has no notice of death. In case the parties have agreed to a notice of surety's death, then notice of death will be necessary. Under English Law also, notice of surety's death is necessary.

(c) Discharge of surety by novation (Sec. 62):

A contract of guarantee is a species of the general contract. As such, a contract of guarantee is discharged by novation, i.e., by substituting a new contract in place of the old one. The original contract is discharged.

II. Discharge of surety by the act or conduct of the creditor:

1. By variation in terms of contract (Sec. 133):

Any variance made without the surety's consent, in the terms of the contract between the principal-debtor and the creditor, discharges the surety as to transactions subsequent to the variance.

Example:

A becomes surety to C for B's conduct as a manager in C's Bank. Afterwards, B and C contract, without A's consent that B's salary shall be raised and that he shall become liable for one-fourth of the losses on over-drafts. B allows a customer to overdraw, and the bank loses a sum of money. A is discharged from his surety-ship by the variation made without his consent and is not liable to make good the loss.

It should be noted that variation discharges the surety in respect of transactions which take place after the variation. Therefore, he continues to be liable for the transactions which were entered before the variation took place.

2. By release or discharge of principal-debtor (Sec. 134):

A surety is discharged by any contract between the creditor and the principal-debtor by which the principal debtor is released or by an act or omission of the creditor, the legal consequence of which is the discharge of the principal-debtor.

Example:

A contract with B for a fixed price to build a house for B within a month, B supplying the necessary timber. C guarantees A's performance of the contract. B fails to supply the timber. C is discharged from his surety-ship.

Exceptions:

In the following cases, the surety is not discharged:

(i) Death: Death of the principal-debtor does not discharge the surety from his liability.

(ii) Insolvency: Similarly, insolvency of the principal debtor does not discharge the surety.

(iii) Omission to sue within the period of limitation:

The omission of the creditor to sue within the period of limitation does not discharge the surety.

Example:

B owes to C a debt guaranteed by A. The debt becomes payable. C does not sue B for more than 3 years after the debt has become payable. Although the debt has become time-barred, yet the surety is not discharged from his liability as surety.

(iv) Release of one of the co-sureties (Sec. 138):

In case there are co-sureties, a release of one of them by the creditor does not discharge the other; neither does it free a surety so released from his responsibility to other co-sureties.

3. By compounding by the creditor with the principal debtor (Sec. 138):

A contract between the creditor and the principal debtor by which the creditor makes a composition with, or promises to give time to or not to sue, the principal-debtor, discharges the surety, unless such contract is made with the consent of the surety.

It should be noted that the surety is discharged only if the contract to give time to principal- debtor is made by the creditor with the principal-debtor. Therefore, if a contract is made with a third party, the surety is not discharged (Sec. 136).

Example:

C, the holder of an overdue bill of exchange drawn by A as surety for B, and accepted by B, contracts with C to give time to B. A is not discharged.

4. By creditor's act or omission impairing surety's eventual remedy (Sec. 139): In case the creditor does any act which is inconsistent with the rights of the surety, or omits to do any act which his duty to the surety requires him to do, and the eventual remedy of the surety himself against the principal-debtor is thereby impaired, the surety is discharged.

Examples:

(1) B contracts to build a ship for C for a sum of 2 lakh rupees, to be paid by instalment as the work reaches certain stages. A guarantees B's performance to C. C without the knowledge of A, pre-pays the last two instalments without the work being completed. A is discharged by the pre-payment.

(2) A employs B as a cashier on the guarantee of C. A promises to check up the cash of the cashier at least once a month. He does not check the cash for 2 months. The cashier misappropriates the funds; C is not liable to A on his guarantee.

It should be noted that the failure of the creditor to sue the principal-debtor within the period of limitation does not discharge the surety.

5. By loss of surety (Sec. 141):

If the creditor loses, or without the consent of the surety, parts with any security given at the time of contract, the surety is discharged to the extent of the value of the security.

It should be noted that the surety will be discharged only when he parts with any security given at the time of contract. He is not discharged when he parts with any security given after the contract of guarantee is made.

Examples:

(1) A advances to B Rs. 2,000 on the guarantee of C. A also has an additional security for the Rs. 2,000 by a mortgage of B's furniture. A cancels the mortgage, thereby returns the furniture to B. B becomes insolvent and is unable to pay anything. C is discharged from his liability to the extent of the value of the security (furniture).

(2) A gives a loan to B on the security of C. Afterwards, A obtains B's scooter as a further security. Subsequently, A gives up the further security, i.e., returns the scooter to B. In this case, C is not discharged to the extent of the value of the security as the further security was given after the loan had already been given.

III. Discharge of Surety by Invalidation of the Contract :

(i) By obtaining guarantee by misrepresentation (Sec. 142):

Any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid.

(ii) By obtaining guarantee by concealment (Sec. 143):

Any guarantee which the creditor has obtained by means of keeping silence as to the material facts of circumstances is invalid.

Example:

A engaged B as a cashier. B misappropriates some cash. Thereupon, A asks B to bring some surety who can guarantee his good conduct. C give his guarantee for B's good conduct. A does not inform C about B's previous misconduct. B again misappropriates cash. C is not liable as a surety.

(iii) By the failure of the co-surety to join (Sec. 144):

Where a person gives guarantee upon a contract that the creditor shall not act upon it until the other co-surety has joined, the guarantee is not valid if the other person does not join.

Whether Failure of Consideration between the Creditor and Principal debtor discharged the Surety:

It has already been discussed that there is, no need of separate consideration for a contract of guarantee between the creditor and surety. But there must be consideration between the creditor and the principal debtor. Therefore, on the failure of such consideration, surety will be discharged from his liability

PAWN OR PLEDGE

Definition of Pledge 1. Pledge is a real security on the basis of which a pledgee may levy execution upon the pledged asset, having priority to other creditors, including the state, in satisfying the secured claim.

2. Pledge validity depends on the validity of the obligation secured by the pledge.

Pledger:

1. The pledger is a natural person or legal entity that has right of ownership to the pledged asset.

2. Both the obligor of a secured obligation and a third party may be a pledger.

3. Assets in common ownership may only be pledged by consent of all co-owners.

4. Commercial companies and enterprises pledge their assets in conformity with their incorporation documents.

5. A share of assets in common shared ownership may be pledged without the other co-owners' consent.

6. Assets owned by persons with limited ability to perform and minors may only be pledged by consent of their guardianship or custody authority.

Pledgee is an entity for the benefit of which a pledge is established.

1. Pledge is established with regard to a movable or real asset or a body of movable or real assets.

2. Pledge of real assets is called mortgage.

3. Movable assets are encumbered with pledge with or without their disposition.

4. Pledge of a movable asset with its disposition is called pawn.

Pledge shall be indivisible even if the pledged asset or obligation is divisible.

- **Pledge Rise and Registration Grounds for, and Moment of, Rise of Pledge**

1. Pledge only arises on the conditions and in the forms set forth by this Law.

2. Pledge is conventional or legal.

3. Mortgage and pledge of movable assets without their disposition arise at the moment of their registration in the respective registry.

4. Pawn arises at the moment of acquiring possession of the asset. Registration of Pledge without Disposition

Pledge of assets without their disposition shall be registered in:

Real Estate Registry – in the event of mortgage;

Registered Securities Registry – in the event of pledge of registered securities;

Government Securities Registry – in the event of pledge of government securities;

Intellectual Property Registry – in the event of pledge of intellectual property rights; and Pledged Movable Assets Registry – in the event of pledge of other movable assets.

RIGHTS OF PAYEE

Surety-takeover agreements.

(a) The procedures in this section apply primarily, but not solely, to fixed-price construction contracts terminated for default.

(b) Since the surety is liable for damages resulting from the contractor's default, the surety has certain rights and interests in the completion of the contract work and application of any undisbursed funds. Therefore, the contracting officer must consider carefully the surety's proposals for completing the contract. The contracting officer must take action on the basis of the Government's interest, including the possible effect upon the Government's rights against the surety.

(c) The contracting officer should permit surety offers to complete the contract, unless the contracting officer believes that the persons or firms proposed by the surety to complete the work are not competent and qualified or the proposal is not in the best interest of the Government.

(d) There may be conflicting demands for the defaulting contractor's assets, including unpaid prior earnings (retained percentages and unpaid progress estimates). Therefore, the surety may include a "takeover" agreement in its proposal, fixing the surety's rights to payment from those funds. The contracting officer may (but not before the effective date of termination) enter into a written agreement with the surety. The contracting officer should consider using a tripartite agreement among the Government, the surety, and the defaulting contractor to resolve the defaulting contractor's residual rights, including assertions to unpaid prior earnings.

(e) Any takeover agreement must require the surety to complete the contract and the Government to pay the surety's costs and expenses up to the balance of the contract price unpaid at the time of default, subject to the following conditions:

- Any unpaid earnings of the defaulting contractor, including retained percentages and progress estimates for work accomplished before termination, must be subject to debts

due the Government by the contractor, except to the extent that the unpaid earnings may be used to pay the completing surety its actual costs and expenses incurred in the completion of the work, but not including its payments and obligations under the payment bond given in connection with the contract.

- The surety is bound by contract terms governing liquidated damages for delays in completion of the work, unless the delays are excusable under the contract.
- If the contract proceeds have been assigned to a financing institution, the surety must not be paid from unpaid earnings, unless the assignee provides written consent.

The contracting officer must not pay the surety more than the amount it expended completing the work and discharging its liabilities under the defaulting contractor's payment bond. Payments to the surety to reimburse it for discharging its liabilities under the payment bond of the defaulting contractor must be only on authority of

(i) Mutual agreement among the Government, the defaulting contractor, and the surety;

(ii) Determination of the Comptroller General as to payee and amount; or

(iii) Order of a court of competent jurisdiction.

RIGHTS AND LIABILITIES OF FINDER OF LOST GOODS

A person, who finds goods belonging to another and takes them into his custody, is subject to the same responsibility as a bailee (Sec 71). The finder of goods is given special privileges under the law. He is entitled to retain the goods as against the whole world except the true owner there of. He is, therefore like a custodian of goods found by him for and on behalf of the true owner. As and when the owner is found, he is to return the goods to him. He has to take all reasonable steps to find the true owner.

The following are the rights and liabilities of the finder of goods:

Rights: (1) he has a right to retain possession of such goods against the whole world except the true owner:

(2) He is entitled to lien, i.e. a right to retain the goods found even against the true owner until he receives compensation for trouble and expenses voluntarily incurred by him to preserve the goods and find out the owner. However, the finder of goods is not entitled to sue for such compensation, though he is entitled to retain the goods until he receives such compensation.

(3) The finder may sue for the reward, where the owner has offered a specific reward for the return of the goods. He may retain the goods until he receives it. He cannot claim any remuneration for services rendered by him.

(4) The finder may sell the goods if —

a) the owner cannot with reasonable diligence be found; or

b) he refuses, upon demand, to pay the lawful charges of the finder; or

c) the thing is in danger of persisting or of losing the greater part of its value, or

d) the lawful charges of the finder in respect of the thing found, amount to two thirds of its value.

A finder of goods cannot sell the goods otherwise than on above grounds. If he does so, he will be guilty of conversion.

Liabilities: The liabilities and obligations of the finder of the goods are:

1) They must use reasonable diligence and try to find out the true owner;

2) They must take due care of the goods

3) They must not use the goods for his own purpose of pledge.

Definition:

The bailment of goods as security for payment of a debt or performance of a promise is called pledge. The bailer in this case is called the pawnor. The bailee is called the Pawnee (Sec 172). The transaction is called the pledge or pawn. Bailor in this case is also called the pledgor and the bailee is called the pledge. Pledge is therefore a kind of bailment.

Illustration:A borrows Rs 4,000 against security of his jewellery. The bailment of jewellery is a pledge.

Any kind of movable property can be pledged by actual or constructive. Where a person pledges the goods in which he has only a limited interest, the pledge is valid to the extent of that interest. Rules of bailment are generally applicable to pledge.

Essentials:

(1) The goods must be delivered as security of payment of a debt or for performance of a promise;

(2) There must be actual or constructive delivery of goods pledged. When a third person having possession of the goods agrees to hold them on pledge's behalf it will constitute sufficient delivery. Delivery of documents of title to the goods which would enable the Pawnee to obtain

possession thereof, like delivery of railway receipt would constitute the same thing as delivery of goods and would therefore be a pledge.

(3) The pledge can be made of movable goods only. Movable goods include documents, shares, or valuable things. Government promissory notes may be pledged by endorsement and delivery. Money cannot be pledged.

(4) Transfer of possession is essential. Agreement to transfer possession of goods when ready or in future does not create a pledge.

A bailment relates to specific moveable property of which delivery has been given by one person to another for a specific purpose. Where specific moveable and immovable properties were given in possession by one party to another under the contract but the right of realization was not confined to the specific moveable properties of which delivery was given but extended to other assets also, it was held that since no specific moveable property was given as a security for the debts of the transferee, the transaction could not be called a pledge.

LAW OF AGENCY

DUTIES IMPOSED ON MEMBERS ACTING ON BEHALF OF THE CHAPTER

An agency is "a legal relationship whereby one person acts for another."The person that acts for another is the agent, and the person from whom the agent gets authority is the principal.

"Agency can be created by contract (express or implied, oral or written), by ratification (assent is given either to an act done by someone who had no previous authority to act or to an act that exceeded the authority granted to an agent), by estoppel (a person allows another to act for him/her to such an extent that a third party reasonably believes that an agency relationship exists), or necessity (a person acts for another in an emergency situation without express authority to do so)."6

Unless modified by contract, agents generally owe the following duties to their principals:

- Duty to obey instructions provided by the principal;
- Duty to act with skill;
- Duty of loyalty;
- Duty to protect confidential information;
- Duty to notify and give information; and
- Duty to account for monies spent.

"As a fiduciary respecting matters within the scope of the agency … the agent owes a duty of good faith and condor in affairs connected with the undertaking, including the duty to disclose to the principal all matters coming to [the agent's] notice or knowledge concerning the subject … of the agency which it is material for the principal to know for his protection or guidance."

"Duty to give information arises when agent has notice of facts which, in view of his relations with the principal, he should know may affect the desires of his principal as to his own conduct or the conduct of the principal."

The duty of loyalty requires the agent to act in the best interest of the principal. If the agent's acts on behalf of the principal affect the agent's interests, the agent must disclose those conflicts of interest to the principal. Furthermore, the agent cannot take advantage of opportunities directed to the principal, without first disclosing those opportunities to the principal, and awaiting the principal's rejection of those opportunities.

Agency law varies from state to state. This document does not begin to touch upon the many detailed aspects of agency law. It is designed only to provide a beginning framework for understanding agency law issues.

Actual and apparent authority , The law of agency is an area of commercial law dealing with a set of contractual, quasi-contractual and non-contractual fiduciary relationships that involve a person, called the agent, that is authorized to act on behalf of another (called the principal) to create legal relations with a third party. Succinctly, it may be referred to as the equal relationship between a principal and an agent whereby the principal, expressly or implicitly, authorizes the agent to work under his or her control and on his or her behalf. The agent is, thus, required to negotiate on behalf of the principal or bring him or her and third parties into contractual relationship.

An agent's breach of his fiduciary duties can result in liability to the Actual authority can be express or implied. Express authority is explicitly authorized by chapter consensus or provisions in the chapter by-laws. Implied authority refers to authority that naturally arises from express authority. Although there wasn't express authority to access the letterhead, access to the letterhead

Agency is a personal non-assignable obligation parties to an agency agreement:

- Principal – the person who delegates authority – also called the Client
- Agent – the person who accepts authority and acts on behalf of the Principal

• Third Party – the person whom the agent deals with on behalf of the Principal – also called the Customer

TYPES OF AGENCY BASED ON AUTHORITY DELEGATED:

• UNIVERSAL AGENCY – the broadest and most general scope of authority – ongoing in nature – the agent can bind the Principal if authorized to do so

• GENERAL AGENCY – narrower, more specific range of activities – ongoing in nature – the agent can bind the Principal if authorized to do so

• SPECIAL AGENCY - limited scope of authority to single act – not ongoing - the agent can bind the Principal if authorized to do so real estate transactions where the broker represents the sellers.

Methods of creating agency:

• Express Agreement – specifically agreed to orally or in writing

• Implied Agreement – created by words or actions of the parties

• Agency by Estoppel / Ostensible Agency – when the Principal leads a third party to believe a person is the agent, then the principal cannot deny the agency relationship

• Agency by Ratification – when the Principal accepts an unauthorized act of an agent after the fact and accepts the benefits

Implied agency

• Relationship of the parties – friends, relatives, bosses, etc.

• Actions – acting like an agent, providing client level services

• Persons who should have representation – first time buyers, language, education problems

Common law agency

• Single agency/representation – representing one party to the transaction

• Dual agency/representation – representing both parties to the transaction with informed consent of both parties Disclosed Common Law Dual Agency – Undisclosed

Types of Agency

The Four Types of Agency Law

For any small business owner considering expansion, a thorough understanding of the law of agency is essential in picking the best real estate representative. For a business owner thinking of selling or acquiring an additional property, working with a real estate representative is a great way to alleviate the pressures of making a property transfer. Once an agency relationship is

established between a seller or buyer and a broker, the parties must then select the type of agency arrangement to fit the situation.

Establishing an Agency Relationship

An agent is someone who has been granted the authority to make decisions on behalf of another person. Agents can bind a third party to a contract and negotiate on behalf of the one granting authority, known as the principal. In almost every situation, authority is expressly given to the agent by the principal either verbally or in writing. Implied agency refers to a situation in which an agent has to act outside of his express duties to perform a task for the principal's benefit. If an agent is acting on behalf of the principal without express or implied authority to do so, the law will protect the consumer or client by conferring authority upon the actor even without the principal's permission. An example of this would be if a person entered into a contract to sell the principle's property for an amount outside the agent's express authority. In order to protect the buyer from losing the contract, the agent will be considered to have apparent authority.

Seller's Broker

The seller's broker is also known as the seller's representative or listing agent. This person works exclusively on behalf of the seller to find a buyer for the listed property. The relationship is formed by an express written contract which provides that the seller's broker is the only person authorized to sell the property. Once a sale is made, the broker receives a percentage of the sale price as payment. If the broker knows information about the property that would sway a potential buyer, he must disclose this information under most state laws. The broker owes fiduciary duties to the seller, such as duty of loyalty and full disclosure.

Sub-agent

A sub-agency involves a situation where a potential buyer would like to look at a property and his regular agent is unavailable. A sub-agent will walk the buyer through the property and provide him customer service as if he were his own client. The difference is that a sub-agent is not permitted to provide the buyer with any information or disclosures that could negatively impact the seller.

Buyer's Broker

A buyer's broker is in an agency relationship similar to that of the seller's broker, only he is working directly with interested buyers looking for property. The buyer's broker must disclose

material information about a property that would likely interfere with the buyer's use and enjoyment of the property. In Arizona, this refers to information about the seller's likelihood not to sell, defects, liens or judgments on the property.

The buyer's broker communicates directly with a seller's broker if the buyer makes an offer and, in most cases, is granted authority to negotiate on behalf of the buyers. Small business owners looking to acquire property should contract with a buyer's broker with commercial real estate experience as well as an understanding of the buyer's industry and needs.

Dual Agency

Dual agency refers to a situation in which a broker represents both a seller and buyer at the same time. This does not constitute a conflict of interest as long as both parties are aware of and consent to the arrangement. The dual agent is required to keep information about price, motivation or terms confidential unless expressly instructed to inform the other party about this information.

Agents come in all kinds of different forms – it just depends on the situation. However, you can usually classify agents into a few different main types. Besides the regular agency relationship with 1 principal and 1 agent, other types of agents include:

Co-agents

- When multiple agents have an agency relationship with just 1 principal

Dual-agents

- When 1 agent acts on behalf of multiple principals in regard to the same transaction
    - For example, a real estate agent may act as the agent for the buyer and the seller on the same piece of property
    - Dual-agents also include spies who work for 2 or more governments.

Sub-agents

- Is an agent of an agent, where the original agent grants authority to a sub-agent
    - For example: principal (hires)--> agent (hires)--> subagent
- The subagent acts on behalf of the first agent and the principal
- Sub-agents are only allowed if it is:
    - Necessary to complete a project
        - For example, a general contractor might hire a subcontractor who then hires subagents to do specific tasks

- General contractor (principal) --> subcontractor (agent) --> mason (subagent)

- Customary in the business industry
- The principal expressly allows the agent to hire a subagent
- It deals with a very trivial matter

EXPOST FACTO AGENCY REQUIREMENTS

Ex post facto

In Latin, ***ex post facto*** literally means *from that which is done afterward.* In English, we use it to mean *after the fact.* It's primarily a legal term, and it can sound out of place in informal contexts, where *after the fact* or synonyms such as *retroactive* work just as well. *Ex post facto* is usually used as an adjective, but it also works as an adverb. Here are a few examples of the phrase in action in legal contexts:

The Swiss Supreme Court will intervene ex post facto only on restrictive grounds. They were hearings ex post facto, held to gather input on a proposal that is not a proposal at all, but rather the law of the District.

An **ex post facto** is a law that retroactively changes the legal consequences of actions that were committed, or relationships that existed, before the enactment of the law. In criminal law, it may criminalize actions that were legal when committed; it may aggravate a crime by bringing it into a more severe category than it was in when it was committed; it may change the punishment prescribed for a crime, as by adding new penalties or extending sentences; or it may alter the rules of evidence in order to make conviction for a crime likelier than it would have been when the deed was committed. Conversely, a form of ex post facto law commonly called an amnesty law may decriminalize certain acts or alleviate possible punishments (for example by replacing the death sentence with lifelong imprisonment) retroactively. Such laws are also known by the Latin term in mitius.

A law may have an ex post facto effect without being technically ex post facto. For example, when a law repeals a previous law, the repealed legislation is no longer applicable to situations to which it previously was, even if such situations arose before the law was repealed. The principle of prohibiting the continued application of such laws is called Nullum crimen, nulla poena sine praevia lege poenali, especially in European Continental systems.

Some common-law jurisdictions do not permit retroactive criminal legislation, though new precedent generally applies to events that occurred before the judicial decision. Ex post facto laws are expressly forbidden by the United States Constitution in Article 1, Section 9, Clause 3. In some nations that follow the Westminster system of government, such as the United Kingdom, ex post facto laws are technically possible, because the doctrine of parliamentary supremacy allows Parliament to pass any law it wishes. In a nation with an entrenched bill of rights or a written constitution, ex post facto legislation may be prohibited.

RIGHTS, DUTIES, AND LIABILITIES OF PRINCIPLES AND AGENTS:

An agent acts within the scope of his/her authority, a principal is bound by the act of his/her agent. Moreover, a party is responsible for any action or inaction by the party or the party's agent. The liability of the principal to a third person upon a transaction conducted by an agent is based upon facts such as: the agent was authorized; the agent was apparently authorized; orthe agent had a power arising from the agency relation and not dependent upon authority or apparent authority.

A principal may be liable to a third person on account of a transaction with an agent because of the principles of estoppels, restitution, or negotiability, although he/she may not be subject to liability based on principles of agency. Unless a person has expressly or impliedly made such other his/her representative, no person is liable for the acts of another who assumes to represent. Moreover, a person dealing with an agent cannot hold the principal liable for any act or transaction of the agent not within the scope of his/her actual or apparent authority. Unless the limitations of the agency are known or can be readily ascertained, the principal is bound by unauthorized acts of an agent through which a third party has sustained a loss.

