

UNIT-I - Commercial Law

SYLLABUS

UNIT I COMMERCIAL LAW

THE INDIAN CONTRACT ACT 1872 - Definition of contract, essentials elements and types of a contract, Formation of a contract, performance of contracts, breach of contract and its remedies, Quasi contracts - Contract Of Agency: Nature of agency, Creation and types of agents, Authority and liability of Agent and principal: Rights and duties of principal and agents, termination of agency.

THE SALE OF GOODS ACT 1930 - Nature of Sales contract, Documents of title, risk of loss, Guarantees and Warranties, performance of sales contracts, conditional sales and rights of an unpaid seller - **Negotiable Instruments Act 1881**: Nature and requisites of negotiable instruments. Types of negotiable instruments, liability of parties, holder in due course, special rules for Cheque and drafts, discharge of negotiable instruments.

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

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

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

INDIAN CONTRACT ACT 1872

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

CONTRACT – Definition

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

According to Salmond, “A contract is an agreement creating and defining obligation between the parties.”

Section 8(h) of the Indian Contract Act defines contract as an agreement which is enforceable by law.

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

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

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

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

ELEMENTS OF CONTRACT

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

1. Agreement: - There must be an agreement between the parties of a contract. It involves a valid offer by one party and a valid acceptance by the other party. Agreement is created by offer and acceptance. Therefore an agreement is = offer + acceptance. It is only by an agreement a contractual relation is established between the parties. For example, A sends a proposal to B to purchase a property for Rs. 10 lakhs and B accept the same, then this result into an agreement.

2. Lawful consideration: Consideration means something in return. An agreement is legally enforceable only when each of the parties to it give something and gets something. It may be past, present or future

and must be real and lawful. A contract without consideration is not a contract at all. The consideration must be legal, moral and not against public policy.

3. **Capacity of parties:** The parties to an agreement must be capable of entering into a valid contract. According to sec. 11, the following persons are not competent to enter in to a contract.

- (a) Persons of unsound mind (Idiots, lunatic person etc.)
- (b) Persons disqualified by law to which they are subject.
- (c) Minors (Not completed the age of 18)

4. **Free consent:** For the formation of a contract one person must give his consent to another person. The consent thus obtained must be a free consent. A consent is said to be free if it is not caused by coercion, undue influence, fraud, misrepresentation or mistake. If the consent is obtained by unfair means, the contract would be voidable.

5. **Consensus ad idem:** It means the two parties of the contract must agree upon the subject matter of the contract in the same manner and in the same sense. That is there must be identity of minds among the parties regarding the subject matter of the contract.

For example, A has two houses one at Calicut and another at Palakkad. He has offered To sell one house to B. B accepts the offer thinking to purchase the house at Palakkad, while A, when he offers; he has his mind to sell the house at Calicut. So there is no consensus ad idem.

6. **Lawful object:** The object of an agreement must be lawful. It must not be illegal or immoral or opposed to public policy. If it is unlawful, the agreement becomes void.

7. **Not declared to be void:** There are certain agreements which have been expressly declared void by the law. It includes:

- (a)Wagering agreement
- (b) Agreement in restraint to marriage

(c) Agreement in restraint of trade etc.

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

8. Certainty and possibility of performance: - The terms of the contract must be precise and certain. They should not be vague. The terms of agreement must be capable of performance. For example A agrees to sell one of his houses. A has four houses. Here the terms of agreement are uncertain and the agreement is void.

9. An intention to create legal relationship:- There should be an intention between the parties to create a legal relationship. Mere informal promise is not to be enforced. Social agreements are not to be enforced as they do not create any legal obligations. An oral contract is a valid contract except in those cases where writing, registration etc. is required by some statute.

CLASSIFICATION OF CONTRACTS

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

1. Formation of Contract
2. Performance of Contract
3. Extend of validity of Contract

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

a. **Express contract:** - These are the contracts, which are entered into between the parties, by words spoken or written. For example, A writes to B , “ I am willing to sell my Car to you for Rs. 2,00,000.” B accepts A’s offer by another letter. This is an express contract.

b. **Implied contract:** - Implied contracts are formed on the basis of implied promises on the part of parties. When the proposal or acceptance is made otherwise than in words, the contract formed is called implied contract. Thus in implied contract, making an offer and giving acceptance to it is manifested by

the act on the part of party. For example, X gets into a public bus, and then he enters into an implied contract with the authorities of the bus that he wishes to travel in the bus.

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

B. On the basis of Performance:- It includes

a. **Executed Contract**:-Executed contract is one that has been performed. If both parties of a contract have performed their respective obligations, contract is known as executed contract. For example, A sells a Car to B for Rs. 1,00,000. B pays the price. This is an executed contract.

b. **Executory contract** :-An executor contract is one in which both the parties have not yet performed their obligations either wholly or partly. For example, A makes an agreement for buying a car from a car dealer and has made payment. The car has been delivered, but the ownership is yet to be transferred.

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

a. **Valid contract**:- Contract is said to be valid if it satisfies all conditions required for its enforceability. In other words an agreement enforceable by law is a valid contract. For example, If A offers B to sell his car for Rs. 2,00,000 B agree to buy the car for this price, then it is a valid contract.

b. **Void Contract**: A contract which ceases to be enforceable by law become void. No party has right to claim it in the court of law. A void contract not necessarily be unlawful but it has no legal effects. A contract with alien friend becomes subsequently void when alien friend become alien enemy.

c. **Voidable contract**:- According to sec.2(i) “ An agreement which is enforceable by law at the option of one or more parties, but not at the option of other or others is a voidable contract.” Generally a contract becomes voidable when the consent of one of the parties to the contract is obtained by coercion, undue

influence or misrepresentation. For example, if the consent of the party was caused by coercion the contract is enforceable at the option of the party whose consent was not free.

D . Illegal contracts: - The contract is said to be illegal, if its object is illegal. A contract arising out of an illegal agreement is illegal ab initio . For example, an agreement to commit murder is an illegal one.

e. Unenforceable contract: - It is a contract, which is valid, but not capable of being enforced in a court of law because of some technical defects. Technical reasons affecting validity of contract may be that contract is not in writing or is not registered or has no adequate stamp duty on it etc. For example, A make out promissory note in favour of B for Rs. 1000, It has stamp duty of Rs. 5 only. But as per law it must have stamp duty of Rs. 10, such promissory note is invalid. But if stamp duty is raised up to required level it may be allowed to be enforced.

Formation of Contract

Elements of Formation of Contract

Two main elements:

1)Agreement

a) Offer

b) Acceptance

2)Consideration

3) Other elements

:a)Intention to create legal relations

b)Capacity

c)Formalities

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

According to section 2 (h) of the Indian Contract Act, “an agreement enforceable by law is a contract”.

That is all agreements are not contract. An agreement, in order to become a contract must satisfy certain

conditions which are the essential elements of a contract. For example, if an agreement is not intended to create legal relationship, agreement not made with the free consent of the parties, agreement not made for a lawful object etc. These agreements are not valid contracts. An agreement which does not create legal obligation is also not a contract. Thus all contracts are agreements but all agreements are not contracts.

OFFER AND ACCEPTANCE

Offer and acceptance are the two basic elements which comprise an agreement. One person makes an offer to another person, when the other person accepts that offer, it becomes an agreement.

Offer or Proposal

According to sec. 2 (a) of the Contract Act, **“When one person signifies to another his willingness to do or abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal.”**

Offer is one of the essential elements of a contract. The person making the offer or proposal is called the offeror proposer or promisor and the person to whom the proposal is made is called ‘the proposee’ or offeree.

Elements of an Offer:

1. In an offer one party must express his willingness for doing or not doing a thing
2. It must be made to another person
3. Offer is made with a view to know the assent of the other person.
4. There must be an intention to create legal relationship.

Classification of offer:

1. **Specific offer:** - **When an offer is made to a specific person or class of persons**, such offer is known as specific offer. The specific offer can be accepted only by that particular person or organization.
2. **General offer:** **It is an offer which is made to a group of people or public at large.** Such offer can be accepted by any member of that group.
3. **Cross offer:** - **When two parties exchange identical offers with each other, in ignorance of each other’s offer**, the offers are cross offer.
4. **Counter offer:** **Incomplete and conditional acceptance of an offer is known as counter offer.** In other words, when an **original offer is rejected and a new offer is made**, it is known as counter offer.

5. **Standing offer (Tender):-** An offer for a continuous supply of a certain article at a certain rate over a definite period is called a standing offer.

ESSENTIALS OF VALID OFFER

The following characteristics are necessary to create a valid offer.

1. The terms of an offer must be clear and certain;
2. Offer may be express or implied;
3. The offer must be communicated to the offeree;
4. An offer must be made with an intention of creating legal obligations;
5. Offer may be conditional;
6. Offer must be made with a view to obtaining the assent of the other party
7. Invitation to an offer is not an offer
8. Offer may be specific or general;
9. Offer should not contain a term the non-compliance of which would amount to acceptance;

When an offer does come to an End? / Revocation of Offer/Lapses of Offer:-

The Offer must be accepted before it lapses. Sec. 6 of the contract act deals with various modes of revocation of an Offer.

1. **Revocation by Communication of notice (Sec. 6(1):-** A person who makes an offer can withdraw it at any time before acceptance. Such revocation may be express or implied. Notice of revocation will take effect only when it comes to the knowledge of the offeree.
2. **By lapse of time (Sec.6 (2):-** An offer lapses if it is not accepted within the prescribed time. Where no time is fixed, it should be accepted within a reasonable time. Otherwise the offer will lapse after a reasonable time.
3. **Death or insanity of an offeror:-** An offer lapses by the death or insanity of the offeror, if the fact of his death or insanity comes to the notice of the acceptor before acceptance.
4. **Non fulfillment of pre requisite conditions: -** When the offeror has put some conditions, which are prerequisites to acceptance, such conditions must be fulfilled before accepting offer. Non fulfillment of such conditions will lead to revocation of an offer.
5. **By counter offer: -** The offer will be revoked if the offeree makes a counter offer.
6. **Offer not accepted according to the mode prescribed:-** Sometimes the offeror may prescribe particular mode in which offeree must send his acceptance. Non compliance of prescribed mode may lead to rejection of acceptance.

7. Subsequent Illegality or destruction of subject matter: - An offer lapses, if it becomes illegal after it is made but before it is accepted

.ACCEPTANCE According to section 2(b) a proposal or offer is said to have been accepted when the person to whom the proposal is made, signifies his assent to the proposal. An offer when accepted becomes a promise. Offer and Acceptance in a contract are like two sides of a coin and the absence of any one will not create any contractual relationship between these parties. According to William Anson, “acceptance is to offer what is a lighted match is to a train of gun powder.” An acceptance can be made by words spoken or written. It can be made by conduct also. It can be accepted only by the person to whom it is made.

ESSENTIALS OF A VALID ACCEPTANCE:-

1. Acceptance must be absolute and unconditional: -
2. Acceptance must be given in a prescribed mode or manner:
3. Time of Acceptance:
4. Acceptance must be communicated:
5. Acceptance may be express or implied: -
6. Acceptance must be made before offer is revoked:
7. Acceptance must be made by the offeree:
8. Acceptance is not implied from silence of the party:

CONSIDERATION

Consideration is one of the essential elements of valid contract. According to sec. 25 of the Indian Contract Act, an agreement made without consideration is void. Every agreement must be supported by consideration to become a contract. In true sense consideration means “something in return” to the promisor (quid proquo).

The term consideration is defined in sec.2 (d) of the Indian Contract Act as,”when at the desire of the promisor, the promisee or any other person has done or abstained from doing, or promise to do or to abstain from doing something, such act, abstinence or promise is called a consideration for the promise.”

Essentials of Consideration:-

1. Consideration must move at the desire of the promisor:
2. Consideration may move from the promisee or any other person
3. Consideration may be past, present or future:
4. Consideration need not be adequate

5. Consideration must be real and not illusory:
6. Consideration must be lawful:

A stranger to a contract/ Privity of contract

A stranger to a contract is a person who is not a party to the Contract. Such a party neither makes nor accepts any offer. Privity of contract states that the contract confers right and obligations on contracting parties only. Therefore stranger to a contract cannot sue on the contract.

A stranger to consideration/ Privity of consideration:

When consideration is furnished not by the promisee but by a third person, the promise becomes a stranger to consideration. Under the Indian contract Act, consideration may move from the promisee or any other persons. So in India, a consideration made by the stranger is lawful and enforceable.

Exceptions to the rule that a stranger to a contract cannot sue:

1. **Beneficiary of a trust:** - Trust is an arrangement whereby some property is handed over to trustee by the owner. This property is to be managed by the trust for the benefit of the party known as beneficiary. Here the beneficiary can sue to enforce his rights under the trust, though he is not a party to a contract.
2. **Contracts through an agent:** - Contracts which are entered into through an agent can be enforced by his principal. Here the principal can file suit against third party or can be sued by third party.
3. **Marriage settlement, partition or other family arrangement:** - If an agreement has made for the above purpose, in such agreement provision may be made for the benefit of a particular member. Such person, who is beneficiary in the agreement, can maintain a suit.
4. **Estoppels to acknowledgment:** - When a party admits liability in a contract to third party, then if he denies it on any ground, he will be stopped from doing so. His liability would continue towards third party.
5. **Charges created on immovable property:** - Agreement creating charge on immovable property in favour of third party for his benefit can be enforced by third party.

Exception to the rule 'No consideration No Contract'

Generally a promise without consideration is null and void. It is a 'naked promise' or '*Nudum Pactum*'. But sec. 25 of the contract Act given some exceptions to this rule.

1. Agreement based upon love and affection:- Here the essentials of the agreements includes:

- a. It must be expressed in writing
- b. It should be registered under the law for the time being in force
- c. It should be made on account of natural love and affection, and
- d. The parties should stand in a near relation to each other.

If an agreement fulfils the above conditions, it is valid and enforceable even though it is not supported by consideration.

2. Promise to compensate for Past voluntary services: - If a person has already voluntarily done something for the promisor and the promisor agrees to compensate wholly or in part, the agreement is valid even though it is without consideration.

3. Agreement to pay time barred debt:- A promise by a debtor to pay a time barred debt is enforceable provided it is made in writing and is signed by the debtor or by his agent authorized in that behalf. An oral promise to pay a time barred debt is unenforceable.

4. Agency: - According to sec 185 of the Indian Contract Act, no consideration is necessary to create an agency.

5. Completed gifts: - Gift once made cannot be recovered on the ground of absence of consideration.

CAPACITY OF PARTIES

According to section 10 of the contract Act, parties making an agreement must have the contractual capacity. Section 11 of the Act states that “every person is competent to contract who is of a gage of majority according to law to which he is subject, and who is of a sound mind and is not declared disqualified from contracting by law to which he is subject.”

Thus every person is competent to enter into a contract if,

- a. he has attained the age of majority
- b. he is of sound mind, and
- c. he is not disqualified by any law from contracting

MINOR

A person who has not attained the age of majority is a minor. According to the Indian Majority Act 1875, person who has not completed his 18th year of age is considered to be a minor. But if a minor is under the care and custody of the court and a guardian is appointed by the court for the minor, then the minor becomes major only on the completion of the age of 21 years.

Law regarding Minor's Agreement:-

1. **An agreement with a minor is void ab initio:** A minor does not have the contractual capacity and when he makes agreements, such agreements are void and cannot be enforced in the court of law.
2. **Minor can be a promisee or beneficiary:** - A minor cannot be stopped from getting benefits in an agreement. If in a contract, minor is a beneficiary or suffered loss or he is a promisee, he can demand the enforcement of agreement.
3. **Ratification on attaining the majority is not allowed:** A minor cannot ratify a promise entered into during his minority, after attaining majority.
4. **Minor is not bound to return the benefits received:** - If a minor retained any benefit under the agreement, he is not liable for repay or compensate the same. The reason is that the original contract is void in the beginning itself.
5. **The principles of estoppel is not applicable to minor:** - The general principle of estoppel is not applicable to a minor.
6. **A minor is liable for necessities supplied:** According to sec 68, "if a person, incapable of entering into a contract or any one whom he is legally bound too support, is supplied by another person with necessities suited to his condition in his life, the person who has furnished such supplies, is entitled to be reimbursed from the property of such incapable person.
7. **Minor can be an agent:** A minor can act as an agent and bind his principal by his acts.
8. **He cannot be adjudged insolvent:** A minor cannot adjudged insolvent as he is not competent to enter into contracts for debts.
9. **Minor- as partner:** A minor cannot be a partner, but he may be admitted to the benefit of a partnership. His liabilities are limited to the extend of his interest in the partnership.

PERSONS OF UNSOUND MIND

In order to be competent to contract, a person must be of sound mind. A person who is usually of unsound mind and occasionally of sound mind may make a contract when he is of sound mind. A person who is usually of sound mind but occasionally of unsound mind, may not make a contract when he is of unsound mind.

Types of persons of unsound mind:

1. **Idiots:** A person who has completely lost his mental powers and incapable of forming a rational judgment is called an idiot. All agreements other than of necessities of life, with idiots are absolutely void.
2. **Lunatic:** A lunatic person is a person who suffers a serious mental disorder due to some mental strain or mental shock or any highly tragic event. A lunatic is not liable for agreements entered into during the period of his madness.
3. **Drunken persons:** A drunken person suffers from temporary incapacity to contract. An agreement by a drunken person is void because during his drunkenness he cannot understand the business and its implications.

PERSONS DISQUALIFIED BY OTHER LAWS

1. **Alien enemies:** - A person who is not a citizen of India is called alien. The following rules will apply in respect of an alien enemy:
 - a. No contract can be made with an alien enemy during the subsistence of war
 - b. Performance of the contract made before the outbreak of war will be suspended during the course of war.
2. **Foreign sovereigns, and ambassadors:-** In the case of Ambassadors and foreign sovereigns, according to sec 86 of the civil procedures, previous sanction of the central government is to be obtained .
3. **Insolvents:** When a debtor is adjudged as insolvent his property vests in the official Receiver and thereby he cannot enter into a contract. This disqualification is automatically removed after he is discharged.
4. **Convicts:-** A convict when undergoing imprisonment is incapable of entering in to a contract. When the period of sentence expires, the incapacity to contract disappears.
5. **Corporations:** A company or corporation can enter into contracts only through its agents, such as Board of Directors, Managing Directors etc in accordance with its Memorandum of Associations. Any contract beyond the Memorandum is not valid.
6. **Married women:** They are competent to enter into a contract with respect to their separate properties. But she cannot enter into contracts with respect to their husbands' property.

FREE CONSENT

According to Sec13 of the Contract Act defined consent as, “two or more persons are said to consent when they agree upon the same thing in the same sense.” Without free consent of the parties, an agreement does not acquire legal sanctity and consequences.

Section 14 of this act states that, ‘Consent is said to be free when it is not caused by,

1. Coercion
2. Undue influence
3. Mis representation
4. Fraud
5. Mistake

In the first four cases, the contract is voidable, but in the last case, the contract is *void ab initio*

ELEMENTS OF FREE CONSENT

A.COERCION

Coercion implied use of some kind of physical force by doing some act forbidden law to seek consent of the other party. If the consent to an agreement is obtained by coercion, the contract is voidable at the option of the party whose consent is so obtained. It includes:

- a. The committing of any act forbidden by the Indian Penal Code
- b. The unlawful detention of any property of another person
- c. Threatening to detain the property of another person.

B.UNDUE INFLUENCE:

It is the improper use of any power possessed over the mind of the contracting party.

Section 16(1) of the Contract Act defines undue influence as follows:-

“ 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”..

Effect of Undue influence: - An agreement caused by undue influence shall be voidable at the option of the party whose consent has been so obtained. In such cases the court may either set aside the contract absolutely or it may direct the person, who wants to avoid the contract to refund the benefit which he actually obtained.

C.FRAUD:

When a wrong representation is made by a party with the intention to deceive the other party or to cause him to enter in to a contract, it is said to be fraud. According to Sec.17, Fraud includes any of the following acts,

- a. A false suggestion as to a fact known to be a false
- b. A promise made without any intention of performing it.
- c. Doing any act filled with deceive
- d. The active concealment of fact with knowledge of the fact, and
- e. Doing any such act as the law specially declares to be fraudulent.

D.MISREPRESENTATION:

It is a misstatement of material facts. The party making untrue statement believes that the statement is true, but in reality statement turns to be incorrect. It also includes non disclosure of material facts and facts without any intention to deceive the other party.

According to sec.18 of the Act, misrepresentation means and includes:

1. The positive assertion in a manner not warranted by information of the person making it which is not true, though he believes it is to be true.
2. Any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him, or
3. 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.

E.MISTAKE

A mistake means that parties intending to do nothing have by intentional error done something else. If the agreement is made under a mistake, it means that there is no consent and when the consent is nullified by such mistake, and then the agreement has no legal effect.

Classification of Mistake:

1. Mistake of fact and
2. Mistake of law

A. Mistake of Fact:-Mistake relating to terms and conditions or any facts essential to the agreement is known as mistake of facts. Mistake of facts may be

a. **Bilateral mistake:-** A bilateral mistake is one where both the parties are under a mistake.

Section 20 of the Act lays down that, "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." Therefore two conditions must be fulfilled for bilateral mistakes:

- a) Mistake must be committed by both the parties, and
- b) The said mistake must relate to some essential fact.

b. **Unilateral mistake: -** In this case only one party is under a mistake. In other words, if there is a mistake on the part of one party alone and the other party does not know the mistake, then it is called unilateral mistake. According to section 22, "a contract is not voidable merely because it was caused by one of the parties to it being under a mistake regarding a matter of fact."

In the following case unilateral mistake make contracts void:-

- i. Unilateral mistake relate to the nature of contract, the contract itself is void.
- ii. Unilateral mistakes is as to identity of the person contracted with, the contract is void.

C. Mistake of Law:- Mistake of law may be of two types:

1. Mistake of Indian Law
2. Mistake of foreign law

LEGALITY OF OBJECT

The contract to be legally valid must contain lawful object. According to section 10 of the act, "all agreements are contract if they are for lawful consideration and with a lawful object.

Lawful object means, intention to do something permissible within the provisions of law". For example, A in consideration of Rs. 10 lac from B agrees to Kill C. The object of this agreement is killing, which is illegal and punishable under Indian Penal Code.

Unlawful Consideration and Unlawful Object: Under the following circumstances an agreement would be unlawful:

1. **It is forbidden by law:-**If the object or consideration of an agreement is forbidden by law, the agreement is void. For example, A agrees to sell certain goods to B after knowing very well the goods are to be smuggled out of the country. Here the object is forbidden by law.
2. **It defeats the provisions of any other law:-**Where the enforcement of a particular is of such a nature that it would defeat the provisions of any statutory law which is in force, the agreement is void.

3. **It is fraudulent:** - Fraud is punishable under the provisions of the law. Thus an agreement made with an object of defrauding or deceiving another will be void.

4. **It involves an injury to a person or property of other:-** Agreements made with an object of putting some person in to criminal or wrongful harm or damaging his property or reputation is void.

5. **It is Immoral:** - If the object of an agreement is considered as immoral in the opinion of the court, such agreement will be void on account of unlawful object.

6. **It is against public policy:** - Any agreement which goes against public policy and adversely affect public welfare public decency and public interest will be void. The court has declared the following agreements oppose to public policy.

- a. Trading with alien enemy
- b. Trafficking in public office
- c. Interfering with course of justice
- d. Marriage brokerage agreements
- e. Agreement creating interest against professional duty.
- f. Agreement in restraint of parental duty.
- g. Agreement in restraint of Trade

PERFORMANCE OF CONTRACT:

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

Who must perform the Contract

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

1. **Promisor himself:** It is very clear that a person who makes a promise must perform it. If a contract involves the exercise of personal skill and qualification of the promisor then it must be performed by the

promisor himself and not by any other person and in case of death of such promisor, his heirs are not liable to perform the contract.

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

2. By the agent of promisor: When the personal skill of the promisor is not necessary, and the work could be done by any one, the promisor or his representative may employ a competent person to perform it. He acts as an agent of the promisor.

3. By legal representative:-If the promisor dies before the performance of the contract, his legal representative like son and daughter who inherit the property of the deceased promisor are bound to perform it.

4. Third person:-If the promisee accepts performance of the promise from third party, there is discharge of the contract and the promisor is thereby discharged.

Time and Place of Performances:

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

a. **Where time is not fixed:** Where the contract is to be performed without any demand by the promisee and where no time for performance is fixed then the contract must be performed within a reasonable time.

b. **Where time is fixed:** - When a promise is to be performed on a certain day and the promisor has undertaken to perform it without application by the promisee the promisor may perform it at any time during the usual hours of business on such a day and at the place at which the promise ought to be performed.

c. **Place of performance:-**If the contract mentions a place, the contract must be performed at the place mentioned in the contract. If no place is mentioned, the promisor must ask the promisee to fix a reasonable place to perform the contract.

d. The performance of any promise may be made in any manner or at any time which the promisor prescribes or sanctions. (sec. 50)

Performance of Joint promises:

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

1. **Joint liability:** When two or more persons make joint promises for doing or not doing something, both the promisors are jointly liable to perform it. In case of death of any one of them, his legal representative along with remaining promisors will perform the promise.
2. **Individual liability:** - When two or more joint promisors make promise and there is no express contract contrary to it, both of them are individually liable to perform them. Here the liability of joint promisors is 'Joint and several'.
3. **Right of contribution:** Joint promisors have joint and several liabilities. When one of the joint promisors has been compelled to perform entire promises, he has a right to claim contribution or share of other promisors, unless contrary intention appears from the contract.
4. **Release of one of the joint promisors:** According to section 44 of this act, "a release by the promisee of any one of the joint promisors does not discharge other joint promisors from liability. The released joint promisor also continues to be liable to other joint promisors.

BREACH OF CONTRACT AND REMEDIES FOR BREACH

Formation of a contract imposes obligation on both the parties to perform their respective promises. When one of them fails to neglect or refuses to perform his promise, he is said to have committed a breach of contract. Breach of contract may of two types; actual breach and anticipatory breach.

Actual breach of contract takes place when the promisor fails to perform his obligation or refuses to do so on the due date of performance.

In anticipatory breach of contract, the promisor either refuses to perform or makes himself unable to perform a promise before due date of performance.

The various remedies available to an injured are:

A. Rescission of the Contract: - Where one of the parties to a contract commits breach, the other party treats the contract as rescind or cancelled and refuses the further performance. It is the way by which a contract may be discharged. When a contract is broken by one party, the other party may sue to treat the contract as rescinded and refuse further performance.

For example, A promises to sell his Car to B for a Price. A does not sold the Car , B is discharged from his liability to pay the Price.

The court may grant rescission if the contract is voidable on the part of the aggrieved party. The court may refuse to grant rescission in the following cases:

- a. When the aggrieved has ratified the contract
- b. Owing to change of circumstances parties cannot be restored to their original position.
- c. During the subsistence of the contract, third parties have acquired rights in good faith and for value.
- d. When only part of the contract is sought to be rescinded and such part is not severable from rest of the contract.

B. Suit for damages: - When a contract is broken, the injured party can claim damages from the other party. The object of awarding damages for the breach of a contract is to put the injured party in the same financial position as if the contract had been performed. No compensation is to be given for any indirect or remote loss on account of breach. There are different types of damages

- a. **Compensatory damages:** These damages include the direct loss suffered by the aggrieved party, and it is calculated as on the date of breach, taking into consideration, the prevailing circumstances.
- b. **Special damages:** - These damages are those which arise from the breach of contract under special circumstances. If there is a breach of contract under special circumstances, special damages can be claimed. Special damages can be recovered only if it stipulated in the contract.

c. **Exemplary damages or vindictive damages:** - These damages are awarded with a view to punish the defaulting party who injured the feelings of the others and not solely with the idea of awarding compensation to the injured party.

d. **Nominal damages:** Nominal damages are awarded in cases where the injured party is able to prove a breach of contract, but he has not suffered any real and substantial loss. The basic idea of granting such damages is to bring the party making breach of contract to record and to recognize the right of aggrieved party.

Penalty and Liquidated damage: - Sometimes, the parties while making a contract, may fix the amount of damage, which may be either Liquidated damage or penalty depending upon the manner of fixing it. Liquidated damages represent a sum fixed or ascertained by the parties in the contract.

It is a fair and genuine pre-estimate of the probable loss that might ensue as a result of the breach.

Penalty is a sum fixed the contract at the time of its formation which is disproportionate to the damages likely to accrue as a result of the breach. It is used forcing the other party to perform the contract.

C. Suit for Specific Performance: In certain cases, damages are not an adequate remedy for the breach of the contract. In such circumstances, the court directs the defaulting party, to carry out the performance of the contract specifically. This is known as specific performance. Specific performance of a contract cannot be claimed as a matter of right, and the courts are always at discretion to grant the relief by specific performance or not.

The order of specific performance, at the discretion of the court may be granted in the following cases:

- a. Where monetary compensation is not an adequate remedy for breach of contract.
- b. Where there is no standard for ascertaining the actual damage, caused by non performance of promise by the party.
- c. When it is probable that monetary consideration on non-performance of the act cannot be obtained.

D. Suit for Injunction: - In a contract if the party has made a promise for not doing something, and the party makes a breach of contract by doing that thing. To prevent such party from doing that act an order of injunction may be claimed by an aggrieved party. Injunction is a preventive relief and is generally issued in cases where the compensation in terms of money is not an adequate relief.

E. Suit upon quantum meruit:- The quantum meruit literally means ‘as much as earned’ or ‘in proportion to work done’. That is when a person had done some work under a contract and the other party repudiated the contract, or some event happens which makes the further performance of the contract impossible, then the party who has performed the work can claim remuneration for the work has already done.

Claim for quantum meruit: Claim for quantum meruit arises in the following cases:

- a. **When a contract is found to be void:** When a contract is discovered to be unenforceable for some technical reasons, any person who has received any advantage under such contract is bound to restore it.
- b. **When something is done without any intention to do so gratuitously:** - According to section 70 of the act, when a person does some work for or delivers something to another person with the intention of receiving payment for the same then such other person is bound to make payment if he accepts such services or goods or enjoys their benefit.
- c. **When a contract is divisible:** When a contract is divisible and the party not in default has enjoyed the benefit of the part performance, the party in default may sue on quantum meruit.
- d. **When one party abandons or refuses to perform the contract:-** When a party of a contract performs a part of the contract, abandons it without completing or refuses to perform the remaining part, then, the other party can claim, compensation for the work done on the basis of quantum meruit.
- e. **When an indivisible contract is performed badly:** - When an indivisible contract for lump sum has been completely performed but badly, the person performing it is entitled to claim the whole amount; but the other party can make a deduction for a bad work.

QUASI CONTRACTS

The obligations which are created and imposed by law in the absence of any contract to that effect are called quasi contracts. Quasi contracts are based on the maxim, "nemo debet locupletari ex aliena iustitia", that is "no man must grow rich out of another person's cost." Quasi contracts are also called constructive contracts. For example A has forgotten his bag containing certain goods at B's shop by mistake. B is under legal obligation to return them to A. The obligations created by quasi contracts can be enforced in the court in similar manner as in case of a formal contract. In other words, when the person fails to

discharge his obligation arising out of quasi contracts, another party will get legal remedies as if the contract is broken.

Types of Quasi-Contracts:

The Indian Contract Act provides for five types of quasi-contracts, which are as follows:

1. Supply of necessities to the person having no contractual capacity or to his dependent:-An agreement made by the person who has no contractual capacity are void. But agreements made by such person to procure necessities for him or his dependent is legally entitled to recover the cost of such supplies.

2. Reimbursement of payment made by a person who is interested but which another person is legally bound to pay:-

In certain cases it happens that one party makes a payment, because he is interested in that payment. But liability for making that payment lies on another person. Thus on making such payment, the person liable to pay has to reimburse it to the person who has made the payment.

3. Obligation to pay for non gratuitous act or service:-

Sometimes a person may render services voluntarily with an intention of getting its return. The person who gets benefit of such acts or services is liable to compensate the person doing such act or rendering services.