The principal will no longer be liable for a particular act after the third person has notice of the principal's repudiation of the agent's authority to do such an act. After the termination of an agency for a particular purpose and notice of the revocation of the agency, the act of an agent will not bind the principal. A principal is liable for the tortious acts of an agent within the course and scope of the agent's employment. Unless the principal commands or directs the act, a principal is not liable for the torts committed by an agent while acting adversely to the principal or outside the scope of the agent's employment.

Even though the principal does not authorize, ratify, participate in, or know of the misconduct, he/she may be held for an agent's tort committed in the course and scope of the

agent's employment. A master or other principal who is under a duty to provide protection is subject to liability to such others for harm caused to them by the failure of such agent to perform the duty. A principal is not relieved from the separable part of a contract which he/she authorized the agent to make by the fact that the agent undertook. Even where the agent's unauthorized act constitutes a fraud on both the principal and the third person, the partial validity rule is applicable.

Under circumstances which do not impute knowledge and without the principal's knowledge or consent, the principal is not liable for an usurious agreement of an agent which is entered into. The principal is bound where: the principal expressly or impliedly authorizes or ratifies the agent's usurious agreement, or

The circumstances are such that the agent's conduct is presumed to be known to the principal. The issue is whether the agent had apparent authority to enter into an usurious agreement. Whether the principal is bound by the agent's acts requires a case-by-case inquiry into whether the principal's conduct reasonably induced a third party to believe that the agent had authority to act for the principal.

Even if an act done by an agent is directly contrary to the instructions of the principal, the principal will be liable unless the third person with whom the agent dealt knew that the agent was exceeding his/her authority or violating his/her instructions. A general agent for a disclosed or partially disclosed principal subjects his/her principal to liability for acts done on his/her account which usually accompany or are incidental to transactions which the agent is authorized to conduct if the other party reasonably believes that the agent is authorized to do them although they are forbidden by the principal. A disclosed or partially disclosed principal authorizing an agent to make a contract is subject to liability upon a contract made in violation of such limitations with a third person who has no notice of them.

Even though the agent acts in his/her own interests and adversely to the principal, where the party with whom the agent contracts have no knowledge of the agent's dereliction, the rule that a principal is liable for the contracts of an agent applies. An agent cannot bind the principal where the person with whom the agent contract knows that the agent is engaged in self-dealing or has an adverse interest.

A person receiving the document from the agent is not entitled to hold the principal thereon, if he had notice that the agent filled the blanks, where a principal entrusts an agent with an executed document containing blanks with authority to fill the blanks.

A representation by an authorized agent of the principal is binding upon the principal. A principal cannot repudiate statements made by an agent in the course of employment. The principal is bound by the agent's material representations of fact to the same extent as if the principal had made them personally.

However, an agent cannot bind the principal by statements which are not made in the course of, and within the scope of, the business being transacted for the principal. The third person cannot hold the principal liable for representations made by an agent if the third person did not rely thereon to his/her disadvantage. The principal is not liable for statements of the agent which are not representations.

The Principal of payment and liability of agent:

The principal is bound only where the person to whom payment is made is in fact an authorized agent of the person to whom the indebtedness is owed. The debtor makes payment to a person other than the principal at his/her own risk. If a party is informed that the person with whom he/she deals is merely the agent of another, such party will not be allowed afterward to charge the principal. However, the burden is on the principal to show that it was the intention of the third person and the agent that exclusive credit was being given to the agent.

The principal is bound by the knowledge of or notice to an agent received while the agent is acting within the scope of his/her authority. The agent's knowledge or notice is imputed to the principal and is constructive notice. The liability of a principal is affected by the knowledge of an agent concerning a matter as to which he acts within his/her power to bind the principal or upon which it is his/her duty to give the principal information that:

except where the agent is acting adversely to the principal or where knowledge as distinguished from reason to know is important, the principal is affected by the knowledge which an agent has a duty to disclose to the principal or to another agent of the principal to the same extent as if the principal had the information; and

Except where there is reliance upon the appearance of agency, a principal is not bound by knowledge of an agent concerning matters as to which he has only apparent authority.

Unless the notified has notice that the agent has an interest adverse to the principal, a notification given to an agent is notice to the principal if it is given:

to an agent authorized to receive it,

to an agent apparently authorized to receive it,

to an agent authorized to conduct a transaction, with respect to matters connected with it as to which notice is usually given to such an agent, unless the one giving the notification has notice that the agent is not authorized to receive it,

to an agent to whom by the terms of a contract notification is to be given, with reference to matters in connection with the contract, or

to the agent of an unidentified or undisclosed principal with reference to transactions entered into by such agent within his/her powers, until discovery of the identity of the principal; thereafter as in the case of a disclosed principal.

The rule of imputed knowledge is a rule of public policy based upon the necessities of general commercial relationships. Where a principal acts through an agent, a third person dealing with the agent is entitled to rely upon the agent's knowledge and notice and it binds the principal rather than innocent third parties. The relationship of principal and agent must exist between the parties in order for one person's knowledge to be imputed to another under the law of agency. Even though the agent is not under the full control of the principal, any knowledge acquired by an agent within the scope of his/her employment is chargeable to the principal.

The knowledge of an agent may be imputed to the principal only where it is relevant to the agency and to the matters entrusted to the agent. If the knowledge acquired or notice received by an agent:

(A) does not pertain to the duties of the agent,

(B) does not relate to the subject matter of the employment, or

affects matters outside the scope of the agency, it is not chargeable to the principal unless actually communicated to him/her.

The rule charging the principal with an agent's knowledge is not necessarily restricted to matters of which the agent has actual knowledge. The principal is not affected by knowledge which the agent should have acquired in the performance of his/her duties unless the principal has a duty to others that care will be exercised in obtaining information. Moreover, the principal is not affected by the knowledge which an agent should have acquired in the performance of the

agent's duties to the principal or to others, except where the principal or master has a duty to others that care shall be exercised in obtaining information.

Except for knowledge acquired confidentially, the time, place, or manner in which knowledge is acquired by a servant or other agent is immaterial in determining the liability of his/her principal. In order to be an effective notice, a notification must be given to or by an agent during the time when the agent has power to affect his principal by giving or receiving such notification. A principal is not affected by notice which comes to the agent outside the course of the transaction in which the agent is employed. The relevant consideration is whether the agent has the knowledge at the time it becomes relevant in his/her work for the principal.

Then, the principal is bound regardless of whether the agent's knowledge was acquired as a result of the agency. The burden is on the party seeking to charge the principal with the knowledge acquired by the agent to prove that such knowledge remained present in the mind of the agent at the time of the transaction. The principal will not be held chargeable with notice thereof, if the proof is doubtful. If the person giving notice has a right to rely upon the appearance of the continuance of the agency and has no reason to be aware that it has terminated, the principal may be chargeable with notice given to a former agent.

The principal is affected by the knowledge which the agent has when acting for the principal or, if it is the duty of the agent to communicate the information and not otherwise to act, the principal is affected after the lapse of such time as is reasonable for its communication. The principal is charged with the agent's notice thereof in a transaction that occurs after the agency is terminated, if a fact is of general or continuing significance. Even though the agent may no longer be in the principal's employ, where the principal claims through a transaction, he/she is chargeable with knowledge of the agent gained relative thereto.

However, where the former agent abandoned the matter without result, a principal is not chargeable with the knowledge of an agent employed merely to conclude a particular transaction. It is subsequently transacted without reference to the former agency, or to any business of the principal other than that then transacted where the fact had no apparent materiality. The subsequent transaction is independent thereof.

The principal is not affected by the knowledge of an agent as to matters involved in a transaction in which the agent deals with the principal or another agent of the principal as, or on account of, an adverse party. The agent's knowledge generally is not imputed to the principal

where the conduct and dealings of an agent are such as to raise a clear presumption that s/he will not communicate to the principal the facts in controversy. Moreover, a principal is not affected by the knowledge of an agent in a transaction in which the agent secretly is acting adversely to the principal and entirely for his/her own or another's purposes, except where the principal is affected by the knowledge of an agent who acts adversely to the principal if the failure of the agent to act upon or to reveal the information results in a violation of a contractual or relational duty of the principal to a person harmed thereby, if:

The agent enters into negotiations within the scope of his/her powers and the person with whom he/she deals reasonably believes him/her to be authorized to conduct the transaction; or before he/she has changed his/her position, the principal knowingly retains a benefit through the act of the agent which otherwise s/he would not have received.

An agent's adverse dealings or fraud cannot alter the legal effect of the agent's knowledge or notice with respect to the principal with regard to third persons who had no connection with such agent in relation to the perpetration of the adverse dealings or fraud and no knowledge that the agent was acting adversely. Unless the third person has notice of the agent's adverse purposes, a notification by or to a third person or by an agent is not prevented.

POSSIBLE QUESTIONS

PART A – (ONE MARKS)

(ONLINE EXAMINATION)

PART B – (TWO MARKS)

1. Define the term guarantee.
2. What is discharge of duty?
3. Who may be an agent?
4. What is meant by anticipatory breach of contract?
5. Define pledge.
6. What do you mean by damage?
7. Define breach of contract.
8. What does injunction means?
9. What are the rights of payee in contract?
10. Write a short note on Remedies for breach of contract?
11. What are the rules to be followed in rights of surety?
12. Define law of Agency.
13. Define Pawn or pledge.
14. What are the rights of principles and agents?
15. What are the rights of payee in contract?

PART C – (SIX MARKS)

1. Explain about rights and liabilities of finder of lost goods.
2. Explain about rights and liabilities of principles and agents.
3. Explain about contract of indemnity and guarantee.
4. Explain about kinds of Agency.
5. Define Agency. Explain in detail about various kinds of Agency.
6. Discuss the essentials and legal rules for a contract of guarantee.
7. What does it mean by discharge of contract? Explain the various modes of discharging a contract.
8. Explain briefly about pledge. What are the rights of payee?
9. What are the remedies for breach of contract? Explain.
10. Explain the term "Public policy" and state the agreements opposed to public policy.

KARPAGAM ACADEMY OF HIGHER EDUCATION

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DEPARTMENT OF COMMERCE

I - B.COM BUSINESS LAW (17CMU201)

UNIT II (DIFFERENT MODES OF DISCHARGE OF CONTRACT)

S.NO.	QUESTIONS	OPTION I	OPTION II	OPTION III	OPTION IV	ANSWER
1	Performance of a contract is popular mode of _____ of a Contract	Discharge	Execute	Confirming	Breach	Discharge
2	_____ means when a new contract is substituted for an existing contract.	Novation	Alteration	Rescission	Breach	Novation
3	_____ of a contract means a change in one or more terms of a contract.	Novation	Alteration	Rescission	Breach	Alteration
4	The law terminates a contract in the following cases	Death, Insolvency, Merger and Unauthorized material alteration	Death , appointment , Transfer and Entry	Appointment, Winding up, Entry and Transfer	Agreement, Contract and Breach	Death, Insolvency, Merger and Unauthorized material alteration
5	_____ Breach means before the time for performance arrives a party to the contract may declare his intention of not performing the contract.	Contract	Anticipatory	Unauthorized	Authorised	Anticipatory
6	A proposal when accepted becomes a	Promise	Offer	Contract	Acceptance	Promise
7	Which of the following statement is true?	A contract with a minor is voidable at the option of the minor	An agreement with a minor can be ratifies after he attains majority	A person who is usually of a unsound mind cannot enter into cantract even	A person who is usually of a sound mind cannot enter into contract when he is of unsound	A person who is usually of a sound mind cannot enter into contract when he is of unsound mind

S.NO.	QUESTIONS	OPTION I	OPTION II	OPTION III	OPTION IV	ANSWER
8	On the valid performance of the contractual obligations by the parties, the contract	is discharged	becomes enforceable	becomes void	Voidable contract	is discharged
9	A contract is discharged by rescission which means the	change in one or more terms of the contract	acceptance of lesser performance	abandonment of right by a party	cancllation of the existing contract	cancllation of the existing contract
10	In case of illegal agreements, he collateral agreements are.	Valid	Void	Voidable	Discharged	Void
11	Consent is nott said to be free when it is caused by	Coercion	Undue influence	Fraud	Unlawful	All of these
12	Moral pressure is involved in the case of	Coercion	Undue influence	Misrepresentation	Fraud	Undue influence
13	Sometimes, a party is entitled to claim compensation in proportion to the work done by him. It is possible by a suit for	damages	injunction	quantum meruit	Return	quantum meruit
14	Where a promier has made an offer of performance to the promisee and the offer has been accepted by thepromisee it is called	An actual performance	Attempted performance	Not performed	Agreement	An actual performance
15	Where a promier has made an offer of performance to the promisee and the offer has not been accepted by thepromisee it is called	An actual performance	Attempted performance	Not performed	Agreement	Attempted performance
16	Novation means	Substitution	two or more	both a and b	Cancellation	Substitution

S.NO.	QUESTIONS	OPTION I	OPTION II	OPTION III	OPTION IV	ANSWER
17	Recission means	Substitution	agree	Cancellation	change	Cancellation
18	Alteration means	Substitution	agree	Cancellation	change	change
19	Remission means	Substitution	letter full fillment	Cancellation	change	letter full fillment
20	Waiver means	reliquishment	letter full fillment	Cancellation	change	reliquishment
21	A contract is discharged if it is not performed or enforced with in a specified period called period of	limitation	specified	fixed	not limitation	limitation
22	Limitation act passed in the year of	1953	1963	1973	1993	1963
23	Contract is refuses or fails to perform is called	breach	cancellation	Remission	discharge	breach
24	Not performing the contract before the performance is due	anticipating breach contract	breach contract	void	contract	anticipating breach contract
25	If any party to contract results or fails to performhis part of the contract at the time fixed for performance is called……..contract during on due date of performance	breach	actual breach	anticipating	void	actual breach

S.NO.	QUESTIONS	OPTION I	OPTION II	OPTION III	OPTION IV	ANSWER
26	If any party to contract results or fails to perform remaining part of the contract is called	breach	actual breach	anticipating	void	actual breach
27	A contracts with B to buy a necklace, believing it is made of pearls whereas in fact it is made of imitation pearls of no value. B knows that A is mistake and takes no steps to correct the error. Now A wants to cancel the contract on the basis of	A can cancel the contract alleging fraud	A cannot cancel the contract	A can cancel the contract alleging undue influence	A can claim damages	A cannot cancel the contract
28	Cross offer means	Exchanging identical offers by two parties in ignorance	Offer made to the public in general	Offer allowed to remain open for acceptance over a period of time	Offer made to a definite person	Exchanging identical offers by two parties in ignorance
29	Valid Contract	(a) In case of this collateral agreements are void	(b) Not enforceable in a court of law	© An agreement enforceble by law at the option of one or more of the parties	Enforceable at the option of the both the parties	Enforceable at the option of the both the parties
30	Which of the following Is a requirement for misrepresentation to exist?	Misrepresentation should relate to a material fact	The person making a misrepresentation should not believe it to be true	It must be made with an intention to deceive the other party	Contingent agreement	Misrepresentation should relate to a material fact
31	Which of the following agreement is void?	Agreement made under the unilateral mistake of fact	Agreement made under the bilateral mistake of fact	Agreement made under the influence of fraud	Contingent agreement	Agreement made under the bilateral mistake of fact
32	Which of the following offers constitute a valid offer?	An auctioneer displays a TV. Set before a gathering in an auction sale	Ram who is in possession of three cars purchsed in different years says - I will sell you a car.	A says to B, Will you purchase my motor cycle for Rs.20,000?	Coercion	A says to B, Will you purchase my motor cycle for Rs.20,000?
33	Contract caused by which of the following is void?	Fraud	Misrepresentation	Coercion	Bilateral Mistake	Bilateral Mistake
34	Suppose the time fixed for performace of the contract was expired but the time is not essential. What is the remedy of the promisee in the circumstances?	Can rescind the contract	No remedy available	To claim compensation	Cannot be determined	To claim compensation

S.NO.	QUESTIONS	OPTION I	OPTION II	OPTION III	OPTION IV	ANSWER
35	What is legal terminology for the doing or not doing of something which the promisor desires to be done or not done?	Desires	Consideration	Wishes	Promise	Consideration
36	Implied contract, even if not in writing or express words, is perfectly..... If other conditions are satisfied.	Void	Valid	Voidable	Illegal	Valid
37	R, an optical surgeon, employs S as the assistant for a term of three years and S agrees not to practice as a surgeon during this period. This contract is	Void	Valid	Voidable	Illegal	Valid
38	A agrees to pay Rs.500 to B if it rains, and B promises to pay a like amount to A if it does not rain, this agreement is called	Quasi contract	Contingent Agreement	Wagering agreement	Voidable contract	Wagering agreement
39	When the offeree offers to qualifies acceptance of the offer subject to modifications and variations he is said to have made a .	Standing, open or continuing offer	counter offer	cross offer	special offer	counter offer
40	When after the formation of a valid contract, an event happens which makes the performance of contract impossible, and then the contract becomes,	Void	Voidable	Valid	Illegal	Void
41	The basis of quasi contractual relations is true	Existence of a valid contract betweeen the parties	Prevention of unjust enrichment at the contract act	Provisions contained in section 10 of the contract act	Existence of a voidable contract between the parties	Prevention of unjust enrichment at the contract act
42	A agrees to pay Rs.1000 to B if a certain ship returns within a year. However, the ship sinks within the year. In this case, the contract becomes	Valid	Void	Voidable	Illegal	Void
43	Where an agreement consists of two parts one legal and the other illegal, and the legal part is separable from the illegal one. Such legal part is	Void	Valid	Voidable	Illegal	Valid

S.NO.	QUESTIONS	OPTION I	OPTION II	OPTION III	OPTION IV	ANSWER
44	Untill goods are ascertained there is merely	An agreement to sell	A breach of condition	A breach of warranty	A breach of Contracr	An agreement to sell
45	Discharge by mutual agreement may involve	Novation	Recission	Alteration	Quantun Merut	All of the above
46	A enquires from B, Will you purchase my cow for $ 100? B replies, I shall purchase your cow for $ 100 provided you purchase my parrot for $ 120. In this case.	B has accepted the offer of A	B has accepted the offer of A	B has made a counter offer of A	B cannot make such an offer	B has accepted the offer of A
47	A contract in which only one party has to fulfill his obligation at the time of the formation of the contract, the other party having fulfilled his obligation at the time of the contract or before the contract comes into existence is known as.	Unilateral contract	Bilateral contract	Quasi contract	Express contract	Unilateral contract
48	In case of a sale the position of a buver is that of	Owner of thegoods	Hirer of the goods	Bailee of the goods	None of the above	Owner of thegoods
49	A undertakes to paint a picture of B. he die before he paints the picture. The contract	In discharged by death	Becomes voidable at the options of B	Becomes of voidable at the options of legal representatives of A	Will have to performed by legal representatives of A	In discharged by death
50	Specific performance may be ordered by the court when	The contract is voidable	The damages are an adequate remedy	The damages are not an adequate remedy	The contract is uncertain	The damages are not an adequate remedy
51	In case of wrongful dishonor of a cherub by a banker having sufficient fund to the credit of the customer, the court nay award	Ordinary damage	Nominal damage	Exemplary damage	Contemtuous damage	Exemplary damage
52	The position of a finder of lost goods is that of a	Bailer	Bailee	Bailee of the goods	Principal debtors	Bailee of the goods

S.NO.	QUESTIONS	OPTION I	OPTION II	OPTION III	OPTION IV	ANSWER
53	A gratuitous bailment is one which is	Supported by consideration	Not supported by consideration	Not enforced by law	Void	Not supported by consideration
54	Contracts made before war with an alien enemy which are against public policy are	Suspended and are revived after the war is over	Dissolved	Not affected at all	Void ab initio	Void ab initio
55	Quantum meruit means	a non-gratuitous promise	an implied promise	as much as is earned	as much as paid	as much as is earned
56	The right of subrogation in s contract of guarantee is available to the	creditors	principle debtors	surety	indemnifier	surety
57	A gratuitous bailee is liable for defects in the goods bailed	Even if he is not aware of them	Only if he is aware of them	In all cases	In particular case	Only if he is aware of them
58	where the performance of a contract becomes subsequently impossible or unlawful, the contract becomes	illegal	void	voidable	initial imposibility	void
59	an agreement to do an act impossible in itself	is void	is void ab initio	is voiable	become void when imposibility	is void ab initio
60	A promises to perform a dance in B Theatre. A dies. The contract	Void	discharge	rescinded	voidable	discharge

UNIT - III

SYLLABUS

Indian Partnership Act 1932: Definition and Tests of Partnership – Implied Authority of Partners – Limitations – Firms Debts and Private Debts – Priority in Discharge – Rights and Liabilities of Partners – Dissolution of Partnership Firm.

THE INDIAN PARTNERSHIP ACT, 1932

DEFINITION AND TEST OF PARTNERSHIP

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 partner is defined under section 4 of "Indian partnership act 1932 as under "partnership 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"

Section 2 of the act defines:

(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; (c-1) "Registrar" means the Registrar of Firms appointed under sub-section (1) of section 57 and includes the Deputy Registrar of Firms and Assistant Registrar of Firms appointed under sub-section (2) of that section;

(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) Expressions used but not defined in this Act and defined in the Indian Contract Act, 1872, shall have the meanings assigned to them in that Act.

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.

Test for Determining the Existence of Partnership

Law of partnership an extension of law of agency:

As mentioned above there are four essential characteristics of partnership. An association of two or more persons entering into an agreement to share profits may not necessarily determine partnership because such an agreement may not be able to carry on business and may be formed for charitable or social objects. Similarly mere sharing of profits may exist between the joint owners of the property and therefore this may also not determine the existence of partnership. Even a mere statement that the parties are to be partners will not necessarily constitute them as partners in law. So also a person who holds out himself to be a partner is not a partner in law though he may be liable to third parties.

Section 6 of the Act lays down in determining whether a group of persons are a firm or not and whether a person is or is not a partner in a firm, regard shall be given to the relation between the parties as shown by all the relevant facts taken together.

The intentions of the partners will have to be decided with reference to the terms of the agreement and all the surrounding circumstances including evidence as to the interfacing or interlocking of management finance and other incidents of the respective businesses.

The members of a Hindu Undivided family carrying on family business are not partners, because a male child of a Hindu acquires an interest in such business by birth apart from any agreement to that fact. He is not a partner but a joint owner. Joint ownership is a family quasi-partnership created by the operation of law and is not a partnership arising out of a contract. Similarly, a Burmese Buddhist husband and wife carrying on business are not partners.

The true test for determining the existence of partnership is Agency and Authority. In determining the existence of partnership it is essential to trace the real intention of the parties to

the agreement and circumstances of the case, whether the relation of principal and agent exists between the parties? It is the reaction of agency which distinguishes a partnership from co-ownerships. It was held that in cases where losses as well as profits are shared, the presumption about the existence of partnership still becomes stronger, though not conclusive.

Agency is an essential element of partnership just sharing of profits and contribution to losses is not sufficient. It was held that the receipt by a person of a share in the profits of a businesses is prima facie evidence that he is a partner, but this is not a conclusive test. The question whether a person is a partner or not therefore depends in nearly all cases upon whether or not he has the authority to act for other partners and whether or not other partners have the authority to act for him. Intention of parties to be gathered from the language used in the deed read as a whole and having regard to the ordinary sensible meaning.

It is only where there is a difference of opinion between the partners that the matter is connected with the business has to be decided by a majority of partners. Hence control and management can be exercised by a single partner and need not be by the majority.

Where a contract was entered into by one of the partners of a firm with the Finance Corporation for supply of dal, the contract will be binding on the other partners of the firm when validity of the contract or authority of the partner to enter into the contract is not denied by other partners.

IMPLIED AUTHORITY OF PARTNERS

Every partner has the implied authority to bind the firm and other partners by his acts done in the name of the firm, in the ordinary course of the firm's business and with the intention to bind the firm.

"In determining whether a group of persons is or is not a firm, regard shall be had the real relation between the parties as shown by all relevant facts taken together "The real relation between the partners can be ascertained."

A partner has the implied authority to do the following acts on behalf of his firm.

(i) To buy, sell and pledge goods on behalf of the firm.

(ii) To raise loans on the security of such assets.

(iii) To receive payments of debts due to the firm.

(iv) To accept, make an issue bills of exchange, promissory notes, etc., on behalf of the firm.

(v) To engage servants for the firm's business.

(vi) To take on lease a premises on behalf of the firm.

However, a partner has no implied authority, unless otherwise expressed in the partnership deed, in the following matters:

(a) To submit a dispute relating to the firm to arbitration.

(b) To compromise or relinquish any claim or a portion of claim made by the firm.

(c) To withdraw a suit or proceeding filed on behalf of the firm.

(d) To admit any liability in a suit or proceeding against the firm.

(e) To open a bank account on behalf of the firm in his own name.

(f) To acquire or purchase immovable property for and on behalf of the firm

(g) To transfer or sell immovable property belong to the firm; and

(h) To enter into partnership with others on behalf of the firm.

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.

LIMITATIONS OF A PARTNERSHIP FIRM

The Major Limitations of Partnership Firm are as follows:

(i) Uncertainty of duration:

A partnership suffers from a possible limited span of life. Legally, a partnership firm must be dissolved on the retirement, death, bankruptcy, or lunacy of any partner or demanded by any partner.

The probability of any one of these event occurring when there are a number of partners is much greater than in the case of a sole proprietor.

(ii) Risks of additional liability:

It is true that like the sole proprietor, each partner has unlimited liability. But his liability may arise not only from his own acts but also from the acts and mistakes of co-partners over whom he has no control.

(iii) Lack of harmony:

The old saying that "too many cooks spoil the broth" can be apt for a business partnership. Harmony may be difficult to achieve, especially when there are many partners. Lack of centralised authority and conflicts in policy can disrupt the organisation.

(iv) Difficulty in withdrawing investment:

Investment in a partnership can be simple, but its withdrawal may be difficult or costly when this aspect is considered from the point of view of individual partners. This is so because no partner can withdraw his interest from the firm without the consent of all partners.

(v) Lack of public confidence:

A partnership may suffer from lack of public confidence because like that of a company there is no legal mechanism to enforce the registration of a partnership firm and the disclosure of its affairs.

(vi) Limited resources:

A partnership is good insofar as it can be started with limited capital. However, it becomes a handicap in the growth and expansion phases of the business. There is a limit beyond which it is almost impossible for partners to collect capital. This limit is generally up to the personal properties of partners.

(vii) Unlimited liability:

Unlimited liability discourages partners to undertake risky ventures, and therefore, their risk-taking initiative is dampened.

FIRM DEBTS AND PRIVATE DEBTS

Debt

A debt is an obligation owed by one party (the debtor) to a second party, the creditor; usually this refers to assets granted by the creditor to the debtor, but the term can also because metaphorically to cover moral obligations and other interactions not based on economic value.

A debt is created when a creditor agrees to lend a sum of assets to a debtor. Debt is usually granted with expected repayment; in modern society, in most cases, this includes repayment of the original sum, plus interest.

In finance, debt is a means of using anticipated income and future purchasing power in the present before it has actually been earned. Some companies and corporations use debt as a part of their overall corporate finance strategy.

Interest

Interest is the fee charged by the creditor to the debtor. Interest is generally calculated as a percentage of the principal sum per year, and is generally paid periodically at intervals, such as monthly or semi-annually.

Interest rates may be fixed or floating. In floating-rate structures, the rate of interest that the borrower pays during each time period is tied to a pre-established benchmark such as LIBOR or, in the case of inflation-indexed bonds, inflation.

Repayment

Loans may be structured so that the entire principal balance is due at the maturity of the loan; so that the entire principal balance is paid slowly or amortized over the term of the loan; or so that the loan partially amortizes during the term of the loan and a larger "balloon payment" is due at maturity. Amortization structures are common in mortgages and credit cards.

Collateral and recourse

A debt obligation is considered secured if creditors have recourse to specific collateral. Collateral may include claims on tax receipts (in the case of a government), specific assets (in the case of a company) or a home (in the case of a consumer). Unsecured debt comprises financial obligations for which creditors do not have recourse to the assets of the borrower to satisfy their claims.

A company may use various kinds of debt to finance its operations. The various types of debt can generally be categorized into:1) secured and unsecured debt, 2) private and public debt, 3) syndicated and bilateral debt, and 4) other types of debt that display one or more of the characteristics noted above.

Private debt comprises bank-loan type obligations, whether senior or mezzanine. Public debt is a general definition covering all financial instruments that are freely traceable on a public exchange or over the counter, with few if any restrictions.

A basic loan or "term loan" is the simplest form of debt. It consists of an agreement to lend a fixed amount of money, called the principal sum or principal, for a fixed period of time, with this amount to be repaid by a certain date. In commercial loans interest, calculated as a percentage of the principal sum per year, will also have to be paid by that date, or may be paid periodically in the interval, such as annually or monthly. Such loans are also colloquially called bullet loans, particularly if there is only a single payment at the end – the "bullet" – without a "stream" of interest payments during the life of the loan.

Private Debts

Private debt funds have emerged as a regular source of financing for mid-market deals in recent years. According to a recent report from advisory firm Deloitte, which tracks 20 private lenders in the UK mid-market, there were over 55 deals involving private debt funds between Q4 2012 and Q3 2013, with the last quarter on record showing the highest number of transactions.

Other market dynamics are also driving the private debt phenomenon. Investors, in search of steady regular returns on investments, are putting their money into private debt funds, which offer annualised returns on a fixed basis.

Last year private debt fund Blue Bay Asset Management raised €800 million to invest in mid-market debt with an additional €200 million for co-investments, while Ardian, formerly known as Axa Private Equity, is attempting to close a €2 billion debt fund. Due to the relative infancy of the market, there is no comprehensive data on the number of private debt funds being raised, yet industry figures say more capital is being poured into the market.

"There is an awful lot of new capital being raised by private debt funds to supply the market with products, given the lack of liquidity," said Jon Herbert, a director at LDC responsible for sourcing financing for deals, and former head of acquisition finance at the firm's parent group.

For Herbert, private debt funds are able to offer a wide range of debt packages and options for individual businesses. This makes them attractive, he said, despite the perception that they are more expensive than bank lenders. "It entirely comes down to the choice of the individual private equity firm. Some think they [private debt funds] are expensive, but you are paying for a product which delivers features [which] banks aren't providing at the moment, such as extra leverage, more flexible covenants and bullet structures. These are features well worth paying for."

Charlie John stone, a partner at UK mid-market firm ECI Partners, said private equity firms' perceptions of private debt funds are changing. "The gap has closed. Now you are looking at expense and flexibility – it is about pros and cons."

Throughout 2013, buyout firms hunting for larger deals enjoyed a healthy high yield bond market, which enabled them to refinance portfolio companies and put together aggressive financing packages for trophy deals. Now, in the mid-market, private equity firms are enjoying a similarly welcome credit boost, as private debt funds vie to provide credit on deals with other funds and the remaining banks in the market.

According to people familiar with the matter, Lloyds, RBS, HSBC, GE and Barclays continue to serve the mid-market, but are now facing competition from the likes of Ares, High bridge, Blue Bay and ICG. Competition is making the terms of loans more favourable for private equity firms, especially given the scarcity of new primary deals in the market.

"In the long term, we'll see how banks compete against the funds, as the banks' own situations improve. We are early into that phase already," Herbert added.

Good for sponsors

The developments are overwhelmingly positive for sponsors. Mid-market buyout firms are able to enjoy an ever-growing number of debt sources, and more options when putting together financing packages for leveraged buyouts.

"Private debt funds are taking market share, and are less of a premium than they once were," said one UK mid-market manager. "There was a transaction last summer where we worked with a high growth business, but one that ate capital as it grew. We went to a non-bank lender as they were happy to have less amortization. You end up with better covenants for businesses that may want to recycle cash."

For banks, the development of the private debt sector is less welcome. "Last year was the seminal year for private debt, and we probably saw double the amount of deals than in the previous two years combined. There has been an increase in liquidity, and also in acceptance of these funds, to the extent that private equity firms do not have a preference anymore," said David Parker, a partner at debt advisory firm Marlborough Partners.

Jonathan Guise, managing partner at Marlborough, said banks were even "beginning to see their assets under management eroded" due to the "sheer quantum of capital that has been exited out of banks' portfolios". He added: "The banks are looking to keep some assets under

Looking like the US

According to some market observers, European private debt is slowly beginning to resemble the US market, which has a wide range of non-bank lenders.

Fobel agreed the European private debt market was "heading in the direction" of the US market, but added funds were "at a much earlier stage in the journey".

Despite the boost for the European mid-market, some private equity firms continue to hold some reservations about private debt lenders, especially when pondering what might happen if a company breaches the terms or covenants of a loan.

One UK private equity executive said some buyout firms privately held concerns about "some aggressive behaviour in the past" shown by some private lenders, and added this may deter some private equity firms from using them. However, he added that while it was "unclear" how private debt funds would react when companies fell into trouble with their loans, the behaviour of banks through the crisis meant they were not necessarily a safer option.

Private debt partnerships

In response to the changing lending environment, UK investment bank Barclays announced a partnership with Blue Bay Asset Management earlier this month.

The duo will offer so-called unitranche debt for deals between £75 million to £120 million. Karl Nelson, managing director and head of debt finance at Barclays, said that the bank had trailed the arrangement with Bluebag on the £82 million refinancing of Tower Brook Capital Partners backed retailer Phase Eight last month.

Barclays will provide the safest part of debt for the deals, the senior debt, with Bluebag providing the riskier part of debt.

"The client gets a cleaner structure and a one-stop solution" said N "The idea here is to provide that little bit of extra leverage, that little bit of extra flexibility and speed of deployment.""People were worried about who's in the syndicate and about them selling out, but the experience of the recent cycle has turned things on its head. Funds are not charities, but they are motivated by returns on their capital, and are predictable and rational, whereas banks have proven to be highly irrational."

Private Companies and Debt

From jobs to GDP, privately owned companies help drive the American economy. In the United States, the three hundred largest private companies alone employ over 4 million people and have combined revenues in excess of $1 trillion.

But when these private companies need funds to expand or manage their operations, they may not have access to public funding through the sale of stocks and bonds. In this situation, private companies raise funds by selling equity ownership shares in the company or through debt financing in the form of loans and lines of credit

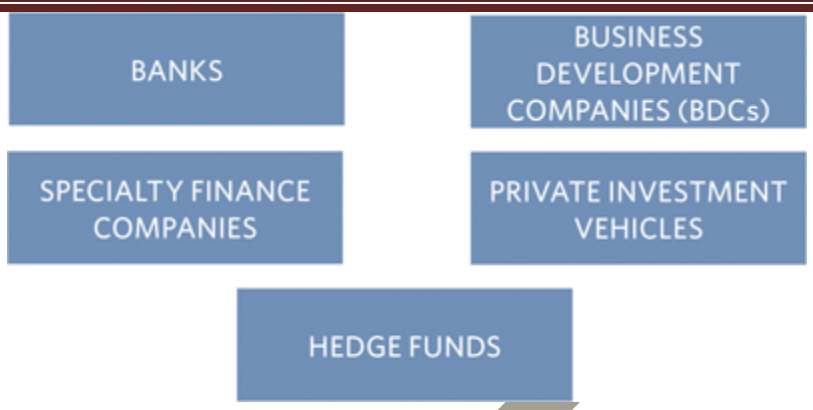
How Private Debt Financing Works

When a private company identifies an opportunity to grow their business, the company may not have the cash or assets on hand to pursue the necessary expansion. In this situation, debt may be the preferred financing option.

To fund the growth opportunity, the company borrows the needed funds by asking a lender for a loan. In exchange for making the loan, the lending institution expects to receive interest payments in addition to repayment of the contractual loan amount. Both parties have the potential to benefit. If all goes as intended, the company grows its business and the lending institution receives a contractual return on its investment.

Sources of Private Debt Financing

Private companies can seek debt financing in the form of loans from:



The Capital Structure and Debt

The combination of equity and debt forms a company's capital structure. The balance of how much debt versus equity is unique to each company and is determined by the management team's evaluation of various loan terms and other business factors.

Debt has a priority claim on cash flows or assets and there are different levels of debt. Senior debt ranks first in repayment priority; subordinated debt ranks second and typically has a higher yield. Equity typically comes with the highest return expectations to reflect the increased risk of non-payment based on its lower claims priority.

For Investor Use

Private debt investments may be either direct or indirect and are subject to significant risks, including the possibility of default.

This information does not constitute a solicitation of an offer to sell/buy any specific security offering. Such an offering is made only by the applicable prospectus, which should be read carefully by an investor before investing. Investors are advised to consider the investment

objectives, risks, charges and expenses carefully before investing. Broker/dealers are reminded that communications sent to any person relating to securities must be accompanied or preceded by a prospectus in accordance with the Securities Act of 1933, as amended.

PRIORITY IN DISCHARGE OF PARTNER

A limited partnership is formed when a certificate substantially complying with subsection

(1) It is filed and recorded in the office of the Registrar of Joint Stock Companies

(2) A certificate shall be signed by all the persons desiring to form a limited partnership and shall state

(a) The firm name under which the limited partnership is to be conducted;

(b) The character of the business;

(c) The name and place of residence of each partner, general and limited partners being Respectively designated;

(d) The term for which the limited partnership is to exist;

(e) The amount of cash and the nature and fair value of other property, if any, contributed by each limited partner;

(f) The amount of additional contributions, if any, agreed to be made by each limited partners and the times at which or events on the happening of which an additional contribution is to be made;

(g) The time, if agreed upon, when the contribution of each limited partner is to be returned;

(h) The share of the profits or other compensation by way of income which each limited Partner is entitled to by reason of his contribution;

(i) The right, if given, of a limited partner to substitute an assignee as contributor in his place and the terms and conditions of the substitution;

(j) The right, if given, of the partners to admit additional limited partners;

(k)The right, if given, of one or more of the limited partners to priority over other limited partners, to a return of contributions or to compensation by way of income, and the nature of the priority;

(l) The right, if given, of the remaining general partner or partners to continue the business on the death, retirement or mental incompetence of a general partner; and

(m) The right, if given, of a limited partner to demand and receive property other than cash in return for his contribution.

Declaration not required

Where a certificate is filed pursuant to this Act, a declaration is not required to be filed under the Partnerships and Business Names Registration Act.

Appointment of agent

Where a certificate is filed pursuant to this Act, it shall be accompanied by an appointment of agent in the same form and to the same effect as an appointment of agent filed pursuant to the Partnerships and Business Names Registration Act. R.S., c. 259, s. 5.

Person may be both general and limited partner

A person may be a general partner and a limited partner at the same time in the same limited partnership.

Rights and powers of dual partner

(2) A person who is at the same time a general partner and a limited partner has the same rights and powers and is subject to the same restrictions as a general partner except that in respect of his contribution as a limited partner he has the rights against the other partners that he would have if he were not also a general partner. R.S., c. 259, s. 6.

Restriction on firm name

7 (1)The surname of a limited partner shall not appear in the firm name of the limited partnership unless it is also the surname of one of the general partners.

Liability where misuse of surname

(2) A limited partner whose surname appears in the firm name contrary to subsection (1) is liable as a general partner to any creditor of the limited partnership who has extended the credit without actual knowledge that the limited partner is not a general partner. R.S., c. 259, s. 7.

Restriction on contribution of limited partner

8 (1) A limited partner may contribute cash and other property to the limited partnership, but not services.

Interest of limited partner is personal property

(2) A limited partner's interest in the limited partnership is personal property.

General partner is registered owner of real property

(3) Only the general partners shall be shown at the registry of deeds as owners of any interest of the limited partnership in real property. R.S., c. 259, s. 8.

Rights and powers and liabilities of general partner

A general partner in a limited partnership has all the rights and powers and is subject to all the restrictions and liabilities of a partner in a partnership without limited partners except that, without the written consent to or ratification of the specific act by all the limited partners, a general partner has no authority to

(a) Do any act in contravention of the certificate;

(b) Do any act which makes it impossible to carry on the ordinary business of the limited partnership;

(c) Consent to a judgment against the limited partnership;

(d) Possess limited partnership property, or assign any rights in specific partnership property, for other than a partnership purpose;

(e) Admit a person as a general partner;

(f) Admit a person as a limited partner, unless the right to do so is given in the certificate; or

(g) Continue the business of the limited partnership on the death, retirement or mental incompetence of a general partner,

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

RIGHTS AND LIABILITIES OF PARTNERS

The various rights of a partner on dissolution are partner's general line. Every partner on his representative is entitled to have the firm's property applied in payment of the firm's debts. The surplus distributed amongst the partners or the representatives according to their respective rights.

The rights of a partner are as follows:

i. Right of the partner to take part in the day-to-day management of the firm.

ii. Right to be consulted and heard while taking any decision regarding the business.

iii. Right of access to books of accounts and call for the copy of the same.

iv. Right to share the profits equally or as agreed upon by the partners.

v. Right to get interest on capital contributed by the partners to the firm.

vi. Right to avail interest on advances paid by the partners for business purpose.

vii. Right to be indemnified in respect of payment made or liabilities incurred or for protecting the firm from losses.

viii. Right to the use of partnership property exclusively for partnership business only not himself.

ix. Right as agent of the firm and implied authority to bind the firm for any act done in carrying the business.

x. Right to prevent admission of new partners/expulsion of existing partners.

xi. Right to continue unless and otherwise he himself cease to become partner.

xii. Right to retire with the consent of other partners and according to the terms-and conditions of deed.

xiii. Right of outgoing partner/legal heirs of deceased partner.

2. Liablities of a Partner

The duties of a partner are as follows:

i. To carry on the business to the greatest common advantage:

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

ii. To be just and faithful to each other:

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

iii. To render true accounts:

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

iv. To provide full information:

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

v. To attend diligently to his duties:

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

vi. To work without remuneration:

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

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

Indemnify for loss exceeds his authority and the firm suffers from any loss, he shall have compensate the firm for such loss.

xiii. Duty to be liable jointly and severally:

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

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

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

ix. To account for personal profits:

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

x. Not to carry on any competing business:

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

xi. To share losses:

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

xii. To act within authority:

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

xiv. Duty not to assign his interest:

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

3. Liabilities of a Partner to Third Parties:

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

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

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

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

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

iii. Liability of the firm for misutilisation by partners:

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

iv. Liability of an incoming partner:

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

v. Liability of a retiring partner:

A retiring partner is liable for the acts of the firm done before his retirement. But a retiring partner may not be liable for the debts incurred before his retirement if an agreement is reached between the third parties and the remaining partners of the firm discharging the retiring partner from all liabilities. After retirement the retiring partner shall be liable unless a public notice of

his retirement is given. No such notice is required in case of retirement of a sleeping or dormant partner.

DISSOLUTION OF A FIRM

Meaning

Dissolution of a partnership firm merely involves a change in the relation of partners; whereas the dissolution of firm amounts to a complete closure of the business. When any of the partners dies, retires or become insolvent but if the remaining partners still agree to continue the business of the partnership firm, then it is dissolution of partnership not the dissolution of firm. Dissolution of partnership changes the mutual relations of the partners. But in case of dissolution of firm, all the relations and the business of the firm comes to an end. On dissolution of the firm, the business of the firm ceases to exist since its affairs are would up by selling the assets and by paying the liabilities and discharging the claims of the partners. The dissolution of partnership among all partners of a firm is called dissolution of the firm.

Example

X,Y and Z are partners in a firm's retires. The partnership between X, Y and Z comes to an end and new partnership between Y and z comes into existence. This new partnership between Y and z shall be known as "reconstituted firm". Thus on retirement of partner, the old partnership stands dissolved, but the firm continues its business with the remaining partners Y and Z.

A firm may be dissolved in the following manner

1. Dissolution by Court
2. Dissolution by agreement
3. Dissolution by operation of law
4. Dissolution on the happening of certain contingencies
5. Dissolution by notice

Dissolution by Court

The court may dissolve a firm at the suit of any partners on any of the following grounds namely

a. Insanity of a Partner: that a partner has become of unsound mind. The insanity of a partner does not ipso facto dissolve the firm and the next friend or continuing partners has to file suit foe dissolution.
b. Permanent Incapacity of a Partner: that a partner has become permanently incapable of performing his duties as partner.
c. Conduct Affecting Prejudicially The Business: that a partner is guilty of conduct, which is likely to affect prejudicially the carrying on the business of the firm.
d. Breach of Partnership Agreement: that a partner willfully or persistently commits breach of agreements relating to the management of the affairs of the firm or the conduct of it - s business or otherwise conducts himself in matters relating to the business, that it is not reasonably practical for the other partners to carry on the business with him.
e. Transfer of Interest of a Partner : that a partner has in any way transferred the whole of his interest in the firm to a third party.
f. Loss: that the business of the firm cannot be carried on save at a loss
g. Just And Equitable : on any other ground that renders it just an equitable that the firm should be dissolved.

Dissolution by Agreement

A firm may be dissolved with the consent of all the partners or in accordance with the contract between the partners. The partnership agreement may contain a proviso that the firm will be dissolved on the happening of certain contingency.

Dissolution by Operation of Law

A firm is compulsorily dissolved on the following grounds

a. Insolvency of partners
b. By the happening of any event which makes it unlawful for the business of the firm to e carried on.

Dissolution on the happening of contingent event (S.42) A firm may be dissolved on the happening of any of the following contingent event:-

(i) Expiry of Fixed Period:- If the firm is constituted for fixed period, then the firm is dissolves automatically.

(ii) On achievement of specific task:- If the firm has been constituted for the achievement of specific task, on achievement of that task, firm ceases to exist, unless there is an agreement to the contrary.

(iii) Death of Partner: - Death of any of the partner dissolves the partnership.

(iv) Insolvency of Partner: - in the absence of a contract to the contrary, the insolvency of any of the partner may dissolve the firm. The rule shall apply even though the partnership has been constituted for a fixed term and the term has not yet expired or has been constituted for particular venture and the same has yet not been completed.

(v) Resignation of Partner: - Resignation by any of the partners dissolution of firm.

Rights of partners on dissolution

1. Right to an Equitable lien:-

On the dissolution of the firm, every partner is entitled to certain rights i connection with the winding up of the firm. Such rights are,

1.Right to have the property of the firm utilised in payment of its debts and liabilities.