4. Rights and duties of the finder of lost goods: -

A person who finds goods lost by another person on his being taken custody of those goods, certain rights and obligations are created on his part without any formal contract. Such rights and obligations resemble with that of a formal contract and can be enforced in a similar manner.

5. Liability of persons to whom money is paid or things delivered by mistake or under coercion: -

Where the person has delivered some goods or has made payments of money to another person either by mistake or under coercion. Such person is under legal obligation to return it to the person delivering.

CONTRACT OF AGENCY

It is a contract which creates the relationship of agent with principal is known as agency.

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

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

Rules of Agency:

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

Essential features of agency:

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

Creation of an Agency:

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

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

2. Agency by implied agreement:-It includes

a) Agency by estoppels: Estoppels means preventing a person from denying a fact. According to sec. 237 of the contract act lays down that, when an agent has, without authority done acts or incurred obligations to third persons on behalf of his principal, the principal is bound by such acts or obligations if he has by his words or conduct induced such third persons to believe that such acts and obligations were within the scope of the agent's authority.

b). Agency by holding out:-It is a branch of the agency by estoppels. In this case some affirmative conduct by the principal is necessary. Where a person permits another by a long course of conduct to pledge his credit for certain purposes, he is bound by the act of such person in pledging his credit for similar purposes, though in some cases without the previous permission of his master.

c. Agency by necessity: In some extra ordinary circumstances, a person who is not really an agent should act as an agent of another. Such an agency is called agency by necessity.

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

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

Essentials of Ratification:

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

1. The act to be ratified must be a lawful one.
2. The principal must be in existence at the time of the act that is to be ratified.

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

Kinds of Agent:

1. On the basis of extend of their authority:

- a. General agent
- b. Special agent
- c. Universal agent

1. **General Agent:** A general agent is one who has authority to do all acts in the ordinary course of trade or profession. The authority of a general agent is continuous unless it is terminated.

2. **Special Agent:** A special agent is one who has authority to do a particular act in a particular transaction.

3. **Universal Agent:** A universal agent is one who has authority to do all acts which the principal can lawfully do and delegate. He has an unlimited authority to bind the principal.

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

a. Commercial agent/mercantile agent

- (i) Auctioneers
- (ii) Broker
- (iii) Commission agent
- (iv) Delcredere agent
- (v)Factor

Commercial or Mercantile Agent: A mercantile agent is a person having authority either to sell the goods or to consign the goods or to raise money on the security of goods. Mercantile agents may be of several kinds which are as follows:

- a) Broker:** He is an agent employed to make bargains and contracts in matters of trade, commerce, or navigation between other parties for a compensation commonly called brokerage.
- b) Factor:** A factor is one who is entrusted with the possession of goods and who has the authority to buy, sell or otherwise deal with the goods or to raise money on their security.
- c) Auctioneer:** An auctioneer is one who is entrusted with the possession of goods for sale at a public auction.
- d) Commission Agent:** The term 'commission agent' is a general term which is used in practice even for a factor or broker.
- e) Banker:** Banker acts as an agent of the customer when he collects cheques or drafts or bills or buys or sells securities on behalf of his customers.
- f) Del-credere Agent:** A del-credere agent is one who gives guarantee to his principal to the effect that the third person with whom he enters into contracts shall perform his obligation.

b. Non mercantile agent

Non-mercantile Agent: An agent who does not deal in mercantile transactions. These include attorneys, solicitors, guardian, promoters, wife, etc.

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

Substituted agent (Co-agent)

According to section 194 of the Contract Act, "When an agent has an express or implied authority of his principal to name another person to act for the principal and the agent names another person accordingly, such person is known as substituted agent. Such a person is an agent of the Principal and is responsible to him. Sec.195 states that in selecting such agent for for his principal, an agent is bound to exercise the same

amount of discretion as a man of ordinary prudence would exercise in his own case; and if he does this he is not responsible for the principal for the acts or negligence of the agent so selected.

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

Liabilities of Principal to third parties:-

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

Liability of agent to third parties:-

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

1. **Where the agent acts for foreign principal: -** Where an agent enters into a contract for the sale or purchase of goods that the agent should be personally liable, in such cases the agent would be personally liable.

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

Duties and Rights of an Agent:

Duties of an agent to Principal:

1. **Duty to follow directions given:** An agent must conduct the business of the principal according to the directions given by the principal. In the absence of any direction, should conduct according to the custom.
2. **Duty to act with skill and diligence:** - An agent is bound to conduct business of the agency with as much skill as is generally possessed by persons engaged in similar business unless the principal has notice of his want of skill.

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

Rights of an Agent:

1. **Rights to remuneration:** Where services rendered by agent are gratuitous, he is entitled to receive the agreed remuneration or if nothing has been agreed, a reasonable remuneration.
2. **Right of retainer:** The agent has a right to retain his principal's money until his claim in respect of his remuneration or advances made or expenses properly incurred in conducting the business of agency are paid.

3. **Right of lien:** An agent has a right to retain goods, papers and other movable or immovable property of the principal received by him until the amount due to him had been paid or accounted for.
4. **Right of indemnification:** An agent had a right to be indemnified by the principal against the consequences of lawful acts done in exercise of his authority.
5. **Rights of compensation:-** An agent is entitled to claim compensation from the principal in respect of any injury caused to the agent by the negligence of the principal or want of skill.

Rights and Duties of a Principal

Rights of a Principal:

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

Duties of the Principal:

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

Termination of Agency:-

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

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

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

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

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

SALE OF GOODS ACT 1930

The Sale of goods Act contains certain law relating to sale of movable properties. The Act covers topics such as the concept of sale of goods, warranties and conditions arising out of sale, delivery of goods and passing of property and other obligations of the buyer and the seller, the documents to title to goods and

the transfer of ownership on the basis of such documents. This act came into force on 1st July 1930, and it extends to the whole of India, except the state of Jammu and Kashmir. A contract of sale has some special features which are not common to all contracts.

Goods:

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

Contract of Sale:

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

Essential features of a contract of sale:

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

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

CONTRACT OF GUARANTEE

Where a person gives a guarantee to another person, either to (a) performing a promise or (b) discharging the liability of a third person, there arises a "Contract of Guarantee"

According to section 126 of the Contract Act, "A contract of guarantee is a contract to perform the promise or discharge the liability of a third person in case of his default." The person who gives the guarantee is called the surety or guarantor, and the person in respect of whose default the guarantee is given is called the principal debtor, and the person to whom the guarantee is given is called the creditor.

For example, A lends Rs. 5000 to B on C's promise to pay the same if B fails to pay within a year. This is a contract of guarantee.

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

Essential features of a contract of guarantee:-

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

1. **Three parties:** - There must be three parties in a contract of guarantee, namely the principal debtor, the creditor and the surety.
2. **Three contracts:** There are three contracts in a contract of guarantee, namely, contract between principal debtor and creditor, contract between principal debtor and surety, and contract between creditor and surety.
3. **Capacity to contract:** In a contract of guarantee, the principal debtor may not be a person competent to contract, but his incapacity should be in the knowledge of the surety. In such case, the surety is regarded as the principal debtor and is personally liable to pay the debt, although the principal debtor is not liable to pay.

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

Kinds of guarantee:

Guarantee may be classified in the following ways:

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

The Negotiable Instruments Act was enacted, in India, in 1881. Prior to its enactment, the provision of the English Negotiable Instrument Act were applicable in India, and the present Act is also based on the English Act with certain modifications. It extends to the whole of India except the State of Jammu and Kashmir.

According to Section 13 (a) of the Act, “Negotiable instrument means a promissory note, bill of exchange or cheque payable either to order or to bearer, whether the word “order” or “bearer” appear on the instrument or not.”

Performance of Contract of Sale:

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

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

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

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

1. **Possession of goods:** Delivery should have the effect of putting the buyer in possession of the goods. So a delivery to anyone other than the buyer or his agent is insufficient.
2. **Delivery and payment are concurrent conditions:** - The seller should be ready to hand over the possession of goods and the buyer should be ready to pay the price.

3. **Part delivery:** A delivery of part of the goods has the effect of delivery provided such part delivery is made in progress of the delivery of the whole(Sec. 34)
4. **Buyer to apply for delivery:** Unless expressly agreed to the contrary, the seller is not bound to deliver them until the buyer applies for delivery.
5. **Time of delivery:** - in a contract of sale, the delivery of goods should be made within a reasonable time unless a time is fixed in the contract.
6. **Place of delivery:** - Where the place of delivery is stated in the contract, the goods must be delivered at the specified place during working hours on a working day.
7. **Goods in possession of third person:** - When the goods at the time of sale are in possession of a third person, delivery takes place if such third person acknowledges to the buyer that he holds the goods on his behalf.
8. **Expenses of delivery:** - The seller should bear the expenses of putting the goods into a deliverable state and also the incidental expenses unless otherwise agreed.
9. **Installment delivery:** - Unless both the parties agree, the buyer of goods is not bound to accept delivery thereof by installments.
10. **Delivery to a carrier by wharfinger:** Delivery of goods to a carrier for the purpose of transmission to the buyer or the delivery of the goods to a wharfinger for safe custody is prima facie deemed to be delivery of the goods to the buyer.
11. **Buyer right of examining the goods:** - Where the goods are delivered to the buyer which he has not previously examined, he is entitled to examine them for his satisfaction. He is not deemed to have accepted them unless and until he has had a reasonable opportunity for such examination.
12. **Return of rejected goods:** - A mere fact that goods have been received does not lead to acceptance. In certain cases, buyer has a right to reject the goods after having received them. In such cases, the buyer is not bound to return the goods to the seller. It should be sufficient if he intimates his rejection.
13. **Examination of goods by the buyer:** - Where goods are delivered to the buyer which he has not previously examined, he is not deemed to have accepted them unless and until he is given a reasonable opportunity of examining the goods.
14. **When wrong quantity is delivered:** - Where the quantity delivered is different from the quantity contracted then, the buyer accepts the goods which are in accordance with the contract and rejects the rest.

15. Liability of buyer for neglecting or refusing delivery of goods: - When a seller is ready and willing to deliver the goods and requests the buyer to take delivery, and the buyer fails to take delivery within a reasonable time of that request, the buyer is liable to compensate the seller for any loss arising due to his neglect or refusal to take delivery plus a reasonable charge for the care and custody of the goods.

UNPAID SELLER:

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

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

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

1. Right s of an unpaid seller against the goods:-It includes

a. **Right of lien** (sec.47 to 49):- A lien is a right to retain possession of goods until payment of the price. In the case of unpaid vendor's lien, the seller is entitled to retain the goods of the buyer until the whole price is paid even though the ownership is passed from the seller to the buyer. A lien may be of two kinds. General lien and particular lien. The conditions that should be fulfilled before an unpaid vendor can exercise right of lien are (1) ownership must have been passed to the buyer(2)the goods must be in the possession of the seller(3)the price or part of the price must remain unpaid.

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

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

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

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

- i. If the goods are of a perishable nature
- ii. When the unpaid seller notice of his intention to sell

iii. Where the seller expressly reserves a right of re sale in case the buyer makes default.

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

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

Meaning Of Negotiable Instruments

In the words of Justice, Willis, “A negotiable instrument is one, the property in which is acquired by anyone who takes it bonafide and for value notwithstanding any defects of the title in the person from whom he took it”.

Characteristics of Negotiable Instruments

A negotiable instrument has the following characteristics.

1. Property

The possessor of the negotiable instrument is presumed to be the owner of the property contained therein. A negotiable instrument does not merely give possession of the instrument but right to property also. The property in a negotiable instrument can be transferred without any formality. In the case of a bearer instrument, the property passed by mere delivery to the transferee. In the case of an order instrument, endorsement and delivery are required for the transfer of property.

2. Title

The transferee of a negotiable instrument is known as holder in due course.’ A bonafide transferee for value is not affected by any defect of title on the part of the transferor or of any of the previous holders

of the instrument. This is the main distinction between a negotiable instrument and other subjects of ordinary transfer. The general rule of *nemo dat quod non habet* does not apply to negotiable instruments.

3. Rights

The transferee of the negotiable instrument can sue in his own name, in case of dishonor.

A negotiable instrument can be transferred any number of times till it is at maturity. The holder of the instrument need not give notice of transfer to the party liable on the instrument to pay.

4. Presumptions

Certain presumptions apply to all negotiable instruments e.g. a presumption that consideration has been paid under it.

5. Prompt Payment

A negotiable instrument enables the holder to expect prompt payment because a dishonor means the ruin of the credit of all persons who are parties to the instrument.

Examples of negotiable instruments

(a) Negotiable instruments recognized by statute :

- i) Bills of exchange
- ii) Promissory notes.
- iii) Cheques.

(b) Negotiable instruments recognized by usage or custom :

- i) Hundis.
- ii) Share warrants.
- iii) Dividend warrants.
- iv) Banker's drafts.
- v) Circular notes.
- vi) Bearer debentures.
- vii) Debentures of Bombay port trust.
- viii) Railway receipts.
- ix) Delivery orders.

The list of negotiable instruments is not a closed chapter. With the growth of commerce, new kinds of securities may claim recognition as negotiable instruments.

Example of Non-negotiable instruments

- i) Money orders.
- ii) Deposit receipts.
- iii) Share certificates
- iv) Dock warrants.
- v) Postal orders.

PROMISSORY NOTES

A promissory note is a negotiable instrument which contains an unconditional promise to pay a certain sum of money to a certain person or to the bearer of the instrument. Let us take an example. Suppose Shri Ram has taken a loan of Rs. 10, 000 from Shri Amal. Now, Shri Ram can write a promissory note stating “I promise to pay Shri Amal or order a sum of Rs. 10, 000, value received.” Shri Ram must put his signature and it must be properly stamped to make it a valid promissory note.

Section 4, of the Negotiable Instrument Act, 1881 define 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, certain person, or to the bearer of the instrument.” Thus, a promissory note contains an unconditional promise to pay a certain sum of money only to a certain person or to his order, on a specified future date. This instrument must bear the signature of the person who promises to make payment.

The specimen of a promissory note is given below :

Rs. 10, 000	Guwahati June 12, 2009
I, Shri Ram promise to Shri Amal or order a sum of Rupees Ten Thousand, value received.	
To Shri Amal, Nalbari	<div style="border: 1px solid black; padding: 5px; display: inline-block;">Sd/- Ram Stamp</div>

Parties to a promissory note: The main parties involved in a promissory note are-

i. Maker or Drawer:

The person, who draws or makes the instrument, is called the maker of the promissory note. The maker promises to pay the amount specified in the promissory note. He must sign the note.

ii. Payee:

The person to whom the amount will be paid is called the payee. The payee may transfer the instrument before the due date to meet his business obligations. In that case, the parties will be-

- **Endorser:** The person, (the payee) who transfers the document to some other person to meet his financial obligation, is called the endorser.

- **Endorsee:** The person in whose favour the instrument is transferred is called the endorsee.

Now, let us discuss the features of a promissory note-

- **A written document:** To be a valid promissory note, it must be in writing. A verbal promise to pay is not a promissory note.

- **Unconditional promise to pay:** The promissory note must contain an unconditional promise to pay. A conditional promise to pay is not a promissory note. For example, if it is written as “I promise to pay Rs. 5, 000 to Hari, if he comes to my home”, is not a promissory note.

- **The parties must be certain:** The maker and the payee of a promissory note must be certain.

- **The amount payable must be certain:** The amount of money which is payable as promised by the maker of the promissory note, must be certain. Money means the legal tender money. If any other things other than money are promised by the maker, it is not a promissory note.

- **It must be signed by the maker:** The maker of the promissory note must put his signature on the instrument. The note may be signed by the agent of the maker but the agent must clearly state as to on whose behalf he is signing the note. The promissory note must be properly dated and stamped as per Indian Stamp Act.

- **Time of payment:** A promissory note may be payable on demand or after a fixed period of time. The promissory note which is payable on demand is called demand promissory note and those payable after a fixed period of time is called time promissory note.

BILLS OF EXCHANGE

Section 5 of 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.”

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A bill of exchange contains an unconditional order as opposed to unconditional promise in a promissory note. The bill must be signed by the maker, usually a creditor, who directs the debtor, to make the payment at a specified future date. Let us take another example. The specimen of a bill of exchange is given below :

Rs. 10, 000	Guwahati June 12, 2009
Three months after date pay Mr. or order a sum of Rs. 10, 000, value received.	
To	<div>Sd/- Stamp</div>
Mr. ,	
Barpeta.	

Suppose, Amar has purchased goods from Hari for Rs. 5, 000 on credit. Amar is the debtor and he have to pay Rs. 5,000 to Hari (creditor). Now, Hari can write a bill of exchange on Amar stating that Amar will pay him a sum of Rs. 5, 000 at a fixed future date. The bill must be accepted by Amar recognizing the fact that he will pay the money at the specified time. Suppose, Hari is indebted to Rakesh for Rs. 5, 000. Now, Hari can transfer the document to Rakesh, who will collect the amount from Amar on due date. In a bill of exchange, the main parties involved are-

- **Drawer:** The person, who draws or writes the bill, is called the drawer.
- **Drawee or Acceptor:** The person, on whom the bill is drawn, is called the drawee.
- **Payee:** The person, to whom the bill will be paid, is called the payee. The drawer may himself be the payee.

Features of a bill of exchange-

- The bill of exchange must be in writing.
- The bill of exchange must contain an unconditional order to pay.
- The drawer, drawee and the payee of a bill of exchange must be certain.
- The amount of money which is payable through the bill must be certain. Money means the legal tender money.
- The drawer must sign the bill. It must be properly dated and stamped as per the Indian Stamp Act.
- The drawee must accept the bill by putting his signature on the bill.

- A bill may be payable on demand or after the expiry of a fixed period of time.

CHEQUE

The cheque has been defined by Section 6 of Negotiable Instrument Act as “a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand.”

The cheque is an unconditional order given to a banker by its customer to pay a certain amount of money to a person or the bearer of the cheque or a person authorized by the person on whose name the cheque is issued. Only an accountholder can issue a cheque to its bank. The cheque is handed over to the payee and the payee collects the money in person or through his bank. The main parties to a cheque are-

• Drawer:

The person who draws the cheque is called the drawer of the cheque. The drawer is the accountholder of the bank.

• Drawee:

The bank on whom the cheque is drawn is called the drawee. In case of cheque, the drawee is always a bank.

• **Payee:** The person on whom the cheque is payable is called the payee.

Features of a cheque:

- A cheque is a bill of exchange. But it has some special features. They are-
- A cheque must be in writing.
- The cheque must be dated.
- It contains an unconditional order to pay.
- The drawer must sign the cheque. The signature of the drawer must match with the specimen signature given by the drawer (accountholder) to the bank at the time of opening the account.
- The cheque is always payable on demand. It means the banker must pay the cheque as and when presented for payment, if all other legal conditions are fulfilled like, availability of funds in the account of the accountholder, the amount of the cheque written in words must tally with the amount written in words etc.
- A cheque is always drawn on a specified banker.
- The parties to the cheque must be certain.

- The amount of money to be payable must be certain.

Provisions in respect of Cheques

A “cheque” is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand. ‘Cheque’ includes electronic image of a truncated cheque and a cheque in electronic form. [section 6]. The definition is amended by Amendment Act, 2002, making provision for electronic submission and clearance of cheque. The cheque is one form of bill of exchange. It is addressed to Banker. It cannot be made payable after some days. It must be made payable ‘on demand’.

Crossing of cheque

The Act makes specific provisions for crossing of cheque

Cheque crossed generally

Where a cheque bears across its face an addition of the words “and company” or any abbreviation thereof, between two parallel transverse lines, or of two parallel transverse lines simply, either with or without the words “not negotiable”, that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed generally. [section 123]

Cheque crossed specially

Where a cheque bears across its face an addition of the name of a banker, either with or without the words “not negotiable”, that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed specially, and to be crossed to that banker. [section 124].

Payment of cheque crossed generally or specially

Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker. Where a cheque is crossed specially, the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed, or his agent for collection. [section 126].

Cheque bearing “not negotiable”

A person taking a cheque crossed generally or specially, bearing in either case the words “not negotiable”, shall not have, and shall not be capable of giving, a better title to the cheque than that which the person from whom he took it had. [section 130]. Thus, mere writing words ‘Not negotiable’ does not mean that the cheque is not transferable. It is still transferable, but the transferee cannot get title better than what transferor had.

Electronic Cheque

Provisions of electronic cheque has been made by Amendment Act, 2002. As per Explanation I(a) to section 6, 'A cheque in the electronic form' means a cheque which contains the exact mirror image of a paper cheque, and is generated, written and signed by a secure system ensuring the minimum safety standards with the use of digital signature (with or without biometrics signature) and asymmetric crypto system.

Truncated Cheque

Provisions of electronic cheque has been made by Amendment Act, 2002. As per Explanation I(b) to section 6, 'A truncated cheque' means a cheque which is truncated during the clearing cycle, either by the clearing house during the course of a clearing cycle, either by the clearing house or by the bank whether paying or receiving payment, immediately on generation of an electronic image for transmission, substituting the further physical movement of the cheque in writing.

Acceptance And Payment For Honour And Drawee In Need

Provisions for acceptance and payment for honour have been made in case when the negotiable instrument is dishonoured. Bill is accepted for honour when it is dishonoured when presenting for acceptance, while payment for dishonour is made when Bill is dishonoured when presented for payment.

Based on this characteristic, cheques can be classified into two main groups. They are-

1. Open cheques; and
2. Crossed cheques

In case of open cheques, the amount of such cheques can be collected by the payee over the counter of the bank. These cheques are of two types-

1. Bearer cheque:

The cheque which is payable to the bearer or the possessor, is called the bearer cheque. Such cheque can be transferred by mere delivery without any endorsement. For example, "Pay Ram or bearer" is a bearer cheque, where Ram or any other person who possess the cheque, can collect the amount of the cheque.

2. Order cheque:

The cheque which is payable only to a certain person (whose name appears on the cheque) or to his order, is called the order cheque. The word 'Order' is written instead of the word 'Bearer' on the cheque. The drawer can strick off the word 'bearer' and can write the word 'order' to make it an order cheque. An

order cheque can not be transferred without endorsement and the paying banker takes reasonable care before making the payment of such cheque. For example, “Pay Ram or order” is an order cheque, where payment will be made only to Ram or to the person to whom Ram has endorsed the cheque.

In case of crossed cheques, the amount of such cheques can not be collected over the counter of the bank. The amount of such a cheque is paid through the bank account of the payee. Hence, they are safer as compared to the open cheques. A cheque can be crossed by drawing two parallel transverse lines across the face of the cheque with or without the words “and company” or “not negotiable” or “account payee” between the parallel transverse lines. Crossing of a cheque means paying the money to the specified person only by transferring the money to his account and not directly (cash).

A cheque can be crossed by the-

1. Drawer; or
2. The holder; when the cheque is open; or
3. The collecting banker.

Let us discuss the types of crossing:

1. General crossing:

Section 123 of the Negotiable Instruments Act, 1881 defines general crossing as “where a cheque bears across its face, an addition of the word “and company” or any abbreviation thereof between two parallel transverse lines simply, either with or without the words “not negotiable”, that addition shall be deemed a crossing and the cheque shall be deemed to be crossed generally.”

It means a cheque can be crossed generally by simply drawing two parallel transverse lines. The parallel lines are generally drawn on the left hand top corner of the cheque. The words “and company” or “not negotiable” may or may not be written in between the parallel lines.

Date20.....	
Pay.....or Bearer
Rupees.....	Rs. <input type="text"/>
A/c No. <input type="text"/>	
State Bank of India Dispur Guwahati	

Figure: General crossing of a cheque

2. Special crossing:

Section 124 of the Negotiable Instruments Act, 1881 defines special crossing as “where a cheque bears across its face, an addition of the name of a banker with or without the words “not negotiable”, that addition shall be deemed a crossing and the cheque shall be deemed to be crossed specially and to be crossed to that banker.”

Thus, in case of special crossing, the name of a particular bank is written in between the parallel lines. The main implication of this type of crossing is that the amount of the cheque will be paid to the specified banker whose name is written in between the lines.

UBI Date 20.....

Pay or Bearer

Rupees Rs. []

A/c No. []

State Bank of India
Dispur
Guwahati

Figure: Special crossing of a cheque

3. Account payee crossing:

This type of crossing is done by adding the words ‘Account Payee’. This can be made both in general crossing and special crossing. The implication of this type of crossing is that the collecting banker has to collect the amount of the cheque only for the payee. If he wrongly credits the amount of the cheque to another account, he will be held responsible for the same.

4. Not negotiable crossing:

When the words ‘not negotiable’ is added in generally or specially crossed cheques, it is called not negotiable crossing. A cheque bearing not negotiable crossing cannot be transferred. If a cheque bearing ‘Not negotiable crossing’ is transferred, care must be taken regarding the ownership of title of both the transferer and transferee.

In the above discussion, we have come across that a negotiable instrument (promissory note, bill of exchange, cheque) can be transferred from one person to another. At this point of time, it is important to discuss some important aspects relating to transferring of negotiable instruments.

Endorsement

The term 'endorsement' means writing the name of the person on the back of the instrument to negotiate the instrument in favour of that person. Let us take an example. Mr. A wants to transfer a cheque to

Mr. B. Now, Mr. A will write the name of Mr. B on the back of the cheque and put his signature to negotiate the cheque and then he delivered the cheque to Mr. B. This act is called endorsement. Mr. A is the endorser and Mr. B is the endorsee.

Kinds of endorsement:

1. General endorsement:

In general endorsement, the endorser put his signature on the back of the instrument without specifying the name of the endorsee. This type of endorsement makes an order instrument payable to the bearer. General endorsement is also known as blank endorsement.

2. Special endorsement:

In this type of endorsement, the endorser adds a direction to pay the amount of the instrument to, or to the order of, a certain person. Therefore, the bearer is not entitled to get the amount of the instrument. Special endorsement is also known as full endorsement.

3. Restrictive endorsement:

This type of endorsement restricts the right of the endorsee as regards further negotiation of the instrument. For example, Mr. A negotiate a bill as "Pay Mr. B only", is a restrictive endorsement.

4. Conditional endorsement:

If any condition is added while endorsing the instrument, it is called conditional endorsement or qualified endorsement. This type of endorsement restricts the liability of the endorser. Conditional endorsement are of the following types-

- a) Sans recourse endorsement: When the words "sans recourse" are added as a part of endorsement, it becomes conditional endorsement. The implication of this endorsement is that the endorser is not liable to the endorsee or any subsequent holder, for the dishonour of the instrument.
- b) Facultative endorsement: In this type of endorsement, the endorser is liable in the event of dishonour of the instrument, though the notice of dishonour is not served on the endorser as a result of facultative endorsement.

c) Sans fias endorsement: Through sans fias endorsement, the endorser makes it clear that the endorsee or any subsequent holder need not incur any expense on his account in respect of the negotiated instrument.

d) Liability of endorser depends upon a contingency: In this type of endorsement, the liability of the endorser depends upon the happening of an event. If the event does not take place, the liability of the endorser does not arise. For example, if Mr. A makes an endorsement as “Pay Mr. B on his arrival”.

Liability of the Parties to Negotiable Instruments

Liability of the Drawer (Section 30)

The provisions relating to the liability of the drawer are given in Section 30. According to Section 30, “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 give to, or received by, the drawer as hereinafter provided.”

Liability of the drawer of a bill of exchange:

The drawer of a bill is primarily responsible until the bill has been accepted by the concerned drawee. But when the bill has been accepted by the drawee thereafter the acceptor becomes liable to the holder of the bill thereof and the liability of the concerned drawer becomes secondary to that of the acceptor. Further, if the holder of a bill makes a default in presentment for acceptance where it is compulsory, or in presentment for payment, the drawer is discharged altogether.

Liability of the drawer of a cheque:

When a drawer issues a cheque, it is his liability to pay to the holder the amount of the cheque through his banker when the cheque is duly presented for payment. If the cheque is dishonoured, the drawer is liable for payment. IF the cheque is dishonoured, the drawer is liable to compensate the holder of the cheque provided that the drawer has received a notice of dishonour. However, the drawer of a cheque will not be entitled to a notice of dishonour , if the dishonour is due to lack of funds in his account.

Liability of Drawee Cheque

The provisions related to the liability of the drawee of a cheque are mentioned in Section 31 of the Negotiable Instruments Act. According to Section 31:

- “The drawee of a cheque having sufficient funds of the drawer in his hands properly applicable to the payment of such cheque when duly required to do so, and in default of such payment, must compensate the drawer for any loss or damage caused by such default”.
- The drawee of a cheque who is always a banker is liable to the drawer if he, having sufficient funds of his customer, wrongfully refuses or fails to honour his customer’s cheque.
- The liability of the drawee arises only when the cheque has been dishonoured by mistake. But where the cheque is dishonoured for any of the reasons explained earlier in this chapter, the banker does not incur any liability for rightful dishonour.

Liability of the Maker of a Promissory Note and the Acceptor of a Bill of Exchange

According to Section 32 of the Negotiable Instruments Act, “In the absence of contract to the contrary, the maker of a promissory note and the acceptor before maturity of a bill of exchange are bound to pay the amount thereof at maturity according to the apparent tenor of the note or acceptance respectively, 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, such maker or acceptor is bound to compensate any party to the note or bill for any loss or damage sustained by him and caused by such default.”

From these provisions of Section 32, we come to know that the liability of the maker of a promissory note and of the acceptor of a bill of exchange is the same. They are primarily responsible for the payment due on the instrument. Their liability is absolute and unconditional.

Liability of Endorser [Section 35]

When the marker or holder of an negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to indorse the same, and is called the “endorser”.

Liability of Parties to Holder in Due Course

According to Section 36, “Every prior party (i.e., maker or drawer, acceptor and all intervening endorsers to an instrument is liable to a holder in due course until the instrument is satisfied (paid).” Therefore, the maker and endorsers of a note are jointly and severally liable for the payment and may be sued jointly.

Holder and Holder in Due Course

Holder and holder in due course is explained below.

Holder

According to section 8 of the Act, the "holder" of a promissory note, bill of exchange or cheque means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto.

Where the note, bill or cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction.

Possession of instrument:

The person must be a de jure holder. He must be entitled to possess the instrument in his own name. His possession must be under some legal and valid title. A thief or any person who finds the instrument or an indorsee under a forged endorsement though in possession of the negotiable instrument, Is not a holder in the absence of a legal title to it. Even an agent holding a negotiable instrument for his principal is also not a holder though he has a right to receive the payment.

Entitled to receive the amount :

The person must be entitled to receive the amount of the instrument and give a valid discharge to the buyer. A person may be bearer of an instrument or payee or indorsee of an instrument but he may not be called a holder of instrument if he is prohibited by law from receiving the amount due on the instrument.

It must be remembered that no person can sue an instrument unless his name appears thereon either as the payee or the indorsee unless the instrument is made payable to bearer. Moreover, a true owner unless he is a holder cannot maintain a suit in the court of law.

Following persons are considered the holders of the negotiable instruments:

- A principal whose name appears on an instrument as the holder though it is executed in the name of his agent for him.
- Where a negotiable instrument is a bearer one, any person who is in the possession of such instrument is the holder,
- Where a negotiable instrument is in the name of a partner of a firm, it naturally becomes a holder as it is not a separate entity from the partner.
- The indorsee of a cheque is called a holder.

- If a holder of a negotiable instrument is dead, the heirs of the deceased holder become the holders.
- A principal on whose behalf a promote is endorsed in blank and is delivered to his agent, he is the holder of the instrument though his name does not appear on the instrument.

However the following persons are not called holders

- A thief or any person who finds the instrument or an indorsee under a forged endorsement is not a holder though he is in possession of the negotiable instrument.
- The word 'entitled' used in the definition of a holder shows that the title of the person who claims to be the holder must be acquired in a lawful manner. A person obtaining the instrument under forgery is not a holder.
- When the endorsement of a bill is 'for collection only' the indorsee cannot be a holder

The above mentioned lists are not complete.

Holder in Due Course

Section 9 of the Act defines 'holder in due course' as any person who

- for valuable consideration,
- becomes the possessor of a negotiable instrument payable to bearer or the indorsee payee thereof,
- before the amount mentioned in the document becomes payable, and
- without having sufficient cause to believe that any defect existed in the title of the person from whom he derives • his title. (English law does not regard payee as a holder in due course).