2.Right to have the surplus distributed among all the partners as per their rights.

2. Right to return of premium:-

A Partner is entitled to repay in full or such part of the premium as may have been agreed upon or as may be reasonable where

1. Parttnership has been constituted for a fixed term
2. Partner has paid a premium at the time of his admission into a partnership.
3. The firm is dissolved before the expiration of the fixed term.
4. The firm must have been dissolved otherwise than by the death of a partner.

3. Right where partnership contract is rescinded for fraud:-

If a partner is induced to join the firm by fraud or misrepresentation by other partner, he is entitled to put an end to the partnership agreement on the discovery of such fraud or misrepresentation.

1. A right offen or retention of the surplus of the assets of the firm left after having paid the debts of the firm, for any sum paid by him with a view to purchase a share in the firm and for ant capital contributed by him.

2. To be indemnified by the partner or partners guilty of fraud or against all the debts of the firm.

4. Right to restrain the use of the firm's Name or property:-

After the dissolution of a firm, every partner has a right to restrain the other partners from carrying on a similar business in the firm's name. A Partner can also be restrained from using the property of the firm for his own benefit. It may, however, be noted that a partner can be so restrained until the affairs of the firm are completely wound up.

5. Right to earn personal profits by using the name of the firm:-

If, on the dissolution of a firm, a partner buys the goodwill of the firm, he has the right to use the firm's name and earn personal profits.

POSSIBLE QUESTIONS

PART A (ONE MARK)

(ONLINE EXAMINATION)

PART B – (TWO MARKS)

1. Can a minor admitted as a partner?
2. Who is called a dormant partner?
3. What is meant by Dissolution in partnership?
4. Write a short note on tests of partnership.
5. Who can be implied authority of partners?
6. Write a short note on dissolution of partnership firm.
7. Define Partnership.
8. Who is a sleeping partner?
9. Mention any four rights of a partner
10. Define Indian partnership act 1932.
11. Write a note on firm debts.
12. What are the liabilities of partners?
13. What are the limitations of partners in partnership?
14. What are the rights of partners?
15. Write a definition and tests of partnership?

PART –C (SIX MARKS)

1. Explain the rights and liabilities of partners.
2. Explain about dissolution of partnership firm.
3. Explain about the implied authority of partners.
4. Explain about dissolution of partnership firm.
5. Define Partnership and explain about rights and liabilities of Partners?
6. Explain briefly about dissolution of partnership firm?
7. Explain the essentials of partnership?
8. Explain the various types of partners.
9. Explain briefly about rights and duties of partners.
10. Explain the rights and obligations of partners after the resolution of partnership.

KARPAGAM ACADEMY OF HIGHER EDUCATION

(DEEMED TO BE UNIVERSITY)

(ESTABLISHED UNDER SEC 3 OF UGC ACT 1956)

DEPARTMENT OF COMMERCE

I - B.COM BUSINESS LAW (17CMU201)

UNIT III (INDIAN PARTNERSHIP ACT 1932)

S.NO.	QUESTIONS	OPTION I	OPTION II	OPTION III	OPTION IV	ANSWER
1	Active partner is one who,	Takes part in the business	Actively participate in co-curricular activities	Actively share the profits	Makes a show of authority	Takes part in the business
2	On dissolution the partners remain liable to till,	Accounts are settled	Partners due are paid off	Public notice is given	The registrar strikes off the name	Public notice is given
3	Which of the following statements, about the registration of firm, is not true?	It must be done at the time of formation	It may be done at the time of formation	It may be done before filing a suit against third party	It may be done at any time after its formation	It must be done at the time of formation
4	The reconstitution of the firm takes place in case of	Admission of a partner	Retirement of a partner	Expulsion or death of a partner	All of the above	All of the above
5	Every partner has the right to	Take part in the business of the firm	To share exclusive profits	To use the property of the firm for personal purpose	Pay taxes	Take part in the business of the firm
6	Which of the following is not the right of a partner i.e., which he cannot claim as a matter of right?	Right to take part in business	Right to have access to account books	Right to share profits	Right to receive remuneration	Right to receive remuneration
7	X and Y agree to work together as carpenters but X shall receive all profit and shall pay wages to Y. The relatiion between X and Y is that	Partners	Carpenters	Labourers	Master-Servant	Master-Servant
8	Which of the following is an essential feature of partnership?	Registration	Test of Mutual Agency	Separate Legal Entity	Master-Servant	Test of Mutual Agency
9	A company may be in the form of	An unincorporated association	incorporated association	Both the above	Government certificate	An unincorporated association

S.NO.	QUESTIONS	OPTION I	OPTION II	OPTION III	OPTION IV	ANSWER
10	A new partner is held liable for all acts of the firm done	Before he become a partner	After he beame a partner	any time after even he ceases to be a partner and upto his death	Before or after he became a partner	After he beame a partner
11	The rights of a minor when admitted to the benefits of the parnership include	Right to share of the property and profits of the firm as may be agreed upon	Right to have access to and inspect and copy of the account of the firm	Right to cast his vote on the question of appointment of	A & B but not C	A & B but not C
12	A letter of acceptance sufficiently stamped and duly addressed is put into course of transmission. There is	A contract voidable at the option of acceptor	A contract voidable at the option of offerer	No contract at all	A valid contract	A valid contract
13	A who purchase certain goods from B by misrepresentation pledges them with C, the pledge is	Valid	Void	Voidable	Invalid	Valid
14	A minor is person who has not completed…….years of age	20	21	18	19	18
15	Where a certain amount is deposied as securing for performance of a contract, it is called	earnest money	cash money	hard money	No money	earnest money
16	A person making a proposal is called	promisor	vendor	contract	promisee	promisor
17	The Indian contract, 1872 is extended to	the whole of india	the whole of british india	the whole of india except J&K	all the states only	the whole of india except J&K
18	Acceptance in ignorance of the offer is	valid	void	voidable	illegal	void
19	Promotion of litigation in which one had no interest is	champerty	maintenance	stifling litigation	No litigation	maintenance
20	An ordinary partnership business can have	Not more than 50 partners	Not more than 20 partners	Any number of partners	Any number than 2 partners.	Not more than 20 partners

S.NO.	QUESTIONS	OPTION I	OPTION II	OPTION III	OPTION IV	ANSWER
21	A banking partnership business can have:	Not more than 10 partners.	Not more than 20 partners.	Not more than 50 partners	Any number of partners	Not more than 10 partners.
22	In the absence of an agreement profit and loss are divided by partners in the ratio of:	Capital	Equally	Time devoted by each partners	Fixed	Equally
23	In the absence of an agreement, Interest on loan advanced by the partner to the firm is allowed at the rate of	0.06	0.05	0.07	0.08	0.06
24	Current accounts of the partners should be opened when the capitals are:	Fluctuating	Fixed	Either fixed or fluctuating	Equally	Fixed
25	Investment in partnership is made by introducing	Cash	None – cash assets	Cash or non – cash assets	assets	Cash or non – cash assets
26	Partnership is formed by the partners by:	Written agreement	Oral	Written or oral	Both a & B	Written or oral
27	Any partner who investments in the business but does not take active part in the business is:	Secret partner	Sleeping partner	Active partner	Nominal partner	Sleeping partner
28	The written agreement of partnership is called:	Partnership deed	Articles of association	Memorandum of association	Certificate of incorporation	Partnership deed
29	Under fixed capital methods, profit will be credited to	Capital Account	Drawings	Current A/c	Profit & Loss	Current A/c
30	Partnership business in Pakistan is government by partnership Act of:	1913	1932	1984	1928	1932
31	The members of partnership firm are individually called as:	Director	Investor	Partner	Manager	Partner

S.NO.	QUESTIONS	OPTION I	OPTION II	OPTION III	OPTION IV	ANSWER
32	The object of partnership is to	Earn profit	Not to earn profit	Welfare of members	No profit No loss	Earn profit
33	Liability of partners in a partnership business is	Limited	Un-limited	Limited & unlimited	shared	Un-limited
34	Capital of the partners are maintained by:	Fixed capital method	Fluctuating capital methods.	By any two above methods	shared	By any two above methods
35	Drawings of the partners are:	Debited to profit & loss A/c	Credited to profit & loss A/c	Credited to capital A/c	Debited to capital A/c	Debited to capital A/c
36	A partners has to pay interest on drawings what is the entry in the personal A/c of the partner?	Credit partners capital A/c	Credit partners current A/c	Debit the partners current A/c	Debit partners current A/c	Debit partners current A/c
37	Interest on capital Account:	Debited to profit & loss A/c	Credit to profit & loss A/c	Debit to profit & loss and credited to partners capital A/c.	Only credited to partners capital A/c.	Debit to profit & loss and credited to partners capital A/c.
38	At the time of admission of a new partner the firm is:	Dissolved	Continued	Not effected	RE-organized	Dissolved
39	At the time of admission an incoming partner contributes as goodwill:	In cash	Does not pay cash	May or may not pay cash for good will	Pay taxes	May or may not pay cash for good will
40	Good will is valued as two years purchase of the average profits of three previous years are Rs. 15000, the value of good-will be:	Rs. 15000	Rs. 30000	Rs. 20000	Rs. 50000	Rs. 30000
41	A partner who has not actively engaged in the conduct of partnership is called	A dormant partner	A active partner	A working partner	A nominal partner	A dormant partner
42	A person who lends his name to the firm, without having any real interest in it is called	An active partner	A working partner	A sleeping partner	A nominal partner	A nominal partner

S.NO.	QUESTIONS	OPTION I	OPTION II	OPTION III	OPTION IV	ANSWER
43	Where a person holds himself out as a partner in a firm, he is then stopped from……the character he has assumed	Accepting	Demanding	Denying	Deserving	Denying
44	A did not object when he was introduced by B, one of the partners in BCD & CO., partnership firm, to X, one of the suppliers of the firm, as a partner, In this case, A is called	A nominal partner	A sleeping partner	A partner by holding out	An active partner	A partner by holding out
45	The indian partnership act is concerned with	rights of partners	duties of partners	legal relations between partners and third person	liabilities of a partner	all of the above
46	Partnership is the……..between persons who have agreed to share the profits of a business	business	trade	relation	venture	relation
47	Nature of the partnership is	Involuntary and contractual	Statutoty and contractual	Economical and edhical	Voluntary and contractual	Voluntary and contractual
48	In a partnership, there must be an agreement to share the profits of the business. The business does not include	trade	occupation	reputation	profession	reputation
49						
50	If a firm incurs a loss, it must be borne in the..ratio, unless agreed otherwise	capital contribution	deawings	profit-sharing	Loss sharing	profit-sharing
51	The true test of partnership is…..rater than…..	sharing of profits, sharing of losses	sharing of losses, sharing of profits	sharing of profits, mutual agency	Mutual agency, sharing of profits	Mutual agency, sharing of profits
52	One of the following is called the cardinal principle of partnership law	Carrying on of business by all or any of them actingfor all	sharing of profits	Compensation payable for working partners	Sharing of losses	Carrying on of business by all or any of them actingfor all
53	The prima facie evidence of 'sharing of profits' can be rebutted by a stronger evidence, viz., by proving that there is no	mutual benefit	mutual interest	mutual fund	mutual agency	mutual agency

S.NO.	QUESTIONS	OPTION I	OPTION II	OPTION III	OPTION IV	ANSWER
54	one of the following is not a right of a minor in a partnership firm	he has a right to his agreed share of the profits of the firm	he can have access to, inspect and copy the accounts of the firm	he can sue the partners for accounts withut severing his	No partners Account	he can sue the partners for accounts withut severing his connection with of the firm
55	Within.....months, a majority attained person admitted as a partner to the benefits of partnership, when he was a minor, can elect to become a partner or not to become a partner	2	3	6	9	6
56	E, a minor was admitted as a partner in AB & CO., on April 1, 2008. He was informed of the admission as a partner on July 1, 2008. He attained majority on June 1, 2008. By which date,	39600	39630	39782	39813	39813
57	One of the following is true when a person elects to become a partner on attaining majority	He becomes personally liable to the other partners for all acts of the firm done since	He becomes personally liable to third parties for all acts of	He becomes personally liable to third parties for all acts of the	He becomes personally liable to the other partners for all acts of the	He becomes personally liable to third parties for all acts of the firm done since he attained t
58	A partnership deed usually contain the particulars relating to	name of the firm and partners	asset sharing	Both the above	joint ownership	name of the firm and partners
59	A and B agreed to produce a film and share the profits of hiring it out. In this case there is	partnership	co-ownership	joint ownership	Both a & b	partnership
60	a partnership firm	is a legal person	is not a legal person	has a legal status of its own	has separate legal entity apart from its partners	is not a legal person

UNIT - IV

SYLLABUS

Sale of Goods Act 1930: Definition of Sale and Distinction between Sale and Related Transaction Resembling Sale – Sale and Agreement to Sell – Rules Regarding Passing of Property in Goods – Condition and Warranties – Actual and Implied- Principle of Caveat Emptor - Limitations - Rights of Unpaid Vendor.

THE SALE OF GOODS ACT, 1930

The Sale of Goods Act is an important piece of legislation which affects one and all. The rules and regulations affecting the ownership in goods transferred by seller to buyer are contained in this act. The transfer of ownership in goods involves a contract between buyer and seller, the provisions of the Indian Contract Act are applicable here too. This Act may be called the Sale of Goods Act, 1930. It extends to the whole of India (except the State of Jammu and Kashmir). It shall come into force on the 1st day of July, 1930

Definitions- In this Act, unless there is anything repugnant in the subject of content-

"Sale" means the transfer of ownership of goods by the seller to the buyer in exchange for a price paid or promised. Price is the consideration for sale of the goods.

"Buyer" means a person who buys or agrees to buy goods,

"Delivery" means voluntary transfer of possession from one person to another.

Contract of Sale

Section 4 defines a contract of sales as "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.

A contract of sale may be absolute or conditional. 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.

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.

Goods:

Section 2(7) defines Goods as every kind of movable property other than actionable claims and money. An actionable claim means a debt or a claim for money which a person may have against another and which he may recover by suit.

NATURE OF SALES CONTRACT

DOCUMENTS OF TITLE

Formal commercial document (such as bill of sale, certificate of title, title deed) or shipping document (such as a bill of lading, dock receipt, warehouse receipt) that confers and/or proves ownership. A document of title enables its holder (possessor) to receive, retain, sell, or otherwise dispose of the document and the goods or property listed therein. Any written instrument, such as a bill of lading, a warehouse receipt, or an order for the delivery of goods, that in the usual course of business or financing is considered sufficient proof that the person who possesses it is entitled to receive, hold, and dispose of the instrument and the goods that it covers.

A document of title is usually either issued or addressed by a bailee—an individual who has custody of the goods of another—to a bailor—the person who has entrusted the goods to him or her. Its terms must describe the goods covered by it so that they are identifiable as well as set forth the conditions of the contractual agreement. Possession of a document of title is symbolic of ownership of the goods that are described within it.

Documents of title are an integral part of the business world since they facilitate commercial transactions by serving as security for loans sought by their possessors and by promoting the free flow of goods without unduly burdening the channels of commerce.

A person who possesses a document of title can legally transfer ownership of the goods covered by it by delivering or endorsing it over to another without physically moving the goods. In such a situation, a document of title is a negotiable instrument because it transfers legal rights of ownership from one person to another merely by its delivery or endorsement. It is negotiable only if its terms state that the goods are to be delivered to the bearer, the holder of the document, to the order of the named party, or, where recognized in overseas trade, to a named person or his or her assigns. The Uniform Commercial Code and various federal and state regulatory laws define the legal rights and obligations of the parties to a document of title.

RISK OF LOSS

Risk of loss is a term used in the law of contracts to determine which party should bear the burden of risk for damage occurring to goods after the sale has been completed, but before delivery has occurred. Such considerations generally come into play after the contract is formed but before buyer receives goods, something bad happens.

Under the Uniform Commercial Code (UCC), there are four risk of loss rules, in order of application:

1. Agreement - the agreement of the parties controls
2. Breach - the breaching party is liable for any uninsured loss even though breach is unrelated to the problem. Hence, if the breach is the time of delivery, *and* the goods show up broken, then the breaching rule applies risk of loss on the seller.
3. Delivery by common carrier other than by seller.
    1. Risk of loss shifts from seller to buyer at the time that seller completes its delivery obligations
    2. If it is a destination contract (FOB (buyer's city)), then risk of loss is on the seller.
    3. If it is a delivery contract (standard, or FOB (seller's city)), then the risk of loss is on the buyer.
4. If the seller is a merchant, then the risk of loss shifts to the buyer upon buyer's "receipt" of the goods. If the buyer never takes possession, then the seller still has the risk of loss.

SALE AND RELATED TRANSACTION RESEMEBLING SALE:

An installment sale is a sale of property where you receive at least one payment after the tax year of the sale. The rules for installment sales do not apply if you elect not to use the installment method or the transaction is one for which the installment method may not apply.

The installment sales method cannot be used for the following.

Sale of inventory. The regular sale of inventory of personal property does not qualify as an installment sale even if you receive a payment after the year of sale. Under Other Rules, *later*.

Dealer sales. Sales of personal property by a person who regularly sells or otherwise disposes of the same type of personal property on the installment plan are not installment sales. This rule also applies to real property held for sale to customers in the ordinary course of a trade or

business. However, the rule does not apply to an installment sale of property used or produced in farming.

Special rule. Dealers of time-shares and residential lots can treat certain sales as installment sales and report them under the installment method if they elect to pay a special interest charge. For more information, see section 453(l).

Stock or securities. You cannot use the installment method to report gain from the sale of stock or securities traded on an established securities market. You must report the entire gain on the sale in the year in which the trade date falls.

Installment obligation. The buyer's obligation to make future payments to you can be in the form of a deed of trust, note, land contract, mortgage, or other evidence of the buyer's debt to you.

General Rules

If a sale qualifies as an installment sale, the gain must be reported under the installment method unless you elect out of using the installment method.

Electing Out of the Installment Method under *Other Rules*, later, for information on recognizing the entire gain in the year of sale.

Sale at a loss. If your sale results in a loss, you cannot use the installment method. If the loss is on an installment sale of business or investment property, you can deduct it only in the tax year of sale.

Unstated interest. If your sale calls for payments in a later year and the sales contract provides for little or no interest, you may have to figure unstated interest, even if you have a loss. Unstated Interest and Original Issue Discount (OID) *under* Other Rules, *later.*

Figuring Installment Sale Income

You can use the following discussions or Form 6252 to help you determine gross profit, contract price, gross profit percentage, and installment sale income.

Each payment on an installment sale usually consists of the following three parts.

- Interest income.
- Return of your adjusted basis in the property.
- Gain on the sale.

In each year you receive a payment, you must include in income both the interest part and the part that is your gain on the sale. You do not include in income the part that is the return of your basis in the property. Basis is the amount of your investment in the property for installment sale purposes.

Interest Income

You must report interest as ordinary income. Interest is generally not included in a down payment. However, you may have to treat part of each later payment as interest, even if it is not called interest in your agreement with the buyer. Interest provided in the agreement is called stated interest. If the agreement does not provide for enough stated interest, there may be unstated interest or original issue discount.

SALE AND AGREEMENT TO SELL

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 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.

(4) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled

This agreement witness as follows:

1. The Sale consideration of the Schedule Property is fixed at Rs. (Rupees only).
2. The PURCHASER has paid a sum of by cash/ cheque /D.D. bearing No drawn on

dated as advance, the receipt of which sum the SELLER hereby acknowledges.

3. The balance payment of will be paid by the PURCHASER to the SELLER at the time of execution of the absolute Sale Deed and thus completing the Sale transaction.
4. The parties herein covenant to complete the Sale transaction and to execute the Absolute Sale Deed by the end of

5. The SELLER confirms with the PURCHASER that he/she has not entered into any agreement for sale, mortgage or exchange whatsoever with any other person relating to the Schedule Property of this Agreement.

6. The SELLER hereby assures the PURCHASER and he/she has absolute power to convey the same and there are no encumbrances, liens, charges, Government dues, attachments, acquisition, or requisition, proceedings etc.

7. The SELLER agrees to put the purchaser in absolute and vacant possession of the schedule property after executing the sale deed and registering the same in the rule.

8. The SELLER covenants with the purchaser that he/she shall not do any act, deed or thing creating any charge, lien or encumbrance in respect of the schedule property during the subsistence of this Agreement.

9. The SELLER has specifically agreed and covenants with the PURCHASER that he/she shall do all acts, deeds and things which are necessary and requisite to convey absolute and marketable title in respect of the schedule property in favour of the PURCHASER or his nominee.

10. IT IS AGREED between the parties that all expenses towards Stamp Duty and Registration charges shall be borne by the PURCHASER only.

11. The PURCHASER shall have the right to nominate or assign his right under this agreement to any person / persons of his choice and the SELLER shall execute the Sale Deed as per terms and conditions of this Agreement in favour of the PURCHASER or his nominee or assignee.

12. The SELLER has agreed to get consent deed duly executed to this Sale transaction from his wife/her husband, sons and daughters on or before date of registration of Sale Deed and assured that they all join to execute sale deed in favor of the purchaser.

13. It is hereby expressly provided and agreed by the parties here to that both parties are entitled to enforce specific performance of the agreement against each other in case of breach of any conditions mentioned in this Agreement.

14. The original of the "AGREEMENT" signed by both the parties shall be with the PURCHASER and copy of the same similarly signed shall be with the SELLER. Which the property in the goods is to be transferred

Terms and conditions of sale

Terms and Conditions.

These Terms and Conditions of Sale (these "Terms") apply to the sale and delivery by Seller to Customer of the Product as set forth in the Agreement to which these Terms are attached. These Terms are incorporated into the Agreement and, in combination therewith, constitute the entire agreement between the parties with respect to the sale and delivery of the Product. The Agreement is expressly limited to these Terms, and any and all terms or provisions submitted by Customer which add to, conflict with, or otherwise modify these Terms or the Agreement are expressly rejected**.**

2. Price.

The price for the Product shall be as set forth in the Agreement (the "Price"). Unless otherwise stated, the Price is for delivery by the appropriate shipper or courier service and exclusive of all taxes, customs, duties and insurance. Any and all current or future taxes, fees, or governmental charges applicable to the sale, delivery or shipment of the Product that Seller is required to pay or collect shall be shall be payable by Customer either directly or if paid by additional costs and not subject to any offset or reduction for any reason.

3. Risk of Loss.

Risk of loss of the Product shall transfer to Customer on the Shipmen Date.

4. Invoices; Payment. Customer shall be responsible for and pay, if applicable, (a) all taxes (excluding income taxes) arising out of the sale of the Product, including, without limitation, all federal, state, or local property, license, privilege, sales, use, excise or gross receipts taxes or other like taxes and tariffs, and (b) all fees and expenses incurred by Seller in connection with the delivery of Product. Any amounts not paid by credit card shall be due as invoiced and shall not be subject to offset or reduction for any reason. Product will not be shipped until payment for the Product and shipping is made in full. All amounts referenced in this Agreement are denominated and shall be paid in United States Dollars.

5. Title

Notwithstanding delivery of the Product or any other provision of these Terms, title to the Product shall not pass to Customer until Seller has received payment in full for the invoiced amount for the Product and payment of all other monies then due or owing to Seller. Until such

time as title in the Product passes to Customer, Customer shall hold the Product as Seller's fiduciary and bailee and shall keep the Product separate from those of Customer and third parties, properly stored, protected and insured and identified as Seller's property; provided Customer shall be entitled to use the Product as provided in the Agreement.

6. Consequential Damages Limitation of Liability.

Notwithstanding anything to the contrary contained in this Agreement, Seller and Customer waive all claims against each other (and against each other's parent company, affiliates, contractors, subcontractors, consultants, agents and vendors) for any consequential, incidental, indirect, special, exemplary or punitive damages (including but not limited to, loss of actual or anticipated profits, revenues or product; or loss of use), and regardless of whether any such claim arises out of breach of contract, tort, product liability, indemnity, contribution, strict liability or any other legal theor**y.**

7. Indemnification.

Customer covenants and agrees to indemnify, defend and hold harmless Seller and its affiliates, subcontractors, vendors, officers, directors, employees, agents, consultants and representatives from and against any and all claims, demands, suits, liabilities, injuries causes of action, proceedings, losses, expenses, damages or penalties, including without limitation court costs and reasonable attorneys' fees, arising or resulting from its use of the Product.

RULES REGARDING PASSING OF PROPERTY IN GOODS

Transfer of Property in Goods

The property in the goods is said, to be transferred from the seller to the buyer when the latter acquires the proprietary rights over the goods and the obligations linked thereto. 'Property in Goods' which means the ownership of goods, is different from ' possession of goods' which means the physical custody or control of the goods.

The transfer of property in the goods from the seller to the buyer is the essence of a contract of sale. Therefore the moment when the property in goods passes from the seller to the buyer is significant for following reasons:

a. **Ownership:-**The moment the property in goods passes, the seller ceases to be their owner and the buyer acquires the ownership. The buyer can exercise the proprietary

rights over the goods. For example, the buyer may sue the seller for non-delivery of the goods or when the seller has resold the goods, etc.

b. **Risk follows ownership**: - The general rule is that the risk follows the ownership, irrespective of whether the delivery has been made or not. If the goods are damaged or destroyed, the loss shall be borne by the person who was the owner of the goods at the time of damage or destruction. Thus the risk of loss prima facie is in the person in whom the property is.

c. **Action against Third parties**:-When the goods are in any way damaged or destroyed by the action of third parties, it is only the owner of the goods who can take action against them.

d. **Suit for Price -** The seller can sue the buyer for the price, unless otherwise agreed, only after the gods have become the property of the buyer.

e. **Insolvency** - In the event of insolvency of either the seller or the buyer, the question whether the goods can be taken over by the Official Receiver or Assignee, will depend on whether the property in goods is with the party who has become insolvent.

Essentials for Transfer of Property -- The two essentials requirements for transfer of property in the goods are:

1. **Goods must be ascertained:** Unless the goods are ascertained, they (or the property therein) cannot pass from the seller to the buyer. Thus, 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
2. **Intention to PASS Property in Goods must be there:** In a 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 regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

Rules for ascertaining intention

Unless a different intention appears, the following 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. Rule 1.— 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 or the time of delivery, or both, be postponed.

Rule 2.—where there is a contract for the sale of specific goods and the seller is bound to do something to the goods, for the purpose of putting them into a deliverable state, the property does not pass until such thing be done, and the buyer has notice thereof.

Rule 3.—Where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test, or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing be done, and the buyer has notice thereof.

Rule 4.—When goods are delivered to the buyer on approval or "on sale or return" or other similar terms the property therein passes to the buyer:—

(a)When he signifies his approval or acceptance to the seller or does any other act adopting the transaction:

(b)If he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time. What is a reasonable time is a question of fact.

Rule 5. — (1) Where there is a contract for the sale of unascertained or future goods by description, and goods of that description and in a 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, the property in the goods thereupon passes to the buyer. Such assent may be expressed or implied, and may be given either before or after the appropriation is made.

(2)Where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailed or custodies (whether named by the buyer or not) for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract.

Reservation of right of disposal

(1) Where there is a contract for the sale of specific goods or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of disposal of the goods until certain conditions are fulfilled. In such case,

notwithstanding the delivery of the goods to the buyer, or to a carrier or other bailee or custodies for the purpose of transmission to the buyer, the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled.

(2)Where goods are shipped, and by the bill of lading the goods are deliverable to the order of the seller or his agent, the seller is prima, facie deemed to reserve the right of disposal.

(3)Where the seller of goods draws on the buyer for the price, and transmits the bill of exchange and bill of lading to the buyer together to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading if he does not honour the bill of exchange, and if he wrongfully retains the bill of lading the property in the goods does not pass to him.

CONDITION AND WARRANTIES

According to Section 12 (2) of the Sale of Goods Act, 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. There are mainly three essentials of a condition, such as
I) Condition is essential to the main purpose of the contract.
II) The cause of non-fulfilment of condition is irreparable damage to the aggrieved party.
III) As a result of breach of a condition the aggrieved party will get the right to rescind the contract and recover the damages for breach of condition.

Sale of Goods: Conditions

In any contract, whether oral, written, or partly oral and partly written, each of the terms of the contract are either conditions or warranties. Whether a term of the contract is a condition or warranty relies on the relative importance of the term in the particular contract. Rules of interpretation of contracts allow courts to resolve ambiguity and uncertainty in properly classifying whether a term is a condition or warranty.

There is a further class of terms referred to as 'intermediate terms' which may be either conditions or warranties in the agreement. How the particular term is classified may in part depend upon the seriousness of the consequences of a breach of the term at a later date. Its categorisation relies upon the nature and consequences of the breach of contract.

Contract Conditions

A condition is an essential stipulation in a contract which a party promises to perform or fulfil. Whether terms are properly considered mere warranties or conditions is assessed by reference to what a court considers to be the fundamental to the contract. So, where the term is of such importance to the contract, that a failure to perform by the relevant party would entitle the innocent party to terminate for breach of contract, rather than merely claim damages the term is likely to be ruled a condition. Thus conditions of contract are fundamental to what was agreed by the parties, and are so essential to the agreement that the failure to perform or perform improperly by the other party may be considered a substantial failure to perform the contract at all. For instance the following are likely to be conditions of contracts:

In a contract for the supply of services, the obligation to supply the services; similarly for contracts the supply of goods;

The obligation to pay for goods or services;

1. Where delivery times are time sensitive, to deliver goods by the time;
2. Where the contract is for delivery of a specified computer system, the obligation to deliver a computer system which matches the specification in all material respects;
3. In a software distribution agreement, the distributor has the right to distribute the software;
4. In an assignment of intellectual property rights, the assignor owns the intellectual property rights;
5. In sale of shares, the person has title to the shares in order to convey title of the shares to the purchaser; and
6. Where access to premises is required to perform services for the benefit of the other party;
7. Express clauses requiring compliance with data protection legislation, especially where one of the parties has heavy reliance on onward use of data;
8. In a maintenance and support agreement, maintaining the subject matter of the agreement such that it functions properly and consistently.

Obviously, in examples such as these, a failure to perform leaves the other party in a position where it has not received what it bargained for. In business contracts, whether or not a particular term of a contract is a condition is often not clear cut. The following factors are indicative of conditions:

- words and conduct of the parties in respect to the term;
- the importance of the term to the parties bearing in mind the nature and purpose of the contract;
- whether or not the term is stated to be a condition, but not conclusive of how a court would classify the term in litigation; and
- Whether time is of the essence for performance (or was made of the essence after the contract was entered interest.

Warranties in sales contract:

Define a Condition and warranty

A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty.

* A **condition** is a stipulation essential to the main purpose of the contract, the breach of which gives rise to right to treat the contract as repudiated.

* 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.

* Whether a stipulation in a contract of sale is condition or a warranty depends in each case on the construction of the contract. A stipulation may be a condition, though called a warranty

Implied Conditions and Warranties in Sales Contract

Sec 14-17 of the Sales of Goods act contain a list of conditions and warranties which are implied in a contract for the sale of goods, unless the circumstances of the contract are such as to show a different intention. The implied conditions and warranties are stated below:

1. **Implied Conditions**

Condition as to title- In a contract of sale, unless the circumstances of the contract are such as to show a different intention there is-

(a) An implied condition on the part of the seller that, in the case of a sale, he has a right to sell the goods and that, in the case of an agreement to sell, he will have a right to sell the goods at the time when the property is to pass.

(b) An implied warranty that the buyer shall have and enjoy quiet possession of the goods.

(c) An implied warranty that the goods shall be free from any charge or encumbrance in favor of any third party not declared or known to the buyer before or at the time when the contract is made.

Sale by description- Where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description, and, if the sale is by sample as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.

Implied condition as to quality or fitness- 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, excepts as follows:-

* Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the 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 he is the manufacturer or producer or not), there is an implied condition that the goods shall be reasonably fit for such purpose. Provided that, in the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied conditions to its fitness for any particular purpose.

* Where goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality. Provided that, if the buyer has examined the goods, there shall be no implied conditions as regards defects which such examination ought to have revealed.

* An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.

* An express warranty or conditions does not negative a warranty or condition implied by this Act unless inconsistent therewith.

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.

In the case of a contract for sale by sample there is an implied condition -

(a) That the bulk shall corresponded with the sample in quality.

(b) That shall have a reasonable opportunity of comparing the bulk with the sample.

(c) That the goods shall be free from any defect, rendering them un-merchantable, which would not be apparent on reasonable examination of the sample.

2. **Implied Warranties:**

(a) Warranty of Quiet Possession

(b) Warranty of freedom from encumbrances

(c) Warranty as Quality or Fitness by Usage of Trade

The doctrine of caveat emptor

Caveat Emptor means 'Let the purchaser beware'. That is to say, the buyer shall verify and satisfy himself whether the goods are suitable for the purpose for which he buys.

The seller does not guarantee the fitness or quality of the goods and hence need not disclose the fault in the goods. But this rule does not apply.

- When the buyer expressly relies on the skill and judgment of the seller for the fitness of the goods for a particular purpose.
- In case of sale of goods by description by a seller who ordinarily deals in such class of goods when the goods must be of merchantable quality.

Difference between Warranties and Conditions

The importance of a condition is that breaches of those obligations permit the innocent party to (1) terminate the contract (such that the parties have no further obligations to perform the contract) and (2) claim damages for losses suffered as a result of the breach. Breaches of warranties only permit the innocent party to claim damages, but not terminate the contract.

Whether or not a term is a condition or a warranty is a question of law for the court to decide. The title of a document 'Conditions of Contract' is likely to be interpreted by a court as a reference to all the terms of the contract rather than a declaration that all of the terms of the documents are conditions of contract.

Also, see warranties.

Performance of the sales contract

Meaning: Performance of a sales contract is concerned with duties of the seller and buyer in sales contracts. 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 sales contracts.

Duties of seller and 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.

Payment and delivery are concurrent conditions

Unless otherwise agreed, delivery of the gods 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.

Delivery: Delivery of goods sold may be made by doing anything which the parties agree shall be treated as delivery or which has the effect of putting the goods in the possession of the buyer or of any person authorized to hold them on his behalf.

Rules regarding delivery

Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract, express or implied, between the parties. Apart from any such contract, goods sold are to be delivered at the place at which they are the time of the sale, and goods agreed to be sold are to be delivered at the place at which they are at the time of the agreement to sell, if not then in existence, at the place at which they are manufactured or produced.

*Where under the contract of sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time.

* Where the goods at the time of sale are in the possession of a third person, there is no delivery by seller to buyer unless and until such third person acknowledges to the buyer that he holds the goods on his behalf. Provided that nothing in this section shall affect the operation of the issue or transfer of any document of title to goods.

*Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour. What is a reasonable hour is a question of fact.

*Unless otherwise agreed, the expense of and incidental to putting the goods into a deliverable state shall be borne by the seller.

Delivery of wrong quantity Where the seller delivers to the buyer a quantity of good less than he contracted to sell, the buyer may reject them, but if the buyer accepts the goods so delivered he shall pay for them at the contract rate.

* Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell the buyer may accept the goods included in the contact and reject the rest, or he may reject the whole. If the buyer accepts the whole of the goods so delivered, he shall pay for them at the contract rate.

* Where the seller delivers to the buyer the gods he contract to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest, or may reject the whole.

* The provisions of this section are subject to any usage of trade, special agreement or course of dealing between the parties.

Installment delivery:

(1) Unless otherwise agreed, the buyer of goods is not bound to accept delivery thereof by installments.(Sec. 38(1))

(2) Where there is a contract for the sale of goods to be delivered by stated installments which are to be separately paid for, and the seller makes no delivery or defective delivery in respect of one or more installments, or the buyer neglects or refuses to take delivery of or pay for one or more installments, it is a question in each cased depending on the terms of the contract and the circumstances of the case, whether the breach of contract is a repudiation of the whole contract, or whether it is a severable breach giving rise to a claim for compensation, but not a right to treat the whole contract as repudiated.

Delivery to the carrier or Wharfing:

Where, in pursuance of a contract of sale, the seller is authorized or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer, or delivery of the goods to carrier a for safe custody, is prima facie deemed to be a delivery of the goods to the buyer.

Risk where goods are delivered at distant place Where the seller of goods agrees to deliver them at his own risk at place other than that where they are when sold, the buyer shall, nevertheless, unless otherwise agreed, take any risk of deterioration in the goods necessarily incident to the course of transit.

Buyer‘s right of examining the goods 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 a

reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract.

* Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, he is bound, on request, 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,

Buyer not bound to return rejected goods

Unless otherwise agreed, where goods are delivered to the buyer and he refuses to accept them, having the right so to do, he is not bound to return them to the seller, but it is sufficient it he intimates to the seller that he refuses to accept them.

Liability of buyer for neglecting or refusing delivery of goods

When the seller is ready and willing to deliver the goods and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery and also for a reasonable charge for the care and custody of the goods.

Principle of caveat emptor:

Caveat emptor is the contract law principle that controls the sale of real property after the date of closing, but may also apply to sales of other goods.The phrase caveat emptor arises from the fact that buyers often have less information about the good or service they are purchasing, while the seller has more information. Defects in the good or service may be hidden from the buyer, and only known to the seller.

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 purpose of the buyer. If he makes a wrong selection, he cannot blame the seller if the goods turn out to be defective or do not serve his purpose. The principle was applied in the case of *Ward* v. 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 him 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 judgment of the seller, has expressly or impliedly communicated to him the purpose for which the goods are required.

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

Passing of Property or Transfer of Ownership in caveat emptor

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

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

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

(c) The rights of third parties may depend upon the passing of the property if the buyer resells the goods to a third-party, the third-party will only obtain a good title if the property in the goods has passed to the buyer before or at the time of the resale. Similarly, if the seller, in breach of his contract with the buyer, attempts to sell the goods to a 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.

Exceptions to the Doctrine of Caveat Emptor

The doctrine of caveat emptor is subject to the following exceptions shown

(a) **In Case of Misrepresentation by the seller** Where the seller makes a misrepresentation and the buyer relies on that representation.

(b) **In Case of Concealment of Latent Defect** Where the seller knowingly conceals a defect which would not be discovered on a reasonable examination.

(c) **In Case of Sale by Description [Section 15]** Where the goods are sold by description and the goods supplied by the seller do not correspond to the description.

(d) **In Case of Sale by Sample [Section 17]** Where the goods are sold by sample and the goods supplied by the seller do not correspond with the sample.

(e) **In Case of Sale by Sample as well as Description [Section 15]** Where the goods are sold by sample as well as description and the goods supplied do not correspond with sample as well as description.

(f) **Fitness for a Particular Purpose [Section 16(1)]** Where the seller or a manufacturer is a dealer of the type of goods sold by him and the buyer has disclosed the purpose for which goods are required and relied upon the seller's skill or judgements.

(g) **Merchantable Quality [Section 16(2)]** Where the goods are bought by description from a seller who deals in goods of that description (Whether he is the manufacturer or product or not), there is an implied condition that goods shall be of merchantable quality.

Relevance of Caveat Emptor

The rule of Caveat Emptor appeared to play an important role in the past when trade was conducted on local scale and buyer had every opportunity to examine the goods before buying. However, in the modern context, the rigours of the rule have been mitigated because of global dimensions of trade, government legislations on consumer protection, professional management, intense competition and consumer awareness. In fact, the rule of caveat emptor should be replaced by the rule of 'caveat vendor'

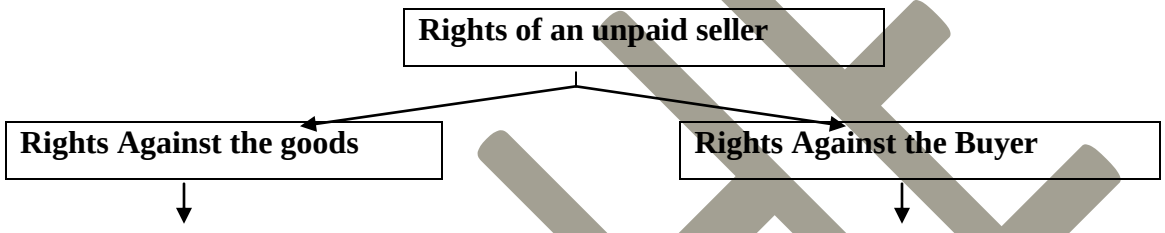
Rights of unpaid seller against the goods

"**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.

RIGHTS OF AN UNPAID SELLER



1. When property in goods has passed
   (i) Right of lien
   (ii) Stoppage in transit
   (iii) Right of resale
2. When property in goods has not passed
   (i) Withholding delivery
   (ii) Stoppage in transit
   (iii) Re-sale

1. Suit for price
2. Suit for damages
3. Right to repudiate the contract
4. Suit for interest

1. Right against the goods

1. When property in goods has passed

(i) Rights of lien Subject to the provisions of this Act, the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely :-

(a) Where the goods have been sold without any stipulations as to credit.

(b) Where the goods have been sold on credit, but the term of credit has expired.

(c) Where the buyer becomes insolvent(S.47(1))

Termination of lien

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.

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.

(ii) 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.

Duration of transit

Goods are deemed to be in course of transit from the time when they are delivered to a carrier for the purpose of transmission to the buyer, until the buyer or his agent in that behalf takes delivery of them from such carrier.

* If the buyer or his agent in that behalf obtains delivery of the goods before their arrival at the appointed destination, the transit is at an end.

* If, after the arrival of the goods at the appointed destination, the carrier acknowledges to the buyer or his agent that he holds the goods on his behalf and continues in possession of them as carrier for the buyer or his agent, the transit is at an end and it is immaterial that a further destination for the goods may have been indicated by the buyer.

(iii) Right of re-sale: After exercising the lien or stoppage in transit an unpaid seller can exercise the right of re-sale.

- Where the goods are of a perishable nature.
- Where the unpaid seller has expressly reserved his right of re-sale in case the buyer makes default.
- Where the unpaid seller gives notice to the buyer of his intention to re-sell the goods and even after that the buyer does not pay the price within a reasonable time.

2. When property in goods has not passed

(i) Right of Withholding delivery:

When property in goods has not passed to the buyer an unpaid seller has, in addition to his other remedies, a right of withholding delivery(s.46(2))

(ii) Stoppage in transit:

If the goods are in transit the unpaid seller can exercise the right of stoppage in transit and can regain the possession.

(iii) Re-sale:

He can resale the goods if any loss occurs to the seller in resale, he can claim damages from the defaulted buyer.

II. Right against the /buyer:

In addition to the right against the goods an unpaid seller has the following rights against the buyer personally.

Suit for price

Where under a contract of sale the property in the goods has passed to the buyer and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may sue him for the price of the goods.

Where under a contract of sale the price is payable on a day certain irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price, the seller may sue him for the price although the property in the goods has not passed and the goods have not been appropriated to the contract.

2. Suit for Damages

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

3. Right to repudiate the contract before due date Where the buyer commits breach before the due date, the seller can if the buyer commits breach before the due date, the seller can repudiate the contract of sale and sue for damages.

4. Suit for interest As a general rule the buyer is not liable to pay any interest for the price money which is due.

POSSIBLE QUESTIONS

PART A – (ONE MARK)

(ONLINE EXAMINTION)

PART B – (TWO MARKS)

1. State the doctrine of caveat emptor.
2. Define the term Unpaid vendor.
3. Write a short note on sale and agreement to sell.
4. Define the term condition.
5. Define the expression "Auction sale"
6. What do you mean by unpaid vendor?
7. Write a short note on actual and implied in sale.
8. What is meant by caveat emptor?
9. What does meant by passing of property?
10. Write a short note on sale and agreement to sell.
11. Write a note on Rights of unpaid vendor.
12. Explain about Actual and implied of contract.
13. Write a definition of sale.
14. What are the conditions to be followed in sale?
15. Define the principle of caveat emptor.

PART C – (SIX MARKS)

1. What are the rules regarding passing of property in goods.
2. What are the Rights of unpaid vendor?
3. Explain about the rules to be followed in passing of property in goods?
4. Briefly explain about the Rights of unpaid vendor.
5. Bring out clearly the distinction between sale and an agreement to sell?
6. Define an Unpaid Seller. What are his rights?
7. Illustrate the implied conditions in the contract of sale of goods.
8. Explain briefly note on condition and warranties.
9. Explain briefly about rules regarding passing of property in goods?
10. Distinguish between "Sale and agreement to sell".