The essential qualification of a holder in due course may, therefore, be summed up as follows:

He must be a holder for valuable consideration.

Consideration must not be void or illegal, example, a debt due on a wagering agreement. It may, however, be inadequate. A donee, who acquired title to the instrument by way of gift, is not a holder in due course, since there is no consideration to the contract. He cannot maintain any action against the debtor on the instrument. Similarly, money due on a promissory note executed in consideration of the balance of the security deposit for the lease of a house taken for immoral purposes cannot be recovered by a suit.

He must have become a holder (passessor) before the date of maturity of the negotiable instrument. Therefore, a person who takes a bill or promissory note on the day on which it becomes payable cannot claim rights of a holder in due course because he takes it after it becomes payable, as the bill or note can be discharged at any time on that day.

He must have become holder of the negotiable instrument in good faith. Good faith implies that he should not have accepted the negotiable instrument after knowing about any defect in the title to the instrument. But, notice of defect in the title received subsequent to the acquisition of the title will not affect the rights of a holder in due course.

Besides good faith, the Indian Law also requires reasonable care on the part of the holder before he acquires title of the negotiable instrument. He should take the instrument without any negligence on his part. Reasonable care and due caution will be the proper test of his bona fides.

It will not be enough to show that the holder acquired the instrument honestly, if in fact, he was negligent or careless. Under conditions of sufficient indications showing the existence of a defect in the title of the transferor, the holder will not become a holder in due course even though he might have taken the instrument without any suspicion or knowledge.

Rights and Privileges of a Holder in Due Course

A holder in due course gets certain rights and special privileges which an ordinary holder of a negotiable instrument cannot possess. Certain defences which can be set up against an ordinary holder claiming as a negotiable instrument cannot be set up against a holder in due course. Moreover, a holder in due course gets a title to a negotiable instrument free from equities. Various rights and privileges of a holder in due course are summarised below.

Instrument purged of all defects

A holder in due course who gets the instrument in good faith in the course of its currency is not only himself protected against all defects of title of the person from whom he has received it, but also serves, as a channel to protect all subsequent holders. A holder in due course can recover the amount of the instrument from all previous parties although, as a matter of fact, no consideration was paid by some of the previous parties to instrument or there was a defect of title in the party from whom he took it. Once an instrument passes through the hands of a holder in due course, it is purged of all defects. It is like a current coin. Who-so-ever takes it can recover the amount from all parties previous to such holder (Sec. 53).

It is to be noted that a holder in due course can purify a defective title but cannot create any title unless the instrument happens to be a bearer one.

Privilege in case of inchoate instrument not affected:

Right of a holder in due course to recover money is not at all affected even though the instrument was originally an inchoate stamped instrument and the transferor completed the instrument for a sum greater than what was intended by the maker. (Sec. 20)

- **Liability of Prior Parties:** All prior parties to the instrument (the maker or drawer, acceptor and intervening • indorser) continue to remain liable to the holder in due course until the instrument is duly satisfied. The holder in due course can file a suit against the parties liable to pay, in his own name (Sec. 36)

- **Privilege (Can enforce payment) in case of a fictitious bill:** Where both drawer and payee of a bill are fictitious • persons, the acceptor is liable on the bill to a holder in due course. If the latter can show that the signature of the supposed drawer and the first indorser are in the same hand, for the bill being payable to the drawer's order the fictitious drawer must indorse the bill before he can negotiate it. (Sec. 42).

- **No effect of conditional delivery or of special delivery:** Where negotiable instrument is delivered conditionally or • for a special purpose and is negotiated to a holder in due course, a valid delivery of it is conclusively presumed and he acquired good title to it. (Sec. 46).

- **No effect of absence of consideration or presence of an unlawful consideration:**

- The plea of absence of or unlawful consideration is not available against the holder in due course. The party responsible will have to make payment (Sec. 58).

- **Estoppel against denying original validity of instrument:** • The plea of original invalidity of the instrument cannot be put forth, against the holder in due course by the drawer of a bill of exchange or cheque or by an acceptor for the honour of the drawer. But where the instrument is void on the face of it example, promissory note made payable to "bearer", even the holder in due course cannot recover the money. Similarly, a minor cannot be prevented from taking the defence of minority. Also, there is no liability if the signatures are forged. (Sec. 120).

- **Estoppel against denying capacity of the payee to indorsee:** • No maker of promissory note and no acceptor of a bill of exchange payable to order shall, in a suit therein by a holder in due course, be

permitted to resist the claim of the holder in due course on the plea that the payee had not the capacity to indorse the instrument on the date of the note as he was a minor or insane or that he had no legal existence (Sec 121)

- **Estoppel against endorser to deny capacity of parties:** • An endorser of the bill by his endorsement guarantees that all previous endorsements are genuine and that all prior parties had capacity to enter into valid contracts. Therefore, he on a suit thereon by the subsequent holder, cannot deny the signature or capacity to contract of any prior party to the instrument.

Part A (ONE Mark)

Multiple Choice Questions
Online Examination

Part – B (2 Marks)

- 1) What is Law?
- 2) Mention the types of law.
- 3) Write short note on business law?
- 4) Define commercial law?
- 5) Define Contract.
- 6) Define Agreement;
- 7) What are the essential elements of a valid contract?
- 8) What is void contract?
- 9) What is 'executory contract'?
- 10) What is executed contract?
- 11) Define contingent contract.
- 12) What is quasi contract?
- 13) What is meant by free consent?
- 14) Mention the three bases by which contracts are classified.
- 15) Mention the types of contracts or classification of contracts.
- 16) List out the steps in the formation of a contract.
- 17) State the meaning of performance of contracts.
- 18) Who must perform a contract?
- 19) What do you mean by assignment of a contract?
- 20) List the methods of discharging of a contract.
- 21) What do you understand by Breach of contract?
- 22) What are the remedies for breach of contract?
- 23) What is meant by 'Quantum Meruit'?
- 24) List the kinds of quasi contracts.
- 25) What is contract of sale?

- 26) What is meant by sale?
- 27) What is meant by agreement to sell?
- 28) List the essential elements of a contract of sale.
- 29) Define the term transfer of title.
- 30) List few documents of title.
- 31) What are the condition and warranty in a sales contract?
- 32) List out the implied warranties in a contract of sale.
- 33) What is warranty?
- 34) Distinguish between warranty and guarantee.
- 35) What is meant by indemnity?
- 36) What is meant by guarantee?
- 37) Define performance of sales contracts?
- 38) What do you mean by 'Caveat Emptor'?
- 39) Who is an unpaid seller?
- 40) Define the term 'Goods'.
- 41) List the kinds of goods.
- 42) Mention the types of delivery of goods.
- 43) List the rights of a buyer.
- 44) List the duties of the buyer.
- 45) What is the right of a finder of lost goods?
- 46) What is meant by bailment?
- 47) Who is a 'bailor' and who is a 'bailee'?
- 48) What is meant by lien?
- 49) What is meant by pledge?
- 50) Define agency.
- 51) Who is an agent and who is a principal?
- 52) Who is an agent and who is a servant?
- 53) Who is an agent and who is an independent contractor?
- 54) What is the test for determining the existence of agency?
- 55) List the methods / ways of agency creation.

- 56) What is meant by 'agency by estoppels'?
- 57) What is meant by 'Agency by holding out'?
- 58) What is meant by agency by ratification?
- 59) What are the different kinds of agents?
- 60) What are the characteristics of '*del credere*' agent?
- 61) State the Agent's authority and liability of principal?
- 62) How will you terminate the Agency?
- 63) List the ways by which agency is terminated by law.
- 64) List the ways by which agency is terminated by the parties.
- 65) When does the agency become irrevocable?
- 66) What is a Negotiable Instrument?
- 67) Define Negotiation?
- 68) List the characteristics of Negotiable instruments.
- 69) List the presumptions applicable to all negotiable instruments.
- 70) List the types of negotiable instruments.
- 71) Mention the parties to a promissory note.
- 72) Mention the parties to a bill of exchange.
- 73) What is meant by crossing of cheque.

Part – C (8 Marks)

1. Explain the essential elements of a valid contract.
2. Explain the various types of contracts with your own example.
3. Enumerate the various void agreements.
4. What is quasi contract? Explain its types?
5. How is an agency terminated? Explain.
6. Explain breach of contract and its remedies.
7. What are the essential elements of negotiable instruments? How are they transferred?
8. Write briefly on formation of a contract and performance of contracts according to the Indian Contract Act 1872.
9. Explain the rights of an unpaid seller.

10. Briefly explain the types of Negotiable Instruments.
11. Explain the authority and liability of agents.
12. State the rules relating to passing of property in the goods under the sale of goods act 1930.
13. Write a note on remedies for breach of contract.
14. Explain the duties and rights of bailor and bailee.
15. Briefly explain types of contract.
16. Explain the provisions of sale of goods act.
17. Explain the essential requisite conditions of negotiable instruments.
18. How an agent is liable to principal?
19. What are the essentials of agency?
20. Write notes on "The Sale of Goods Act 1930.
21. Explain the different kinds of agents?
22. Describe the essentials of a valid contract. When does an agreement become void?
23. Discuss the essential features to be fulfilled in Negotiable Instruments.
24. Explain the privileges of a holder in due course.
25. Explain the essential features of a bill of exchange.
26. Explain the essential features of a promissory note.

UNIT 1

QUESTIONS	OPTION A	OPTION B	OPTION C	OPTION D	ANSWERS
The Law of Contract is nothing but	a child of commercial dealing.	a child of religion.	a child of day-to-day politics.	a child of economics.	a child of commercial dealing.
The Contract Act came into force	from 1 September 1973	before 1 September 1882.	from 1 September 1872.	after 1 September 1874	from 1 September 1872.
Contractual rights and duties are created by	state.	statute.	parties.	custom or usage.	parties.
Contract is defined as an agreement enforceable by law, vide Section ... of the Indian Contract Act.	2(e)	2(f)	2(h)	2(i)	2(h)
A contract creates	rights in personam.	rights in rem.	no obligations.	only obligations and no rights.	rights in personam.
Voidable contract is one	which is lawful.	which is invalid.	which is valid as long as it is not avoided by the party entitled to do so.	which is unlawful.	which is valid as long as it is not avoided by the party entitled to do so.
When the contract is perfectly valid but cannot be enforced because of certain technical defects. This is	unilateral contract.	bilateral contract.	unenforceable contract.	void contract.	unenforceable contract.
..... is without any legal effect and cannot be enforced in a Court of Law.	Valid contract	Void contract	Voidable contract	Unenforceable contract	Void contract
..... is forbidden by law.	Valid contract	Voidable contract	Unenforceable contract	Illegal agreement	Illegal agreement
A makes a contract with B to beat his business competitor. This is an example of	valid contract.	illegal agreement.	voidable contract.	unenforceable contract.	illegal agreement.
..... is made by words spoken.	Express contract	Implied contract	Tacit contract	Unlawful contract	Express contract

QUESTIONS	OPTION A	OPTION B	OPTION C	OPTION D	ANSWERS
A appoints B as his agent, by way of a power of attorney. This is an example of	Implied contract.	unlawful contract.	tacit contract.	express contract.	express contract.
..... implies a contract though the parties never expressed their intention to enter into a contract.	Implied contract	Electronic contract	Express contract	Unlawful contract	Implied contract
..... is a one-sided contract in which only one party has to perform his promise or obligation.	Void contract	Illegal agreement	Unilateral contract	Bilateral contract	Unilateral contract
Where the obligation in a contract is outstanding on the part of both parties, it is called	bilateral contract.	unilateral contract.	void contract.	illegal agreement.	bilateral contract.
A contract in which, under the terms of a contract, nothing remains to be done by either party is known as	executory contract.	unilateral contract.	bilateral contract	executed contract.	executed contract.
Contracts classified on the basis of performance are	Non executed contracts.	Non executory contracts.	partly executed or partly executory contracts.	partly Non executed or partly executory contracts.	partly executed or partly executory contracts.
An implied contract is one which comes into existence on account of	conduct of the parties.	non-availability of a paper for writing.	inability of the parties to write or speak.	directions given by a court.	conduct of the parties.
Flaw in capacity to contract may arise from –	lack of free consent	lack of consideration	minority	absence of legal formalities	minority
Anticipatory breach of a contract takes place –	during the performance of the contract	at the time when the performance is due.	before the performance is due	at the time when the contract is entered into.	before the performance is due
A contract has become more difficult of performance due to some un-contemplated events or delays. The contract is	is discharged	is not discharged	becomes void	becomes voidable	is not discharged
A quasi contract –	is a contract	as an agreement	creates only legal obligation	Offer	creates only legal obligation

QUESTIONS	OPTION A	OPTION B	OPTION C	OPTION D	ANSWERS
A minor enters into a contract for the purchase of certain necessities , in such case –	he is not personally liable to pay	he is not liable to pay	his estate is liable to pay	his guardian is liable to pay	his estate is liable to pay
_____ agency is the most common form of agency.	Express	Apparent	Incidental	Implied	Express
A principal accepts an agent's unauthorized contract through _____ of the contract.	subornation	subrogation	ratification	ramification	ratification
Apparent agency is also referred to as _____.	agency by estoppel	authorized agency	agency by default	express agency	agency by estoppel
_____ is a contract a principal and agent enter into that says the principal cannot employ another agent other than the one stated.	exclusive principal contract	apparent agency contract	exclusive agency contract	ratified contract	exclusive agency contract
Which of the following is not a method of terminating an agency relationship by acts of the parties?	achievement of agency purpose	lapse of time	bankruptcy of the principal	mutual agreement	bankruptcy of the principal
The principal–agent relationship entails that the principal	hires the agent.	is smarter than the agent.	provides guidance to the agent.	is hired by the agent.	hires the agent.
Which of the following is not an ingredient of a principal–agent problem?	Conflict of interest.	Asymmetric information.	Equilibrium.	Surplus available.	Equilibrium.
A principal could be liable for the acts of an agent that exceeded its actual authority on the basis of:	Apparent authority	Express authority	Necessity	Implied authority	Apparent authority
Which of the following is not an implied obligation or duty of an agent to its principal?	To demonstrate good faith	To act with competence and diligence	To pay reasonable expenses of the agency agreement	To protect confidentiality	To pay reasonable expenses of the agency agreement
An agent:	Has the authority to bind the corporation	Can only act in the presence of the principal	Has no authority to bind the corporation	Cannot enter into agreements on behalf of the principal	Has the authority to bind the corporation

QUESTIONS	OPTION A	OPTION B	OPTION C	OPTION D	ANSWERS
If an agent enters into a contract with a third party, who is ordinarily liable?	The agent	The principal	The third party	Any witnesses to the contract	The principal
A condition is a stipulation which is a –	essential to the main purpose of contract of sale	not essential to the main purpose of contract of sale	collateral to the main purpose of contract of sale	necessay to end the contract	essential to the main purpose of contract of sale
In a sale , there is an implied condition on the part of the seller that he –	has a right to sell the goods	is in possession of the goods	will have the right to sell	will acquire the goods	has a right to sell the goods
If a sale is by sample as well as by description , the implied condition is that the goods shall correspond with –	sample	either sample or description	description	both sample and description	both sample and description
In a sale, the property in goods –	is transferred to the buyer ,	is yet to be transferred to the buyer	may be transferred at a future time	is transferred when the buyer pays the price	is transferred to the buyer ,
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 thinks is reasonable	price to be determined by a third independent person.	a reasonable price
The term property as used in the sale of goods act 1930 means	possession	ownership	ownership and possession both	he subject matter of contract of sale.	ownership
In a sale ,if the goods are destroyed , the loss falls on –	the buyer	the seller	partly on buyer and partly on seller	the seller if price has not been paid	the buyer
The right of subrogation in a contract of guarantee is available to the	creditor	principal debtor	surety	indemnified	surety
A guarantee obtained by a creditor by keeping silence as to material circumstances is –	valid	voidable	unenforceable	invalid	invalid
Sale of goods for cash is an example of –	mutual and concurrent promises	mutual and dependent promises	mutual and independent promises	conditional and dependent promises,.	mutual and concurrent promises

QUESTIONS	OPTION A	OPTION B	OPTION C	OPTION D	ANSWERS
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.
The measure of damages in case of breach of a contract is the difference between the	contract price and the market price at the date of breach.	contract price when the maximum market price during the terms of the contract.	contract and the price at which the plane tiff might have sold the goods.	contract price and the price fixed by the court.	contract price and the price fixed by the court.
A guarantee which is given for the good conduct of a person is called _____.	prospective guarantee.	specific guarantee.	fidelity guarantee.	continuing guarantee.	fidelity guarantee.
A person who acts as an agent as well as guarantor is called _____.	factor.	broker.	delcredere agent.	banker agent.	factor.
A stipulation collateral to the main purpose of the contract is called a.contingent _____.	contingent	specific.	condition.	warranty.	warranty.
An agent whose authority to act for the principle is unlawful is _____.	general agent	broker	delcredere agent	universal agent	universal agent
Goods which are manufactured or produced by the seller after making of the contract of sale	contingent goods.	existing goods.	future goods.	specific goods.	future goods.
In case of a wrongful dishonour of a cheque by a banker having funds to the credit of the customer ,the court may award	ordinary damages	nominal damages	exemplary damages	contemptuous damages.	exemplary damages
The parties of bill of exchange are	drawer acceptor and payee	banker drawee and payee	banker acceptor and payee	banker drawer and payee	drawer acceptor and payee
Liability of maker is _____ in case of bill of exchange	Primary	Unlimited	Unconditional	Secondary	Secondary

QUESTIONS	OPTION A	OPTION B	OPTION C	OPTION D	ANSWERS
When the loss of cheque is intimated to the bank, it is advisable to get the cheque	Dishonoured	Cancelled	Stalled	Countermanded	Countermanded
When the banker has reason to believe that the title of the presenter is defective, then the cheque will be	Dishonoured	Cancelled	Stalled	Countermanded	Dishonoured
Who is primarily liable on a cheque?	Drawer	Paying banker	Collection banker	Everybody who touches the cheque	Drawer
The effect of a crossing a cheque is	The payee can obtain payment only through a bank account	The payee is compelled to open an account	The payee will have to endorse the cheque to a bank	All	The payee can obtain payment only through a bank account
The drawer of a cheque is always a	bank	company	Firm	customer	customer
A cheque is considered as stale when it has been in circulation for	more than forty eight hours	more than one year	more than six months unless otherwise specified	more than three months	more than three months
Where the signature of the drawer of a cheque is not genuine , such a cheque is called	post dated cheque	stale cheque	forged cheque	Pre dated cheque	forged cheque
A demand draft issued by a bank is valid for	3 years	There is no time limit	3 months	12 months	3 months

Unit - II – Company Law

Syllabus

Major principles – Nature and types of companies, Formation, Memorandum and Articles of Association, Prospectus, Power, duties and liabilities of Directors, winding up of companies, Corporate Governance.

INTRODUCTION TO COMPANIES ACT 2013

The 1956 Act has been in need of a substantial revamp for quite some time now, to make it more contemporary and relevant to corporate, regulators and other stakeholders in India. While several unsuccessful attempts have been made in the past to revise the existing 1956 Act, there have been quite a few changes in the administrative portion of the 1956 Act. The most recent attempt to revise the 1956 Act was the Companies Bill, 2009 which was introduced in the Lok Sabha, one of the two Houses of Parliament of India, on 3 August 2009. This Companies Bill, 2009 was referred to the Parliamentary Standing Committee on Finance, which submitted its report on 31 August 2010 and was withdrawn after the introduction of the Companies Bill, 2011. The Companies Bill, 2011 was also considered by the Parliamentary Standing Committee on Finance which submitted its report on 26 June 2012. Subsequently, the Bill was considered and approved by the Lok Sabha on 18 December 2012 as the Companies Bill, 2012 (the Bill). The Bill was then considered and approved by the Rajya Sabha too on 8 August 2013. It received the President's assent on 29 August 2013 and has now become the Companies Act, 2013.

Companies Act 2013 is an Act of the Parliament of India which regulates incorporation of a company, responsibilities of a company, directors, dissolution of a company. The 2013 Act is divided into 29 chapters containing 470 sections as against 658 Sections in the Companies Act, 1956 and has 7 schedules. The Act came into force on 12 September 2013 with few changes like earlier private companies maximum number of member was 50 and now it will be 200. A new term of "one person company" is included in this act that will be a private company and with only 98 provisions of the Act

notified. On 27 February 2014, the MCA stated that Section 135 of the Act which deals with corporate social responsibility will come into effect from 1 April 2014. On 26 March 2014, the MCA stated that another 183 sections will be notified from 1 April 2014. The Ministry of Company Affairs thereafter proposed a draft notification for exempting private companies from the ambit of various sections under the companies act.

Purpose/Objective of the Act

The Act broadly seeks to achieve the following objectives:

- To promote the development of the economy by encouraging entrepreneurship and enterprise efficiency and creating flexibility and simplicity in the formation and maintenance of companies;
- To encourage transparency, accountability and high standards of corporate governance;
- To recognize various new concepts and procedures facilitating ease of doing business while protecting interests of all the stakeholders;
- To enforce stricter action against fraud and gross non-compliance with company law provisions;
- To set up institutional structure in the form of various authorities, bodies and panels as well as by including recognition of various roles for professionals and other experts; and
- To cater to the need for more effective and time bound approvals and compliance requirements relevant in the present context.

Following are the important highlights of Companies Act, 2013:

- New definitions have been introduced, some of which are auditing standards, associate company, CEO, CFO, control, employee stock option, financial statement, global depository receipt, Indian depository receipt, independent director, interested director, key managerial personnel, promoter, one person company, small company, turnover, voting right, etc.
- Number of existing definitions have been modified, for example, definitions of abridged prospectus, body corporate, director, expert, managing director, officer in default, etc.

- Definition of private company changed - the limit on maximum number of members increased from 50 to 200.
- The concept of One Person Company introduced. It will be a private limited company.
- The concept of Small Company introduced. It will be subject to lesser stringent regulatory framework.

Meaning and definition of company

The term "Company" was originally derived from 2 Latin words

Com (means together)

Panis (means bread/meal)

Thus the term "Company" was originally used for that group of person who took their meal together.

According to Section 2(20) of Companies Act, 2013, company means a company incorporated (formed and registered) under this Act or under any of the previous company's laws.

Lord Justice Lindley has defined a company as "an association of many persons who contribute money or money's worth to a common stock and employ it in some trade or business and who share the profit and loss arising there from. The common stock so contributed is denoted in money and is the capital of the company. The persons who contributed in it or form it, or to whom it belongs, are members. The proportion of capital to which each member is entitled is his "share". The shares are always transferable although the right to transfer them may be restricted."

According to Sec (1), "A company formed and registered under the act". According to Sec (3) of the act, "on incorporation a company becomes a body corporate or a corporation with a perpetual succession and a common seal."

According to N.D.Kapoor, "IT is a voluntary association of persons formed for some common purpose, with capital divisible into parts, known as shares, and with a limited liability. It is a creation of the law and is sometimes known as an artificial person with a perpetual succession and a common seal. IT exists only in the eyes of the law, I.e., it is regarded by the law as person, just as a human being. But it has no physical existence."

Major principles of company

1) Corporate personality: Being an artificial person, a company is a legal entity different and separate from its promoters, members, directors, and other stake holders. It has its own corporate name and work under that name. It

- can hold its assets in its own name,
- can sue or be sued in its own name,
- can borrow/lend funds, open bank accounts, enter into contracts in its own name

Any of its shareholders or directors or other officers cannot be held liable for the acts of the company even if he/it holds the entire share capital. Further, the shareholders or individual directors are not the agents of the company and so they cannot bind company by their personal acts. Company means a company incorporated (formed and registered) under this Act or under any of the previous companies laws (like Companies Act, 1956).

2) Limited liability: According to Section 3(2), a company may be

a company limited by shares

A company limited by shares means the liability of the members towards the company is limited to amount unpaid on their shares only.

a company limited guarantee

A company limited guarantee means the liability of the members towards the company is limited to the amount of guarantee prescribed in the MOA. Further, in such companies the members can be made liable only in the event of winding up of the company.

an unlimited company

An unlimited company means here the liability of the members is unlimited towards company.

But, in none of the above cases, members can be made liable to anyone else except company for any act of the company or directors

3) Perpetual Succession: Perpetual Succession means existence forever. According to Section 9, from the date of incorporation mentioned in the certificate of incorporation, every company has perpetual

succession. A company is an artificial person created by law; therefore it can be dissolved or wind up by law. In other words, members may come and go, but company can go forever.

4) Separate Property: A company is separate legal entity having its own corporate name. It can hold properties in its own name. No member can claim himself to be the owner of the company's property during its existence. In other words, the property of a company is not the property of the individual members.

5) Transferability of Shares: According to Section 44 of Companies Act, 2013 the shares or debentures or other interest of any member in a company shall be movable property, transferable in the manner provided by the articles of the company.

According to Section 2(68) (i) of Companies Act, 2013, private company may restricts the right to transfer its shares through its AOA. But a generally, a public company cannot restrict the transfer of its shares.

6) Capacity to sue and be sued: A company is separate legal entity having its own corporate name. Therefore, according to Section 9, company may sue or may be sued in its own name (not in the name of its directors or members).

7) Contractual Rights: A company is an artificial person created by law. Therefore like natural person, it can enter into contract in its own name through its agent (directors or other authorised persons).

8) Demutualization (separation of management and ownership): Demutualization means separation of management and ownership. Under company form of business, management (directors) is different from owners (members). Members of the company do not get engaged into day-to-day business of the company. Members appoint directors who run company on their behalf. Such directors may or may not be members of the company.

9) Common Seal: On incorporation, a company may have a common seal. Since a company has no physical existence, therefore it has to act through its agents only. To put restriction on the misuse of the

powers of those agents, contracts entered into by anyone on behalf of the company may be under the common seal of the company. Thus common seal acts as official signature of the company. Now, after Companies (Amendment) Act, 2015, it is not compulsory for the company to have common seal. Thus a company may or may not have common seal.

Kinds of companies

The Companies Act, 2013 provides for the kinds of companies that can be promoted and registered under the Act. The three basic types of companies which may be registered under the Act are:

- a) Private Companies;
- b) Public Companies; and
- c) One Person Company (to be formed as Private Limited).

Section 3 (1) of the Companies Act 2013 states that a company may be formed for any lawful purpose by—

- a) seven or more persons, where the company to be formed is to be a public company;
- b) two or more persons, where the company to be formed is to be a private company; or
- c) one person, where the company to be formed is to be One Person Company that is to say, a private company, by subscribing their names or his name to a memorandum and complying with the requirements of this Act in respect of registration

Section 3 (2) A company formed under sub-section (1) may be either—

- a) a company limited by shares; or (b) a company limited by guarantee; or (c) an unlimited company.

Classification of Companies

i) Classification on the basis of Incorporation: There are three ways in which companies may be incorporated.

Statutory Companies: These are constituted by a special Act of Parliament or State Legislature. The provisions of the Companies Act, 2013 do not apply to them. Examples of these types of companies are Reserve Bank of India, Life Insurance Corporation of India, etc.

Registered Companies: The companies which are incorporated under the Companies Act, 2013 or under any previous company law, with ROC fall under this category.

ii) Classification on the basis of Liability: Under this category there are three types of companies:

a) Unlimited Liability Companies: In this type of company, the members are liable for the company's debts in proportion to their respective interests in the company and their liability is unlimited. Such companies may or may not have share capital. They may be either a public company or a private company.

b) Companies limited by guarantee: A company that has the liability of its members limited to such amount as the members may respectively undertake, by the memorandum, to contribute to the assets of the company in the event of its being wound-up, is known as a company limited by guarantee. The members of a guarantee company are, in effect, placed in the position of guarantors of the company's debts up to the agreed amount.

c) Companies limited by shares: A company that has the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them is termed as a company limited by shares. For example, a shareholder who has paid Rs. 75 on a share of face value ` 100 can be called upon to pay the balance of Rs. 25 only. Companies limited by shares are by far the most common and may be either public or private.

Other Forms of Companies

Associations not for profit having license under Section 8 of the Companies Act, 2013 or under any previous company law;

- Government Companies;
- Foreign Companies;
- Holding and Subsidiary Companies;
- Associate Companies/Joint Venture Companies
- Investment Companies
- Producer Companies.
- Dormant Companies

Private Company

According to Section 2(68) of the Companies Act, 2013 “Private Company” means a company having a minimum paid-up share capital of one lakh rupees or such higher paid-up share capital as may be prescribed, and which by its articles, –

- a) restricts the right to transfer its shares;
- b) except in case of One Person Company, limits the number of its members to two hundred:

Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member:

Provided further that –

- a) persons who are in the employment of the company; and
- b) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members; and
- c) prohibits any invitation to the public to subscribe for any securities of the company;

Public Company

According to Section 2(71) of the Companies Act, 2013 “public company” means a company which –

- a) is not a private company;
- b) has a minimum paid-up share capital of five lakh rupees or such higher paid-up capital, as may be prescribed:

Provided that a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purpose of this Act even where such subsidiary company continues to be a private company in its articles.

As per section 3 (1) (a), a public company may be formed for any lawful purpose by seven or more persons, by subscribing their names or his name to a memorandum and complying with the requirements of this Act in respect of registration.

Associate Company

As per Section 2(6), “Associate Company”, in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

Explanation to section 2(6) provides that “significant influence” means control of at least twenty per cent of total share capital, or of business decisions under an agreement.

Dormant Company

The Companies Act, 2013 has recognized a new set of companies called as dormant companies. As per section 455 (1) where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.

➤ Explanation appended to section 455(1) says that for the purposes of this section,—

i) “inactive company” means a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years;

ii) “significant accounting transaction” means any transaction other than—

a) payment of fees by a company to the Registrar;

b) payments made by it to fulfill the requirements of this Act or any other law;

c) allotment of shares to fulfill the requirements of this Act; and

d) payments for maintenance of its office and records.

➤ As per section 455(2), the Registrar on consideration of the application shall allow the status of a dormant company to the applicant and issue a certificate in such form as may be prescribed to that effect.

➤ Section 455(3) provides that the Registrar shall maintain a register of dormant companies in such form as may be prescribed.

➤ According to section 455(4), in case of a company which has not filed financial statements or annual returns for two financial years consecutively, the Registrar shall issue a notice to that company and enter the name of such company in the register maintained for dormant companies.

- Further a dormant company shall have such minimum number of directors, file such documents and pay such annual fee as may be prescribed to the Registrar to retain its dormant status in the register and may become an active company on an application made in this behalf accompanied by such documents and fee as may be prescribed. [Section 455(5)]
- The Registrar shall strike off the name of a dormant company from the register of dormant companies, which has failed to comply with the requirements of this section. [Section 455(6)]

One Person Company

The 2013 Act introduces a new type of entity to the existing list i.e. apart from forming a public or private limited company, the 2013 Act enables the formation of a new entity a 'one-person company' (OPC). An OPC means a company with only one person as its member [section 3(1) of 2013 Act]. The draft rules state that only a natural person who is an Indian citizen and resident in India can incorporate an OPC or be a nominee for the sole member of an OPC.

Small Company

A small company has been defined as a company, other than a public company.

- 1) Paid-up share capital of which does not exceed 50 lakh INR or such higher amount as may be prescribed which shall not be more than five crore INR
- 2) Turnover of which as per its last profit-and-loss account does not exceed two crore INR or such higher amount as may be prescribed which shall not be more than 20 crore INR:

As set out in the 2013 Act, this section will not be applicable to the following:

- A holding company or a subsidiary company
- A company registered under section 8
- A company or body corporate governed by any special Act [section 2(85) of 2013 Act]

Government Company

Section 2(45) defines a "Government Company" as any company in which not less than fifty one per cent of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company.

FORMATION OF COMPANIES

The procedure or formation of a company may be divided into four stages:

1. Promotion
2. Incorporation
3. Raising of capital
4. Commencement of business

Promotion

The term 'promotion' is a term of business and not of law. It is frequently used in business.