KARPAGAM ACADEMY OF HIGHER EDUCATION

(DEEMED TO BE UNIVERSITY)

(ESTABLISHED UNDER SEC 3 OF UGC ACT 1956)

DEPARTMENT OF COMMERCE

I - B.COM BUSINESS LAW (17CMU201 / 17BPU211)

UNIT IV (SALE OF GOODS ACT 1930)

S.NO.	QUESTIONS	OPTION I	OPTION II	OPTION III	OPTION IV	ANSWER
1	There must be ____ parties to a contract of sale	Five	Six	two	Seven	two
2	Contract of sale of goods section 4(1) of the _____	Law of Contract Act	Law of Performance Act	Discharge of Contract Act	The Sale Of Goods Act	The Sale Of Goods Act
3	A sale is an executed Contract whereas an Agreement to sell is an _____ contract	Past	Arranged	Executory	Promisee	Executory
4	Sales Tax is levied at the time of the Contract of ____	Transfer	Purchase	Sales Deed	Consideration	Sales Deed
5	A sale is governed by the Sale of Goods Act, ___	1930	1945	1977	1877	1930
6	A hire purchase is governed by the Hire Purchase Act, _____	1972	1945	1977	1877	1972
7	___ means voluntary transfer of possession from one person to another (Sec 2(2))	Delivery	Purchase	Sale	Consideration	Delivery

S.NO.	QUESTIONS	OPTION I	OPTION II	OPTION III	OPTION IV	ANSWER
8	The term CIF means _____	Cost in Factory	Cost, Insurance and Freight	Carriage inwards in Factory	Both a and b	Cost, Insurance and Freight
9	Goods which are in existence at the time of the Contract of sale is know as	present goods	specific goods	existing goods	none of the above	existing goods
10	The sale of Goods Act, 1930 came into force on	15th March,1930	30th July, 1930	1st July, 1930 30th	1st April 1930	15th March,1930
11	An auction sale is complete on the	delivery of goods	fall of hammer	payment of price	none of the above	payment of price
12	A minors liability for necessaries supplied to him	Arises after he attains majority age	Is against only minors property	Does not arise at all	Arises if minor gives a promise for it	Is against only minors property
13	Generally, which of the following damages are not recoverable?	Ordinary damages	Special damages	Remote damages	Nominal damages	Remote damages
14	A mistake as to a law not in force in india has the same effect as,	Mistake of fact	Mistake of Indian law	Fraud	Misrepresentation	Mistake of fact
15	Which of the following is not an implied condition in a contract of sale	Condition as to tile	Condition as to description	Condition as to free encumbrance	Condition as to sample	Condition as to free encumbrance
16	Doctrine of caveat emptor means	Let the seller beware	Let the buyer beware	Let the creditor beware	none of the above	Let the buyer beware

S.NO.	QUESTIONS	OPTION I	OPTION II	OPTION III	OPTION IV	ANSWER
17	Agreement for the sale of future goods is	Sale	Agreement to sell	Void	Hire purchase contract	Agreement to sell
18	Agreement-the meaning of which is uncertain is	Void	Valid	Voidable	Illegal	Valid
19	The Sale of Goods Act, 1930 deals with	Sale	mortgage	pledge	all of the above	Sale
20	In which form of the contract, the property in the goods passes to the buyer immediately	agreement to sell	hire purchase	sale	instalment to sell	sale
21	The essence of a right of lien is to	deliver the goods	retain the possession	regain the possession	Hypothecation	retain the possession
22	If a seller handed over the keys of a warehouse containing the goods to the buyer results in	(a) constructive delivery	actual delivery	symbolic delivery	transfer	symbolic delivery
23	Voluntary transfer of possession by one person to another is popularly known as	(a) Transfer	Possession	Delivery	Hypothecation	Delivery
24	In case of sale on approval, the ownership is transferred to the buyer when he	Accepts the goods	Adopts the transaction	Fails to return goods	In all the above cases	In all the above cases
25	The bidder at an auction sale can withdraw his bid	Any time during auction	Before fall of hammer	Before payment of price	Cannot withdraw at all	Before fall of hammer

S.NO.	QUESTIONS	OPTION I	OPTION II	OPTION III	OPTION IV	ANSWER
26	Goods must be the same as wanted by the seller. This is	Condition as to description	Condition as to wholesomeness	Condition as to sample	Condition as to title	Condition as to description
27	Goods dependant upon certain events which may or may not happen	Unascertained goods	Contingent goods	Future goods	Existing Goods	Contingent goods
28	Which of the following is a NOT document of title of goods?	Bill of lading	Railway Receipt	Dock Warrant	Performa invoice	Performa invoice
29	In case of sale of standing trees, the property passes to the buyer when trees are	Felled and ascertained	Counted and ascertained	Not felled but earmarked	Both b and c	Felled and ascertained
30	The sale of Goods Act, 1930 came into force on	15th March, 1930	1st July, 1930	30th July, 1930	30th June, 1930	1st July, 1930
31	Price-under the sale of goods act, 1930 means	Money or moneys worth	Monetary consideration for the sale of goods	Any consideration that can be expressed in terms of money	none of the above	Monetary consideration for the sale of goods
32	Goods that are identified and agreed upon at the ime of contract of sale are know as	Specific goods	existing goods	Future goods	generic goods	Specific goods
33	In case of an agreement to sell, subsequent loss or destruction of the goods is the liability of	The buyer	The seller	Bothe the buyer and the seller	The insurance company	The seller
34	An auction sale is an example of	Invitation to treat an offer	Mere communication of information in the course of negotiation	Statement of intention	Offer	Invitation to treat an offer

S.NO.	QUESTIONS	OPTION I	OPTION II	OPTION III	OPTION IV	ANSWER
35	Goods that are defined only by description and not identified and agreed upon at the time of contract of sale are known as	Specific goods	Future goods	existing goods	Unascertained Goods	Unascertained Goods
36	A condition may be treated as warranty in thee following cases	Where the buyer altogether waives the formance of the condition	Where the buyer elects to treat the breach of condition as one of a warranty	In both of the above situation	In some other situations, but not in the above situations	In both of the above situation
37	Provisions relating to doctrine of Caveat Emptor is laid down in the	Sale of Goods Act, 1930	Indian Contract Act, 1872	Indian Partnership Act, 1932	Companies Act, 1956	Sale of Goods Act, 1930
38	A specific ofer can be accepted by	Any person	Any friend of offerer	The person the whom it is made	Any friend of offeree	The person the whom it is made
39	If a price is not determined by the parties in a contract of sale the buyer is bound to pay	The price demanded by the seller	A reasonable price	The price which the buyer is reasonable	Cost	A reasonable price
40	Unless otherwise agreed, where goods are send by the seller to the buyer by a route involving a sea transit of the seller	must inform the buyer in time to get the gods insured	may insure the goods	must insure the goods	no need to insure the goods	must inform the buyer in time to get the gods insured
41	A seller delivers goods in excess of the quantity ordered for. The buyer may	accept the whole	reject the whole	accept the goods ordered for and returns	accept the part of goods	accept the whole
42	Where the neglected or refusal of the buyer to take delivery of goods amounts to a repudiation of the contract, the seller may sue for the	price or damages	price only	damages only	both for price and damages	price or damages
43	Transfer of title by non-owners is debit in section.....of sale of goods act	27-30	26-29	28-31	30-33	27-30

S.NO.	QUESTIONS	OPTION I	OPTION II	OPTION III	OPTION IV	ANSWER
44	Which of the following results in an offer?	a declaration of intention	an invitation to offer	an advertisement offering reward to anyone who finds the lost dog of the advertiser	an offer made in a joke	an advertisement offering reward to anyone who finds the lost dog of the advertiser
45	one of the folowing term is not a term related to goods	Existing Goods	Past Goods	Future Goods	Deliverable Goods	Past Goods
46	the sale of goods act deal with	actinable claim	money	Movable Property	Goods	Goods
47	goods owned or possessed by the seller are called	Specific goods	ascertained goods	existing goods	past goods	existing goods
48	goods identified in accordance with the agreement after the contract of sale is called	uncertained goods	generic goods	Future goods	past goods	past goods
49	delivery means voluntary transfer of _____ by one person to another	ownership	documents	possession	Hypothecation	possession
50	delivery of goods may be made by____	actual delivery	constructive delivery	sympolic delivery	both a & b	both a & b
51	A wharehouse keeper agrees to hold goods of X on behalf of B at X's request. This amount to	actual delivery	constructive delivery	sympolic delivery	both a & b	constructive delivery
52	delivery of goods by handling over documents of title to goods amounts to	actual delivery	constructive delivery	sympolic delivery	both a & b	actual delivery

S.NO.	QUESTIONS	OPTION I	OPTION II	OPTION III	OPTION IV	ANSWER
53	Contract of sale of goods is a contract between buyer and seller to exchange_____for a price	general property in goods	special property in goods	ownership in goods	both a & b	both a & b
54	handling over the goods to the buyer amouints to	actual delivery	sympolic delivery	both a & b	constructive delivery	actual delivery
55	transfer of documents of title to the goods sold to the buyer, amounts to	actual delivery	sympolic delivery	both a & b	constructive delivery	sympolic delivery
56	the goods sold to the buyer should be delivered at	Specific goods	any place of sellers choice	constructive delivery	known place of the market	Specific goods
57	the goods sold to the buyer should be delivered at	within 15 days on contract	at specified time	within 30 days of contract	at any time of sellers choice	at specified time
58	delivering the keys of a godown in which the goods sold are stored, amounts to	actual delivery	sympolic delivery	both a & b	constructive delivery	sympolic delivery
59	under the sale of goods Act, 1930, an unpaid seller has right	against the goods sold	against the buyser	both a & b	against the seller	both a & b
60	the right of lien of an unpaid seller depends on	ownership goods	Possession goods	title of goods	both a & b	Possession goods

UNIT - V

SYLLABUS

Common Carriers: Definition - Rights and Duties of Common Carriers – Contract of Carriage of Goods by Sea – Bill of Lading and Charter Party – Distinction- **RTI Act**- Features- Procedures. **Negotiable Instrument Act**: Features- Presumption- Types- Promissory Notes- Bills of Exchange-Cheques- Holder in Due Course - Liability of Parties- Rights of Parties- **Intellectual Property Legislations:** Meaning and scope of Intellectual Properties – Patent Act of 1970 – Patentee – True and first inventor – Procedure for grant of Process and Product Patents – TRIPS.

COMMON CARRIERS

DEFINITION

Individual or business that advertises to the public that it is available for hire to transport people or property in exchange for a feea common carrier is legally bound to carry all passengers or freight as long as there is enoughspace, the fee is paid, and no reasonable grounds to refuse to do so exist.

A common carrier is distinguished from a contract carrier (also called a public carrier in UK English),which is a carrier that transports goods for only a certain number of clients and that can refuse to transport goods for anyone else, and from a private carrier. A common carrier holds itself out to provide service to the general public without discrimination (to meet the needs of the regulator's quasi judicial role of impartiality toward the public's interest) for the "public convenience and necessity". A common carrier must further demonstrate to the regulator that it is "fit, willing, and able" to provide those services for which it is granted authority. Common carriers typically transport persons or goods according to defined and published routes, time schedules, and rate tables upon the approval of regulators. Public airlines, railroads, lines, taxicab companies, cruise ships, motor carriers (i.e., trucking companies), and other companies generally operate as common carriers. Under U.S. law, an ocean freight forwarder cannot act as a common carrier.

Classification of carriers

Carriers are classified into two categories namely,

1. Private carriers
2. Common carriers

1. Private carriers

A Private carrier is one who makes no general offer, but carriers goods as a casual occupation and not as a business, and for a particular person on special terms mutually agreed upon. He is not governed by the carriers act, 1875.His position is that of a bailee. So he is governed by the Indian contract Act.

2. Common carriers

According to Sec 2 of the carriers act 1865 a common carrier is "a person, other than the Government, engaged in the business of transporting for hire, property from place to place, by land or inland navigation for all persons indiscriminately".

Rules as to delivery of goods:

1. Mode of delivery:-

Delivery should have the effect of putting the goods, in the possession of the buyer or his duly authorised agent. Delivery of goods, as already observed, may be actual, constructive, or symbolic.

2. Delivery and payment concurrent conditions:-

Delivery of the goods and payment of the price must be according to the terms of the contract. 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 possessions 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.

3. Effect of part delivery:

A Delivery of part of the goods in process of the delivery of the whole. has the same effect, for the purpose of passing the property in such goods, as a delivery of the whole. But a delivery of the goods, such an intention of serving of severing it from the whole, does not operate as delivery of the remainder.

4. Buyer to apply for delivery:

Apart from any express contract, the seller of goods is not bound to deliver them until the buyer applies for delivery, where the goods are subsequently acquires by the seller, he should intimate this to the buyer and the buyer should then apply for delivery. Unless otherwise agreed, the buyer has no cause of action against the seller if he does not apply for delivery.

5. Place of delivery:

Where the place at which delivers the goods is to take place is specified in the contract, the goods must be delivered at that place during business hours on a working day. Where there is no specific agreement as to place, the goods sold are to be delivered at the place at which they are at the time of sale. As regards the goods agreed to be sold, they are to be delivered at the place at which they are at the time of agreement to sell, or,if not then in existence, at the place at which they are manufactured or produced.

6. Time of delivery:

Where under the contract of sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time. But where the contract used words like "directly", "without loss of time". or "forthwith", quick and immediate delivery is contemplated. Demand or tender of delivery should be made at a reasonable hour. What is a reasonable hour is a question of fact .

RIGHTS AND DUTIES OF COMMON CARRIERS

Duties of a common carrier:

A common carrier must receive and carry the goods of all persons who offer them. The consignor can recover damages from the carrier if he wrongfully refuses to accept and carry his goods. But a common carrier cannot be compelled to carry the goods in the following cases:

(a) If his vehicle is already full;

(b) If the goods are inadequately dangerous nature;

(c) If the goods are inadequately packed;

(d) If the goods belong to a class which he does not profess to carry;

(e) If the route through which the goods are to be carried is in a disturbed state;

2. A common carrier must follow his customary route and must not deviate from it without cause. He need not carry by the shortest route.
3. He is bound to carry the goods safely
4. He must deliver the goods to the consignee within the time expressed in the contract or within a reasonable time.
5. He must deliver the goods to the consignee at the place designated by the consignor; unless the consignee requires the goods to be delivered at another place.

Rights of a common carrier

1. He can ask the consignor to deliver the goods to him.
2. He can claim payment in advance i.e., before he carries, but not before he receives the goods.
3. He is entitled to reasonable compensation for the services rendered.
4. He has a lien to retain the goods until his charges for the carriage are paid. It is a particular and not general lien. The lien cannot be enforced if the carrier has agreed to give credit.
5. The carrier is entitled to make a charge for the unreasonable detention of his vehicles by the consignor of the consignee. This is the right to charge demurrage.
6. Where a consignor delivers goods of a dangerous character to a common carrier, the consignor will be liable in damages if the carrier suffers any loss or injury there from.
7. A common carrier has a right to refuse to carry the goods under certain circumstances.
8. A common carrier can limit his liability by entering into a special contract under certain circumstances.

Significance of transfer of ownership:

It is important to know the precise moment of time at which the property in goods passes from the seller to the buyer for the following reasons:-

1. Risk follows ownership:-

Unless otherwise agreed, risk follows ownership whether delivery has been made or not and whether price has been paid or not. Thus the risk of loss as a rule lies on the owner. But if 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.

2. Proprietary Right over the goods and action against third parties:-

When the goods are in any way damaged or destroyed by the action of third parties, it is only the owner of the goods who can take action against them.

3. Insolvency of the seller or the buyer:

In the event of insolvency of the seller or the buyer, the question whether the official receiver of assignee can take over the goods or not depends on whether the property in the goods has passed from the seller to the buyer.

4. Seller's Right to suit for price: The seller can sue for the price, unless otherwise agreed, only if the goods have become the property of the buyer.

CONTRACT OF CARRIAGE OF GOODS BY SEA

Contract of Goods by Sea Act is a United States statute governing the rights and responsibilities between shippers of cargo and ship-owners regarding ocean shipments to and from the United States. It is the U.S. enactment of the International Convention Regarding Bills of Lading, commonly known as the "Hague Rules". It was found in Title 46 Appendix of the United States Code, starting at Section 1301, but has been moved to a note in 46 United States Code 30701.

The United States Congress, concerned that the Hague Rules did not offer shippers enough protection against damage to cargo by ship owners, amended the Hague Rules in a number of minor, but important, ways. It increased the amount that ship owners would have to pay cargo owners for damage in transit from GBP 100 per package to USD 500 per package or, for goods not shipped in packages, per customary freight unit. This "package limitation" has become one of the most contentious and litigious areas in the field of cargo damage, particularly as it relates to the transportation of goods by ocean shipping containers.

At the time of the passage of COGSA most cargo was shipped in boxes, crates, and bags. Shortly after its passage, cargo owners determined that cargo could be handled more efficiently if placed on pallets, a process that results in numerous boxes or bags of cargo being consolidated on a single pallet. Shipowners, seeing an opportunity to reduce their liability for cargo damage, argued to the courts that the pallets were now "packages" and that they were entitled to limit their liability to $500 per pallet. Some courts agreed.

Later, ship owners began offering cargo owners the opportunity to ship their cargoes in large ocean shipping containers. The containers came in two sizes — 8 feet (2.4 m) high x 8 feet (2.4 m) wide x 20 feet (6.1 m) long (2.4 m x 2.4 m x 6 m) or 8 x 8 x 40 feet (12 m) long. The term "Twenty-foot equivalent unit" or TEU derived from this size - a TEU was a space aboard a ship that was 8 feet (2.4 m) wide by 8 feet (2.4 m) high by 20 feet (6.1 m) long.

Ship owners, again seeing an opportunity to limit their liability, began arguing that the containers were "packages" and that they could limit their liability to $500 per container, even though the contents of a container may be valued at over $500,000. Again, some courts agreed.

It is this imbalance, both in the relative bargaining power of cargo owners, and the superior bargaining power of ship owners, and the imbalance between $500 per container and the

true value of a shipment which has led to countless lawsuits and judicial opinions over the "package limitation" problem.

The rest of the world, seeing this as an attempt by ship owners to free themselves from responsibility for protecting cargo, amended the Hague Rules in 1968 with the Visby Amendments which eliminated the "per package" limitation and substituted a limitation per kilogram. In so doing, litigation concerning limitations on liability became virtually non-existent outside the United States. However, Congress failed to pass the Visby Amendments to the Hague Rules.

At the time of the passage of COGSA the customary freight unit for most cargo was the "revenue ton" - the number of long tons (2240 lb, 1017 kg) or measurement tons (100 cubic feet) that would produce the most revenue for the ship-owner. For example, a cargo of aluminium ingots, which were not packaged for shipment, would be heavy and dense, so the customary freight unit for aluminium ingots would be the long ton, a measurement of weight. By comparison, a shipment of canoes, which were not packaged for shipment, would be light but would take up a large volume, ensuring the customary freight unit would be the measurement ton of 100 cubic feet (2.8 m^3).

If a canoe were 2 feet (0.61 m) wide by 2 feet (0.61 m) high by 10 feet (3.0 m) long (0.6 m x 0.6 m x 3 m), its measurement would be 40 cubic feet (2 x 2 x 10) which would be one measurement ton (anything less than 100 would be 1 by default) and hence the limitation would be $500 per canoe.

The courts, possibly believing that Congress' approach was too cumbersome, jettisoned the word "customary" from the phrase "customary freight unit" and decided that whatever freight unit the ship owner applied would be the freight unit for determining the limitation on liability. Again, seeing an opportunity to limit their liability for cargo damage, ship owners began freighting all cargo by unit, rather than by units of weight or measurement. Consequently an automobile which might have a volume of 400 cubic feet (15 m^3), or 4 measurement tons, which would previously entitle the carrier to a limitation of $2000, was now freighted as "one automobile" thereby reducing the ship owner's liability from $2000 per automobile to $500.

Clauses of charter party: It is open to the parties to include any lawful terms in a charter party. But most of such terms nave now become the usual clauses of a charter party.

1. Ready to load:-

A Charter party usually contains a statement as to the position of the ship. Such a statement may, in circumstances, operate as a condition, the breach of which entities the charterer to repudiate the contract. For example, a statement by the owner that the ship is "Expected ready to load under this charter"

2. Fit for voyage:-

Charter –party usually provide that the ship shall be "tight, strong and every way fitted for the voyage".

3.Full and complete cargo:

The clause "full and complete cargo" means that the charterer undertakes to supply the agreed cargo in order that the ship owner may suffer loss of freight. That is why where a charterer refused to load more than 2673 tons, whereas a full and complete cargo would have been 2950 tons, it was held that the charterer ought to have loaded a full and complete cargo and freight was payable accordingly .

4."King's Enemies" and "Restraints of princes":

The expression "kings enemies" denotes the enemies the sovereign of the person who made the bill of lading and the expression "Restraints of princes "denotes all cases of restraint or interruption by lawful authority ,leaving, of course, the case of pirates to be ranked with other dangers of sea.

Facts of which a Bill of lading is Prima Facie Evidence:-

A bill of lading is prima facie evidence of many facts which are as follows:-

1. Prima facie evidence of receipt of Goods:-

A bill of lading shall be prima facie evidence of the receipt by the carrier of the goods as therein described. Thus it operates as a certificate that the goods have been received. The effect of bill of lading as an acknowledgement of the receipt of the goods is two –fold. That is, as against the shipper, it is only prima facie evidence and as against the consignee or endorsee, it is conclusive evidence, so that if such a person has suffered loss by reason of acting on the bill, he can hold the person signing the bill liable.

2.Bill of lading as evidence of contract of Affreightment:-

The bill of lading is not the contract of affreightment in itself, but it is the evidence of the contract. The terms of the contract of carriage are no doubt to be found in the bill. but as the bill is only an evidence of the contract, and not the contract by itself, there can be other terms also.

3.Bill of lading as a document of title:-

A bill of lading is a document of title. It is a symbol of the goods. It represents the goods themselves. Its possession refers to the possession of the goods themselves, and its transfer being a symbolic delivery of the goods themselves has the same effect as an actual delivery.

Types of bill of lading:-

1. Clean bill of lading:

When the ship owner admits in the bill of lading that the goods shipped are in good order and conditions, it is called as "clean bill of lading".

2. Through bill of lading:

When the goods are to be carried partly by sea and partly by land or partly in other's ship, it is called as **"through bill of lading".**

3. Dirty bill of lading:

When qualified statements say **"goods shipped in damp condition",** or **"one bale torn",** are contained in a bill of lading, it is called as dirty bill of lading.

General

The way in which transport by sea is unique is that, whilst the ship is on passage, the goods loaded in her are:

- The ship's sole responsibility.
- Inaccessible to anyone (except of course the crew).

A great deal of the smooth operation of international trade depends upon taking proper advantage of these two facts.

BILL OF LADING AND CHARTER PARTY

Charter parties

It will be recalled from earlier lessons that there are two principal types of contracts for the carriage of goods by sea. Chapter four dealt with the Charter Party, which is a contract between Charterer and Ship owner, with the rate and terms negotiated in an international market. Unless the parties choose specifically to incorporate any international conventions (such as the Hague-Visby Rules), a charter party is a "stand-alone" contract in which virtually all the intentions of the parties are set out.

Chapter four covered the different types of charter with some detail about the standard forms used which, with any amendments and additions upon which the parties may agree, sets down in writing the full intentions of the parties which are legally referred to as the **express terms**.

There are, however, certain terms in a charter party which are implied under common law and are thus referred to as **implied terms**.

Kinds of charter party:

There are two kinds of charter party. They are

1. Voyage charter party.

2. Time charter party.

1.Voyage charter party:

When the vessel is chartered for a particular voyage,it is called as voyage charter party.

2.Time charter party:

When the ship is chartered for a particular period, it is called time charter party. The time charter party is also known as charter party by demise because the ship is for the time being leased out

to the charterer.

In the case of a voyage charter some basic implied terms are:

On the part of the ship owner:

1. That the ship is seaworthy.
2. That the ship will proceed "with reasonable despatch".
3. That the ship will make no unjustifiable deviation (deviation to save life is always justifiable).

On the part of the charterer:

1. Not to ship dangerous goods without the knowledge of the ship-owner.

In the case of a time charter:

1. That the time charterer will only use the vessel between good and safe ports.
2. That dangerous goods will not be shipped without the knowledge of the ship owner.

- Bills of a contract of carriage single items (ocean freight) are used as a freight contract. As the name suggests, this refers to the cargo and the transport of specific goods. There is an alternative, and this is the charter contract, the so-called "charter party". The shipper of the goods and the ship owner conclude a contract, which refers only to the means of transport. Loading and transport are the duty of the shipper and take place at his own risk.
- **Lading and charter party**:-

•**Full Charter:** the shipper charters the whole ship.

•**Split Charter**: unspecified loading space on the ship is chartered.

•**Space Charter**: the shipper uses particular cargo hold, refrigerating hold for example.

•**Time Charter:** the shipping company makes the whole ship available for a determined time period.

•**Bare Boat Charter:** the shipper has solely the ship at his disposal – but without crew, provisions or fuel.

The charter contract forms the basis for the charter party bill of lading. The charter contract is highly significant: it regulates the rights and obligations of the parties to the contract as well as the amount of freight.

The designation of a bill of lading ("bill of lading", "liner bill of lading") often does not immediately suggest a charter party. It is only the wording of the document that makes this clear – for example in the notes on freight costs it states: •"Prepayable freight paid as per charter party.

Facts of which a bill of lading is Prima facie evidence:

A bill of lading is prima facie evidence of many facts which are as follows:-

1. Prima facie evidence of receipt of goods:-

A bill of lading shall be prima facie evidence of the receipt by the carrier of the goods as therein described. Thus it operates as certificates that the goods have been received. The effect of a bill of lading as an acknowledgement of the receipt of the goods is two –fold. That is as against the shipper, the person signing the bill liable.

2. Bill of lading as evidence of contract of affreightment:-

The bill of lading is not the contract of affreightment in itself, but it is the evidence of the contract. The terms of the contract of carriage are no doubt to be found in the bill, but as the bill is only an evidence of the contract, and not the contract by itself, there can be other terms also.

3. Bill of lading as a document of title:

A bill of lading is a document of title.It is a symbol of the goods. It represents the goods themselves. Its possession refers to the possession of the goods themselves, and its transfer being a symbolic delivery of the goods themselves has the same effect as an actual delivery.

Negotiability of bill of lading

An Important effect of bill of lading being a document of title is that through it is not a negotiable instrument, it has this characteristic of a negotiable instrument that property in the goods represented by the bill passes to the person to whom it is transferred.However,in strict legal sense, a bill of lading, is not a negotiable instrument. In case of a negotiable instrument, the holder in due course gets a better title than that of his transferor but in case of bill of lading, its transferee takes it subject to all previous defects in title. This principle is now in corporate in Sec 1 of the Indian Bill of lading Act 1856.Therefore, a bill of lading, is not a negotiable instrument in the strict legal and technical sense.

Characteristics of common carriers

The above definition reveals the following characteristics of common carriers:

1. A Common carrier may be an individual, a firm, an association of persons or a body corporate, but the government is not included in the definition.

2. It carries only the goods and not passengers.

3. It must be of a regular transporting business and should transport goods regularly and not occasionally.Further; it should not carry goods free also.

4. The carriage must by land or inland navigation.

5. It should carry goods of all and sundry without any discrimination

Exceptions:-

A Common carrier cam lawfully refuses to carry the goods under the following circumstances:

1. If there is no space in the vehicle.

2. If the goods are not of the type, he usually professes to carry.

3. If the destination is not along his usual route.

4. If the reasonable charges for the carriage are not paid by the consignor.

5. If the goods were inadequately packed.

6. If the consignor refused to pay the freight in advance when so requested.

7. If the goods were tendered at an unreasonable time before the carrier was ready for his journey.

Advantages do the Charter Party offer:

A charter party can be advantageous for the exporter, if for example several shippers wish to transport the same goods by sea freight to the same destination and the overall volume of these goods constitute the full ship's loading capacity. This often makes the pro rata freight costs more economical in comparison to a normal freight contract – particularly, as the shippers can divide the risk of loading and transportation among themselves.

There are also cost benefits for the importer if, for example, he receives goods for a project from several different suppliers which can all be transported on the same ship. The importer "collects" on the one ship he has chartered the goods from various shippers. The conclusion of a single charter party contract is often cheaper for the importer than several individual liner shipping contracts, and the calculation of freight costs is also

Charter Party Bill of Lading acceptable under a Letter of Credit:

Generally, a charter party bill of lading is only acceptable under a letter of credit if it's conditions expressly permit this. And for good reason: this kind of transport document is based on quite individual charter contracts which cannot be viewed by third parties and may contain clauses which are not acceptable to the importer of the goods or any other purchaser of the bill of lading.

DISTINCTIONS:

Bill of lading serves the same purpose as any other contract entered into between two parties. The face of the bill of lading provides for the entry of information required for the transportation of the freight. The reverse side usually contains the terms and conditions of carriage. However, the bill of lading does differ from the ordinary contract in one respect: The terms and conditions, primarily dealing with claims and liability issues, are prescribed by statute. These terms and conditions are part of the bill of lading contract, whether they are actually printed on the form or not. Participants in the bill of lading contract are assumed to be familiar with these terms and conditions.

There are three distinct functions served by the bill of lading:

1. A receipt issued by a carrier to a shipper for goods received for transportation. It states the place and date of the shipment, describes the goods, their quality, weight, dimensions, identification marks, condition, etc., and sometimes their quality and value.

2. A contract naming the parties involved the specific rate or charge for transportation, and the agreement and stipulations regarding the limitations of the carrier's common law liability in the case of loss or injury to the goods. It also lists other obligations assumed by the parties or to matters agreed upon between them.

3. Documentary evidence of title to the goods. "Negotiable" bills of lading are made out "to the order of" a consignee and the carrier may only deliver the cargo to the person in possession of the original bill of lading. When a negotiable bill of lading is negotiated, the person to whom it is negotiated receives title to the goods. Non-negotiable bills of lading, commonly known as straight bills of lading, do not convey title to the goods.

- **Straight (uniform) bill of lading:** Non-negotiable document used to provide that the shipment is to be delivered directly to the party whose name is shown as consignee. The carrier does not require its surrender upon delivery except when needed to identify consignee. It is clearly marked "non-negotiable."
- **Order bills of lading**: Negotiable bill of lading that consigns the goods "to the order of" the person named. It differs from the "straight" bill of lading because it is assignable and negotiable. This bill of lading is printed on yellow paper to distinguish it from a straight bill of lading. The use of order bills of lading is quite limited in the United States

Common carriers are not required by regulation to issue a bill of lading. The claims and liability conditions mandated by statute for bill of lading contracts are not automatically part of motor carriage under contract. The claims and liability stipulations agreed upon by the parties are included in the contract, and disputes are resolved based upon the conditions included in the contract. Parties to the contract may incorporate the statutory claims and liability provisions into the contract carrier agreement, or include provisions agreed upon between the parties. However, in the absence of a clear written contract between the parties defining the terms and conditions of liability, the statutory liability under the bill of lading will become the basis for resolving the dispute.

A bill of lading may be drafted subject to a master contract, or it may serve as the only contract for the transportation. A carrier is not able to avoid liability if it fails to issue a bill of lading.

Mate's Receipt

As soon as the goods are loaded on board the vessel, the captain or master of the ship, shall issue a document known as mate receipt direct to the port trust auperintendent,in charge of the shed.

Negotiability of bill of lading

An important effect of bill of lading being a document of title is that through it is not a negotiable instrument, it has this characteristic of a negotiable instrument that property in the goods represented by the bill passes to the person to whom it is transferred.However,in strict legal sense, a bill of lading, is not a negotiable instrument. In case of a negotiable instrumenr,the holder in due course gets a better title than that of his transferor but in case of bill of lading ,its

transferee takes it subject to all previous defects in title. This principle is now incorporated in sec 1 of the Indian Bill of lading Act 1856.Therefore, a bill of lading, is not a negotiable instrument in the strict legal and technical sense.

RIGHT TO INFORMATION ACT:

What is RTI?

RTI stands for Right to Information. Right to Information is a part of fundamental rights under Article 19(1) of the Constitution. Article 19 (1) says that every citizen has freedom of speech and expression. As early as in 1976, the Supreme Court said in the case of Raj Narain vs State of UP, that people cannot speak or express themselves unless they know. Therefore, right to information is embedded in article 19. In the same case, Supreme Court further said that India is a democracy. People are the masters. Therefore, the masters have a right to know how the governments, meant to serve them, are functioning. Further, every citizen pays taxes. Even a beggar on the street pays tax (in the form of sales tax, excise duty etc) when he buys a piece of soap from the market. The citizens therefore, have a right to know how their money was being spent. These three principles were laid down by the Supreme Court while saying that RTI is a part of our fundamental rights.

If RTI is a fundamental right, then why do we need an Act to give us this right?

This is because if you went to any Government Department and told the officer there, "RTI is my Fundamental right, and that I am the master of this country. Therefore, please show me all your files", he would not do that. In all probability, he would throw you out of his room. Therefore, we need machinery or a process through which we can exercise this fundamental right. Right to Information Act 2005, which became effective on 13thOctober 2005, provides that machinery. Therefore, Right to Information Act does not give us any new right. It simply lays down the process on how to apply for information, where to apply, how much fees etc.

When did RTI Act come into force?

The Central Right to Information Act came into force on the 12th October, 2005. However, before that 9 state Governments had passed state Acts. These were J & K, Delhi, Rajasthan, Madhya Pradesh, Maharashtra, Karnataka, Tamil Nadu, Assam & Goa.

What rights are available under RTI Act 2005?

1. Right to Information Act 2005 empowers every citizen to
2. Ask any questions from the Government or seek any information
3. Take copies of any government documents
4. Inspect any government documents.
5. Inspect any Government works
6. Take samples of materials of any Government work

Who is covered under RTI?

The Central RTI Act extends to the whole of India except the State of Jammu and Kashmir. All bodies, which are constituted under the Constitution or under any law or under any Government notification or all bodies, including NGOs, which are owned, controlled or substantially financed by the Government are covered.

What is "substantially financed"?

This is neither defined under RTI Act nor under any other Act. So, this issue will evolve with time, maybe through some court orders etc

Are Private bodies covered under the RTI Act?

All private bodies, which are owned, controlled or substantially financed by the Government are directly covered. Others are indirectly covered. That is, if a government department can access information from any private body under any other Act, the same can be accessed by the citizen under the RTI Act through that government department.

Isn't Official Secrets Act 1923 an obstacle to the implementation of RTI Act?

No. Sec 22 of the RTI Act 2005 clearly says that RTI Act would over ride all existing Acts including Officials Secrets Act.

Can the PIO refuse to give me information?

A PIO can refuse information on 11 subjects that are listed in section 8 of the RTI Act. These include information received in confidence from foreign governments, information prejudicial to security, strategic, scientific or economic interests of the country, breach of privilege of legislatures, etc. There is a list of 18 agencies given in second schedule of the Act to which RTI Act does not apply. However, they also have to give information if it relates to matters pertaining to allegations of corruption or human rights violations.

Form A section 6(1) and 7(1) of the RTI Act, 2005

1. Full Name of the Applicant
2. Full Address
3. Details of the document/Inspection/Samples required

SALIENT FEATURES OF THE RIGHT TO INFORMATION ACT, 2005

1. The short title of the legislation has been changed from .The Freedom of Information Act. to Right to Information Act

2. Provides a very definite day for its commencement, i.e. 120 days from enactment.

3 IT defines .appropriate Government. as meaning, in relation to a .Public Authority. established, constituted or owned or substantially financed by funds provided directly or indirectly or controlled .

(i) by the Central Government, the Central Government;

(ii) by the State Government, the State Government..

4. It shall apply to .Public Authorities. which means any authority or body or Institution of self-government established or constituted by or under the Constitution; by any law made by the appropriate Government or, any other body owned , controlled or substantially financed directly or indirectly by the appropriate Government, and includes non-government organizations, substantially financed by the Government

5. The ambit covers the two Houses of Parliament, State Legislature, the Supreme Court/High Court/ Subordinate Courts including their administrative offices, Constitutional Authorities like Election Commission, Comptroller & Auditor General, Union Public Service Commission etc.

Only domestic and foreign private bodies working within the country have been excluded form the purview of the Act.

6. All citizens shall have the right to information, subject to the provisions of the Act.

7. It casts an obligation on Public Authorities to grant access to information and to publish certain categories of information within 120 days of the enactment. The responsibility about suo-motu disclosure/publication by public authorities has been considerably enlarged.

8. The Act lays down the machinery for the grant of access to information. The Public Authorities are required to designate Public Information Officers and Assistant Public Information Officers within 100 days of the enactment and whose responsibility it is to deal with requests for information and also to assist persons seeking information.
9. Provision has been made for transfer of a request by a public authority to another public authority wherein the subject matter/information is held by the latter.
10. A time limit of 30 days has been prescribed for compliance with requests for information under the Act, which, can be extended to 40 days where third-party interests are involved.
11. Fee to be reasonable. Also, no fee to be charged from persons who are below poverty line. Further, information to be provided free of charge where the response time-limit is not adhered to.
12. Certain categories of information have been exempted from disclosure under sections 8 and 9 of the Act. The Categories, by way of illustration, include, information likely to affect security of the State, strategic, scientific or economic interests of the State, detection and investigation of offences, public order, conduct of international relations and Cabinet papers.
13. Subject to 3 exceptions; the Act contains a provision for reveal of information, which is otherwise, exempted form disclosure under section 8 on completion of 20 years after the completion of the event.
14. The Act also incorporates the principle of severability.
15. Envisages creation of an independent non-judicial machinery, viz., Central Information Commission and State Information Commissions comprising a Chief Information Commissioner and Information Commissioners to decide 2nd stage appeals
16. Legal frame work of exercise of powers by the Commission defined in the Act.
17. The Act also provides a two-tier Appellate Forum. First appeal to departmental officer senior to the Public Information Officer. The second appeal to be made to Commission.
18. On a request for information being refused, the applicant can prefer an appeal to the prescribed authority within 30 days of the decision; the time for disposal of appeal being also 30 days extendable to 45 days.
19. Intelligence and security agencies specified in Schedule-II to the Act have been exempted form being covered within the ambit of the Act. However, the exemption is not absolute;

agencies shall have the obligation to provide information in matters relating to corruption and human rights violations.

20. The jurisdiction of subordinate courts has been barred expressly by section 23 of the Act.
21. The provisions of the proposed Act have been made overriding in character, so that the scheme is not subverted through the operation of other minor Acts.
22. Monitoring and reporting-Act makes a provision to produce statistics to assess its implementation so that improvements could be effected.
23. Central Information Commission and State Information Commissions to monitor the implementation of the Act and prepare an Anneal Report to be laid before Parliament/State Legislature.
24. Central Government to prepare programmes for development of .information. regime
25. FOI Act, 2002 to be repealed.

Procedure for Requesting Information under RTI in Tamil Nadu

Application:

Apply in plain paper (No form is prescribed) in English or Tamil to the concerned Public Information Officer of the public authority.

No reason for seeking information need be given or should be asked;

There is no specified form;

A. Fee for application:

Fee payable is Rs.10/-

It can be paid by cash or by postal money order or by affixing court fee stamp or by Demand Draft or Bankers' Cheque

It can be paid in SBI / RBI through any Government treasury, sub-Treasury / Pay and Accounts Office under the following head of Account:

0075. Miscellaneous General Services – 800. Other Receipts – BK. Collection of fees under Tamil Nadu Right to Information (Fees Rules) 2005.(DPC: 0075 00 800 BK 0006)

By direct payment in cash in offices with facilities to receive Cash.

B. Fee for Other Charges:

Fee payable is Rs.2/- per page created / copied for A4 / A3 sizes;

Actual charges for larger paper;

Actual cost / price for samples / models;

For inspection of records, no fee for the first hour, and a fee of Rs.5/- for every one hour (or fraction thereof) there after.

For information provided in diskette or floppy Rs.50/- per diskette or floppy and

For information provided in printed form at the price fixed for publications or Rs.2/- per page of photocopy for extracts from the publication.

It can be paid as a Demand Draft or Bankers Cheque or by way of Treasury Challan throughSBI / RBI or through any Government treasury, sub-Treasury / Pay and Accounts Office under the following head of Account ;

0075. Miscellaneous General Services – 800. Other Receipts – BK. Collection of fees under Tamil Nadu Right to Information (Fees Rules) 2005.

(DPC: 0075 00 800 BK 0006)

It can also be paid by way of cash against proper receipt.

Some DOs and DON'Ts:

Ask the information specifically listing them (1), (2), (3), etc.

Do not write long history of the case or other extraneous comments that will confuse the issue;

Give your contact address clearly.

Be brief and to the point. For example, merely write, like,

"Under the RTI Act, kindly supply the following information:

1)

2)

3)

.. .. ….

.. .. ….

My address for communication is:

. . . . . .

, , , , , , , , , , , , , , , , , ,

I enclose the requisite payment as

……

Thanking you,

Yours faithfully,

…… "

There is no need to mark a copy to Information Commission or Appellate Authority at the first stage of application as it will be premature and won't be acted upon.

Nor try to route it through them as it will only delay the papers with no advantage;

Kindly be polite in the correspondence. Rudeness will not get any better results!

There is no need to pay any fees on appeals.

NEGOTIABLE INSTRUMENTS ACT 1881:

MEANING OF NEGOTIABLE INSTRUMENTS:

The word "negotiable" means "Transferable by delivery" and the word "instrument" means "a written document by which a right is created in favour of some person. Thus, the term "negotiable instruments" means "a written document transferable by delivery."

According to Section 13 (1) of the Negotiable Instruments Act, 1881(NI Act), A "negotiable instrument" means a promissory note, bill of exchange or cheque payable either to order or to bearer.

Features of Negotiable Instruments

After discussing the various types of negotiable instruments let us sum up their features as under

A negotiable instrument is freely transferable. Usually, when we transfer any property to somebody, we are required to make a transfer deed, get it registered, pay stamp duty, etc. But, such formalities are not required while transferring a negotiable instrument. The ownership is changed by mere delivery (when payable to the bearer) or by valid endorsement and delivery (when payable to order). Further, while transferring it is also not required to give a notice to the previous holder.

ii. Negotiability confers absolute and good title on the transferee. It means that a person who receives a negotiable instrument has a clear and undisputable title to the instrument. However,

the title of the receiver will be absolute, only if he has got the instrument in good faith and for a consideration. Also the receiver should have no knowledge of the previous holder having any defect in his title. Such a person is known as holder in due course. For example, suppose Rajiv issued a bearer cheque payable to Sanjay. It was stolen from Sanjay by a person, who passed it on to Girish. If Girish received it in good faith and for value and without knowledge of cheque having been stolen, he will be entitled to receive the amount of the cheque. Here Girish will be regarded as 'holder in due course'.

iii. A negotiable instrument must be in writing. This includes handwriting, typing, computer print out and engraving, etc.

iv. In every negotiable instrument there must be an unconditional order or promise for payment.

v. The instrument must involve payment of a certain sum of money only and nothing else. For example, one cannot make a promissory note on assets, securities, or goods.

vi. The time of payment must be certain. It means that the instrument must be payable at a time which is certain to arrive. If the time is mentioned as 'when convenient' it is not a negotiable instrument. However, if the time of payment is linked to the death of a person, it is nevertheless a negotiable instrument as death is certain, though the time thereof is not.

vii. The payee must be a certain person. It means that the person in whose favour the instrument is made must be named or described with reasonable certainty. The term 'person' includes individual, body corporate, trade unions, even secretary, director or chairman of an institution. The payee can also be more than one person.

viii. A negotiable instrument must bear the signature of its maker. Without the signature of the drawer or the maker, the instrument shall not be a valid one.

ix. Delivery of the instrument is essential. Any negotiable instrument like a cheque or a promissory note is not complete till it is delivered to its payee. For example, you may issue a cheque in your brother's name but it is not a negotiable instrument till it is given to your brother.

x. Stamping of Bills of Exchange and Promissory Notes is mandatory. This is required as per the Indian Stamp Act, 1899. The value of stamp depends upon the value of the pronote or bill and the time of their payment.

Types of Negotiable Instruments

According to the Negotiable Instruments Act, 1881 there are just three types of negotiable

instruments i.e., promissory note, bill of exchange and cheque. However many other documents are also recognized as negotiable instruments on the basis of custom and usage, like hundis treasury bills, share warrants, etc., provided they possess the features of negotiability. In the following sections, we shall study about Promissory Notes (popularly called pronotes), Bills of Exchange (popularly called bills), Cheques and Hundis (a popular indigenous document prevalent in India), in detail.

PROMISSORY NOTE

Suppose you take a loan of Rupees Five Thousand from your friend Ramesh. You can make a document stating that you will pay the money to Ramesh or the bearer on demand. Or you can mention in the document that you would like to pay the amount after three months. This document, once signed by you, duly stamped and handed over to Ramesh, becomes a negotiable instrument.

Now Ramesh can personally present it before you for payment or give this document to some other person to collect money on his behalf. He can endorse it in somebody else's name who in turn can endorse it further till the final payment is made by you to whosoever presents it before you. This type of a document is called a Promissory Note.

Section 4 of the Negotiable Instruments Act, 1881 defines a promissory note as 'an instrument in writing (not being a bank note or a currency note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to or to the order of a certain person or to the bearer of the instrument'.

Rs. 10,000/- New Delhi

September 25, 2002

On demand, I promise to pay Ramesh, s/o RamLal of Meerut or order a sum of Rs 10,000/- (Rupees Ten Thousand only), for value received.

To , ramesh Sd/ Sanjeev

Address…….. Stamp

FEATURES OF A PROMISSORY NOTE

Let us know the features of a promissory note.

i. A promissory note must be in writing, duly signed by its maker and properly stamped as per Indian Stamp Act.

ii. It must contain an undertaking or promise to pay. Mere acknowledgement of indebtedness is not enough. For example, if some one writes 'I owe Rs. 5000/- to Satya Prakash', it is not a promissory note.

iii. The promise to pay must not be conditional. For example, if it is written 'I promise to pay Suresh Rs 5,000/- after my sister's marriage', is not a promissory note.

iv. It must contain a promise to pay money only. For example, if some one writes 'I promise to give Suresh a Maruti car' it is not a promissory note.

v. The parties to a promissory note, i.e. the maker and the payee must be certain.

vi. A promissory note may be payable on demand or after a certain date. For example, if it is written 'three months after date I promise to pay Satinder or order a sum of rupees Five Thousand only' it is a promissory note.

vii. The sum payable mentioned must be certain or capable of being made certain. It means that the sum payable may be in figures or may be such that it can be calculated.

BILL OF EXCHANGE

Suppose Rajiv has given a loan of Rupees Ten Thousand to Sameer, which Sameer has to return. Now, Rajiv also has to give some money to Tarun. In this case, Rajiv can make a document directing Sameer to make payment up to Rupees Ten Thousand to Tarun on demand or after expiry of a specified period. This document is called a Bill of Exchange, which can be transferredto some other person's name by Tarun.

Section 5 of the Negotiable Instruments Act, 1881 defines a bill of exchange as 'an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to or to the order of a certain person, or to the bearer of the instrument'.

Specimen of a Bill of Exchange

Rs. 10,000/- New Delhi

May 2, 2001

Five months after date pay Tarun or (to his) order the sum of Rupees Ten Thousand only for value received.

To	Accepted	Stamp
Sameer	Sameer	S/d
Address		Rajiv

Features of a bill of exchange

Let us know the various features of a bill of exchange.

i. A bill must be in writing, duly signed by its drawer, accepted by its drawee and properly stamped as per Indian Stamp Act.

ii. It must contain an order to pay. Words like 'please pay Rs 5,000/- on demand and oblige' are not used.

iii. The order must be unconditional.

iv. The order must be to pay money and money alone.

v. The sum payable mentioned must be certain or capable of being made certain.

vi. The parties to a bill must be certain.

CHEQUES

Cheque is a very common form of negotiable instrument. If you have a savings bank account or current account in a bank, you can issue a cheque in your own name or in favour of others, thereby directing the bank to pay the specified amount to the person named in the cheque. Therefore, a cheque may be regarded as a bill of exchange; the only difference is that the bank is always the drawee in case of a cheque.