Haney defines promotion as "the process of organizing and planning the finances of a business enterprise under the corporate form". Gerstenberg has defined promotion as "the discovery of business opportunities and the subsequent organization of funds, property and managerial ability into a business concern for the purpose of making profits there from".

First of all the idea of carrying on a business is conceived by promoters. Promoters are persons engaged in, one or the other way; in the formation of a company. Next, the promoters make detailed study to assess the feasibility of the business idea and the amount of financial and other resources required. When the promoters are satisfied about practicability of the business idea, they take necessary steps for assembling the business elements and making provision of the funds required to launch the business enterprise. Law does not require any qualification for the promoters.

Promoter

Under Companies Act, 2013 promoter means a person who -

- who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or
- who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or

- in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act: Provided that nothing in sub-clauses (b) and (c) shall apply to a person who is acting in a professional capacity; (Clause 2(69))

Role of promoters

The promoters stand in a fiduciary position towards the company about to be formed. From the fiduciary position of promoters, the following important results follow:

1. A promoter cannot be allowed to make any secret profits. If any secret profit is made in violation of this rule, the company may, on discovering it, compel the promoter to account for and surrender such profit.
2. The promoter is not allowed to derive a profit from the sale of his own property to the company unless all material facts are disclosed. If he contracts to sell his own property to the company without making a full disclosure, the company may either rescind the sale or affirm the contract and recover the profit made out of it by the promoter.
3. The promoter must not make an unfair or unreasonable use of his position and must take care to avoid anything which has the appearance of undue influence or fraud.

Incorporation of company

A company is an association of both natural and artificial persons incorporated under the existing law of a country. In terms of the Companies Act, 2013 a “company means a company incorporated under the Companies Act, 2013 (the Act) or under any of the previous company law” [Section 2(20)].

In common law, a company is a “legal person” or “legal entity” separate from, and capable of surviving beyond the lives of its members.

Procedure for Incorporation of company

(1) There shall be filed with the Registrar within whose jurisdiction the registered office of a company is proposed to be situated, the following documents and information for registration, namely:—

- a) the memorandum and articles of the company duly signed by all the subscribers to the memorandum in such manner as may be prescribed;

b) a declaration in the prescribed form by an advocate, a chartered accountant, cost accountant or company secretary in practice, who is engaged in the formation of the company, and by a person named in the articles as a director, manager or secretary of the company, that all the requirements of this Act and the rules made there under in respect of registration and matters precedent or incidental thereto have been complied with;

c) an affidavit from each of the subscribers to the memorandum and from persons named as the first directors, if any, in the articles that he is not convicted of any offence in connection with the promotion, formation or management of any company, or that he has not been found guilty of any fraud or misfeasance or of any breach of duty to any company under this Act or any previous company law during the preceding five years and that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief;

d) the address for correspondence till its registered office is established;

e) the particulars of name, including surname or family name, residential address, nationality and such other particulars of every subscriber to the memorandum along with proof of identity, as may be prescribed, and in the case of a subscriber being a body corporate, such particulars as may be prescribed;

f) the particulars of the persons mentioned in the articles as the first directors of the company, their names, including surnames or family names, the Director Identification Number, residential address, nationality and such other particulars including proof of identity as may be prescribed; and

g) the particulars of the interests of the persons mentioned in the articles as the first directors of the company in other firms or bodies corporate along with their consent to act as directors of the company in such form and manner as may be prescribed.

(2) The Registrar on the basis of documents and information filed under sub-section (1) shall register all the documents and information referred to in that subsection in the register and issue a certificate of incorporation in the prescribed form to the effect that the proposed company is incorporated under this Act.

(3) On and from the date mentioned in the certificate of incorporation issued under subsection (2), the Registrar shall allot to the company a corporate identity number, which shall be a distinct identity for the company and which shall also be included in the certificate.

(4) The company shall maintain and preserve at its registered office copies of all documents and information as originally filed under sub-section (1) till its dissolution under this Act.

(5) If any person furnishes any false or incorrect particulars of any information or suppresses any material information, of which he is aware in any of the documents filed with the Registrar in relation to the registration of a company, he shall be liable for action under section 447.

(6) Without prejudice to the provisions of sub-section (5) where, at any time after the incorporation of a company, it is proved that the company has been got incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company, or by any fraudulent action, the promoters, the persons named as the first directors of the company and the persons making declaration under clause (b) of subsection (1) shall each be liable for action under section 447.

(7) Without prejudice to the provisions of sub-section (6), where a company has been got incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company or by any fraudulent action, the Tribunal may, on an application made to it, on being satisfied that the situation so warrants,—

a) pass such orders, as it may think fit, for regulation of the management of the company including changes, if any, in its memorandum and articles, in public interest or in the interest of the company and its members and creditors; or

b) direct that liability of the members shall be unlimited; or

c) direct removal of the name of the company from the register of companies; or

d) pass an order for the winding up of the company; or

e) pass such other orders as it may deem fit:

Provided that before making any order under this sub-section,—

- the company shall be given a reasonable opportunity of being heard in the matter; and

- the Tribunal shall take into consideration the transactions entered into by the company, including the obligations, if any, contracted or payment of any liability.

Capital subscription

Kinds of share capital

The share capital of a company limited by shares shall be of two kinds, namely:—

a) equity share capital—

(i) with voting rights; or

(ii) with differential rights as to dividend, voting or otherwise in accordance with such rules as may be prescribed; and

b) preference share capital:

Provided that nothing contained in this Act shall affect the rights of the preference shareholders who are entitled to participate in the proceeds of winding up before the commencement of this Act.

Explanation.—For the purposes of this section,—

- “Equity share capital”, with reference to any company limited by shares, means all share capital which is not preference share capital;

- “Preference share capital”, with reference to any company limited by shares, means that part of the issued share capital of the company which carries or would carry a preferential right with respect to—

a) payment of dividend, either as a fixed amount or an amount calculated at a fixed rate, which may either be free of or subject to income-tax; and

b) repayment, in the case of a winding up or repayment of capital, of the amount of the share capital paid-up or deemed to have been paid-up, whether or not, there is a preferential right to the payment of any fixed premium or premium on any fixed scale, specified in the memorandum or articles of the company;

- Capital shall be deemed to be preference capital, notwithstanding that it is entitled to either or both of the following rights, namely:—

a) that in respect of dividends, in addition to the preferential rights to the amounts specified in sub-clause (a) of clause (ii), it has a right to participate, whether fully or to a limited extent, with capital not entitled to the preferential right aforesaid;

b) that in respect of capital, in addition to the preferential right to the repayment, on a winding up, of the amounts specified in sub-clause (b) of clause (ii), it has a right to participate, whether fully or to a limited extent, with capital not entitled to that preferential right in any surplus which may remain after the entire capital has been repaid.

Commencement of business

The provisions with regard to Certificate of Commencement of business have been dispensed with under the Companies Bill, 2013. Only declaration and verification is required by the Public Company under the Companies Bill, 2013. These provisions were as follows:

(1) A company having a share capital shall not commence any business or exercise any borrowing powers unless—

a) a declaration is filed by a director in such form and verified in such manner as may be prescribed, with the Registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him and the paid-up share capital of the company is not less than five lakh rupees in case of a public company and not less than one lakh rupees in case of a private company on the date of making of this declaration; and

b) the company has filed with the Registrar a verification of its registered office as provided in subsection (2) of section 12.

(2) If any default is made in complying with the requirements of this section, the company shall be liable to a penalty which may extend to five thousand rupees and every officer who is in default shall be punishable with fine which may extend to one thousand rupees for every day during which the default continues.

(3) Where no declaration has been filed with the Registrar under clause (a) of subsection (1) within a period of one hundred and eighty days of the date of incorporation of the company and the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may, without prejudice to the provisions of sub-section (2), initiate action for the removal of the name of the company from the register of companies under Chapter XVIII.

Memorandum of Association

Memorandum of Association (MOA) is the supreme public document which contains all those information that are required for the company at the time of incorporation. It can also be said that, a company cannot be incorporated without memorandum. At the time of registration of the company, it needs to be registered with the ROC (Registrar of Companies). It contains the objects, powers and scope of the company, beyond which a company is not allowed to work, i.e. it limits the range of activities of the company.

Any person who deals with the company like shareholders, creditors, investors, etc. is presumed to have read the company, i.e. they must know the company's objects and its area of operations. The Memorandum is also known as the charter of the company. There are six conditions of the Memorandum:

Name Clause – Any company cannot register with a name which CG may think unfit and also with a name that too nearly resembles with the name of any other company.

Situation Clause – Every company must specify the name of the state in which the registered office of the company is located.

Object Clause – Main objects and auxiliary objects of the company.

Liability Clause – Details regarding the liabilities of the members of the company.

Capital Clause – Total capital of the company.

Subscription Clause – Details of subscribers, shares taken by them, witness etc.

Definition

As per Section 2(56) of the Companies Act, 2013 “memorandum” means the memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous company law or of this Act.

Alteration of memorandum

(1) Save as provided in section 61, a company may, by a special resolution and after complying with the procedure specified in this section, alter the provisions of its memorandum.

(2) Any change in the name of a company shall be subject to the provisions of subsections (2) and (3) of section 4 and shall not have effect except with the approval of the Central Government in writing: Provided that no such approval shall be necessary where the only change in the name of the company is the deletion there from, or addition thereto, of the word —Privatell, consequent on the conversion of any one class of companies to another class in accordance with the provisions of this Act.

(3) When any change in the name of a company is made under sub-section (2), the Registrar shall enter the new name in the register of companies in place of the old name and issue a fresh certificate of incorporation with the new name and the change in the name shall be complete and effective only on the issue of such a certificate.

(4) The alteration of the memorandum relating to the place of the registered office from one State to another shall not have any effect unless it is approved by the Central Government on an application in such form and manner as may be prescribed.

(5) The Central Government shall dispose of the application under sub-section (4) within a period of sixty days and before passing its order may satisfy itself that the alteration has the consent of the creditors, debenture-holders and other persons concerned with the company or that the sufficient provision has been made by the company either for the due discharge of all its debts and obligations or that adequate security has been provided for such discharge.

(6) Save as provided in section 64, a company shall, in relation to any alteration of its memorandum, file with the Registrar—

- a)* the special resolution passed by the company under sub-section (1);
- b)* the approval of the Central Government under sub-section (2), if the alteration involves any change in the name of the company.

(7) Where an alteration of the memorandum results in the transfer of the registered office of a company from one State to another, a certified copy of the order of the Central Government approving the alteration shall be filed by the company with the Registrar of each of the States within such time and in such manner as may be prescribed, who shall register the same, and the Registrar of the State where the registered office is being shifted to, shall issue a fresh certificate of incorporation indicating the alteration.

(8) A company, which has raised money from public through prospectus and still has any unutilized amount out of the money so raised, shall not change its objects for which it raised the money through prospectus unless a special resolution is passed by the company and—

- a)* the details, as may be prescribed, in respect of such resolution shall also be published in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated and shall also be placed on the website of the company, if any, indicating there in the justification for such change;
- b)* the dissenting shareholders shall be given an opportunity to exit by the promoters and shareholders having control in accordance with regulations to be specified by the Securities and Exchange Board.

(9) The Registrar shall register any alteration of the memorandum with respect to the objects of the company and certify the registration within a period of thirty days from the date of filing of the special resolution in accordance with clause (a) of sub-section (6) of this section.

(10) No alteration made under this section shall have any effect until it has been registered in accordance with the provisions of this section.

(11) Any alteration of the memorandum, in the case of a company limited by guarantee and not having a share capital, purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member, shall be void.

Doctrine of ultravires

‘Ultra’ means beyond and ‘vires’ means powers. The term ultra vires a company means that the doing of the act is beyond the legal power and authority of the company. The doctrine of ultra vires is important in defining the limits of the powers conferred on the company by its Memorandum of Association.

According to this doctrine, the vires (power) of a company to enter into a contract or transaction is limited by the ambit of the Objects Clause of the Memorandum and the provisions of the Companies Act. Whatever is not permitted by the Objects Clause and the Act, is prohibited by the doctrine of ultra vires. If a company engages in any activity or enters into any contract which is ultra vires (outside the power conferred by) the Memorandum or Act, it will be null and void so far as the company is concerned and it cannot be subsequently ratified or validated even if all the shareholders give their consent. Thus under this doctrine, a company has powers to engage in only such activities or enter into such transactions:

- Which are essential to the attainment of the objects specified in the Memorandum;
- Which are reasonably and fairly incidental to the main objects; and
- Which are permitted by the provisions of the Companies Act.

Effects of Ultra Vires Transactions

If a company enters into transactions, which are ultra vires, it will have the following effects:

(1) Injunction: Whenever a company goes beyond the scope of the object clause, any of its members can get an injunction from the court to restrain the company from undertaking the ultra vires act.

- (2) Personal Liability of Directors: If the transaction is ultra vires, for instance, if the funds of the company are misapplied, the directors will be held personally liable.
- (3) Ultra Vires Contracts: Contracts entered into by a company, which are ultra vires, are void ab initio and unenforceable.
- (4) Property Acquired Ultra Vires: If a company acquires any property under an ultra vires transaction, it has the right to hold the property and protect it against damage by other persons.
- (5) Ultra Vires Torts: A company is not liable for torts committed by its agents or employees in the course of ultra vires transactions.

Articles of Association

Articles of Association (AOA) is the secondary document, which defines the rules and regulations made by the company for its administration and day to day management. In addition to this the articles contain the rights, responsibilities, powers and duties of members and directors of the company. It also includes the information about the accounts and audit of the company. Every company must have its own articles, however, a public company limited by shares can adopt Table A instead of Articles of Association. It comprises of all the necessary details regarding the internal affairs and the management of the company. It is prepared for the persons inside the company, i.e. members, employees, directors, etc. The governance of the company is done according to the rules prescribed in it. The companies, can frame its articles of association as per their requirement and choice.

Definition

As per Section 2(5) of the Companies Act, 2013 “articles” means the articles of association of a company as originally framed or as altered from time to time or applied in pursuance of any previous company law or of this Act.

Alteration of Articles of Association of a Company

Section 14 of the Companies Act, 2013 lays down that subject to the provisions of the Act and to the conditions contained in its memorandum, a company may, by a special resolution, alter its articles. Every alteration of articles shall be filed with the Registrar together with a printed copy of the altered articles within a period of fifteen days. [Section 14(2)].

Any alteration of the articles so registered, shall be valid as if it were originally in the articles. A company may alter its articles in accordance with the above provisions in any of the manners mentioned below:

- (i) by adoption of new set of articles;
- (ii) by addition/insertion of a new article;
- (iii) by deletion of an article;
- (iv) by amendment of a specific article; or
- (v) by substitution of a specific article.

Procedure for Altering Articles of Association

A company which proposes to alter its articles of association has to follow the procedure detailed below:

- (1) Convene and hold a Board meeting to –
 - a) Consider and decide which of the articles are to be altered and pass a formal resolution in this respect.
 - b) Fix time, date and venue for holding a general meeting of the company for passing a special resolution as required by Section 14 of the Companies Act, 2013.
 - c) Approve notice, agenda and explanatory statement to be annexed to the notice of the general meeting as per 102 of the Act.
 - d) Authorise the Company Secretary or any other competent officer of the company to issue notice of the general meeting as approved by the Board.
- (2) On the conclusion of the Board meeting, send to the stock exchanges, where the securities of the company are listed, particulars of the proposed alteration of the articles of association of the company.
- (3) Issue notice of the general meeting along with the explanatory statement, to all the members, directors and the auditor of the company. Also forward three copies of the notice of the general meeting to the concerned stock exchanges as per the Listing Agreement.
- (4) Hold the general meeting and have the special resolution passed.

Note: If the company is a listed company and the alteration of articles of association relates to insertion of the provisions defining a private company then ensure that the Special Resolution as aforesaid is passed only through postal ballot.

- (5) Forward a copy of the proceedings of the general meeting to the concerned stock exchanges as per the Listing Agreement.

(6) File with the ROC, Form MGT – 14 along with a certified copy of the special resolution and the explanatory statement annexed to the notice of the general meeting at which the resolution was passed and a copy of the Articles of Association, within fifteen days of the passing of the resolution along with the prescribed filing fee.

(7) Make necessary changes in all the copies of the articles of association of the company lying in the office of the company.

Prospectus

According to Companies Act, 2013 define “prospectus” means any document described or issued as a prospectus and includes a red herring prospectus referred to in section 32 or shelf prospectus referred to in section 31 or any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a body corporate [Clause (70) of Section 2 of this Bill].

Matters to be stated in Prospectus (section 26):

A prospectus may be issued by or behalf of a public company either with reference to its formation or subsequently, or by or on behalf of any person who is or has been engaged or interested in the formation of a public company.

Contents or Information in Prospectus:

Every prospectus shall state following information:-

- (1) names and addresses of the registered office of the company, company secretary, Chief Financial Officer, auditors, legal advisers, bankers, trustees, if any, underwriters and such other persons as may be prescribed;
- (2) dates of the opening and closing of the issue, and declaration about the issue of allotment letters and refunds within the prescribed time;
- (3) a statement by the Board of Directors about the separate bank account where all monies received out of the issue are to be transferred and disclosure of details of all monies including utilised and unutilised monies out of the previous issue in the prescribed manner;
- (4) details about underwriting of the issue;
- (5) consent of the directors, auditors, bankers to the issue, expert’s opinion, if any, and of such other persons, as may be prescribed;

- (6) the authority for the issue and the details of the resolution passed there for;
- (7) procedure and time schedule for allotment and issue of securities;
- (8) capital structure of the company in the prescribed manner;
- (9) main objects of public offer, terms of the present issue and such other particulars as may be prescribed;
- (10) main objects and present business of the company and its location, schedule of implementation of the project;
- (11) particulars relating to—
- a) management perception of risk factors specific to the project;
 - b) gestation period of the project;
 - c) extent of progress made in the project;
 - d) deadlines for completion of the project; and
 - e) any litigation or legal action pending or taken by a Government Department or a statutory body during the last five years immediately preceding the year of the issue of prospectus against the promoter of the company;
- (12) minimum subscription, amount payable by way of premium, issue of shares otherwise than on cash;
- (13) details of directors including their appointments and remuneration, and such particulars of the nature and extent of their interests in the company as may be prescribed; and
- (14) Disclosures in such manner as may be prescribed about sources of promoter's contribution.

Statement in lieu of prospectus

Statement in lieu of prospectus is similar to actual prospectus but without the invitation to the public for subscribing to the shares of the company. This statement is prepared when a company issues shares by private placement. The statement in lieu of prospectus is prepared for the purpose of record, and it is filed with the Registrar of Companies before allotment of share.

1. The prospectus contains a summary of the past, present and prospects of the company
2. The prospectus expressly invites the public to buy shares issued by the company
3. It is the basis of share issue. The contents of prospectus are considered legal evidence in the event of dispute between share holder and the company.
4. A misleading clause in the prospectus will be taken seriously by the courts.

Liabilities for misstatement

Where a prospectus, issued, circulated or distributed under this Chapter, includes any statement which is untrue or misleading in form or context in which it is included or where any inclusion or omission of any matter is likely to mislead, every person who authorizes the issue of such prospectus shall be liable under section 447:

Provided that nothing in this section shall apply to a person if he proves that such statement or omission was immaterial or that he had reasonable grounds to believe, and did up to the time of issue of the prospectus believe, that the statement was true or the inclusion or omission was necessary.

Civil liability for misstatements in prospectus

(1) Where a person has subscribed for securities of a company acting on any statement included, or the inclusion or omission of any matter, in the prospectus which is misleading and has sustained any loss or damage as a consequence thereof, the company and every person who—

- a) is a director of the company at the time of the issue of the prospectus;
- b) has authorised himself to be named and is named in the prospectus as a director of the company, or has agreed to become such director, either immediately or after an interval of time;
- c) is a promoter of the company;
- d) has authorised the issue of the prospectus; and
- e) is an expert referred to in sub-section (5) of section 26, shall, without prejudice to any punishment to which any person may be liable under section 36, be liable to pay compensation to every person who has sustained such loss or damage.

(2) No person shall be liable under sub-section (1), if he proves—

- a) that, having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or
- b) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent.

(3) Notwithstanding anything contained in this section, where it is proved that a prospectus has been issued with intent to defraud the applicants for the securities of a company or any other person or for any fraudulent purpose, every person referred to in subsection (1) shall be personally responsible, without

any limitation of liability, for all or any of the losses or damages that may have been incurred by any person who subscribed to the securities on the basis of such prospectus.

DIRECTORS:

The persons who are in charge of the management of the affairs of a company are termed as directors. They are collectively known as Board of Directors or the Board. The directors are the brain of a company. They occupy a pivotal position in the structure of the company. Directors take the decision regarding the management of a company collectively in their meetings known as Board Meetings or at the meetings of their committees constituted for certain specific purposes. Section 2 (10) of the Companies Act, 2013 defined that “Board of Directors” or “Board”, in relation to a company, means the collective body of the directors of the company.

The Companies Act 2013 has introduced significant changes in the composition of the board of directors of a company. The key changes introduced are set out below:

NUMBER OF DIRECTORS:

The following key changes have been introduced regarding composition of the board:

Section 149(1) of the Companies Act, 2013 requires that every company shall have a minimum number of 3 directors in the case of a public company, two directors in the case of a private company, and one director in the case of a One Person Company. A company can appoint maximum 15 fifteen directors. A company may appoint more than fifteen directors after passing a special resolution in general meeting and approval of Central Government is not required. A period of one year has been provided to enable the companies to comply with this requirement.

1. A one person company shall have a minimum of 1 (one) director;
2. Companies Act 1956 permitted a company to determine the maximum number of directors on its board by way of its articles of association. Companies Act 2013, however, specifically provides that a company may have a maximum of 15 (fifteen) directors.
3. Companies Act 1956 required public companies to obtain Central Government's approval for increasing the number of its directors above the limit prescribed in its articles or if such increase would lead to the total number of directors on the board exceeding 12 (twelve) directors. Companies Act 2013

however, permits every company to appoint directors above the prescribed limit of 15 (fifteen) by authorizing such increase through a special resolution.

Duties of directors

Companies Act 1956 did not contain any provisions that specifically identified the duties of directors.

Companies Act 2013 has set out the following duties of directors:

- To act in accordance with company's articles;
 - To act in good faith to promote the objects of the company for benefit of the members as a whole, and the best interest of the company, its employees, shareholders, community and for protection of the environment;
 - Exercise duties with reasonable care, skill and diligence, and exercise of independent judgment;
- The director is not permitted to:
- Be involved in a situation in which he may have direct or indirect interest that conflicts, or may conflict, with the interest of the company;
 - Achieve or attempt to achieve any undue gain or advantage, either to himself or his relatives, partners or associates.

Role (position) of directors in a company

A Director is part of a collective body of Directors called the Board, responsible for the superintendence, control and direction of the affairs of the Company.

- Directors as Agents : A company as an artificial person, acts through directors who are elected representatives of the shareholders and who execute decision making for the benefit of shareholders
- Directors as employees: When the director is appointed as whole time employee of the company then that particular directors shall be considered as employee director or whole time director
- Directors as officers: Director treated as officers of an company. They are liable to certain penalties if the provisions of the companies act are not strictly complied with.
- Director as trustees: Director is treated as trustees of the company, money and property: and of the powers entrusted to and vested in them only as trustee.
- Director as “Key Managerial Personnel” - key managerial personnel, in relation to a company, means—
(i) the Chief Executive Officer or the managing director or the manager;

- (ii) the company secretary;
- (iii) the whole-time director;
- (iv) the Chief Financial Officer; and
- (v) such other officer as may be prescribed;

Director as “Officer in default”

Officer who is in default, for the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company, namely:—

- (i) whole-time director;
- (ii) key managerial personnel;
- (iii) where there is no key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified;
- (iv) any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default;
- (v) any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity;
- (vi) every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance;
- (vii) in respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer.

LIABILITIES OF DIRECTORS

Liability of non-executive / Independent Directors

An independent director and a non-executive director not being promoter or key managerial personnel, shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently.

The liability of director may be Liability as “Officer”

Section 66 (Reduction of Capital)

If any officer of the company—

- (a) knowingly conceals the name of any creditor entitled to object to the reduction;
- (b) knowingly misrepresents the nature or amount of the debt or claim of any creditor; or
- (c) abets or is privy to any such concealment or misrepresentation as aforesaid, he shall be liable under section 447.

Section 105 (Proxies)

If for the purpose of any meeting of a company, invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense to any member entitled to have a notice of the meeting sent to him and to vote thereat by proxy, every officer of the company who knowingly issues the invitations as aforesaid or wilfully authorises or permits their issue shall be punishable with fine which may extend to one lakh rupees. Provided that an officer shall not be punishable under this sub-section by reason only of the issue to a member at his request in writing of a form of appointment naming the proxy, or of a list of persons willing to act as proxies, if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.

Section 173 (Meetings of Board) Every officer of the company whose duty is to give notice under this section and who fails to do so shall be liable to a penalty of twenty-five thousand rupees.

Section 204 (Secretarial Audit)

If a company or any officer of the company or the company secretary in practice, contravenes the provisions of this section, the company, every officer of the company or the company secretary in practice, who is in default, shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

Section 207 (Conduct of Inspection and Enquiry)

KARPAGAM ACADEMY OF HIGHER EDUCATION, COIMBATORE

Class: I MBA

Course Name: Legal Aspects of Business

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Unit - II

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If any director or officer of the company disobeys the direction issued by the Registrar or the inspector under this section, the director or the officer shall be punishable with imprisonment which may extend to one year and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees. If a director or an officer of the company has been convicted of an offence under this section, the director or the officer shall, on and from the date on which he is so convicted, be deemed to have vacated his office as such and on such vacation of office, shall be disqualified from holding an office in any company.

Section 212 (Inspection by SFIO)

On receipt of the investigation report, the Central Government may, after examination of the report (and after taking such legal advice, as it may think fit), direct the Serious Fraud Investigation Office to initiate prosecution against the company and its officers or employees, who are or have been in employment of the company or any other person directly or indirectly connected with the affairs. Notwithstanding anything contained in this Act or in any other law for the time being in force, the investigation report filed with the Special Court for framing of charges shall be deemed to be a report filed by a police officer under section 173 of the Code of Criminal Procedure, 1973 of the company.

Section 274 (Directions for filing statement of Affairs – Winding Up by Tribunal) If any director or officer of the company contravenes the provisions of this section, the director or the officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both.

Liability as “Officer in Default”

Directors are liable as officers in default under all sections where specific penalty is provided for each officer in default. Where no specific penalty is provided under the Act, they are liable under Section 450.

Liability for “Fraud”

“Fraud” in relation to affairs of a company or any body corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss; Any person who is found to be guilty of fraud, shall be punishable

with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud.

Personal Liability Directors can be made personally liable if

When the directors enter into contract in their own name. When they enter into contracts on behalf of company but fails to use “LTD. or PVT LTD.” when directors exceeds their powers.

The BOD should act an agent of company, not of a single director. Therefore a single director cannot enter into a contract on behalf of company unless the BOD authorises.

Section 35 – Civil Liability for mis-statement in prospectus

Where it is proved that a prospectus has been issued with intent to defraud the applicants for the securities of a company or any other person or for any fraudulent purpose, every person concerned shall be personally responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by any person who subscribed to the securities on the basis of such prospectus.

Section 75 – Damages for Fraud

Where a company fails to repay the deposit or part thereof or any interest thereon referred to in section 74 within the time specified in sub-section (1) of that section or such further time as may be allowed by the

Tribunal under subsection (2) of that section, and it is proved that the deposits had been accepted with intent to defraud the depositors or for any fraudulent purpose, every officer of the company who was responsible for the acceptance of such deposit shall, without prejudice to the provisions contained in subsection (3) of that section and liability under section 447, be personally responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by the depositors.

Section 339 – Liability for fraudulent conduct of business

If in the course of the winding up of a company, it appears that any business of the company has been carried on with intent to defraud creditors of the company or any other persons or for any fraudulent purpose, the Tribunal, on the application of the Official Liquidator, or the Company Liquidator or any creditor or contributory of the company, may, if it thinks it proper so to do, declare that any person, who is or has been a director, manager, or officer of the company or any persons who were knowingly parties

to the carrying on of the business in the manner aforesaid shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the Tribunal may direct.

WINDING UP OF COMPANY

Winding up of a company may be required due to a number of reasons including closure of business, loss, bankruptcy, passing away of promoters, etc., The procedure for winding up of a company can be initiated voluntarily by the shareholders or creditors or by a Tribunal.

As per section 270 of the Companies Act 2013, the procedure for winding up of a company can be initiated either –

- a) By the tribunal or,
- b) Voluntary.

I. WINDING UP OF A COMPANY BY A TRIBUNAL:-

As per Companies Act 1956, a company can be wound up by a tribunal on the basis of the following reasons:

1. Suspension of the business for one year from the date of incorporation or suspension of business for whole year.
2. Reduction in number of minimum members as specified in the act (2 in case of private company and 7 in case of public company)

But with the introduction of new Companies Act 2013, these above stated grounds for winding up have been deleted and some new situations for winding up have been inserted.

As per new Companies Act 2013, a company can be wound up by a tribunal in the below mentioned circumstances:

1. When the company is unable to pay its debts
2. If the company has by special resolution resolved that the company be wound up by the tribunal.
3. If the company has acted against the interest of the integrity or morality of India, security of the state, or has spoiled any kind of friendly relations with foreign or neighboring countries.
4. If the company has not filled its financial statements or annual returns for preceding 5 consecutive financial years.
5. If the tribunal by any means finds that it is just & equitable that the company should be wound up.

6. If the company in any way is indulged in fraudulent activities or any other unlawful business, or any person or management connected with the formation of company is found guilty of fraud, or any kind of misconduct.

II. FILING OF WINDING UP PETITION:-

Section 272 provides that a winding up petition is to be filed in the prescribed form no 1, 2 or 3 whichever is applicable and it is to be submitted in 3 sets. The petition for compulsory winding up can be presented by the following persons:

- The company
- The creditors ; or
- Any contributory or contributories
- By the central or state govt.
- By the registrar of any person authorized by central govt. for that purpose

At the time of filing petition, it shall be accompanied with the statement of Affairs in form no 4. That petition shall state the facts up to a specific date which shall not more than 15 days prior to the date of making the statement. After preparing the statement it shall be certified by a Practicing Chartered Accountant. This petition shall be advertised in not less than 14 days before the date fixed for hearing in both of the newspapers English and any other regional language.

III. FINAL ORDER AND ITS CONTENT:-

The tribunal after hearing the petition has the power to dismiss it or to make an interim order as it think appropriate or it can appoint the provisional liquidator of the company till the passing of winding up order. An order for winding up is given in form 11.

IV. VOLUNTARY WINDING UP OF A COMPANY:-

The company can be wound up voluntarily by the mutual decision of members of the company, if:

- The company passes a Special Resolution stating about the winding up of the company.
- The company in its general meeting passes a resolution for winding up as a result of expiry of the period of its duration as fixed by its Articles of Association or at the occurrence of any such event where the articles provide for dissolution of company.

Steps for Voluntary Winding up of a Company

The following are the steps for initiating a voluntary winding up of a Company:

Step 1: Convene a Board Meeting with two Director or by a majority of Directors. Pass a resolution with a declaration by the Directors that they have made an enquiry into the affairs of the Company and that, having done so, they have formed the opinion that the company has no debts or that it will be able to pay its debts in full from the proceeds of the assets sold in voluntary winding up of the company. Also, fix a date, place, and time agenda for a General Meeting of the Company after five weeks of this Board Meeting.

Step 2: Issue notices in writing calling for the General Meeting of the Company proposing the resolutions, with suitable explanatory statement.

Step 3: In the General Meeting, pass the ordinary resolution for winding up of the company by ordinary majority or special resolution by 3/4 majority. The winding up of the company shall commence from the date of passing of this resolution.

Step 4: On the same day or the next day of passing of resolution of winding up of the Company, conduct a meeting of the Creditors. If two thirds in value of creditors of the company are of the opinion that it is in the interest of all parties to wind up the company, then the company can be wound up voluntarily. If the company cannot meet all its liabilities on winding up, then the Company must be wound up by a Tribunal.

Step 5: Within 10 days of passing of resolution for winding up of company, file a notice with the Registrar for appointment of liquidator.

Step 6: Within 14 days of passing of resolution for winding up of company, give a notice of the resolution in the Official Gazette and also advertise in a newspaper with circulation in the district where the registered office is present.

Step 7: Within 30 days of General Meeting for winding up of company, file certified copies of the ordinary or special resolution passed in the General Meeting for winding up of the company.

Step 8: Wind up affairs of the company and prepare the liquidators account of the winding up of the company and get the same audited.

Step 9: Call for final General Meeting of the Company.

Step 10: Pass a special resolution for disposal of the books and papers of the company when the affairs of the company are completely wound up and it is about to be dissolved.

Step 11: Within two weeks of final General Meeting of the Company, file a copy of the accounts and file and application to the Tribunal for passing an order for dissolution of the company.

Step 12: If the Tribunal is satisfied, the Tribunal shall pass an order dissolving the company within 60 days of receiving the application.

Step 13: The company liquidator would then file a copy of the order with the Registrar.

Step 14: The Registrar, on receiving the copy of the order passed by the Tribunal then publish a notice in the Official Gazette that the company is dissolved.

CORPORATE GOVERNANCE

In a narrow sense, corporate governance involves a set of relationships amongst the company's management, its board of directors, its shareholders, its auditors and other stakeholders. These relationships, which involve various rules and incentives, provide the structure through which the objectives of the company are set, and the means of attaining these objectives as well as monitoring performance are determined. Thus, the key aspects of good corporate governance include transparency of corporate structures and operations; the accountability of managers and the boards to shareholders; and corporate responsibility towards stakeholders. Corporate governance is the system of rules, practices and processes by which a company is directed and controlled. Corporate governance essentially involves balancing the interests of the many stakeholders in a company - these include its shareholders, management, customers, suppliers, financiers, government and the community. Since corporate governance also provides the framework for attaining a company's objectives, it encompasses practically every sphere of management, from action plans and internal controls to performance measurement and corporate disclosure. Thus Corporate governance broadly refers to the mechanisms, processes and relations by which corporations are controlled and directed. Governance structures and principles identify the distribution of rights and responsibilities among different participants in the corporation (such as the board of directors, managers, shareholders, creditors, auditors, regulators, and other stakeholders) and includes the rules and procedures for making decisions in corporate affairs. Corporate governance includes the processes through which corporations' objectives are set and pursued in the context of the social, regulatory and market environment.

Definition of Corporate Governance

“Accountability to providers of capital.” — Bruce Weber

John L. Weinberg “Corporate governance is the control of management in the best interests of the company, including accountability to shareholders who elect directors and auditors and vote on say on pay”

Need of Corporate Governance:

The need for corporate governance has arisen because of the increasing concern about the noncompliance of standards of financial reporting and accountability by boards of directors and management of corporate inflicting heavy losses on investors. The collapse of international giants like Enron, World Com of the US and Xerox of Japan are said to be due to the absence of good corporate governance and corrupt practices adopted by management of these companies and their financial consulting firms. The failures of these multinational giants bring out the importance of good corporate governance structure making clear the distinction of power between the Board of Directors and the management which can lead to appropriate governance processes and procedures under which management is free to manage and board of directors is free to monitor and give policy directions. In India, SEBI realised the need for good corporate governance and for this purpose appointed several committees such as Kumar Manglam Birla Committee, Naresh Chandra Committee and Narayana Murthy Committee.

Importance of Corporate Governance:

1) Investors and shareholders of a corporate company need protection for their investment due to lack of adequate standards of financial reporting and accountability. It has been noticed in India that companies raised capital from the market at high valuation of their shares by projecting wrong picture of the company's performance and profitability. The investors suffered a lot due to unscrupulous management of corporate that performed much less than reported at the time of raising capital. There is increasing awareness and consensus among Indian investors to invest in companies which have a record of observing practices of good corporate governance. Therefore, for encouraging Indian investors to make adequate investment in the stock of corporate companies and thereby boosting up rate of growth of the economy, the protection of their interests from fraudulent practices of corporate of boards of directors and management are urgently needed.

2) Corporate governance is considered as an important means for paying heed to investors' grievances. Kumar Manglam Birla Committee on corporate governance found that companies were not paying adequate attention to the timely dissemination of required information to investors in by India. Though some measures have been taken by SEBI and RBI but much more required to be taken by the companies themselves to pay heed to the investors grievances and protection of their investment by adopting good standards of corporate governance.

3) The importance of good corporate governance lies in the fact that it will enable the corporate firms to (1) attract capital and (2) perform efficiently. This will help in winning investors confidence. Investors will be willing to invest in the companies with a good record of corporate governance. New policy of liberalization and deregulation adopted in India since 1991 has given greater freedom to management which should be prudently used to promote investors' interests. In India there are several instances of corporate' failures due to lack of transparency and disclosures and instances of falsification of accounts. This discourages investors to make investment in the companies with poor record of corporate governance.

4) Indispensable for healthy and vibrant stock market. An important advantage of strong corporate governance is that it is indispensable for a vibrant stock market. A healthy stock market is an important instrument for investors protection. A bane of stock market is insider trading. Insider trading means trading of shares of a company by insiders such directors, managers and other employees of the company on the basis of information which is not known to outsiders of the company. It is through insider trading that the officials of a corporate company take undue advantage at the expense of investors in general. Insider trading is a kind of fraud committed by the officials of the company. One way of dealing with the problem of insider trading is enacting legislation prohibiting such trading and enforcing criminal action against violators. In India, insider trading has been rampant and therefore it was prohibited by SEBI. However, the experience shows prohibiting insider trading by law is not the effective way of dealing with the problem of insider trading because legal process of providing punishment is a lengthy process and conviction rate is very low. According to Sandeep Parekh, an advocate (Securities and Financial Regulations), the effective way of tackling the problem is by encouraging the companies to practice self regulation and taking prophylactic action. This is inherently

connected to the field of corporate governance. It is a means by which the company signals to the market that effective self-regulation is in place and that investors are safe to invest in their securities. In addition to prohibiting inappropriate actions (which might not necessarily be prohibited) self-regulation is also considered an effective means of creating shareholders value. Companies can always regulate their directors/officers beyond what is prohibited by the law”.

5. Changing Ownership Structure: In recent years, the ownership structure of companies has changed a lot. Public financial institutions, mutual funds, etc. are the single largest shareholder in most of the large companies. So, they have effective control on the management of the companies. They force the management to use corporate governance. That is, they put pressure on the management to become more efficient, transparent, accountable, etc. They also ask the management to make consumer-friendly policies, to protect all social groups and to protect the environment. So, the changing ownership structure has resulted in corporate governance.

6. Importance of Social Responsibility: Today, social responsibility is given a lot of importance. The Board of Directors have to protect the rights of the customers, employees, shareholders, suppliers, local communities, etc. This is possible only if they use corporate governance.

7. Growing Number of Scams: In recent years, many scams, frauds and corrupt practices have taken place. Misuse and misappropriation of public money are happening everyday in India and worldwide. It is happening in the stock market, banks, financial institutions, companies and government offices. In order to avoid these scams and financial irregularities, many companies have started corporate governance.

8. Indifference on the part of Shareholders: In general, shareholders are inactive in the management of their companies. They only attend the Annual general meeting. Postal ballot is still absent in India. Proxies are not allowed to speak in the meetings. Shareholders associations are not strong. Therefore, directors misuse their power for their own benefits. So, there is a need for corporate governance to protect all the stakeholders of the company.

9. Globalisation: Today most big companies are selling their goods in the global market. So, they have to attract foreign investor and foreign customers. They also have to follow foreign rules and regulations. All this requires corporate governance. Without Corporate governance, it is impossible to enter, survive and succeed the global market.

10. Takeovers and Mergers: Today, there are many takeovers and mergers in the business world. Corporate governance is required to protect the interest of all the parties during takeovers and mergers.

11. SEBI: SEBI has made corporate governance compulsory for certain companies. This is done to protect the interest of the investors and other stakeholders.

Part A (ONE Mark)

Multiple Choice Questions
Online Examination

Part – B (2 Marks)

1. Define company.
2. What is public company?
3. What is private company?
4. What is holding company?
5. What is statutory company?
6. What is Perpetual Succession?
7. What is statutory company?
8. What is Government Company?
9. State any four circumstances in which directors are personally liable.
10. Define Corporate Governance.
11. What are the contents of a prospectus?
12. Who is an independent director?
13. List the powers of directors.
14. List the duties of directors.
15. Give the responsibilities of director.
16. What is the role of director as agents?
17. State the role of director as officers.
18. What are the records to be maintained during director's meeting?
19. What are the reasons considered for a winding up of a company?
20. What are the essential characteristics of a company?
21. What are the contents of MOA?
22. What do you mean by perpetual succession?
23. What do you mean by doctrine of ultra -vires?
24. What are the functions of the promoter of a company?
25. State any four circumstances in which directors are personally liable.

26. What is a prospectus?
27. Define Memorandum of Association.
28. Define Articles of Association
29. Define corporate governance.
30. State the importance of corporate governance.

Part – C (8 Marks)

1. Explain the nature and different types of companies in detail.
2. Explain the procedures involved in formation of a company.
3. What are the characteristics of a company? Explain.
4. Explain the role of promoters in promoting the company.
5. Discuss the duties and liabilities of directors of a company.
6. What are the powers and duties of Directors?
7. What are the contents of Articles of Association? How can they be altered?
8. Explain the differences between private and public limited company?
9. What are the different meetings of a company?
10. Discuss the contents of Memorandum of Association.
11. What is a Prospectus and what are the Contents of the Prospectus?
12. Explain the provisions of companies act with regard to winding up subject to the supervision of the court.
13. State the method and procedures followed in winding up of a company.
14. Explain the reasons and procedures of winding up of a company.
15. What are the different kinds of winding up of a company? Explain each in detail.
16. Discuss the role of corporate governance in making a company success and the stakeholders responsible for corporate governance.
17. Explain the concept of Corporate Governance.
18. Discuss the role of different authorities involved in corporate governance in India.

UNIT 2

QUESTIONS	OPTION 1	OPTION 2	OPTION 3	OPTION 4	ANSWERS
The term company is defined under which Sec of the Act?	Sec 3(1)	Sec4 (2)	Sec2 (4)	Sec1 (3)	Sec 3(1)
Which of the following are characteristics of a company ?	It has unlimited liability.	It exists only in contemplation of law	It has not a perpetual succession	It comes to an end on the death of all its members.	It exists only in contemplation of law
According to which section, the name of the company should end with “Ltd” or “Pvt Ltd”	10	11	12	13	13
Under which section a private company can automatically converted into a public company	34	43	53	35	43
A company is named as govt. company if it holds _____% of paid up share capital	more than 30	more than 40	more than 50	more than 60	more than 50
Which one of the following companies deal with only its shareholders for their benefit?	Private limited company.	Chit fund company	Nidhi company.	Banking company.	Nidhi company.
The Reserve Bank of India is an example of a _____.	registered company.	statutory company .	chartered company .	unlimited company	statutory company .
When can a private company commence business ?	at any time .	after applying for registration.	after obtaining the certificate of incorporation.	after obtaining the certificate of commencement of business .	after obtaining the certificate of incorporation.
The minimum number of persons required to form a private company is _____.	7	3	2	4	2
Maximum no .of members in case of public company is	50	100	150	Unlimited	Unlimited
The name of a company can be changed by_____.	an ordinary resolution	a special resolution	the approval of the union government	a special resolution and with the approval of the central government	a special resolution and with the approval of the central government

QUESTIONS	OPTION 1	OPTION 2	OPTION 3	OPTION 4	ANSWERS
When is a company said to have been registered?	When it files the memorandum of association with the registrar of	When it gets the certificate of incorporation	When it gets the certificate of commencement of business	When it actually starts its business	When it gets the certificate of incorporation
Under which section, if company fails to commence its main object the court may order	403 (f)	413 (f)	423 (f)	433 (f)	433 (f)
The capital clause of a company can be changed with the permission of _____	Company law board	Registrar	Court	Government	Court
The maximum number of members in the private companies is -----	200	100	50	7	200
_____ companies must have their own Articles.	Government companies.	Unlimited companies.	Companies limited by shares.	Registered companies.	Unlimited companies.
Which of the following companies must file a statement in lieu of prospectus?	A private limited company .	A cooperative society .	A company that has issued a prospectus .	A public company that has not issued a prospectus .	A public company that has not issued a prospectus .
A public corporation denotes a _____.	private limited company .	public company .	government company .	statutory corporation .	statutory corporation .
The companies which are formed under companies Act. 1956. They will be called as	Chartered companies	Statutory companies	Registered companies	Foreign companies	Registered companies
How many members should sign the MOA in case of public company _____	1	3	5	7	7
The amount of minimum subscription may be learnt from the _____.	prospectus.	memorandum of association.	articles of association .	records of general meetings	prospectus.
A prospectus is to be issued within _____ days of registration.	30	60	90	180	90
A company shall not proceed to allot shares until the beginning of the _____ day from the date of issue of prospectus	second	third	fifth	seventh	second

QUESTIONS	OPTION 1	OPTION 2	OPTION 3	OPTION 4	ANSWERS
An act is said to be ultra vires a company when it is beyond the powers _____.	of the company	of the directors	of the directors but not the company.	conferred on the company by the Articles.	of the company
In the process of conversion of a private company into a public company which prospectus must be issued	Deemed prospectus	Shelf prospectus	Statement in lieu of prospectus	General order	Statement in lieu of prospectus
Public company Should start business only after getting certificate of	Incorporation	Commencement of business	Official order	Government order	Commencement of business
Definition of prospectus was given under which sec.	2 (30)	2 (32)	2 (34)	2(36)	2(36)
When there is a untrue statement in a prospectus who can sue	Subscribed in primary market	Subscribed in secondary market	Right issue	Company board	Subscribed in primary market
_____are the prospectus issued instead of full prospectus	Abridged	Statement in lieu	Shelf	Red herring	Abridged
_____ prospectus were issued in case securities were issued in stages	Deemed	Shelf	Red herring	Abridged	Shelf
_____ years of imprisonment will be imposed in case of issue of prospectus with untrue statement	1	2	3	4	2
_____ prospectus were issued in order to test the market before finalizing issue size/price	Deemed	Shelf	Red herring	Abridged	Red herring
What is known as a charter of a Company?	Memorandum of Association	Bye laws	Articles of Association	Prospectus.	Memorandum of Association
The _____defines the scope of a company's activities.	prospectus	statutory declaration	memorandum of association	articles of association	memorandum of association
The _____defines a company's relations with the outside world.	prospectus	statutory declaration	memorandum of association	articles of association	memorandum of association
The most important document of a company is its_____.	prospectus .	annual report.	memorandum of association .	articles of association	memorandum of association .

QUESTIONS	OPTION 1	OPTION 2	OPTION 3	OPTION 4	ANSWERS
The rules and regulations for the internal management of a company are contained in its_____.	prospectus .	annual report.	memorandum of association .	articles of association	articles of association
The share capital of a company may be reduced by_____.	an ordinary resolution	a special resolution .	a resolution of the board of directors .	obtaining permission from the company law board	a special resolution .
The articles of association can be altered by_____.	a resolution of the board of directors .	an ordinary resolution in general meeting .	a special resolution in general meeting .	obtaining permission from the company law board .	a special resolution in general meeting .
The altered Memorandum must be filed with the Registrar within _____.	1 month of the company Law Boards order .	2 months of the company Law Boards order.	3 months of the company Law Boards order.	4 months of the company Law Boards order.	3 months of the company Law Boards order.
Which of the following clause of memorandum cannot be altered	Name	Object	Situation	Liability	Liability
Constitution of the company is	memorandum	articles	prospectus	Commencement certificate	memorandum
How many directors of a public company, unless the articles provide otherwise, must be appointed by the company in general meeting	All the directors .	One half of the directors .	Two-thirds of the directors .	Three-fourths of the directors	Two-thirds of the directors .
The _____constitute the top administrative organ of the company. .	general manager .	shareholders.	board of directors .	advisory panel .	board of directors .
Who/what appoints the first directors of a company ?	The shareholders in general meeting .	The Registrar of companies .	The articles of association .	The promoters .	The promoters .
A directors election takes place in a general meeting through a separated Resolution passed by a _____majority	single .	two-thirds.	three-fourths.	five-sixths .	single .

QUESTIONS	OPTION 1	OPTION 2	OPTION 3	OPTION 4	ANSWERS
Which of the following is beyond the powers of the board of directors ?	To issue debentures .	To make loans .	To remit the payment of any debt due by a director .	to issue prospectus.	To remit the payment of any debt due by a director .
Where a company has three directors , the maximum remuneration payable to all of them is _ % of annual profits	5	10	20	25	10
Who may be appointed as a director of a company?	An individual.	A body corporate.	A firm.	An association.	An individual.
A part from the board of directors, a company can have _____.	only a manager.	only a managing director .	both a manager and a managing director .	either a manager or a managing director .	either a manager or a managing director .
Under the companies Act, which one of the following powers can be exercised by the Board of Directors?	Power to sell the company's undertakings.	Power to make call.	Power to reappoint an auditor.	Power to borrow money in excess of the paid up capital.	Power to make call.
A person cannot be a director of more than as per the Companies (Amendment) Act, 2000.	5 companies.	10 companies.	15 companies.	20 companies.	15 companies.
_____ contains a model form of memorandum of association of a company limited by shares	Table A.	Table B.	Table C.	Table D.	Table B.
Mark out the document that need not be prepared and registered with the registrar of companies in public limited companies	statutory declaration	memorandum of association .	articles of association .	directors undertakings to take up and pay for qualification shares.	articles of association .
Which of the following documents may be changed with retrospective effect?	memorandum of association .	articles of association .	prospectus .	Statement in lieu of prospectus	articles of association .
The framework for establishing good corporate governance and accountability was originally set up by the	Thornton Committee	Nestlé Committee	Cadbury Committee	Rowntree Committee	Cadbury Committee
Which of the following is not one the underlying principles of the corporate governance Combined Code of Practice?	accountability	openness	integrity	acceptability	acceptability

QUESTIONS	OPTION 1	OPTION 2	OPTION 3	OPTION 4	ANSWERS
Where an organization takes into account the effect its strategic decisions have on society, this is known as:	Corporate governance	Business policy	Business ethics	Corporate social responsibility	Corporate social responsibility
A voluntary winding-up commences when:	the members of the company pass a special resolution to wind up;	an application is filed with the court by the members of the company;	the company is unable to pay its debts;	an unpaid creditor applies for the winding up.	the members of the company pass a special resolution to wind up;
The party with the highest priority in a court ordered winding-up is:	the liquidator	creditors secured via a floating charge	workers compensation insurers	employees	creditors secured via a floating charge

UNIT- III – Industrial Law
SYLLABUS

An Overview of Factories Act - Payment of Wages Act - Payment of Bonus Act - Industrial Disputes Act

FACTORIES ACT, 1948

Introduction

In India the first Factories Act was passed in 1881. This Act was basically designed to protect children and to provide few measures for health and safety of the workers. This law was applicable to only those factories, which employed 100 or more workers. In 1891 another factories Act was passed which extended to the factories employing 50 or more workers.

Definition of a Factory

“Factory” is defined in Section 2(m) of the Act. It means any premises including the precincts thereof-

- i. Whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on; or
- ii. Whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on;

But does not include a mine subject to the operation of the Mines Act, 1952 or a mobile unit belonging to the Armed forces of the Union, a railway running shed or a hotel, restaurant or eating place.

Highlights

The Factories Act regulates the conditions of work (health, safety, etc) in factories. It safeguards the interests of the workers and it is for the welfare of the factory workers.

The act received the assent of Governor General of India on September 23, 1948 and came into force on April 1, 1949 and extends to the whole of India. It was, in fact, extended to Dadra & Nagar Haveli, Pondicherry in 1963, to Goa in 1965 and to the State of Jammu & Kashmir in 1970.

This act was further amended many times (1949, 1950, 1954, 1956, 1976 and 1989). The act is applicable to any factory in which ten or more than ten workers are working.

Scope of the Factory Act 1948

- 1) Regulate working condition in the factories.
- 2) Basic minimum requirements for ensuring safety, health and welfare of workers
- 3) Applicable of all workers
- 4) Applicable to all factories using power and employing 10 or more workers and if not using power, employing 20 or more workers on any day of the preceding 12 months

Main Provisions of Factory Act 1948

- ✓ Compulsory approval, licensing and registration of factories
- ✓ Health measures
- ✓ Safety measures
- ✓ Welfare measures
- ✓ Working hours
- ✓ Employment of women and young persons
- ✓ Annual leave provision
- ✓ Accident and occupational diseases
- ✓ Dangerous operations
- ✓ Penalties
- ✓ Obligations and rights of employees

Some of the Crucial Sections

Registration & Renewal of Factories

SECTION. 6: To be granted by Chief Inspector of Factories on submission of prescribed form, fee and plan.

Employer to Ensure Health of Workers Pertaining to

- Cleanliness Disposal of wastes and effluents - Sec 12
- Ventilation and temperature dust and fume - Sec 13
- Overcrowding Artificial humidification Lighting – Sec. 14
- Drinking water Spittoons. - Sec. 18

Safety Measures

- Fencing of machinery – Sec. 21
- Work on near machinery in motion. – Sec 22
- Employment prohibition of young persons on dangerous machines.– Sec 23
- Striking gear and devices for cutting off power. – Sec 24
- Self-acting machines.- Sec 25
- Casing of new machinery.- Sec 26
- Prohibition of employment of women and children near cotton-openers.- Sec 27
- Hoists and lifts.- Sec 28.

Welfare Measures

- Washing facilities – Sec 42
- Facilities for storing and drying clothing – Sec 43
- Facilities for sitting – Sec 44
- First-aid appliances – one first aid box not less than one for every 150 workers– Sec 45
- Canteens when there are 250 or more workers. – Sec 46
- Shelters, rest rooms and lunch rooms when there are 150 or more workers. – Sec 47
- Crèches when there are 30 or more women workers. – Sec 48
- Welfare office when there are 500 or more workers. – Sec 49

Working Hours, Spread Over & Overtime of Adults

- Weekly hours not more than 48 - Sec: 51
- Daily hours, not more than 9 hours. - Sec: 54

- Intervals for rest at least ½ hour on working for 5 hours. - Sec: 55
- Spread over not more than 10½ hours. - Sec: 56
- Overlapping shifts prohibited. - Sec: 58
- Extra wages for overtime double than normal rate of wages - Sec:59
- Restrictions on employment of women before 6AM and beyond 7 PM. - Sec: 60

Annual Leave with Wages

- A worker having worked for 240 days @ one day for every 20 days and for a child one day for working of 15 days.
- Accumulation of leave for 30 days.

Sec. 79

Approval, Licensing and Registration of Factories

(1) The State Government may make rules

Requiring for the purposes of this Act, the submission of plans of any class or description of factories to the Chief Inspector or the State Government;

(a) requiring the previous permission in writing of the State Government or the Chief Inspector to be obtained for the site on which the factory is to be situated and for the construction or extension of any factory or class or description of factories;

(b) requiring for the purpose of considering applications for such permission the submission of plans and specifications;

(c) prescribing the nature of such plans and specifications and by whom they shall be certified;

(d) requiring the registration and licensing of factories, or any class or description of factories, and prescribing the fees payable for such registration and licensing and for the renewal of licences;

(e) requiring that no licence shall be granted or renewed unless the notice specified in section 7 has been given.

(2) If on an application for permission referred to in clause (aa) of sub-section (1) accompanied by the plans and specifications required by the rules made under clause (b) of that sub-section, sent to the State Government or Chief Inspector by registered post, no order is communicated to the

applicant within three months from the date on which it is so sent, the permission applied for in the said application shall be deemed to have been granted.

(3) Where a State Government or a Chief Inspector refuses to grant permission to the site, construction or extension of a factory or to the registration and licensing of a factory, the applicant may within thirty days from the date of such refusal, appeal to the Central Government if the decision appealed for was of the State Government, and to the State Government in any other case.

Safety Provisions of the Act

1) Fencing of Machinery

Each and every dangerous hazardous and moving part of machinery shall be securely fenced by safeguards of substantial Construction, which shall be constantly maintained and kept in position while the parts of machinery they are fencing are in motion or in use.

2) Work on Near Machinery in Motion

There in any factory it becomes necessary to examine any part of machinery, such examination or operation shall be made or carried out only by a specially trained adult male worker wearing tight fitting clothing. Such worker shall not handle a belt at a moving pulley unless the belt is not more than fifteen centimetres in width.

No woman or young person shall be allowed to clean, lubricate or adjust any part of a prime mover or of any transmission machinery while the prime mover or transmission machinery is in motion.

3) Employment of Young Person's on Dangerous Machines

No young person shall be required or allowed to work at any unless he has been fully instructed as to the dangers arising in connection with the machine and the precautions to be observed and has received sufficient training in work at the machine.

4) Striking Gear and Devices for Cutting Off Power

In every factory- (a) suitable striking gear or other efficient mechanical appliance shall be provided and maintained and used to move driving belts to and from fast and loose pulleys which form part of the transmission machinery, such gear or appliances shall be so constructed, placed and maintained as to prevent the belt from creeping back on to the fast pulley.

5) Prohibition of Employment of Women and Children Near Cotton Openers

No woman or child shall be employed in any part of a factory for pressing cotton in which a cotton-opener is at work.

6) Self-Acting Machines

No traversing part of a self-acting machine in any factory and no material carried thereon shall, if the space over which it runs is a space over which any person is liable to pass, whether in the course of his employment or otherwise, be allowed to run on its outward or inward traverse within a distance of forty-five centimetres from any fixed structure which is not part of the machine.

7) Casing of New Machine

In all machinery driven by power and installed in any factory after the commencement of this Act, every set screw, bolt or key on any revolving shaft, spindle, and wheel pinion shall be so sunk, encased or otherwise effectively guarded as to prevent danger.

8) Excessive Weights

No person shall be employed in any factory to lift, carry or move any load so heavy as to be likely to cause him injury.

9) Hoists and Lifts

In every factory every hoist and lift shall be (i) of good mechanical construction, sound material and adequate strength; and (ii) properly maintained, and shall be thoroughly examined by a competent person at least once in every period of six months.

Every hoist-way and lift-way shall be sufficiently protected by an enclosure fitted with gates, and the hoist or lift and every such enclosure shall be so constructed as to prevent any person or thing from being trapped between any part of the hoist or lift and any fixed structure or moving part.

10) Revolving Machinery

In every factory in which the process of grinding is carried on there shall be permanently affixed to or placed near each machine in use a notice indicating the maximum safe working peripheral speed of every grindstone or abrasive wheel, the speed or the shaft or spindle upon which the wheel is mounted, and the diameter of the pulley upon such shaft or spindle necessary to secure such safe working peripheral speed.

11) Pressure Plant

If in any factory, any plant or machinery or any part thereof is operated at a pressure above atmospheric pressure, effective measures shall be taken to ensure that the safe working pressure of such plant or machinery or part is not exceeded.

12) Floors, Stairs and Means of Access

All floors, steps, stairs, passages and gangways shall be of sound construction and properly maintained and shall be kept free from obstructions and substances likely to cause persons to slip, and where it is necessary to ensure safety, steps, stairs, passages and gangways shall be provided with substantial handrails.

13) Pits, Sumps, Openings in Floors etc

In every factory fixed vessel, sump, tank, and pit or opening in the ground or in a floor which, by reasons of its depth, situation, construction or contents, is or may be a source of danger, shall be either securely covered or securely fenced.

14) Protection of Eyes

The State Government may by rules require that effective screens or suitable goggles shall be provided for the protection of persons employed on, or in the immediate vicinity of, the process.

15) Precautions Against Dangerous Fumes, Gasses etc

No person shall be required or allowed to enter any chamber, tank, pit, pipe or other confined space in any factory in which any gas, fume, vapour or dust is likely to be present to such an extent as to involve risk to persons employed there.

16) Explosive or Inflammable Dust, Gas etc

Where in any factory any manufacturing process produces dust, gas, fume or vapour of such character and to such extent as to be to explode to ignition, all practicable measures shall be taken to prevent any such explosion by:

- ✓ Effective enclosure of the plant or machinery used in the process;
- ✓ Removal or prevention of the accumulation of such dust, gas, fume or vapour;
- ✓ Exclusion or effective enclosure of all possible sources of ignition

17) Precautions in Case of Fire

In every factory, all practicable measures shall be taken to prevent outbreak or fire and its spread, both internally and externally, and to provide and maintain safe means of escape for all persons in the event of a fire, and the necessary equipment and facilities for extinguishing fire.

Effective measures shall be taken to ensure that in every factory all the workers are familiar with the means of escape in case of fire and have been adequately trained in the routine to be followed in such cases.

18) Safety of Building and Machinery

If it appears to the Inspector that any building or part of a building or any part of the ways, machinery or plant in a factory is in such a condition that it is dangerous to human life or safety, he may serve on the occupier or manager or both of the factory an order in writing specifying the measures which in his opinion should be adopted, and requiring them to be carried out before a specified date.

19) Safety Officers

In every factory, wherein one thousand or more workers are ordinarily employed, or wherein, in the opinion of the State Government, any manufacturing process or operation is carried on, which process or operation involves any risk of bodily injury, poisoning or disease, or any other hazard to health, to the persons employed in the factory, the occupier shall, if so required by the State Government by notification in the Official Gazette, employ such number of Safety Officers as may be specified in that notification.

Working Hours

- Weekly hours
- Weekly holidays
- Compensatory holidays
- Daily hours
- Intervals for rest
- Spread over
- Night shifts
- Prohibition of overlapping shifts
- Extra wages for overtime
- Restriction on double employment
- Register of adult workers

Employment of Women and Young Persons

- Restriction on employment of women
- Prohibition of employment of young children
- Non-adult workers to carry tokens.
- Certificate of fitness
- Effect of certificate of fitness granted to adolescent
- Working hours for children
- Notice of period of work for children

- Register of child workers

Annual Leave Provision

- Annual leave with wages
- Wages during leave periods
- Payment in advance in certain cases
- Mode of recovery of unpaid wages
- Power to prohibit employment on account of serious hazard
- Notice of certain accident
- Notice of certain dangerous occurrences.
- Notice of certain diseases
- Power to direct inquiry into cases of accident or disease
- Safety and occupational health surveys

Payment of Wages Act, 1936

In an economy where even minimum wages were not paid to the workers, the need to protect the wages was felt in the early years of twentieth century. With a view to achieve this object, a private Bill called “Weekly Payment Bill” was introduced in the legislature in the year 1925. The bill aimed at to remove some of the evils prevalent in the economy. e.g., exploitation of labour by imposing arbitrary fines, delay in payment of wages and unauthorised deductions from wages.

The bill was withdrawn on the assurance of the Government that the matter was under consideration. The desirability for putting up legislation was keenly felt in the year 1926 to regulate the extent of fines and other unauthorised deductions. The question was again considered by Royal Commission on Labour in India and on its recommendations the bill of Payment of Wages Act was passed in the year 1936.

The payment of wages act, 1936 was passed to regulate the payment of wages to certain classes of persons employed in industry.

It ensures payment of wages in a particular form and at regular intervals without unauthorized deductions.

The Act extends to the whole of India (sec.1 (2))

- The Act applies to the payment of wages to persons employed in any factory, to persons employed upon any railway by a railway administration and to an industrial or other establishment.
- In various states the act has been extended to shops and establishments also.
- The act does not apply to persons whose wages exceed ` 1, 600 per month.

Definitions

1) Employed person: Includes the legal representative of a deceased person

2) Employer: Includes the legal representative of a deceased employer.

3) Industrial or other establishment: it means any,

- a) Tramway service, or motor transport service
- b) Air transport services other than military
- c) Dock, wharf or jetty
- d) Inland vessel
- e) Plantation
- f) Workshop or other establishment in which articles are produced
- g) Establishment in which any work relating to the construction, development or maintenance of buildings, roads, bridges or canals.