The Negotiable Instruments Act, 1881 defines a cheque as a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand. Actually, a cheque is an order by the account holder of the bank directing his banker to pay on demand, the specified amount, to or to the order of the person named therein or to the bearer.

Specimen of a Cheque

……..20.....

Pay…….....

……..... or Bearer

Rupees……

Rs

……

STATE BANK OF INDIA

Jawaharlal Nehru University, New Delhi – 110067

MSBL/97

6 5 3 0 0 3 1 1 0 0 0 2 0 5 6 1 0

Features of a cheque

Let us look into some important features of a cheque.

i. A cheque must be in writing and duly signed by the drawer.

ii. It contains an unconditional order.

iii. It is issued on a specified banker only.

iv. The amount specified is always certain and must be clearly mentioned both in figures and words.

v. The payee is always certain.

vi. It is always payable on demand.

vii. The cheque must bear a date otherwise it is invalid and shall not be honoured by the bank.

Types of Cheque

Broadly speaking, cheques are of four types.

a) Open cheque, and

b) Crossed cheque.

c) Bearer cheque

d) Order cheque

a) Open cheque: A cheque is called 'Open' when it is possible to get cash over the counter at the bank. The holder of an open cheque can do the following:

i. Receive its payment over the counter at the bank,

ii. Deposit the cheque in his own account

iii. Pass it to some one else by signing on the back of a cheque.

b) Crossed cheque: Since open cheque is subject to risk of theft, it is dangerous to issue such cheques. This risk can be avoided by issuing another types of cheque called 'Crossed cheque'. The payment of such cheque is not made over the counter at the bank. It is only credited to the bank account of the payee. A cheque can be crossed by drawing two transverse parallel lines across the cheque, with or without the writing 'Account payee' or 'Not Negotiable'.

c) Bearer cheque: A cheque which is payable to any person who presents it for payment at the bank counter is called 'Bearer cheque'. A bearer cheque can be transferred by mere delivery and requires no endorsement.

d) Order cheque: An order cheque is one which is payable to a particular person. In such a cheque the word 'bearer' may be cut out or cancelled and the word 'order' may be written. The payee can transfer an order cheque to someone else by signing his or her name on the back of it.

Holder And Holder-In-Due-Course:

According to section 8, a **holder** of a negotiable instrument is "a person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto." Thus, a person who has obtained the possession of an instrument by theft or under a forged endorsement is not a holder as is not entitled to recover the amount of the instrument.

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

PARITES TO NEGOTIABLE INSTRUMENTS AND THEIR LIABILITY:

According to **Section 26** of the Act, Every person capable of contracting,(who has completed 18 years of age and is of sound mind) according to the law to which he is subject, may bind himself and be bound by the making, drawing, acceptance, indorsement, delivery and negotiation of a promissory note, bill of exchange or cheque.

Minor — a minor may draw, indorse, deliver and negotiate such instruments so as to bind all parties except himself. Nothing herein contained shall be deemed to empower a corporation to make, indorse or accept such instruments except in cases in which, under the law for the time being in force, they are so empowered.

1) Maker: The person who makes a promissory note is called a maker.

Liability: In the absence of a contract to the contrary, the maker of a promissory note is bound to pay the amount thereof at maturity according to the apparent tenor of the note or acceptance respectively. In default of such payment, the maker is bound to compensate any party to the note for any loss or damage sustained by him and caused by such default.

2) Drawer: The person who makes a bill of exchange or cheque is called a drawer.

Liability: The drawer of a bill of exchange or cheque is bound in case of dishonour by the drawee or acceptor thereof, to compensate the holder, provided due notice of dishonour has been given to, or received by, the drawer as hereinafter provided.

3) Drawee: The person directed to pay by the drawer is called a drawee.

Liability: The drawee of a cheque having sufficient funds of the drawer in his hands properly applicable to the payment of such cheque must pay the cheque when duly required so to do, and, in default of such payment, must compensate the drawer for any loss or damage caused by such default

4) Acceptor: After the drawee of a bill has signed his assent upon the bill, or, if there are more parts thereof than one, upon one of such parts, 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".

Liability: In the absence of a contract to the contrary, the acceptor before maturity of a bill of exchange is bound to pay the amount thereof at maturity according to the apparent tenor of acceptance and the acceptor of a bill of exchange at or after maturity is bound to pay the amount thereof to the holder on demand. In default of such payment as aforesaid, the acceptor is bound to compensate any party to the bill for any loss or damage sustained by him and caused by such default.

5) Payee: The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the "payee".

6) Holder: He is either the payee or the person to whom the instrument may have been endorsed.

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

Rights: Under section 36 of the Act, every prior party (i.e the maker, drawer, acceptor or intervening indorser) to the negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied.1

Indorsement:

When the maker or holder of negotiable instrument signs the instrument with the intention to negotiate it, it is called an indorsement and the person who signs is called an "indorser". The signature can be made on the back or face of the instrument or on a slip of paper annexed to it or it may also be a signature on stamped paper. As per section 46, indorsement is complete only after delivery of the indorsed instrument to the indorsee.

Indorsement confers the property in the instrument to the indorsee (transferee) with right of further negotiation.

Property is very complex concept to understand. It can be divided into many ways: Movable-Immovable, Tangible-Non Tangible etc. The division of property as movable and immovable, if it is tangible, was known in Roman law and has been adopted by modern Civil Codes. However, "as a result of the industrial revolution and the rapid development made in the fields of science, technology and culture, new kinds of property came into existence". New rights and properties like patents, copyright and industrial designs, which came to be known as Intellectual Property Rights (IPRs) received attention due to their unique characteristics.

Intellectual property is so broad that it has many aspects. It stands for groupings of rights which individually constitute distinct rights. However, its conception differs from time and it to time. It is subject to various influences. The change in information technology, market reality (globalization) and generality have affected the contents of intellectual property. For instance, in olden days because of religion creation of life, say plants or animals were not protected. Thus, defining IP is difficult as its conception changes. It is diverse, challenging and has application in own day today life. IP is a section of law which protects creations of the mind, and deals with intellectual creations. Is it a workable definition? It is also commonly said that one cannot patent or copyright ideas. Intellectual property, as a concept, "was originally designed to cover ownership of literary and artistic works, inventions

(patents) and trademarks". What is protected in intellectual property is the form of the work, the invention, the relationship between a symbol and a business.

However, the concept of intellectual property now covers patents, trademarks, literary and artistic works, designs and models, trade names, neighboring rights, plant production rights, topographies of semi conductor products, databases, when protected by a *sui generis* right, unfair competition, geographical indications, trade secrets, etc. Those types of intellectual property have been characterized as "pieces of information which can be incorporated in tangible objects at the same time in an unlimited number of copies at different time and at different locations anywhere in the world". In other words, intellectual property rights are intangible in nature, different from the objects they are embodied in. The property right is not in those copies but in the information which creates in them.

In today's world, the international dimension of intellectual property is of ever increasing mportance for three compelling reasons. First, the composition of world trade is changing. Currently, commerce in intellectual property has become an even greater component of trade between nations. The value of information products has been enhanced greatly by the new technologies of the semiconductor chip, computer software and biotechnology. Second, the world commerce has become even more interdependent, establishing a need for international cooperation. No longer can a single country impose its economic will on the rest of the world. Accordingly, countries have recognized this interdependence and have called for a broadening of international agreements/arrangements involving intellectual property. Third, new reprographic and information storage technologies permit unauthorized copying to take place faster and more efficiently than ever, undermining the creator's work. There is a general feeling in the developed countries that much of this sort of copying takes place in the third world due to the relaxation of legal standards. All these factors have prompted the international community as a whole to accord due recognition to intellectual property and intellectual property regime.

Thus, the above reasons widen the scope of intellectual property rights.

Among the bundles of intellectual property rights, copyright that deals with the protection of literary, artistic and scientific works is one.

Meaning and Definitions of Intellectual Property Rights

Intellectual property is such a property not occurs in nature but a creation of human intellect, skill and labour. The concept of traditional property recognises the things; which are earned or acquired by labour, money or, by any other valuable consideration; as property and, protects the rights over such a property. But, under the concept of intellectual property, the creativity of a person; the application of such creativity; and, the economic benefits arising out of such application of creativity, are protected. In the term "intellectual property", the word "intellectual" is used as an adjective. It shows the 'quality' or 'specialty' of the 'property'. The word 'intellectual", thus, reflects that the concern property is based on someone's intellect and, is not a common property.

Encyclopedia Britannica defines the term intellectual property as:

'A property that derives from the work of an individual's mind or intellect'.

Besides the definitions of intellectual property, the term IPR, i.e. Intellectual property rights, is commonly used to represent both: the intellectual property and the rights there over. The World Intellectual Property Organization (WIPO) defines the intellectual property rights (IPR) in following words: *"Intellectual Property includes rights relating to*

(i) literary, artistic and scientific works,

(ii) performances and performing artists, photograph and broadcasts;

(iii) inventions in all fields of human endeavoure;

(iv) scientific discoveries;

(v) industrial design;

(vi) trademarks, service marks, commercial names and designations;

(vii) protection against unfair competition; and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields."

There are eight different types of intellectual property rights recognized by WIPO i.e. copyright, patents, trademarks, trade secrets, industrial designs, plant varieties, geographical indications, layout design of integrated circuits. The definition given by WIPO just listed the various subject

matters of intellectual property rights. The list shows that the intellectual property is a combination of industrial property (i.e. patent, design, trademark etc.) and copyright (literary or artistic works, phonograms etc.).In fact, the expression "intellectual property rights" is used to describe a person's property in the creations of his intellect as well as his proprietary rights there over

Scope of Intellectual Property Rights

The scope of intellectual property rights is very wide. The field encompasses such legal concept as trademarks, patents, designs as well as copyright. All these legal concepts deal in one way or the other with the protection of the fruits of man's creative efforts. The man who thinks up a distinctive and original name, device or get-up to market his goods in order to make the goods easily recognizable or even more attractive to the average purchaser, and had over a period of time procured through the quality of his goods substantial goodwill for the name, device or get up, deserves some protection for such name, device or getup, and he is indeed protected by the law of trade marks. The man who spends money, energy, ingenuity and time in conducting research and inventing a new machine, discover a new device or process is protected by the law of patents. The man who designs a new shape for a motor car or settee or designs a new pattern for textiles is also creative. He is protected by the law of designs. The man who writes a new song, or story, or the architect who designs a unique building are all creative. They on their part are protected by the law of copyright. Intellectual property rights include copyright, patent, trademark, geographic indication of origin, industrial design, trade secrets, database protection laws, publicity rights laws, laws for the protection of plant varieties, laws for the protection of semiconductor chips (which store information for later retrieval), etc.

There is a conventional mode of classification of intellectual property as industrial property and copyrights. Industrial properties include inventions (patent), property interest on minor invention (Utility model certificate) and commercial interests (Trade Marks, trade names, geographical indications, and industrial design), plant breeder rights, biodiversity, etc.

Thus Intellectual Property is Knowledge, creative ideas, or expressions of human mind that have commercial value and are protectable under copyright, patent, service mark, trademark, or trade secret laws from imitation, infringement, and dilution. Inellectual property includes brand names,

discoveries, formulas, inventions, knowledge, registered designs, software registered designs, software, and works of artistic, literary, or musical nature. It is one of the most readily tradable properties in the digital marketplace. 1

Patents

A patent is a type of intellectual property right which allows the holder of the right to exclusively make use of and sale an invention when one develops an invention. Invention is a new process, machine, manufacture, composition of matter. It is not an obvious derivation of the prior art (It should involve an inventive step). A person who has got a patent right has an exclusive right. The exclusive right is a true monopoly but its grant involves an administrative process.

Copyright

It is an intellectual property which does not essentially grant an exclusive right over an idea but the expressions of ideas which makes if different from patent law. Patent is related with invention technical solution to technical problems.

Copyright is a field which has gone with artistic, literary creativity, creativity in scientific works, audiovisual works, musical works, software and others. There are neighboring rights. These are different from copyright but related with it – performers in a theatre, dancers, actors, broadcasters, producers of sound recorders, etc. It protects not ideas but expressions of ideas as opposed to patent. Copyright protects original expression of ideas, the ways the works are done; the language used, etc. It applies for all copyrightable works. Copyright lasts for a longer period of time. The practice is life of author plus 50 years after his/her life. Administrative procedures are not required, unlike patent laws, in most laws but in America depositing the work was necessary and was certified thereon but now it is abolished.

The Patent System

A patent is a contract between the inventor or applicant for the patent and the State, whereby the inventor or applicant gets a monopoly from the State for a certain period in return for disclosing full details of the invention. The patent system thus ensures that information on new inventions is made available for eventual public use so as to encourage technical and economic development and discourage secrecy.

If an inventor or company has an invention, which they consider to be novel and inventive, they may apply for a patent. This may be granted only after a detailed examination by a patent office.

Once the patent is granted the inventor or applicant has the sole right to make, use or sell the invention for a limited period. This period is usually twenty years.

There can also be confusion about what exactly can be protected by the patent system. Patents can only be applied to inventions. These usually have an industrial dimension. An invention is normally a new product, which involves a new principle of operation or an improvement to an old principle. Alternatively it may refer to a new or improved industrial process. Things, which do not involve manufacture, are not usually considered to be inventions. For example, a new scientific theory or a new surgical procedure would not be considered to be patentable for this reason.

POSSIBLE QUESTIONS

PART A - (ONE MARK)

(ONLINE EXAMINATION)

PART B – (TWO MARKS)

1. Define bill of lading.
2. Write a short note on charter party.
3. Define cheque.
4. What do you mean by common carrier?
5. Define the term inland instrument.
6. Define bill of lading.
7. Write a short note on contract of goods by sea.
8. Write a short note on bill of lading.
9. What you mean by charter party?
10. Define common carriers.
11. What are the Rights to be followed in common carriers.
12. Write a note on charter party in common carriers.
13. Distinction of common carriers.
14. What are the duties of common carriers?
15. Write a short on Bill of Lading.

PART C – (SIX MARKS)

1. Explain about procedure to be followed in bill of lading?
2. Explain the stages of contract in goods by sea.
3. Explain about contract of carriage of goods by sea.

4 Explain about rights and duties of common carriers.

5. Distinguish between common carriers and private carrier?
6. Explain the functions of Bill of Lading?
7. Explain briefly about contract of carriage of goods by sea.
8. Explain about bill of lading and charter party.
9. Define the terms of common carrier. State the rights and liabilities of a common carrier.
10. Explain the features of negotiable instruments.

11. Discuss different types of negotiable instruments with their features.
12. Explain briefly in right to information Act.
13. Explain different types of cheques.
14. Explain the scope of intellectual property legislation.
15. write short note on i. Promissory Note ii.Bill of Exchange iii. Cheques

KARPAGAM ACADEMY OF HIGHER EDUCATION

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(ESTABLISHED UNDER SEC 3 OF UGC ACT 1956)

DEPARTMENT OF COMMERCE

I - B.COM BUSINESS LAW (17CMU201 / 17BPU211)

UNIT V (COMMON CARRIERS)

S.NO.	QUESTIONS	OPTION I	OPTION II	OPTION III	OPTION IV	ANSWER
1	The law relating to carriage goods is contained in the_____	law of contract	contract of sale of goods	companies Act	the carriage Act	the carriage Act
2	_____is an acknowledgement of receipt of goods	bill of lading	Charter party	bill of loading	voluntary charter-party	Charter party
3	____- is the reward which the law gives for carrying goods.	.Lien	Freight	expenses	.carriage	Freight
4	Carriage by rail is regulated by the Railways Act_____	1988	1989	1981	1980	1988
5	_____ is a evidence of the contract of carriage.	charter-party	bill of lading	Receipt	document	bill of lading
6	_____ not governed by the carriers Act 1875.	common carrier	Private carrier	Public carrier	Public & private carrier	Private carrier
7	_____- is a contract where bya person or company agrees to carry goods / people from one palce to another in return for a payment.	contract of carriage	Contract of goods	contract of transport	.contract of sea	contract of carriage
8	Every consignor of goods or animals has to execute a note called _____	forwarding note	Account note	Book	Bill note	forwarding note
9	_____ does not cover every accident or casualty which may happen the subject -matter.	perils of raad	perils of the sea	Perils of the land	.perils of railway	perils of the sea
10	Master of the ship issue a document known as _____	Receipt	Mate Receipt	Receipt of goods	Receipt of stamp	Mate Receipt
11	The air consignment note is _____ evidence of the conclusion of the contract.	Prime fact	prima face	prima facie	Prima facer	prima facie

S.NO.	QUESTIONS	OPTION I	OPTION II	OPTION III	OPTION IV	ANSWER
12	Liability of carrier is given in _____	schedule 1,chapterIII	sechedule II , chapterIV	schdeule III, chapterV	schedule IV, chapter VI	schedule 1,chapterIII
13	The law relating to carriage of gods by land is contained in the _____	carraige Act, 1865	Carraige Act1875	.Carraige Act1870	Carraige Act1890	carraige Act, 1865
14	The law regardng carraige of goods, by sea is contained in the	Indian bill of lading Act1856	.Indian bill of Lading Act 1857	Indian bill of lading Act 1890	.Indian bill of lading Act,1891	Indian bill of lading Act1856
15	A contract of carriage of goods by sea is called the _____	Contract of affreightment	.contract of consideration	contract of goods	contract on sale of goods	Contract of affreightment
16	When the ship is chartered for a particular period, it is called _____	.time cahrter party	Bill of lading	Voyage charter party	.Clean bil of lading	.time cahrter party
17	When the vessel is chatered for a particular voyage it is called as_____	time charter party	bill of lading	voyage charter party	clean bil of lading	voyage charter party
18	_____means any carraige in which the place of departure and the place of destinationfall in two different countries who have adopted the convention.	International carriage	Carraige Act1875	.convention	Amended convention	International carriage
19	Carriage by rail is regulated by the railwaysAct	1988	1989	.199o	1991	1989
20	_____ note which contains the descriptions of goods, number of package weight, the name addresses of the consignor & consignee	.forwarding note	account note	.backwarding note	special note	.forwarding note
21	_____ is an ordinary tariff rate.	owner's risk rate	principal risk rate	.Railway risk rate	common risk rate	.Railway risk rate
22	The railway administaration shall be responsible as a_____ as under the Indian contract Act 1872 for the loss of goods carried by railway	Bailor	Pawnor	.Bailee	offer	.Bailee
23	A railway administration cannot be held liable in any case for th eloss destruction, damage of the goods mentioned in the _____schedule	First	.second	third	fourth	.second
24	_____ usually contains a statemnt as to position of the ship .	Bill of lading	Bill of exchange	bill of account	charter-party	charter-party
25	Bill of lading is prepared in _____copy.	single	duplicate	original	triplicate	triplicate

S.NO.	QUESTIONS	OPTION I	OPTION II	OPTION III	OPTION IV	ANSWER
26	_____ is one who no general offer, but carrier goods as a casual occupation	.Public carrier	Private carrrier	common carrier	.Compund carrier	Private carrrier
27	The time charter party is called as _____	Voyage charter party	carter party be premise	charter party	Charteraprty by demise	Charteraprty by demise
28	The air consignment note is _____ evidence of the conclusion of the contract.	Prime fact	prima face	prima facie	Prima facer	prima facie
29	_____ serve as a document of title to the goods.	.Railway receipt	Railway document	Railway ticket	.railway pass	.Railway receipt
30	Example for schedule goods	.gold	.document	Receipt	carraigebooks	.gold
31	When the goods are to be carried partly by sea & partly by land or partly in other's ship is called as _____	clean bill of lading	.Through bill of lading	dirty bill of lading	bill of lading	.Through bill of lading
32	The Negotiable Instrument Act is applicable to—	whole of India	whole of India except JK	Whole of India except Jammu and Kashmir city	Whole of India except newly carved out states after 2000	whole of India
33	When the ship owner asmits in the bill of lading that the goods shipped are on good order & condition it is called _____	.through bill of lading	.clean bill of lading	dirty bill of lading	bill of lading of dirty	.clean bill of lading
34	One bale torn are contained in a bill of lading it is called as_____	dirty bill of lading	clean bill of lading	Through bill of lading	voyage charter-party	dirty bill of lading
35	The Negotiable Instruments Act came into force on	1881	1981	1982	1991	1881
36	The carrier can require the consignor to prepare an _____	Account note	Books of accounts	.consignment	.air consignment note	.air consignment note
37	Which of these is not a negotiable Instrument as per the Negotiable Instrument Act,1881	Bill of exchange	Delivery note	Bearer Cheque	share certificate	share certificate
38	--- is not a negotiable instrument as per customs and usage	delivery note	promissory note	cheque	railway receipt	cheque
39	How many parties are involved in a Bill of Exchange	1	2	3	4	3

S.NO.	QUESTIONS	OPTION I	OPTION II	OPTION III	OPTION IV	ANSWER
40	A bill of Exchange must be---	writing	unconditional	properly stamped	all the above	all the above
41	Bill of lading is prepared in _____copy.	single	.duplicate	original	triplicate	triplicate
42	----days grace period is allowed for payment of a cheque.	0	3	6	8	3
43	The carrier owes ____- duties	one	three	two	four	two
44	The every person ans every passenger who has to prepare to pay the required _____ to carry goods under section28	expenses	freight	voucher	bill	freight
45	The contract of affreightment takes _____- forms	two	one	three	four	two
46	The charter party are classified in to _____ types	one	two	three	four	two
47	The bill of lading are classified into _____types	one	two	three	four	three
48	_____ means right to retain tha cargo until its charges are paid	freight	lien	receipt	document	lien
49	_____ involves the following documents like passenger ticket,luggage ticket, air consignment note.	carriage by air	carriage by land	carriage by sea	Carriage by road	carraige by air
50	When the ship owner asmits in the bill of lading that the goods shipped are on good order & condition it is called _____	.through bill of lading	.clean bill of lading	.dirty bill of lading	bill of lading of dirty	.clean bill of lading
51	One bale torn are contained in a bill of lading it is called as_____	dirty bill of lading	.clean bill of lading	Through bill of lading	voyage charter-party	.through bill of lading
52	The time charter party is called as _____	.Voyage charter party	carter party be premise	charter party	Charteraprty by demise	Charteraprty by demise
53	Carriage by rail is regulated by the Railways Act_____	1988	1989	1981	1980	1988

S.NO.	QUESTIONS	OPTION I	OPTION II	OPTION III	OPTION IV	ANSWER
54	_____ is a evidence of the contract of carriage.	charter-party	bill of lading	Receipt	document	bill of lading
55	Type of crossing are restrictive special and _____	receiving	general	credit	debit	general
56	The railway administration shall be responsible for the loss , destruction , damage of goods carried by the railway within a period of _____ days after the termination of transit	30	20	10	0.12	30
57	_____ is adocument issued by the railway acknowledging receipts of goods	bill of lading	dock warrant	railway receipt	delivery order	railway receipt
58	The expansion of IPR	Information property rights	Intellectual property rights	Intellectual property road	Intellectual properly rights	Intellectual property rights
59	Example for Intellectual propety rights	patent	cheque	goodwill	promissory note	patent
60	TRIPS is administrated by	IMF	WTO	WHO	IPR	WTO