Wages

The definition of 'wages' includes the following

- a) Any remuneration payable under any award or settlement between the parties or order of a court
- b) Any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period.
- c) Any sum to which the person employed is entitled under any scheme framed under any law for the time being in force.

The Expression Wages does not include

- 1) Any bonus (whether under a scheme of profit sharing or otherwise) which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a court;
- 2) The value of any house-accommodation or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the State Government.
- 3) Any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;
- 4) Any travelling allowance or the value of any travelling concession;
- 5) Any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment.
- 6) Any gratuity payable on the termination of employment in cases other than those specified in sub-clause (d)

Rules for Payment of Wages

1) Responsibility of Payment of Wages (Sec.3)

Every employer shall be responsible for the payment to persons employed by him all the wages required to be paid under payment of wages act.

2) Fixation of Wage-Periods (Sec.4)

A wage period shall not exceed one month.

3) Time of Payment of Wages (Sec.5)

a) Wages to be paid before 7th or 10th day: No. of persons employed is less than 1000-SSSwages shall be paid before the expiry of 7th day of the following wage period above 1000- before 10th day.

b) Wages in case of termination of employment: The wages earned by him shall be paid before the expiry of the 2nd working day from the day on which his employment is terminated.

c) Wages to be paid on a working day.

4) Medium of Payment of Wages: (Sec.6)

All wages shall be paid in current coins or currency notes or both. Payment of wages in kind is not permitted.

Deductions from Wages (Sec.3 to 7)

1) Deductions for Fines No fine shall be imposed without notice from concerned authority.

The notice specifying the acts and omissions for which fines may be imposed shall be exhibited.

No fine shall be imposed on an employed person until he has been given an opportunity of showing cause against the fine and has completed the age of 15 years.

The total amount of fine which may be imposed in one wage period on an employed person shall not exceed 3 percent of the wages payable to him in respect of that wage period.

Every fine shall be deemed to have been imposed on the day of the act or omission in respect of which it was imposed.

All fines and all realizations thereof be recovered in a register to be kept by the person responsible for the payment of wages, in such form as may be prescribed.

2) Deductions for Absence from Duty

The ratio between the amount of such deductions and the wages payable shall not exceed the ratio between the period of absence and the total period within such wage period.

3) Deductions for Damages or Loss

The deduction for damage to or loss of goods due to employee should not exceed the amount of the damage or loss caused to the employer by the neglect or default of the employed person.

4) Deduction for Services

A deduction for house accommodation and such amenities and services supplied by the employer shall not be made from the wages of an employed person, unless such services have been accepted by him as a term employment.

5) Deduction for Recovery of Advances

The state Government may regulate the extent to which such advances may be given and the installments by which they may be recovered.

6) Deductions for Recovery of Loans

Loans for house building or for other purposes and the interest due in respect thereof approved by the state government shall be subject to any rules made by the state government.

7) Deductions for Payments to Co-Operate Societies and Insurance Schemes

These deductions shall be subject to such conditions as the state government may impose.

8) Other Deductions

Deductions of income- tax payable by the employed person.

Deductions for payments to any provident fund to which the Provident Funds act, 1952 applies or any recognized provident fund.

Limit on Deductions

Should not exceed 75 percent of wages-deductions for payments to co-operatives

Should not exceed 50 percent of wages-for other payments.

Enforcement of the Act

Inspectors: An inspector of Factories appointed under sec.8 (1) of the Factories Act, 1948 shall be an inspector for the purpose of the payment of wages act.

Powers and Functions of Inspectors

- 1) Make such examination and enquiry
- 2) Enter, inspect and search any premises of any railway, factory or industrial or other establishments.
- 3) Supervise the payment of wages to persons employed.

4) Seize or take copies of registers or documents or portions thereof as he may consider relevant in respect of an offence under this act.

Penalty for Offences Under the Act(Sec.20)

1) Penalty for delaying payment of wages within the prescribed period or making un authorized deductions:

Punishable with fine which shall not be less than ` 200 but which may extends to ` 1,000

2) Penalty for not paying wages on a working day or in current coin or not recording fines or not displaying the abstracts of the act:

Punishable with a fine which may extends to ` 500 for each offence.

3) Penalty for failure to maintain, furnish records and returns: fine, ` 200-1000

4) Penalty for Obstructing, etc. Inspector: fine, ` 200-1000

5) Subsequent offence: ` 500- 3000

6) Additional fine for failure to pay wages by the fixed date: Fine for ` 100 for each day for which such failure or neglect continues.

The Payment of Bonus Act 1965

The payment of annual bonus based generally on the amount of annual profits, has become increasingly prevalent among the industrial and commercial establishments. It has gained much importance and has become the subject of increasing number of industrial disputes. This is due to disparity among the firms which are paying bonus and others which are not paying it. In order to have uniformity and consistency in the bonus solution and in the hope of setting a number of industrial disputes pending or likely to arise in the future, the Central Government introduced the Payment of Bonus Ordinance in 1965 and then enacted 'Payment of Bonus Act' to provide for the payment of bonus to persons employed in certain establishments and for matters connected therewith.

- It came into force September 25 1965
- Applied to
-

I. every factory

II. 20 or more persons are employed on any day during an accounting year.

Act not to apply certain classes of people

- Employees employed by the life insurance corporation of India
- Seamen as defined under section 3(42) of the merchant shipping act, 1958
- Employees employed through contractors on building operations
- Employees employed by the reserve bank of India
- Employees employed by
 1. The industrial finance corporation of India
 2. Any financial corporation established under section 3
 3. The deposits insurance corporation
 4. The agricultural refinance corporations
 5. The unit trust of India
 6. The industrial development bank of India
 7. Any other financial institution

Entitled to bonus

Employee have to work not less than thirty working days in the year on a salary less than ₹3,500 per month. Section 2(13)

Disqualifications: an employee who has been dismissed from service for

1. Fraud
2. Violent behaviour
3. Theft
4. Misappropriation
5. Sabotage of any property of the establishment is not entitled for bonus {section 9}

Employee entitled to bonus

1. On the basis of total number of days worked by him

2. A part time employee as a sweeper engaged on a regular basis is entitled to bonus

3. A dismissed employee reinstated with back wages is entitled to bonus.

4. A piece-rated worker is entitled to bonus.

5. A probationer is an employee, as such entitled to bonus

Payment of minimum bonus (section 10)

Minimum bonus which shall be 8.33% of the salary, if employer suffers losses during the accounting year he is bound to pay minimum bonus.

➤ Payment of maximum bonus (section 11) Maximum 20% of salary

➤ Section 14-how to calculate number of working days

➤ Section 13-how the bonus can be reduced in certain cases

1. Date when he has been laid off under an agreement

2. He has been on leave with salary

3. Absent due to temporary disablement

4. Maternity leave with salary

➤ As per section 13 employee has not worked for all the working days in an accounting year, the minimum bonus of ` 100. such bonus is higher than 8.33% of his salary shall be reduced.

➤ If the employee willing to work but unable to work gets the eligibility for bonus under section 8 of the act.

Industrial Disputes Act

Industrial Disputes mean any dispute or difference between employers and employees, or between employers and workmen or between workmen and workmen, which is connected with the employment or non – employment or term of employment or with the conditions of labour of any person.

Definition

According to the Industrial Disputes Act, 1947, Section 2(k); —Industrial Disputes mean any dispute or difference between employers and employees, or between employers and workmen or between workmen and workmen, which is connected with the employment or non – employment or term of employment or with the conditions of labour of any person.

Industrial relations conflict can affect the business in the following way.

- Reduced productivity
- Loss of profits
- Damage to public image
- Difficulty in recruiting & keeping staff
- Wasted time and energy
- Increased costs

1.Reduced productivity

Due to lack of interests, labour will not concentrate in quantity and quality of production. It leads to loss of profit.

2. Loss of profits

Even though all companies and organizations are targeting in profits, they can't proceed for that goals because of labour absence and decrease in production.

3. Damage to public Image

Company's good will and self image is very important in this competitive world. So, due to industrial disputes and strikes that image will be getting down in people mind.

4. Difficulty in recruiting & keeping staff

Employee must have the value and satisfaction in their working period about the company, but if the firm's value has damaged due to industrial disputes means the company can't recruit any other employees to their company and fulfillment of goals.

5. Wastage of time and Energy

If unnecessary disputes arises inside the organization and it is continuing means it will result in major discussion and finally it leads to wastage of time and energy.

6. Increased costs

The mantra for perfect business is decrease in costs and increase in profits, but the increase in industrial disputes will have the main problem of increase in costs and decrease in production and also the profit

Major impacts:

1. Unrest and unnecessary tensions engulf the hearts and minds of all the people involved - labour and senior management.
2. There is economic loss due to conflicts because conflicts may result in strikes and lock-outs. This causes low or no production resulting in industrial loss.
3. Industrial loss may cause economic depression because many industries are interlinked. A problem in one industry may drastically affect another industry.
4. The lives of low-level labourers become worse when they are out of work. They may be the only working members of the family, and their joblessness may lead everyone in the family to poverty.
5. When industrial conflicts get out of hand, they become a threat to peace and security. Workers may resort to violence and indulge in sabotage.

Causes of Industrial Disputes

Handling employee misconduct is a very critical task to be performed by the senior managers. Misconduct and other offensive behaviors often lead to decreased levels of productivity as they affect the individual performance of the employees. To manage discipline among employees, every

company opts for a discipline policy which describes the approach it will follow to handle misconduct.

The causes of industrial disputes can be broadly classified into two categories: economic and non-economic causes. The economic causes will include issues relating to compensation like wages, bonus, allowances, and conditions for work, working hours, leave and holidays without pay, unjust

layoffs and retrenchments. The non economic factors will include victimization of workers, ill treatment by staff members, sympathetic strikes, political factors, indiscipline etc.

- Wages and allowances
- Personnel and retrenchment
- Indiscipline and violence
- Bonus
- Leave and working hours

Wages and allowances

Since the cost of living index is increasing, workers generally bargain for higher wages to meet the rising cost of living index and to increase their standards of living. In 2002, 21.4% of disputes were caused by demand of higher wages and allowances. This percentage was 20.4% during 2003 and during 2004 increased up to 26.2%. In 2005, wages and allowances accounted for 21.8% of disputes.

Personnel and retrenchment

Personnel and retrenchment: The personnel and retrenchment have also been an important factor which accounted for disputes. During the year 2002, disputes caused by personnel were 14.1% while those caused by retrenchment and layoffs were 2.2% and 0.4% respectively. In 2003, a similar trend could be seen, wherein 11.2% of the disputes were caused by personnel, while 2.4% and 0.6% of disputes were caused by retrenchment and layoffs. In year 2005, only 9.6% of the disputes were caused by personnel, and only 0.4% was caused by retrenchment.

Bonus:

Bonus has always been an important factor in industrial disputes. 6.7% of the disputes were because of bonus in 2002 and 2003 as compared to 3.5% and 3.6% in 2004 and 2005 respectively.

Leave and working hours:

Leave and working hours: Leaves and working hours have not been so important causes of industrial disputes. During 2002, 0.5% of the disputes were because of leave and hours of work while this

percentage increased to 1% in 2003. During 2004, only 0.4% of the disputes were because of leaves and working hour.

Consequences of Industrial Conflicts

- Unrest and unnecessary tensions engulf the hearts and minds of all the people involved - labourers and senior management.
- There is economic loss due to conflicts because conflicts may result in strikes and lock-outs. This causes low or no production resulting in industrial loss.
- Industrial losses may cause economic depression because many industries are interlinked. A problem in one industry may drastically affect another industry.
- The lives of low-level labourers become worse when they are out of work. They may be the only working members of the family, and their joblessness may lead everyone in the family to poverty.
- When industrial conflicts get out of hand, they become a threat to peace and security. Workers may resort to violence and indulge in sabotage.

Strikes

Strike is —a temporary cessation of work by a group of employees in order to express their grievance or to enforce a demand concerning changes in work conditions.

Section 2(q) of the Industrial Disputes Act, 1947, defines a strike as —a cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal under a common understanding of a number of persons who are or have been so employed to continue to work or to accept employment.

Types of Strikes

Go slow - Go slow does not amount to strike but it is a serious case of misconduct.

Hunger strike-Some workers may resort to fast on or near the place of work or residence of the employer

Lightning or wildcat strike -It is an unofficial strike ie., a strike not sanctioned by the union. Such strikes occur in violation of the no strike pledge in collective bargaining agreements

Stay in, sit down, pen down or Tool down strike- In all such cases the workmen after taking their seats, refuse to do work by their combination

Sympathetic strike- Cessation of work in the support of the demand workmen belonging to their employer. The management can take disciplinary actions for the absence of workmen.

Economic Strike-In this type the members of trade union stop work to enforce their economic demands such as increase in wages, bonus and other benefits.

General strike-It means a strike by members of all or most of the unions in region or an industry. It may be a strike of all or most of the unions in region or an industry.

Lock outs-It is declared by the employers to put pressure on their workers. It is an act on the part of the employers to close down the place of work until the workers agree to resume work on the terms and conditions specified by the employers.

Lay off-Lay off means failure, refusal or inability of an employer, shortage of power or raw materials or accumulation of the stocks or the breakdown of the machinery or for any other reason not to give employment to a workman.

Retrenchment-It means the termination of the service of a workman for any reasons by the employer. It does not include the voluntary retirement of the workman.

Gherao-It denotes collective action by the workers which members of the management will be imprisoned by them.

Picketing-When workers are dissuaded a certain men at the factory gates it is called as picketing. It is perfectly legal . It is to draw the attention of public.

Boycott-The workers may decide to boycott the company by not using its products. It affects marketability of its products.

Industrial peace

Industrial peace is not merely a negative concept signifying the absence of industrial unrest, or the reconciling of hostile forces in order to avoid ruinous strife, but it also signifies the active presence

of harmonious and good industrial relations generating amity and goodwill between the partners in an industry – a condition which is both the cause and effect of fruitful co – operation

1. Strong trade union with democratic norms
2. Employers should have progressive outlook
3. Employers should recognize the rights of the workers
4. Both (workers and management) should have faith in collective bargaining and settlement disputes.
5. Encouragement of workers participative management.
6. Two communication between both the parties
7. Govt should play an active role for promoting industrial peace. It should make law for the compulsory recognition of a representative union in each industrial unit.

Government Machinery

The various methods and machinery under the industrial disputes act can be classified as under the following heads:

(I) Conciliation

- Works committee
- Conciliation officer
- Board of conciliation

(II) Arbitration

- Court of inquiry

(III) Adjudication

- Labour court
- Industrial tribunal and
- National tribunal

Conciliation:

Conciliation, is a form of mediation. Mediation is the act of making active effort to bring two conflicting parties to compromise. Mediation, however, differs from conciliation in that whereas conciliator plays only a passive and indirect role, and the scope of his functions is provided under the

law, the mediator takes active part and the scope of his activities are not subject to any statutory provisions.

Conciliation is the —practice by which the services of a neutral party are used in a dispute as a means of helping the disputing parties to reduce the extent of their differences and to arrive at an amicable settlement of agreed solution.

The Industrial Disputes Act, 1947 provides for conciliation, and can be utilised either by appointing conciliation officers (permanently or for a limited period) or by constituting a board of conciliation. This conciliation machinery can take a note of a dispute or apprehend dispute either on its own or when approached by either party.

With a view to expediting conciliation proceeding, time-limits have been prescribed— 14 days in the case of conciliation officers and two months in the case of a board of conciliation, settlement arrived at in the course of conciliation is binding for such period as may be agreed upon between the parties or for a period of 6 months and with continue to be binding until revoked by either party. The Act prohibits strike and lockout during the pendency of conciliation proceedings before a Board and for seven days after the conclusion of such proceedings.

Conciliation Officer:

The law provides for the appointment of Conciliation Officer by the Government to conciliate between the parties to the industrial dispute. The Conciliation Officer is given the powers of a civil court, whereby he is authorised to call the witness the parties on oath. It should be remembered; however, whereas civil court cannot go beyond interpreting the laws, the conciliation officer can go behind the facts and make judgment which will be binding upon the parties.

On receiving information about a dispute, the conciliation officer should give formal intimation in writing to the parties concerned of his intention to commence conciliation proceedings from a specified date. He should then start doing all such things as he thinks fit for the purpose of persuading the parties to come to fair and amicable settlement of the dispute.

Conciliation is an art where the skill, tact, imagination and even personal influence of the conciliation officer affect his success. The Industrial Disputes Act, therefore, does not prescribe any procedure to be followed by him.

The conciliation officer is required to submit his report to the appropriate government along with the copy of the settlement arrived at in relation to the dispute or in case conciliation has failed, he has to send a detailed report giving out the reasons for failure of conciliation.

The report in either case must be submitted within 14 days of the commencement of conciliation proceedings or earlier. But the time for submission of the report may be extended by an agreement in writing of all the parties to the dispute subject to the approval of the conciliation officer.

If an agreement is reached (called the memorandum of settlement), it remains binding for such period as is agreed upon by the parties, and if no such period is agreed upon, for a period of six months from the date on which the memorandum of settlement is signed by the parties to the dispute, and continues to be binding on the parties after the expiry of the period aforesaid, until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the party or parties to the settlement.

Board of Conciliation:

In case Conciliation Officer fails to resolve the differences between the parties, the government has the discretion to appoint a Board of Conciliation. The Board is tripartite and ad hoc body. It consists of a chairman and two or four other members.

The chairman is to be an independent person and other members are nominated in equal number by the parties to the dispute. Conciliation proceedings before a Board are similar to those that take place before the Conciliation Officer. The Government has yet another option of referring the dispute to the Court of Inquiry instead of the Board of Conciliation.

The machinery of the Board is set in motion when a dispute is referred to it. In other words, the Board does not hold the conciliation proceedings of its own accord. On the dispute being referred to the Board, it is the duty of the Board to do all things as it thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement. The Board must submit its report to the government within two months of the date on which the dispute was referred to it. This period can be further extended by the government by two months.

Court of Inquiry:

In case of the failure of the conciliation proceedings to settle a dispute, the government can appoint a Court of Inquiry to enquire into any matter connected with or relevant to industrial dispute. The court is expected to submit its report within six months. The court of enquiry may consist of one or more persons to be decided by the appropriate government.

The court of enquiry is required to submit its report within a period of six months from the commencement of enquiry. This report is subsequently published by the government within 30 days of its receipt. Unlike during the period of conciliation, workers' right to strike, employers' right to lockout, and employers' right to dismiss workmen, etc. remain unaffected during the proceedings in a court to enquiry.

A court of enquiry is different from a Board of Conciliation. The former aims at inquiring into and revealing the causes of an industrial dispute. On the other hand, the latter's basic objective is to promote the settlement of an industrial dispute. Thus, a court of enquiry is primarily fact-finding machinery.

Arbitration

On failure of conciliation proceedings, the conciliation officer may persuade the parties to refer the dispute to a voluntary arbitrator. Voluntary arbitration refers to getting the disputes settled through an independent person chosen by the parties involved mutually and voluntarily.

In other words, arbitration offers an opportunity for a solution of the dispute through an arbitrator jointly appointed by the parties to the dispute. The process of arbitration saves time and money of both the parties which is usually wasted in case of adjudication.

Voluntary arbitration became popular as a method of settling differences between workers and management with the advocacy of Mahatma Gandhi, who had applied it very successfully in the

Textile industry of Ahmedabad. However, voluntary arbitration was lent legal identity only in 1956 when Industrial Disputes Act, 1947 was amended to include a provision relating to it.

The provision for voluntary arbitration was made because of the lengthy legal proceedings and formalities and resulting delays involved in adjudication. It may, however, be noted that arbitrator is not vested with any judicial powers.

He derives his powers to settle the dispute from the agreement that parties have made between themselves regarding the reference of dispute to the arbitrator. The arbitrator should submit his award to the government. The government will then publish it within 30 days of such submission. The award would become enforceable on the expiry of 30 days of its publication.

Voluntary arbitration is one of the democratic ways for settling industrial disputes. It is the best method for resolving industrial conflicts and is a close supplement to collective bargaining. It not only provides a voluntary method of settling industrial disputes, but is also a quicker way of settling them.

It is based on the notion of self-government in industrial relations. Furthermore, it helps to curtail the protracted proceedings attendant on adjudication, connotes a healthy attitude and a developed outlook; assists in strengthening the trade union movement and contributes for building up sound and cordial industrial relations.

Adjudication

The ultimate remedy for the settlement of an industrial dispute is its reference to adjudication by labour court or tribunals when conciliation machinery fails to bring about a settlement. Adjudication consists of settling disputes through intervention by the third party appointed by the government. The law provides the adjudication to be conducted by the Labour Court, Industrial Tribunal of National Tribunal.

A dispute can be referred to adjudication if not the employer and the recognised union agree to do so. A dispute can also be referred to adjudication by the Government even if there is no consent of

the parties in which case it is called ‘compulsory adjudication’. As mentioned above, the dispute can be referred to three types of tribunals depending on the nature and facts of dispute in questions.

These include:

- (a) Labour courts,**
- (b) Industrial tribunals, and**
- (c) National tribunals.**

The procedure, powers, and provisions regarding commencement of award and period of operation of award of these three bodies are similar. The first two bodies can be set up either by State or Central Government but the national tribunal can be constituted by the Central Government only, when it thinks that the adjudication of a dispute is of national importance. These three bodies are into hierarchical in nature. It is the Government’s prerogative to refer a dispute to any of these bodies depending on the nature of dispute.

(a) Labour Court:

A labour court consists of one person only, who is normally a sitting or an ex-judge of a High Court. It may be constituted by the appropriate Government for adjudication of disputes which are mentioned in the second schedule of the Act.

The issues referred to a labour court may include:

- (i) The propriety or legality of an order passed by an employer under the Standing Orders.
- (ii) The application and interpretation of Standing Orders.
- (iii) Discharge and dismissal of workmen and grant of relief to them.

(iv) Withdrawal of any statutory concession or privilege.

(v) Illegality or otherwise of any strike or lockout.

(vi) All matters not specified in the third schedule of Industrial Disputes Act, 1947. (It deals with the jurisdiction of Industrial Tribunals).

(b) Industrial Tribunal:

Like a labour court, an industrial tribunal is also a one-man body. The matters which fall within the jurisdiction of industrial tribunals are as mentioned in the second schedule or the third schedule of the Act. Obviously, industrial tribunals have wider jurisdiction than the labour courts.

Moreover an industrial tribunal, in addition to the presiding officer, can have two assessors to advise him in the proceedings; the appropriate Government is empowered to appoint the assessors.

The Industrial Tribunal may be referred the following issues:

1. Wages including the period and mode of payment.
2. Compensatory and other allowances.
3. Hours of work and rest intervals.
4. Leave with wages and holidays.
5. Bonus, profit sharing, provident fund and gratuity.
6. Shift working otherwise than in accordance with the standing orders.
7. Rule of discipline.
8. Rationalisation.
9. Retrenchment.
10. Any other matter that may be prescribed.

(c) National Tribunal:

The Central Government may constitute a national tribunal for adjudication of disputes as mentioned in the second and third schedules of the Act or any other matter not mentioned therein provided in its opinion the industrial dispute involves —questions of national importance or —the industrial dispute is of such a nature that undertakings established in more than one state are likely to be affected by such a dispute.

The Central Government may appoint two assessors to assist the national tribunal. The award of the tribunal is to be submitted to the Central Government which has the power to modify or reject it if it considers it necessary in public interest.

It should be noted that every award of a Labour Court, Industrial Tribunal or National Tribunal must be published by the appropriate Government within 30 days from the date of its receipt. Unless declared otherwise by the appropriate government, every award shall come into force on the expiry of 30 days from the date of its publication and shall remain in operation for a period of one year thereafter.

Part A (ONE Mark)

Multiple Choice Questions
Online Examination

Part – B (2 Marks)

1. Define factory.
2. Define Factories Act, 1948.
3. List any five safety measures.
4. List any five welfare measures.
5. Define the term employer.
6. What is minimum wage?
7. Define living wage and fair wage.
8. State the difference between strike and lockout.
9. How is a minimum wage fixed in India?
10. List the powers of inspector of factories.
11. Distinguish 'Strike' and 'Lockout'.
12. Define the term Hazardous process.
13. Mention the objectives of Industrial Disputes Act, 1947.
14. Define 'Manufacturing processes under the Factories Act
15. State the difference between wages and salaries.
16. Define 'Industrial Dispute'.
17. What are the duties of the employer under the payment of wages Act?

Part – C (8 Marks)

1. Explain the provisions of Factories Act 1948 in detail.
2. Discuss the health measures provided under the Factories Act, 1948.
3. Discuss the safety, welfare and health measures given in factories act.

4. Explain Factory Strike and Lockout under the factories act.
5. Describe the features of Factories Act towards safety, work time and female adult workers.
6. Discuss the provisions of Factories Act for employee welfare, safety and health.
7. Discuss the duties of the employer under the payment of wages Act?
8. Discuss who is responsible for the payment of wages under the Payment of Wages Act?
9. What are the permissible deductions under the payment of wages act? Discuss.
10. Explain the procedures in calculating the Bonus according to the Bonus Act.
11. What is the time limit within which payment of bonus due to an employee under the Act be paid?
12. Write briefly on 'Payment of Annual bonus linked with productivity' under payment of Bonus Act.
13. State the procedure for fixing and revision of minimum wages under the Minimum Wages Act, 1948.
14. Discuss the salient features of Industrial disputes.
15. Describe the machineries provided under the Industrial Dispute Act for Investigation and settlement of industrial Disputes.
16. Discuss the types of industrial disputes and settlement procedures to maintain the Industrial peace and harmony.
17. Discuss the main components of wage structure in India.

UNIT 3

QUESTIONS	OPTION 1	OPTION 2	OPTION 3	OPTION 4	ANSWERS
Cool drinking water should be provided if the number of employees are more than	150	250	350	600	250
In workmen compensation Act an employee is entitled to get compensation for	Sickness	Injury	Retrenchment	Termination	Injury
The bonus act is the outcome of the recommendation made by the _____	State government	Central government	Labour Court	Tripartite commission	Tripartite commission
The person who has ultimate control over a factory is called	Manager	Occupier	Supervisor	Inspector	Occupier
First aid box should be provided for every	50 workers	150 workers	350 workers	300 workers	150 workers
As per the factories act, after how many years should the factory premises be painted and refurbished?	5 years	2 years	10 years	Annually	5 years
The maximum amount of bonus payable to an employee is	8.33%	20%	30%	40 %.	20%
Occupational disease occurs due to	Frequent travel	Being a worker in a specific	water contamination	lack of ventilation facilitation	Being a worker in a specific industry
From the below mentioned options, which of the following is not mentioned under the welfare provision in the factories act?	Canteen	Crèches	Drinking water	First aid	Drinking water
On which date was the bonus act implemented by the government?	2nd September, 1980	2nd September, 1965	1st September, 1970	3rd September, 1966	2nd September, 1965
As per the act what is the minimum number of days an employee must have worked in an establishment to be eligible for bonus?	240 working days	30 working days	120 working days	365 working days	30 working days
Which formula was given by labour appellate tribunal for the calculation of bonus?	Full bench formula	Accrual formula	Rounding formula	Equivalent formula	Full bench formula
As per section 2 in factories act, who will be called as an adult?	A person who has completed 21 years of age	A person who is less than 19 years of age	A person who has completed 24 years of age	A person who has completed 18 years of age	A person who has completed 18 years of age
The term Sabbatical is connected with	Paid leave for study	Paternity leave	Maternity leave	Quarantine leave	Paid leave for study

QUESTIONS	OPTION 1	OPTION 2	OPTION 3	OPTION 4	ANSWERS
The maximum daily hours of work in a day with normal wage allowed in factories is	11 hours	10 hours	9 hours	8 hours	9 hours
Which of the followings is not the aim of the Health and Safety at Work Act 1974?	To integrate and extend the law on health and safety at all places of work	To prevent employers requiring employees to retire at 65	To make detailed regulations to be enforced by sanctions of criminal law	To provide effective means of shaping the policy and regulations	To prevent employers requiring employees to retire at 65
Welfare officers must be appointed to every factory where on ---- or more workers are employed	250	500	750	1000	500
Under the Factories Act, 1948 the working hours of 8 per day and 48 per week	Include spread over	Are minimum working hours	Include rest interval period.	Do not include rest interval period	Do not include rest interval period
Which of these deductions under section 7 of payment of wages act is not authorized?	Deduction for Fines	Deduction for payment of Income tax	Deduction for Payment of insurance	Deduction for payment of uniform and property	Deduction for payment of uniform and property
Which section of the Factories Act covers the topic annual leave with wages?	Section 27	Section 5	Section 86	Section 79	Section 79
If there are 100 workers in a factory, then one seat is allotted to how many workers	25	50	100	75	25
Which of the following is not a statutory welfare facility under the Factories Act, 1948?	Creche	Canteen	Transport	First aid boxes	Transport
The floor of every work room shall be cleaned by applying water at least once in every	Week	Month	Quarter	Fortnightly	Week
Women employers should not be allowed to work between	6.pm and 5.Am.	9.pm and 5.Am.	11 pm and 5.Am.	10.pm and 5.Am.	6.pm and 5.Am.
A person is eligible to get bonus if he has worked in a factory in any year for not less than	30 days	60 days	90 days	100 days	30 days
An adult worker shall not be required to work in a factory during a week for more than	24 hours	60 hours	36 hours	48 hours	48 hours

QUESTIONS	OPTION 1	OPTION 2	OPTION 3	OPTION 4	ANSWERS
Safety officers should be appointed if the workers are more than	500	1000	1500	2000	1000
The Factories Act 1948 extends to	Whole of India including Jammu & Kashmir	Whole of India excluding Jammu & Kashmir	Whole of India including North Eastern Tribal Area	Whole of India excluding North Eastern Tribal Area	Whole of India including Jammu & Kashmir
First aid appliance in a provision relates to labour under the provision of	health of workers .	wealth of workers .	safety of workers .	welfare of workers.	health of workers .
As per Section 6 of the Factories Act 1948, who has the power to make rules on approval, licensing and registration of factories?	Central Government	State Government.	Supreme Court	Labour Commissioner	State Government.
Section 2 (1) of The Payment of Bonus Act, 1965 defines	Accounting year	Allocable Surplus	Appropriate Government	Available Surplus	Accounting year
Maximum number of days required for the calculating annul leave with wages are	240 days or more .	260 days or more .	280 days or more .	300 days or more .	240 days or more .
Loss of little finger due to accident is	temporary partial loss.	permanent partial loss.	temporary total loss.	permanent total loss.	permanent partial loss.
The definition of workman under workmen compensation Act, does not include	railway workers.	workers employed in hotels.	casual workers.	good employee.	casual workers.
Which section states about the classes of employees where Payment of Bonus Act is not applicable?	Section 16	Section 32	Section 22	Section 30	Section 32
Which of the following statements is not correct as per the Payment of Bonus Act, 1965?	It is applicable to construction industry.	It does not apply to employees in Life Insurance Corporation of India.	Allocable surplus means 67% of the available surplus.	Employee means any person including apprentice.	Employee means any person including apprentice.

QUESTIONS	OPTION 1	OPTION 2	OPTION 3	OPTION 4	ANSWERS
The formula for calculating gratuity is	Gratuity = (Monthly Salary/25) X 15 X No. of years of service	Gratuity = (Monthly Salary/30) X 15 X No. of years of service	Gratuity = (Monthly Salary/26) X 15 X No. of years of service	Gratuity = (Monthly Salary/15) X 15 X No. of years of service	Gratuity = (Monthly Salary/26) X 15 X No. of years of service
The employer shall arrange to pay the amount of gratuity within ---- days from the date it becomes payable	30 days	15 days	60 days	75 days	30 days
The eligibility condition for obtaining gratuity under the Payment of Gratuity Act,	Completion of 2 years of Service	Completion of 3 years of Service	Completion of 4 years of Service	Completion of 5 years of Service	Completion of 5 years of Service
Creches are to be provided if the women workers are more than	20	30	40	50	30
In which year did the Industrial Disputes Act, 1947 come into operation?	1947	1949	1953	1963	1947
To which settlement machinery can the central government refer the disputes under rule 81 - A?	Conciliation	Arbitration	Adjudicator	Supreme Court	Adjudicator
Before the industrial disputes act was implemented in the year 1947, which act took care of the industrial disputes?	Trade Disputes Act, 1929	Royal Commission on Labour, 1934	Labour Management Relations Act, 1947	Employee Protection Act	Trade Disputes Act, 1929
The bill passing rule 81A has made two new institutions for the prevention and settlement of industrial disputes, i.e. Work Committees and	Industrial Tribunal	Commission on Labour	Arbitration	Adjudication	Industrial Tribunal
The industrial peace is secured through voluntary _____ and compulsory _____	Compromise and Arbitration	Adjudication and Arbitration	Work Committee and Industrial Tribunal	Negotiation and Adjudication	Negotiation and Adjudication
The first suggestion for legislation in the act was made by a private member's bill called _____.	Legislative Bill	Wages Bill	Weekly Payment Bill	Workers Bill	Weekly Payment Bill
An employer's refusal to provide work opportunities, is classified as	grievance procedure	lock out	injunction	strike procedure	lock out

QUESTIONS	OPTION 1	OPTION 2	OPTION 3	OPTION 4	ANSWERS
A combined refusal in buying products of employers, union members as well as employees, known as	boycott	impasse boycott	strike	picketing	boycott
According to business perspective, employees carrying sign language in depicting their concerns, regarded as	strike	picketing	boycott	impasse boycott	picketing
In case of retrenchment, worker is entitled to _____ months notice or notice pay in lieu of notice.	One	Two	Three	Four	Two
Strike should be called only if at least _____ percent of workers are in support of strike.	10	15	20	25	15
Labour issues are solved in _____	Labour Court	District Court	High Court	Consumer Court	Labour Court
Voluntary withdrawal of labor of company is classified as	strike	picketing	boycott	impasse boycott	strike
Strike occurs when labor does not agree on conditions of contract, classified as	unfair labor practice strike	economic strike	sympathy strike	wild cat strike	economic strike
In order of court, compelling parties either to desist a certain action or to resume a particular action' classified as	grievance procedure	lockout	injunction	strike procedure	injunction
Collective bargaining items that are introduced by any other party must be bargained' considered as	illegal bargaining items	mandatory bargaining items	voluntary bargaining items	involuntary bargaining items	mandatory bargaining items
Strike called by union labor when illegal practices are to be conducted by company's employer is classified as	sympathy strike	wildcat strike	unfair labor practice strike	economic strike	unfair labor practice strike
Which Act of Parliament defines a 'trade	The Trade Union	The Trade Union	The Trade Union	The Trade Union	The Trade Union
The ongoing globalization in the country	Government	Labour and Trade	Employer's	Human Rights'	Labour and Trade
Which of the statements is not correct in the light of present Industrial Relations scenario in India?	Number of strikes is declining	Rate of unionism is increasing	Number of lockouts is higher than the number of lockouts	Wages are revising	Rate of unionism is increasing
First National Commission on Labour as made in _____	1922	1969	1972	1933	1969

QUESTIONS	OPTION 1	OPTION 2	OPTION 3	OPTION 4	ANSWERS
In industries, it is important for the _____ to concentrate in areas of harmony	Employers	Public	Committee	Government	Government

UNIT- IV- Corporate Tax Planning

SYLLABUS

Corporate Tax Planning, Overview of central Sales Tax Act 1956 – Definitions, Scope, Incidence of CST, Practical issues of CST, VAT – Concepts, Scope, Methods of VAT Calculation, Practical Implications of VAT, GST, Practical implications of GST.

Corporate Tax Planning:

The term "corporate tax planning" encompasses the strategic structuring of business operations in order to minimize tax liabilities. Corporate tax planning activities generally seek to avoid legally triggering tax costs rather than illegally evading an existing obligation to pay taxes. Tax planning represents a forward-looking activity, as opposed to tax compliance or reporting, which reflects back on events that have already taken place. Corporations typically engage certified public accountants or tax attorneys for technical advice in this complicated area.

Corporate tax planning is a means of reducing tax liabilities on a registered company. The common ways to do this includes taking deductions on business transport, health insurance of employees, office expenses, retirement planning, child care, charitable contributions etc. Through the various tax deductions and exemptions provided under the Income Tax Act, a company can substantially reduce its tax burden in a legal way. Once again, tax planning should not be confused with tax avoidance and all the planning should be done within the framework of law.

Increasing profits of a company results in higher tax liabilities, As such, it becomes imperative for them to devote enough time on tax planning to reduce the liabilities. With proper tax planning, the direct tax and indirect tax burden is reduced at times of inflation. It also assists in proper planning of expenses, capital budget and sales and marketing costs, among others. A good tax planning results out of:

- Disclosing correct information to relevant IT departments.
- Not being ignorant of applicable tax laws as well as court judgements regarding the same.
- Legal tax planning should be done which is under the purview of law.
- Planning must be done with business objectives in mind and should be flexible enough to incorporate possible changes in the future.

Types of Tax Planning:

Purposive tax planning: Planning taxes with a particular objective in mind

Permissive tax planning: Tax planning that is under the framework of law

Long range and Short range tax planning: Planning done at the start and end of a fiscal year respectively.

Tax Saving Objectives:

The primary objectives of your tax planning should be the following:

- Reduction in overall tax liability
- Economic stability
- Growth of economy
- Litigation minimization
- Productive investment.

Importance of Tax Planning

One cannot deny the fact that tax planning is important to curtail or reduce the tax liability. Tax planning is also important because of the following factors:

(i) Assessee can avail the benefit of relief, deductions, rebate upto the date of submission of return. These cannot be claimed at the time of appeal. As decided in the case “CIT V. Gurjargavures Ltd. (1972) 84 ITR 723” that if there is no tax planning and there are lapses on the part of the assessee, the benefit would be the least.

(ii) Tax planning exercise is more reliable since the Companies Law and other laws narrow down the scope for tax avoidance and tax evasion and driving the tax payers to a situation where the person will be free from all severe penal consequences.

(iii) In order to encourage the programmes of public interest and good for civilised society, the Government provides incentives in the tax laws. Hence, a planner has to be well versed with the law concerning incentives.

(iv) Because of progressive rate of tax to an individual and Hindu Undivided Family assessee is supposed to pay more tax, if income is increased and it necessitates the devotion of adequate time on tax planning.

(v) Tax planning enables companies to make proper expenses planning, capital budgeting planning, sales promotion planning etc. to reduce the tax planning specially during inflation.

(vi) Now-a-days when credit squeeze and dear money conditions, even a rupee of tax decently saved may be taken as an interest free loan from the Government, which perhaps, an assessee need not repay.

(vii) An organisation always requires repairs, renewals, modernisation and replacement of plants and machineries for continuous growth and to fight with competition. Any decisions of these kind would involve huge capital expenditure, in which is financed generally by ploughing back of profits, reserves. Availability of profits, reserves and surplus and claiming such expenses as revenue expenditure are possible through proper implementation of tax planning techniques.

Thus, any legitimate steps taken by assessee directed towards maximising tax benefits, keeping in view the intention of law, will not only help to assessee but also to society.

Extent and commencement of the Central Sales Tax Act 1956:

1. It extends to the whole of India.
2. It was divided into 6 chapters and 26 sections.

3. It had provision for single point as well as multiple-point tax.

4. Under this Act, the goods have been classified as :

(i) Declared goods or goods of special importance in inter-State trade or commerce, and

(ii) Other goods.

The rates of tax on goods in the first category are lower as compared to the rates of tax on goods in the second category.

5. There is no exemption limit for the levy of tax in relation to the turnover of the dealer. Every dealer, who is having inter-State trade, is liable to pay tax under the Act irrespective of the quantum of his turnover.

6. Every dealer engaged in inter-State trade has to get himself registered and the certificate of registration has to be displayed at all places of his business.

7. The tax is levied under this Act by the Central Government but it was collected by that State Government from where the goods have been sold outside the State. The tax thus collected was given to the same State Government which collected the tax. In the case of Union Territories, the tax collected is deposited in the Consolidated Fund of India.

8. The Act does not provide rules regarding submission of returns, payment of tax, appeals, etc. For this purpose, the rules followed by a State in respect of its own sale-tax law shall be followed for the purposes of this Act also.

9. The Central Government and the State Government had empowered to frame proper rules and regulations for the implementation of various provisions of this Act

Objects of enacting the Central Sales-Tax Act

The Act has been enacted to formulate the principles regarding the following :

(1) To formulate principles for determining when a sale or purchase of goods takes place:

- (i) In the course of inter-State trade or commerce; or
 - (ii) Outside a State; or
 - (iii) In the course of import into or export from India.
- (2) To provide for the levy, collecting and distribution of taxes on sales of goods in the course of inter-State trade or commerce.
- (3) To declare certain goods to be of special importance in inter-State trade or commerce.
- (4) To specify the restrictions and conditions to which state laws imposing taxes on the sale or purchase of goods of special importance in the course of inter-State trade and commerce shall be subjected to tax.

Levy of Central Sales Tax

The Governments may after enacting suitable legislations, levy tax on the transactions of the following nature:

- (a) Transfer of property in goods (whether as goods or in any other form) involved in the execution of a works contract;
- (b) Delivery of goods on hire-purchase or any system of payment of instalments;
- (c) Transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;
- (d) Supply of goods by an unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration; and
- (e) Supply by way of or as a part of any service of food (being food or any other article for human supply) or any drink (whether or not intoxication) for cash deferred payment or other valuation consideration.

Further the Central Government has been empowered to levy tax on the consignment of goods (to self or any other person), where such consignment takes place in the course of inter State trade or commerce.

The tax is levied on all sales of goods other than electrical energy effected by a dealer in the course of inter-State trade or commerce during the year.

Amendments in Central Sales Tax Act by the Taxation Laws (Amendment) Act, 2007

The following important amendments have been made in-

1. On sales to the registered dealer, tax shall be charged @ 2% instead of 4% or the rate applicable in the appropriate State, whichever is less.
2. On sales to other dealer's tax shall be charged at the rate applicable to the sale or purchase of such goods inside the State under the sales tax law of that State.
3. The Government shall be liable to pay tax at the same rate as other dealers.
4. Now tobacco products have been deleted from the list of declared goods. Hence, on such goods tax shall be levied at the rate prescribed in the sales tax law of the State instead of maximum 4%.

Sections

- Section 14: A list of such declared goods is provided. Ex: Cereals, Rice, Milk, Salt, Oil, Coal including coke in all its forms but excluding charcoal; Cotton, Cotton fabrics, cotton yarn but not including cotton yarn waste, Aviation turbine fuel, hides and skins, iron and steel, sugar covered under certain headings etc.
- Section 15: Imposes restrictions and conditions in regard to tax on sale or purchase of declared goods within a state. Restriction on the States that they should not levy sales tax (now VAT) not more than 4% on the declared goods. The rationale behind this is that there should not vary from State to State.
- Section 3: Deals with formulation of principles for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce.

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Unit IV

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- Section 4: Deals with formulation of principles for determining when a sale or purchase of goods takes place outside of a State.
- Section 5: When is a sale or purchase of goods said to take place in the course of import or export
- Section 6 and 6A: Imposes the liability to pay tax upon the person who sells goods in the course of inter-state trade or commerce
- Section 7 of Central Sales Tax Act, 1956: Registration of Dealer
- Section 8(1): Every dealer, who in the course of inter-State trade or commerce, sells to a registered dealer goods in the course of inter-State trade or commerce, shall be liable to pay tax under this Act, which shall be three per cent of his turnover or at the rate applicable to the sale or purchase of goods inside the appropriate State under the sales tax law of that State, whichever is lower.
- The selling dealer shall furnish to the prescribed authority by stating the Rule 12 of the CST (R&T) Rules, and in the prescribed Form-C and that declaration should be duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in order to get the 3% rate of tax.
- Exemptions: Exemption from the CST is given to the SEZ.
 - Determination of Turnover
 - Section 9 explains about Levy and Collection of Tax and Penalties.
 - Section 19: Central Government is empowered to constitute the Central Sales Tax Appellate Authority
 - Comprises of Members appointed by the Central Government
 - A Chairman who is a retired judge of the Supreme Court of India or a retired Chief Justice of a High Court.
- An officer of the Indian Legal Service who is, or is qualified to be, an Additional Secretary to the Government of India
- An officer of a State Government not below the rank of Secretary or an officer of the Central Government not below the rank of Additional Secretary, who is an expert in sales tax matters.

- Section 19A: Vacancies etc not to invalidate proceedings
- Section 20: Appeals and the procedure to be heard by the Central Sales Tax Appellate Authority
- Section 21: Procedure on receipt of Application in the Appeal
- Section 22: Powers of the Authority. Powers of Court under Code of Civil Procedure, 1908.
- Section 23: Procedure of the Authority
- Section 24: Advance Rulings to function as Authority under this Act
- Section 25: Transfer of pending procedure
- Section 26: Orders passed by the authority are binding on each State Government, the assessing authorities and other authorities created by or under any law relating to general sales tax.

VAT

Taxation refers to the process of an authority levying certain charges on goods, services and transactions. It is one of the foremost powers held by the government of any country. Various types of taxes are applicable at various stages of sale of goods and services; VAT is one such tax.

VAT is a kind of tax levied on sale of goods and services when these commodities are ultimately sold to the consumer. VAT is an integral part of the GDP of any country.

Value added tax in simple terms could be defined “as a tax on the value addition at different stages of manufacturing and distribution of goods and services”. It is a form of indirect tax in the nature of a multi-point sales tax with a set-off or credit for tax paid on purchases/services. Each transaction of goods sold in the course of business is taxed, thus providing revenue to the government on value addition at each stage.

While VAT is levied on sale of goods and services and paid by producers to the government, the actual tax is levied from customers or end users who purchase these. Thus, it is an indirect form of tax which is paid to the government by customers but via producers of goods and services.

VAT is a multi-stage tax which is levied at each step of production of goods and services which involves sale/purchase. Any person earning an annual turnover of more than Rs.5 lacs by supplying goods and services is liable to register for VAT payment. Value added tax or VAT is levied both on local as well as imported goods

Features of Value Added Tax in India:

- Similar goods and services are taxed equally. So a similar television from all brands will be taxed the same
- VAT is levied at each stage of production and hence makes the taxation process easier and more transparent
- VAT reduces chances of tax evasion and fosters compliance
- Encourages transparency in sale of goods and services at the tiniest level

VAT Implementation in Various State of India:

Since enforcement of VAT and collection of it comes under the purview of state governments, different states have different VAT rules and implementation guidelines. Hence, the procedure for tax implementation, rates of VAT, timelines for VAT payment and VAT return filing, all differ from one state to another.

Despite state-specific implementations, VAT in India can be divided into four main subheads.

- ***NIL VAT Rate:***

In a lot of states items that are very basic in nature are sold without levying any VAT on them. These items are mostly those sold by the unorganized sector in their most basic or natural form. Examples of this type of items are salt, khadi, condoms etc.

- ***1% VAT Rate:***

For items which tend to be highly expensive, the percentage of VAT applicable needs to be kept low since otherwise the VAT levied could be too high an amount. For such items, VAT is kept as low as 1%. Gold, silver and other precious stones as well as precious jewelry fall under this category of goods. Most Indian states have fixed VAT for these items at 1% of the amount.

- **4-5% VAT Rate:**

A large number of daily consumption goods have been put by several state governments under this category of VAT. So VAT charged on goods like oil, coffee, medicines etc. is around 4-5% for most states in India.

- **General VAT Rate:**

General VAT rates apply to goods which cannot be segregated and put under any of the above listed VAT categories. For goods like liquor, cigarettes etc. many governments charge high VAT rates of 12.5% or 14-15%. Also, many state governments follow a general rate of VAT for goods which cannot be categorized to suit the above classification. Such goods are taxed at 12%, 13% or even 15% in different states.

Process of VAT Collection:

The process of collection of VAT can be safely categorized into two broad heads based on the method of collection of value added tax.

- **Account-based collection of VAT**

Under the account based method of collection, sale receipts are not used, instead tax is calculated on the value added. Value added is calculated as the difference between revenues and allowable purchases. Most countries do not use this method of computing and collecting VAT, however, Japan still uses this way for tax collection.

- **Invoice-based collection of VAT**

Under the invoice-based VAT collection, sale receipts or invoice is used to compute the corresponding VAT. Traders when they sell their goods and services offer invoice containing separate details of VAT collected. Most countries in the world today use the invoice-based method of VAT collection.

Another way to categorize VAT collection is to classify it based on the timing of collection.

- ***Accrual-based collection of VAT***

Accrual based collection matches the revenue with the time period during which it is earned and matches the cost of raw materials and expenses to the time period during which they were made. This method is extremely complicated as compared to the cash-based collection of VAT. However, it also throws substantial light on information about any business.

- ***Cash-based collection of VAT***

Cash-based accounting is simpler than accrual-based calculation. Emphasis is laid on the cash that is being handled instead of whether all the bills are paid. Whenever payment is received, that date is recorded as date of receipt of funds.

Need of VAT when sales tax already being levied by government

VAT and sales tax work differently and hence are kept separate. While sales tax calculation is an easy process, VAT is a multi-level and a more complex form of tax. Sales tax is simply calculated as a percentage of the final selling price of goods and services and is levied from customers at the time of purchase of goods and services.

Some of the most striking points of differentiation between sales tax and VAT are listed below.

- VAT is levied from both producers of goods and services as well as consumers while sales tax is entirely levied from customers
- VAT is a complex taxation process because it is charged in multiple stages. Sales tax is a pretty straightforward and simple taxation procedure
- VAT is a multi-stage tax levied at each step of production while sales tax is charged from customers at final purchase of goods or services
- VAT places in a lot of checks and hence is more transparent and efficient while sales tax is easy to fiddle with

- VAT collection places more burden on producers of goods and services which they might ultimately charge from customers, leading to increased financial burden on customers
- VAT is more transparent and efficient as compared to sales tax and hence generates more revenue for the government than sales tax

VAT calculation

$VAT = \text{Output Tax} - \text{Input Tax}$

Output Tax is the percentage of selling price received by the seller on the selling of his final product.

Input Tax is the percentage of cost price paid by a buyer for raw materials required to produce his final goods or services

Suppose Ravi is a carpenter who bought wood for Rs.1000 and paid an input tax of 10% = Rs.100

Ravi made a wooden table out of the purchased wood and sold it for Rs.2000. On this he collected an output tax of 10% on the selling price = 10% of 2000 = Rs.200

So, final VAT payable comes out to be $\text{Output Tax} - \text{Input Tax} = \text{Rs.200} - \text{Rs.100} = \text{Rs.100}$

VAT and Sales Tax Calculation

VAT/Sales Tax is one of the major revenue generators for the Indian government and is charged against the purchase price of a certain type of goods and services. This rate often changes every year, depending on the policy decision taken by the finance ministry.

VAT and Sales Tax Calculation Examples

Mr.A runs an ice cream parlour and often buys raw materials from wholesale dealers to run the business. He spends Rs.1,00,000 to buy the ingredients, which basically is considered as an input and is tax at 10%. In this case,

$\text{Input Tax} = 10\% \text{ of Rs.1 lakh} = \text{Rs.10,000}$

After running the business with great enterprising knowledge, he makes sales worth Rs.5,00,000. Again, there is an output tax to be paid for this as well, which stands at 10%. Here,

$\text{Output Tax} = 10\% \text{ of Rs.5 lakh} = \text{Rs.50,000}$

Going by the formula for VAT, i.e., Output Tax - Input Tax, which is, Rs.50,000 - Rs.10,000 = Rs.40,000.

Therefore, Rs.40,000 is the VAT Mr.A is required to pay for his business.

Value added tax is calculated as the difference between output tax (Tax charged on the sale of goods to consumer) and the input tax (tax paid on purchase of input).

Value Added Tax (VAT) = Output Tax – Input Tax

Let's continue with the same example to understand this. Let's say the TV manufacturer buys inputs from supplier for Rs.30,000 and pays input tax of 12% ($\text{Rs.30000} \times 12\% = \text{Rs.3600}$) on it. Further, he sells the manufactured TV to consumer for Rs. 60,000 and gets paid output tax of 12% ($\text{Rs.60000} \times 12\% = \text{Rs.7200}$). Thus, differential amount between input tax and output tax ($\text{Rs.7200} - \text{Rs.3600} = \text{Rs.3600}$) is the value added tax (VAT) payable to the government by the manufacturer.

There are two ways in which the value added tax was levied

1. Tax is calculated according to the tax paid on purchase of raw materials and other inputs, and the tax that is paid on the sale of end product to the consumer. The difference between the taxes paid at the time of sale and purchase is the VAT.
2. Tax is calculated and collected on the sum total of tax payable at sale and purchase of goods or services, considering the rate of tax applicable on the goods sold. VAT is the tax which is ultimately paid by the consumer but is collected at each phase of production/distribution.

EFFECTS ON THE INDIAN SOCIETY

The Value added is the value that a producer (whether manufacturer, distributor, advertising agent, farmer etc.) adds to his raw materials, or purchases before selling the new or improved product or service. That is the inputs (the raw materials, transport, rent, advertising and so on are brought, people are paid wages to work on these inputs and when final goods and services are sold some profit is left. As the term indicates, it is a tax imposed on value addition of the goods in a chain of the transaction from production, distribution, and retail.

A full-fledged VAT, in essence, an ad valorem tax on domestic final consumption levied at all stages of production and final point of sale. At each stage, the tax is confined only to value added. So, Vat is a tax not on the total value of the goods being sold but only on the value added to it by the seller. The seller is therefore liable to pay tax not on its gross value but on the net value, the gross value minus the value of the input. It is a multi-stage tax is being collected in installment. Therefore, VAT may be called as modified multipoint sales tax. In this calculation starts from Rs.10/- from a trader to retailer ends in Rs. 19/- showing a difference of Rs.9 the additional value being extra charged till it reaches the consumers by the retailers.

The importance of value added tax in India and other countries are due to the following accounting standards which include:

1. Simple tax structure and transparency;
2. Neutrality of tax with respect to behavior of consumer and of producer;
3. Transparency of tax amount in cost of goods and zero rating of tax on exports are easily identifiable.
4. Ability to provide same revenue to the Government with lower rates of tax.

Over the last few years, many attempts have been made to implement value added tax in India. Initially, all states were to move to value added tax system by 2000, but administrative problems and concern over the revenue implications of the change delayed the scheduled implementation. It has been postponed many times in the five years and was finally applicable in 2005.

EFFECTS OF VALUE ADDED TAXES ON SOCIETY

One of the important components of tax reforms initiated since liberalization is the introduction of value added tax. VAT is a multidimensional based system of taxation, with tax being imposed on value addition at each stage of a transaction in the supply chain. After independence, India embarked on rapid development to eradicate the extreme poverty that has affected the transaction in the supply

chain. After independence, India embarked on rapid development to eradicate the extreme poverty that has affected the economy.

The state was given an interventionist role for achieving optimum growth and to quickly accomplish an economic transition from an underdeveloped to a developed country. This required the government to collect the surplus funds were available and to mobilize them for rapid development which is included by the name of direct and indirect taxes. In India, income tax, corporation tax, wealth tax are examples of direct taxes whereas, customs, excise and sales taxes are examples of indirect taxes.

Thus, those who are considered to be too poor to pay direct taxes because their incomes are low are also forced to pay taxes. The idea is that at each stage of production and distribution, there is value addition and a part of that should be given to the government for social development.

The rates of taxes charged differ from area to area as per policy. With the upcoming of the Mall system and International services in India like VLCC, Mc Donalds, Sub Foodways etc. charge a hefty amount from the public in the namesake charging as per government order. The medium and lower class people that are not aware of these accounting techniques face difficulties in the ascertainment of rates for a good or service. In order to maintain a better value added tax system in India, it is necessary to maintain a dual process of maintaining invoices, bills by the seller and the purchaser.

“VAT is already levied differentially on food and drink; more VAT is charged to drink coffee on the premises than to take it away”, writes Sheron, an adviser to the Commons health select committee’s inquiry into alcohol earlier this year. “If this policy was applied to alcohol but was reversed – say, for example, reducing the VAT for on-sales from 20 to 12% – it would be possible to increase the rate of duty to compensate for this without increasing the price of alcohol in pubs.”

INDIAN POSITION

India is a federal state. Thus, the powers of taxation are divided between the Centre and State. In India’s indirect Tax system, the Central government has the authority to impose excise duties on

production or manufacture while the States are assigned the power to levy sales tax. In addition, States are empowered tax on many other goods and services in the form of entry tax, octroi, entertainment tax, electricity duty, motor vehicles tax. Inside newspapers, we read about the high prices charged for products and services like airfares, food products, petrol, entertainment etc. is affecting people in a positive way leading to contribution for nation and humanity. The quotation of famous personalities which show the impact of value added tax in India Chidambaram to State Governments:

“on behalf of the Centre, I promise to fully cooperate with you, compensate you and help in building a computer network system and resolve all problems” (Ramesh Chandra Secretary of the Federal Panel)

“Value added tax will be launched tomorrow (April 1) and there is absolutely no question of deferring it.” (World Bank Country director Michael Carter)

“A comprehensive value added tax widens tax net, as it makes tax evasion difficult going by the experience of other countries, value added tax has proved beneficial and leads to remove buoyancy”.

These comments by renowned personalities help in understanding the technicalities of the accounting and taxations.

GST (Goods and Services Tax)

GST (Goods and Services Tax) is a single indirect tax aimed at making the country a unified common market. It is imposed on the supply of goods and/or services within India. Multiple indirect taxes that the Central Government or State Governments impose on suppliers and consumers are subsumed by GST.

The taxes levied and collected by the Centre until 1 July, 2017, that are subsumed by GST include Central Excise duty, Duties of Excise (medicinal and toilet preparations), Additional Duties of Excise (goods of special importance), Additional Duties of Excise (textile and textile products), Additional Duties of Customs, Special Additional Duties of Customs, Service Tax, and Central surcharges and cesses. The State taxes subsumed under GST include State VAT, Entry Tax, Central

Sales Tax, Entertainment and Amusement Tax, Luxury Tax, Purchase Tax, Taxes on advertisements, Taxes on gambling, betting and lotteries, and State surcharges and cesses relating to the supply of commodities and services.

What is GST?

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The implementation of GST by Prime Minister Narendra Modi is considered a historical move, considering the fact that it significantly reformed indirect tax in India. The consolidation of several different taxes into one is forecast to help the country move forward by eliminating the cascading of taxes. The reform is also set to pave the way for a common national market, thereby making Indian commodities and services increasingly competitive in both local as well as global markets.

GST History

A number of countries around the globe have already implemented GST. For instance, Australia saw the introduction of the tax in 2000, replacing the Federal Wholesale Tax. Canada witnessed the replacement of the Manufacturer's Sales Tax with GST in 1991. New Zealand saw the implementation of the reform in 1986, while Singapore did so in 1994. GST in Malaysia was

introduced in 2015, and India has jumped on the bandwagon to provide benefits to the consumers, the industry, and the government.

History of GST in India

Atal Bihari Vajpayee, the 10th Prime Minister of India, was the first to recommend the idea of adopting GST during his time in office, in the year 2000. An Empowered Committee was formed by the state finance ministers at the time, and their aim was to formulate a structure for GST as they already had experience in creating State VAT. The Centre as well as the State had representatives who were urged to examine several different aspects of the proposal so as to come up with reports on the taxation of services, taxation of inter-state supplies, thresholds, and exemptions. The Finance Minister of West Bengal at the time, Asim Dasgupta, headed the committee and chaired it till 2011.

The advisory to the Finance Ministry between 2002 and 2004, Vijay Kelkar, led a task force and sent a report to the Ministry in 2004, highlighting the issues with the then tax structure, adding that these issues could be mitigated by adopting GST.

During his third term as the Finance Minister of India, P. Chidambaram said in 2005 that the government's medium-to-long term objective was to introduce a uniform taxation structure across India and cover the entire production-distribution chain. As a result, a discussion regarding the same took place in the Budget Session in FY 2005-06, and 1 April, 2010, was set as the date on which GST would be implemented in India.

The advisor to Chidambaram, Parthasarathy Shome, said that preparations by the state to make reforms may take time, but the deadline to implement the regime was retained at 1 April, 2010, in the Union Budget 2007-08. Chidambaram confirmed that significant progress was being made by the states to prepare for the implementation of GST in the Union Budget 2008-09, and the deadline remained intact.

In 2009, following the appointment of Pranab Mukherjee as the new Finance Minister of India, an announcement was made regarding the basic framework of GST, and there was still no change in the deadline. In late 2009, the Empowered Committee, led by Asim Dasgupta, presented the First Discussion Paper (FDP), explaining in detail the proposed GST reform. The foundation for GST, however, was laid by the Mission-Mode Project introduced by the government. The budgetary

outlay of the project was Rs.1,133 crore, and it led to the computerisation of commercial taxes in the various states of India. Following this move, GST implementation was delayed by a year.

The 115th Amendment to the Constitution saw the Government, headed by Congress, put forth the bill for the implementation of GST. The bill drew protests from the opposition party and was then sent for detailed scrutiny to a standing committee. The bill was discussed by the committee in June 2012, and concerns were raised by the opposition party over clause 279B as it provided extra powers to the Centre. As a result, Finance Ministers of various states along with the Finance Minister of India held meetings before setting a deadline to resolve the issues by 31 December, 2012.

During the Budget Session in 2013, the Finance Minister made an announcement that states will receive Rs.9,000 as compensation from the government, appealing to state finance ministers to cooperate with the government so that an indirect tax regime could be implemented. In the same year, the standing committee that was created to examine the bill, submitted its report to the parliament, and the regulation was approved by the panel with a few amendments.

Arun Jaitley, the new Finance Minister of India, revealed in his budget speech in February 2015 that GST would be implemented by 1 April, 2016. However, due to disagreements between states and parties in addition to legal issues, the implementation of the regime was delayed by over a year, and on 1 July, 2017, the four GST-related bills, viz. Central GST Bill, Union Territory GST Bill, Integrated GST Bill, and GST (Compensation to States) Bill became Acts. The GST council, over time, finalised GST rules and rates, and the Government announced that GST will come into effect on 1 July, 2017.

GST Bill

The GST Bill has become one of the main points of discussion around the country thanks to its ability to completely reform the whole taxation system in India. The objective of the bill is to simplify the system for taxpayers by unifying the taxes applicable to consumers and suppliers alike. GST was implemented after the approval of four bills passed by the government, viz., Goods and Services Tax Bill, Integrated GST Bill, Compensation GST Bill, and Union Territory GST Bill.

One of the reasons for the implementation of the GST Bill, as revealed by the Finance Minister of India, Mr. Arun Jaitley, is the impact it will have in keeping inflation in check. Moreover, the

different kinds of taxes applicable to different commodities and services in different states will be uniform across the country depending on the category under which they fall, therefore removing ambiguity. Even individuals who are heavily taxed can find some respite under GST.

Prior to 1 July, 2017, the Centre and the State calculated and charged taxes depending upon the tax layers that were already being charged on a commodity or service, and not the original price of the commodity or service. A move like this could adversely affect the country's GDP. Through the GST Bill, not only will business operations become smoother, but it will also keep a check on tax evasion.

Through the GST Bill, the introduction of a multi-tier tax slab will see four tax slabs applicable to commodities and services in India – 5%, 12%, 18% and 28%. Although GST aimed at levying a uniform tax rate on all products and services, four different tax slabs were introduced because daily necessities could not be subject to the same rate as luxury items. As a result, the GST Bill is expected to have a good impact on the general public as products of mass consumption, such as food grains, will not be taxed. Other commodities and services that are commonly used, like soaps and toothpaste will attract 12%-18% tax, which is lower than the current rate of more than 20%. Even household products such as refrigerators and washing machines will be cheaper as the rate of tax now applicable to them is 28% as opposed to the previous rate of 30%-31%.

GST Calculator

A GST Calculator is an effective tool that can be used to calculate the cost of products and services. A GST calculator is available on bankbazaar.com to help you determine the amount of tax applicable to a certain commodity or service. The formula for the addition of GST is as follows:

$$\text{GST Amount} = (\text{Original Price} \times \text{GST Rate}) / 100$$

$$\text{Net Price} = \text{Original Price} + \text{GST Amount}$$

For instance, if a commodity is sold from Mumbai to Bengaluru for Rs.5000, and the rate of GST is 12%, the GST amount applicable to the product will be $(5000 \times 12) / 100 = \text{Rs.}750$; and the net price will be $\text{Rs.}5000 + \text{Rs.}750 = \text{Rs.}5750$.

The formula for the removal of GST is as follows:

$$\text{GST Amount} = \text{Original Price} - (\text{Original Price} \times (100 / (100 + \text{GST Rate})))$$

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Net Price = Original Price – GST Amount

Calculation of Tax under GST

Here is a table that shows a contrast between the amount of tax applicable under the previous taxation system and the amount charged under GST (Tax rates have been assumed for the purpose of this example)

Details	Tax under Previous Regime	Tax under GST
<i>Value to Manufacturer</i>		
Production cost	Rs.2 lakh	Rs.2 lakh
+ Profit Margin (10%)	Rs.20,000	Rs.20,000
+ Excise Duty (12%)	Rs.26400	
Total Production Cost	Rs.2,46,400	Rs.2,20,000
+ Value Added Tax (12.5%)	Rs.30,800	
+ State GST (6%)		Rs.13,200
+ Central GST (6%)		Rs.13,200
Manufacturer's Invoice Value	Rs.2,77,200	Rs.2,46,400
<i>Value to Wholesaler</i>		
Cost of Products	Rs.2,77,200	Rs.2,46,400
+ Profit Margin (10%)	Rs.27,720	Rs.24,640
Total Value	Rs.3,04,920	Rs.2,71,040
+ Value Added Tax (12.5%)	Rs.38,115	
+ State GST (6%)		Rs.16,262
+ Central GST (6%)		Rs.16,262

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Details	Tax under Previous Regime	Tax under GST
Wholesaler's Invoice Value	Rs.3,43,035	Rs.3,03,564
<i>Value to Retailer</i>		
Cost of Products	Rs.3,43,035	Rs.3,03,564
+ Profit Margin (10%)	Rs.34,304	Rs.30,356
Total Value	Rs.3,77,339	Rs.3,33,920
+ Value Added Tax (12.5%)	Rs.47,167	
+ State GST (6%)		Rs.20,035
+ Central GST (6%)		Rs.20,035
Retailer's Invoice Value	Rs.4,24,506	Rs.3,73,990

Here is a table showing the calculation of tax for inter-state sales:

Details	Tax under Previous Regime	Tax under GST
<i>Value to Retailer</i>		
Cost of Commodities	Rs.2 lakh	Rs.2 lakh
+ Value Added Tax (12.5%)	Rs.25,000	
+ Integrated GST (12%)		Rs.24,000
+ Central State Tax (2%)	Rs.4,000	
Total Value to Retailer	Rs.2,29,000	Rs.2,24,000

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Agarbatti	Edible oils	Insulin	Revenue stamps
Apparels up to Rs.1,000	Fertilizers	Matting	Roasted coffee beans
Braille paper	First day covers	Medicines	Rusk
Braille typewriter	Fish fillet	Milk food for babies	Sabudana
Braille watches	Floor covering	Packaged food items	Skimmed milk
Cashew nuts	Footwear up to Rs.500	Packed paneer	Spices
Coir mats	Frozen vegetables	Pizza bread	Stamp-post marks
Domestic LPG	Hearing aids	Postage stamps	Stent

Services Subject to 5% GST:

- Transport services such as airways and railways
- Air travel in economy class
- Sale of advertisement space for print media
- Supply of tour operators' services
- Road transport by radio taxis and motor cabs
- Small restaurants earning turnover up to Rs.50 lakh

Commodities Subject to 12% GST

Almonds	Chess board	Fruits	Murabba	Playing cards
Animal fat	Chutney	Ghee	Namkeen	Preparations of vegetables
Apparel above Rs.1000	Diagnostic kits and reagents	Glasses for corrective spectacles and flint buttons	Non-AC restaurants	Sewing machine
Ayurvedic medicines	Exercise books	Jelly	Notebooks	Skimmers
Bhujia	Fish knives	Jam	Nuts	Spoons
Butter	Forks	Ladles	Packaged dry fruits	State-run lotteries
Cake servers	Frozen meat products	Ludo	Packed coconut water	Tongs
Carom board	Fruit juice	Mobile	Pickle	Playing cards

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- Air tickets by business class
- Guest houses, inns, and hotels with room tariff ranging between Rs.1000 and Rs.2500 per night

Commodities Subject to 18% GST:

Aluminium foil Furniture	Circuits	Hair oil	Mixed seasonings	Printed
Bamboo	Computers	Headgear	Monitors	Printers
Bidi Patta	Corn flakes	Ice cream	Optical Fiber	Salad dressings
Biscuits	Curry paste	Instant food mixes	Padding pools	Soap
Branded garments	Electrical transformer	Kajal pencil sticks	Swimming pools	Soups
Cakes	Envelopes	Mayonnaise	Pasta	Speakers
Camera	Flavoured refined sugar	Mineral water	Pastries	Steel products
CCTV	Footwear priced above Rs.500	Mixed condiments	Preserved vegetables	Tampons

Services Subject to 18% GST:

- AC hotels serving alcohol to customers
- Guest houses, inns and hotels with room tariff ranging from Rs.2500 and Rs.5000 per night
- IT services
- Telecom services

Commodities Subject to 28% GST:

Aerated water	Chewing gum Molasses	Hair shampoo Sunscreen	Shaving creams	Wallpaper
Aircraft for personal use	Deodorants	Paint	Vacuum cleaner	Washing machine
Automobiles Motorcycles	Dishwasher	Pan masala	Vending machines	Water heater
Ceramic tiles	Hair clippers	Shavers	Waffles and wafers coated with chocolate	Weighing machine ATM

Services Subject to 28% GST:

- Gambling and race club betting
- Cinema and entertainment
- 5-star hotels
- Guest houses, inns and hotels with room tariff of Rs.5000 and upwards

Benefits of GST

The Goods and Services Tax (GST) is imposed on the supply of products and/or services within the country. It subsumes multiple indirect taxes that are imposed by the State Governments or the Central Government, such as Service Tax, Purchase Tax, Central Excise Duty, Value Added Tax, Entry Tax, Luxury Tax, Local Body Taxes, etc.

GST offers benefits to the government, the industry, as well as the citizens of India. The price of goods and services is expected to reduce under the new reform, while the economy will receive a healthy boost. It is also expected to make Indian products and services internationally competitive.

Following are some of the main benefits of GST:

- Uniformity in Taxation
- Cascading of Taxes
- Common Portal
- Common Procedures
- Helping Government Revenue Find Buoyancy
- Simpler and Lesser Number of Compliance
- Regulation of Unorganised Industries
- Lowered Tax Burden on Industry and Trade
- Composition Scheme

Benefits of GST to Businesses and Industry

Industry will avail the maximum benefits of GST as the reform would not only contribute significantly to its rapid growth, but it would also contribute to a 2% increase in the GDP. By subsuming numerous taxes, GST would make the taxation system easier for businessmen by helping them avoid the filing of several different taxes and reducing hassles.

Since GST will operate on an advanced IT platform, all GST-related issues will be addressed online, thereby ensuring ease and transparency in GST payments. Moreover, GST clubs various indirect taxes under one umbrella and eliminates cluster in the calculation of taxes. A single rate and a single mechanism will prevail across India, thereby helping in ensure that there is no overlapping of taxes. For instance, if the GST rate applicable to a certain product is 20% and a consumer purchases it for Rs.200, the GST amount would be 20% of Rs.200 = Rs.40. The overall GST amount paid by all three entities, viz. the manufacturer, the wholesaler, and the retailer will never be more than Rs.40. As a result, the tax applicable to the retailer as per the previous system will be waived off and he can save money on tax. The same applies to manufacturers and wholesalers as they would all have paid GST on the same commodity, thereby providing relief on each other's tax burden.

GST helps in decreasing transaction costs, which in turn make it easy to improve business, which eventually increases competition within the industry. An increase in competition will also help in generate more jobs as newer businesses are established across industries. Exporters and manufacturers can also reap the benefits of GST as most of the state and central taxes would no longer be applicable to products and services, and there will be no more levy of Central Sales Tax either. Lowered costs in the Indian industry will mean that Indian exports will receive a major boost, therefore making Indian goods and services more competitive in international markets.

Benefits to Central and State Governments

Since all indirect taxes charged by the state governments and the central government will be subsumed by GST, it will become simpler to administer the taxation system, especially because of the presence of a robust IT system. Evading GST will become almost impossible due to the use of an advanced IT platform, thereby promoting the payment of taxes.

The cost of collecting taxes will decrease significantly with the implementation of GST, thereby resulting in higher revenue efficiency. GST will also end the duplication of indirect tax collection, and it would also lower the cost of revenue collection, thereby benefitting both, the state governments as well as the central government.

GST Benefits to the Consumer

A good number of products and/or services are either exempt from tax or charged at 5% or less under GST, thereby making daily necessities more easily available to the poor. Small traders will find themselves on a level playing field thanks to a simplified tax structure with fewer exemptions. Products and services will be allowed to move freely across the country, thus resulting in increased competition between manufacturers and businesses which will eventually benefit consumers. Items such as movie-ticket prices, two-wheelers, televisions, stoves, washing machines, SUVs and luxury cars, two-wheelers, etc. will be cheaper.

Since there will be no overlapping of taxes, there will be a big reduction on the overall tax on a commodity, thereby leading to lower prices. The overall tax burden on most goods, as a result, will also reduce, therefore benefitting the consumer.

GST Returns

GST returns must be filed by all persons who register themselves under GST. There are many different kinds of GST returns that must be filed every month, according to the CGST Act, 2017. Even an annual return has to be filed by all those who are registered under GST. Entities registered under the GST Composition Scheme will have to file their returns on a quarterly basis as well as annually. The most common returns that must be filed include GSTR 1, GSTR 2, and GSTR 3.

Normal taxpayers will have to submit these three returns on a monthly basis along with one annual return, as per the CGST law. Taxpayers who are registered as Input Service Distributors are liable to collect or deduct the tax (TCS/TDS). All registered taxable individuals are required to submit outward supply information in Form GSTR 1 by the 10th day of the following month.

The Kinds of Returns Applicable under GST

GST has a number of returns that must be filed electronically via the GST Network portal. Here is a list of returns applicable under GST:

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- **GSTR 1:** Information regarding outward supplies of commodities or services by registered taxable suppliers. The return due date will be the 10th day of the following month.
- **GSTR 1A:** Information relating to auto-drafted supplies of commodities or services. The return due date will be the 15th day of the following month.
- **GSTR 2:** Information relating to inward supplies of products and services by registered taxable recipients. The return due date will be the 15th day of the following month.
- **GSTR 2A:** Information relating to auto-drafted supplies from GSTR 1 or GSTR 5 to the recipient.
- **GSTR 3:** This is a monthly return based on the finalisation of information relating to outward supplies as well as inward supplies in addition to the payment of tax amount by registered taxable persons. The return due date will be the 20th day of the following month.
- **GSTR 3A:** Notice to return defaulter under Section 46 of the Central GST Act, 2017.
- **GSTR 4:** Quarterly return for registered individuals who have selected the composition levy by composition suppliers. The return due date will be the 18th day of the month next to quarter.
- **GSTR 4A:** Auto-drafted information for registered individuals who have chosen the composition levy.
- **GSTR 5:** Return for NRI taxable individuals by NRI taxable individuals. The return due date will be the 20th day of the following month.
- **GSTR 5A:** Information relating to the supply of database access, online information, or retrieval service by an individual located outside the country made to non-taxable individuals in India.
- **GSTR 6:** Return for Input Service Distributor by Input Service Distributor. The return due date will be the 13th day of the following month.

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- **GSTR 6A:** Information relating to auto-drafted supplies from GSTR 1 or GSTR 5 to Input Service Distributors.
- **GSTR 7:** Return for Tax Deducted at Source by the tax deductor. The return due date will be the 10th day of the following month.
- **GSTR 7A:** Tax Deducted at Source Certificate.
- **GSTR 8:** Statement for Tax Collected at Source by the tax collector or e-commerce operator. The return due date will be the 10th day of the following month.
- **GSTR 9:** GST Annual return by registered taxable persons. The return due date will be the 31st of December of the following financial year.
- **GSTR 9A:** Simplified annual return by compounding taxable individuals registered under Section 8.
- **GSTR 10:** GST final return by taxable individual whose registration is either cancelled or surrendered. The return due date will be within three month from the date on which the registration was cancelled or the date on which the cancellation order was issued, whichever is later.
- **GSTR 11:** GST inward supplies statement for (Universal Identification Number) UIN by individuals having UIN and claiming a refund. The return due date will be the 28th day of the month after the month for which the statement was filed.

Part A (ONE Mark)

Multiple Choice Questions
Online Examination

Part – B (2 Marks)

1. What is taxable income?
2. Define corporate tax.
3. What is corporate tax planning?
4. List the merits of corporate tax planning.
5. Define VAT.
6. Mention the advantages of VAT.
7. What are the disadvantages of VAT?
8. What is additional excise duty?
9. What is the meaning of CENVAT?
10. Define 'Sales Tax'.
11. Mention the uses of corporate tax planning.
12. What is tax avoidance?
13. What is tax evasion?
14. What is tax burden?
15. What Is GST's Impact?
16. Which Central and State Taxes Are Subsumed Under GST?
17. List the benefits of GST.
18. What Are the GST Categories?
19. Is GST An Accepted System Of Taxation Across The World?
20. List any five Goods And Services not covered under the GST.
21. What are the components of GST?
22. How imports be taxed under GST?

Part – C (8 Marks)

1. Discuss the essentials of corporate tax planning.
2. Discuss corporate tax planning system in India.
3. What is VAT? Explain the objectives of VAT.
4. Discuss the advantages of VAT system in India.
5. Why sales tax differed from state to state? Explain.
6. Explain how the interstate tax was charged according to the CST?
7. Discuss the difficulties faced in adopting VAT?
8. Explain VAT.
9. What are the areas of tax planning in Central Sales Tax Act?
10. Explain the salient features of CST Act.
11. Describe the overall features and functions of Central Sales Tax.
12. Explain how the provisions of Corporate Taxes planning system influence and effects corporate functions.
13. Explain the role of Assessment Year and Previous Year in determining the Tax liability of an assessee.
14. Explain the provisions of corporate tax planning system.
15. Describe the procedure adopted in computing value added tax.
16. Explain the steps and process which are followed in the calculation of Sales Tax with an example.
17. State and elaborate the salient features of the Sales Tax Act, including the Value Added Tax.
18. Describe the procedure for computing Goods and Service Tax.
19. State and elaborate the salient features of GST,
20. Discuss the advantages and disadvantages of GST tax system in India.
21. Discuss the areas of tax planning in GST.

UNIT 4

QUESTIONS	OPTION 1	OPTION 2	OPTION 3	OPTION 4	ANSWERS
Tax planning is an arrangement of ----- activities	sales	Fiscal	financial	Illegal	financial
Who is Tax payer?	Assessee	Businessman	Trust	Farmer	Assessee
The year in which the income is earned is called _____	Previous year	Current year	Assessment year	Accounting year	Previous year
Sales Tax was considered as	Direct Tax	Indirect Tax	Tax imposed by local government	Tax imposed by foreign government	Indirect Tax
VAT was imposed	Directly on consumer	On final stage of production	On first stage of production	On all stages between production and final stage	On all stages between production and final stage
Inter State Trade and commerce was taxed under the Central Sales Tax Act	1956	1966	1976	1986	1956
Reduction admissible from tax liability is known as -----	Rebate	Tax deduct	Tax Evasion	Tax Avoidance	Rebate
Sales Tax was levied at the time of the Contract of _____	Transfer	Rescinded	Agreement to Sell	resign	Agreement to Sell
VAT belong to _____ list	Central	State	State & Union	Local	State & Union
Input tax credit as credited in Electronic Credit Ledger can be utilized for	Payment of Interest	Payment of Penalty	Payment of Fine	Payment of Taxes	Payment of Taxes
Tax invoice must be issued by _____	Every supplier	Every taxable person	Registered persons not paying tax under composition scheme	Every Consumer	Registered persons not paying tax under composition scheme
A bill of supply can be issued in case of inter-state and intra-state	Exempted supplies	Supplies by composition suppliers	Supplies to unregistered persons	Unexempted supplies	Exempted supplies
An invoice must be issued	At the time of removal of goods	On receipt of payment for supply	Delivery Date	On transfer of risks	At the time of removal of goods

QUESTIONS	OPTION 1	OPTION 2	OPTION 3	OPTION 4	ANSWERS
GST means	Goods and Supply Tax	Goods and Services Tax	Government Sales Tax	General Sales Tax	Goods and Services Tax
In India GST became effective from	1st April, 2017	1st January, 2017	1st July, 2017	1st March, 2017	1st July, 2017
In India GST came effective from 1st July, 2017 India has chosen _____ model of dual GST	USA	UK	Canadian	China	Canadian
GST is a _____ based tax on consumption of goods and services	Duration	Destination	Dividend	Development	Destination
Indian GST model has _____ rate structure	3	4	5	6	4
How many types of taxes will be in Indian GST	2	3	4	5	3
First announcement to introduce GST by 2010, is made in the year	2000	2004	2006	2008	2006
Which of the following is subsumed in GST	VAT	Stamp Duty	Entry Tax	Entertainment Tax	Stamp Duty
What are the taxes levied on an inter-state supply	CSGT	SGCT	CSGT & SGCT	IGST	CSGT & SGCT
What is the maximum rate prescribed under CGST	12%	20%	28%	18%	20%
Which of the following taxes will be levied on imports of goods and services?	CSGT	SGCT	CSGT & SGCT	IGST	IGST
Maximum rate prescribed under UTGST/ SGST	14%	20%	28%	30%	20%
How will be the goods and services classified under GST regime?	SAC code	HSN code	SAC/ HSN code	GST Code	SAC/ HSN code
Which form is to be used for registration	Form GSTR – 1A	Form GSTR – 2	Form GST REG – 01	Form GST REG	Form GST REG – 01
When does liability to pay GST arise in case of supply of goods?	on raising of invoice	At the time of supply goods	On receipt of payment	Earliest of any of other options	Earliest of any of other options
The time limit to pay the value of supply with taxes	90 days	6 months	180 days	365 days	180 days
Provisional input tax credit can be utilized against	Any tax liability	Self Assessed output tax liability	Interest and penalty	Fine	Self Assessed output tax liability
What is the validity of registration certificate?	5 years	10 years	No validity	Validity till it is cancelled	Validity till it is cancelled

QUESTIONS	OPTION 1	OPTION 2	OPTION 3	OPTION 4	ANSWERS
Business which has centralized registration under existing Acts	Shall obtain a centralized registration under GST law	Shall obtain a registration on temporary basis	No need to apply for registration under GST	Shall obtain a separate registration in each state from where it is making taxable supplies	Shall obtain a separate registration in each state from where it is making taxable supplies
Selective sales tax was levied on	Sales of all commodities	Multi-point tax	Selected commodities	Unselected commodities	Selected commodities
System of sales taxation	Single and Multiple point	First point	Final point	Multiple point	Single and Multiple point
Tax avoidance is perfectly legal and is referred as	Tax Liability	Tax Planning	Tax Evasion	Tax Avoidance	Tax Planning
Tax Invoice is also called as _____	Tax Credit	Tax Paid	Retail Invoice	Input Tax	Retail Invoice
Tax on sale of goods is called as -----	sales tax	Income Tax	Commercial tax	Goods tax	sales tax
Taxes are _____ payments to government	Compulsory	Optional	Flexible	Fixed	Compulsory
Which of the following tax will be abolished by the Goods and Services Tax.	Property tax	Corporation tax	VAT	Income tax	VAT
Which of the following tax is imposed by the Central Government but the state government collects it?	Corporation tax	VAT	Income tax	stamp duty	stamp duty
According to budget 2017-18, which is the correct decreasing order of the government tax revenue?	Income Tax> Corporation Tax> Service Tax.	Income tax> Corporate tax> product tax	Corporate tax> income tax> product tax	Corporate tax> product tax> income tax	Corporate tax> income tax> product tax
VAT has been calculated by deducting tax credit from tax collected—	during the payment period	during the financial year	during any period	during accounting period	during the payment period
Income which accrues outside India from a business controlled from India is taxable in case of:	Resident only	Not ordinarily resident only	Both ordinarily resident and NOR	Non-resident	Both ordinarily resident and NOR
Income which accrues or arises outside India and also received outside India taxable in case of:	Both ordinarily resident and NOR	Non resident	Resident only	Not ordinarily resident only	Resident only

QUESTIONS	OPTION 1	OPTION 2	OPTION 3	OPTION 4	ANSWERS
What is called Tax heaven?	Subsidy given by the government in taxes	Tax evasion in the domestic country	To impose equal taxes on domestic producers and foreign producers	A country which gives tax exemptions to the foreign citizens that there will be no tax on investing the money in their country.	A country which gives tax exemptions to the foreign citizens that there will be no tax on investing the money in their country.
What kind of tax system is found in India?	Progressive	Degressive	Proportional	Regressive	Degressive
What is the tax gap?	The difference between what companies should be paying and are actually paying	The amount of taxes the government would like to collect	The difference between taxes owed to government and what it actually receives	The amount of tax paid by individuals versus that paid by corporations	The difference between taxes owed to government and what it actually receives
What is the difference between tax avoidance and evasion?	Avoidance is done by corporates	There is no difference in law	Evasion is done by individuals	Avoidance is legal and evasion is illegal	Avoidance is legal and evasion is illegal
The income tax in India is	direct and proportional	direct and progressive	indirect and proportional	indirect and progressive	direct and progressive
An ad valorem duty was levied on the basis of	the value added	the unit of the commodity	the price of a commodity	the advertisement expenditure	the price of a commodity
Government imposes taxes to ?	check the accumulation of wealth among the rich	run the machinery of state	uplift weaker sections	to pay salary to government staff	run the machinery of state
Which commission distributes the taxes between centre and states ?	Planning commission	Finance Commission	Board of Direct Taxes	National Development Council	Finance Commission

QUESTIONS	OPTION 1	OPTION 2	OPTION 3	OPTION 4	ANSWERS
Which of the following states became the first state in the country to launch RBI's e-payment system for commercial tax payers?	Kerala	Karnataka	Maharashtra	Andhra Pradesh	Karnataka
A local authority has earned income from the supply of commodities outside its own jurisdictional area. It is :	Taxable	Partially Exempted	Exempt	Partially taxable	Taxable
Which of the following was associated with CENVAT	Gift tax	Wealth tax	Income tax	Indirect tax	Indirect tax
Central sales tax was leived by	State Government	Central Government	Finance Commission	Planning Commission	Central Government
The report of Vijay Kelkar Committee related to .	Tax reforms	Money value	Inflation	Banking operations	Tax reforms
Corporation tax are taxes on....	Income of company	Income of individual	Income of government	Land revenue	Income of company
Taxation and the government expenditure policy are dealt under which policy ?	Fiscal policy	Monetary policy	Trade policy	Industrial policy	Fiscal policy
Which tax is not related with income from corporate sector in India ?	Capital gain tax	Income tax	Excise duty	Stamp duty	Capital gain tax

UNIT-V – Consumer Protection Act

SYLLABUS

Consumer Protection Act – Consumer rights, Procedures for Consumer grievances redressal, Types of consumer Redressal Machineries and Forums- Competition Act 2002 - Cyber crimes, IT Act 2000 and 2002, Cyber Laws, Introduction of IPR – Copy rights, Trade marks, Patent Act.

CONSUMER PROTECTION ACT 1986

The Consumer Protection Act was passed in 1986 and it came into force from 1 July 1987. The main objectives of the Act are to provide better and all-round protection to consumers and effective safeguards against different types of exploitation such as defective goods, deficient services and unfair trade practices. It also makes provisions for simple, speedy and inexpensive machinery for redressal of consumers' grievances.

The salient features of Consumer Protection Act (CPA) 1986 are as follows:

- (a) It applies to all goods, services and unfair trade practices unless specifically exempted by the Central Government.
- (b) It covers all sectors whether private, public or co-operative.
- (c) It provides for establishment of consumer protection councils at the central, state and district levels to promote and protect the rights of consumers and a three tier quasi-judicial machinery to deal with consumer grievances and disputes.
- (d) It provides a statutory recognition to the six rights of consumers.

GOODS AND SERVICES COVERED UNDER CPA 1986

The term 'goods' under this Act has the same meaning as under the sale of goods Act. Accordingly it covers all types of movable property other than money and includes stocks and shares, growing crops, etc. The term 'service' means service of any description made available to potential users and includes banking, financing, housing construction, insurance, entertainment, transport, supply of

electrical and other energy, boarding and lodging, amusement, etc. The services of doctors, engineers, architects, lawyers etc. are included under the provisions of Consumer Protection Act.

FILING OF COMPLAINTS

For redressal of consumer grievances a complaint must be filed with the appropriate forum. In this section let us know, who can file a complaint, what complaints can be filed, where to file the complaint, how to file the complaints etc.

Who can file a complaint?

The following persons can file a complaint under Consumer Protection Act 1986:

- (a) a consumer;
- (b) any recognized voluntary consumer association whether the consumer is a member of that association or not;
- (c) the Central or any State Government; and
- (d) one or more consumers where these are numerous consumers having same interest.
- (e) Legal heir or representative in case of death of a consumer.

What complaints can be filed?

A consumer can file a complaint relating to any one or more of the following:

- (a) an unfair trade practice or a restrictive trade practice adopted by any trader or service provider;
- (b) goods bought by him or agreed to be bought by him suffer from one or more defect;
- (c) services hired or availed of, or agreed to be hired or availed of, suffer from deficiency in any respect;
- (d) price charged in excess of the price (i) fixed by or under the law for the time being in force, (ii) displayed on the goods or the package, (iii) displayed in the price list, or (iv) agreed between the parties; and
- (e) goods or services which are hazardous or likely to be hazardous to life and safety when used.

Where to file a complaint?

If the value of goods and services and the compensation claimed does not exceed Rs. 20 lakh, the complaint can be filed in the District Forum; if it exceeds Rs. 20 lakh but does not exceed Rs. One crore, the complaint can be filed before the State Commission; and if it exceeds Rs. One crore, the complaint can be filed before the National Commission.

How to file a complaint?

A complaint can be made in person or by any authorised agent or by post. The complaint can be written on a plain paper duly supported by documentary evidence in support of the allegation contained in the complaint. The complaint should clearly specify the relief sought. It should also contain the nature, description and address of the complainant as well as the opposite party, and so also the facts relating to the complaint and when and where it arose.

What are the reliefs available to consumers?

Depending on the nature of complaint the relief sought by the consumer, and the facts of the case, the Redressal Forum/Commission may order one or more of the following reliefs:

- (a) Removal of defects from the goods or deficiencies in services in question.
- (b) Replacement of the defective goods.
- (c) Refund of the price paid.
- (d) Award of compensation for loss or injury suffered.
- (e) Discontinuance of unfair trade practices or restrictive trade practice or not to repeat them.
- (f) Withdrawal of hazardous or dangerous goods from being offered for sale.
- (g) Provision of adequate costs to aggrieved parties.

Time limit for filing the case

The consumer can file the complaint within two years from the date on which the cause of action had arisen. However, it may be admitted even after the lapse of two years if sufficient cause is shown for the delay.

Time limit for deciding the case

Every complaint must be disposed off as speedily as possible within a period of three months from the date of notice received by the opposite party. Where the complaint requires laboratory testing of goods this period is extended to five months.

RIGHTS OF CONSUMERS

John F. Kennedy, the former USA President, in his message to consumer had given six rights to consumers. These rights are (i) right to safety, (ii) right to be informed, (iii) right to choose, (iv) right to be heard, (v) right to redress and (vi) right to represent. These rights had paved the way for organised consumer movement in the USA and later it spread all over the world. In India, the Consumer Protection Act, 1986 has also provided for the same rights to consumers. Let us have a brief idea about these rights of consumers.

(a) Right to Safety

It is the right of the consumers to be protected against goods and services which are hazardous to health or life. For example, defective vehicles could lead to serious accidents. The same is true of electrical appliances with sub-standard material. Only recently, there were mass protests and boycott of soft drinks due to presence of hazardous pesticides beyond permissible limits. Thus, right to safety is an important right available to the consumer which ensures that the manufacturers shall not produce and sell sub-standard and dangerous products.

(b) Right to be Informed

The right to be informed is an important component of consumer protection. The consumer must be provided with adequate and accurate information about quality, quantity, purity, standard and the price of the goods and services. Now-a-days the manufacturers provide detailed information about the contents of the product, its quantity, date of manufacturing, date of expiry, maximum retail price, precautions to be taken, etc. on the label and package of the product. Such information helps the consumers in their buying decision and use of the product.

(c) Right to Choose

The right to choose provides that the consumer must be assured, whenever possible, access to a variety of goods and services at competitive prices. If the market has enough varieties of products at

highly competitive prices, the buyers have an opportunity of wide selection. However, in case of monopolies like railways, postal service and electricity supply etc. it implies a right to be assured of satisfactory quality of service at a fair price.

(d) Right to be Heard

The rights to safety, information and choice will be frivolous without the right to be heard. This right has three interpretations. Broadly speaking, this right means that consumers have a right to be consulted by Government and public bodies when decisions and policies are made affecting consumer interests. Also, consumers have a right to be heard by manufacturers, dealers and advertisers about their opinion on production, marketing decisions and any grievances of the consumers. Now-a-days, most of the top manufacturers and firms have set up consumer service cells to attend to consumers' complaints and take appropriate steps for their redressal. Thirdly, consumers have the right to be heard in legal proceedings in law courts dealing with consumer complaints.

(e) Right to Seek Redressal

The consumers have been given the right of redressal of their grievances relating to the performance, grade, quality etc. of the goods and services. If required, the product must be repaired / replaced by the seller/ manufacturer. The Consumer Protection Act has duly provided for a fair settlement of genuine grievances of the consumers. It has also set up a proper mechanism for their redressal at district, state and national levels.

(f) Right to Consumer Education

It means the right to receive knowledge and skill to become an informed consumer. In this direction the consumer associations, educational institutions and the policy makers can play an important part. They are expected to impart information and knowledge about (i) the relevant laws which are aimed at preventing unfair trade practices, (ii) the ways and means which dishonest traders and producers may adopt to deceive the consumers, (iii) insistence on a bill or receipt at the time of purchase, and (iv) the procedure to be followed by consumers while making complaints. Effective consumer education leads to an increased level of consumer awareness and help them to enforce their rights

more effectively, and protect themselves against fraudulent, deceitful and grossly misleading advertisement, labeling, etc.

Consumer grievances redressal

A well-defined grievance procedure is an important element of sound industrial relation machinery. Prompt and effective disposal of worker's grievance is the key to industrial peace. A dissatisfaction, which is orally made known by one employee to another, is known as a complaint. A complaint becomes a grievance when this dissatisfaction related to work is brought to the notice of the management. Grievances are feelings, something real, sometime imagined, which an employee may have in regard to his employment situations. Grievances give rise to unhappiness, frustration, discontent, indifference to work; poor morale and they ultimately lead to the inefficiency and low productivity of workers. The cost of grievance can be high in terms of time lost, poor work, damage, poor customer services and goodwill of the organization.

CONTENTS OF GRIEVANCE

Basically, a grievance is a complaint of one or more workers, which has following contents.

- (i) Wage, incentives, work arrangements, complain about job specification.
- (ii) Rule interpretation, transfer, seniority, and promotion.
- (iii) Working conditions, safety, welfare amenities.
- (iv) Supervision, discipline, code of conduct.
- (v) Inter-personnel relationship, superior-subordinate relationship.
- (vi) Contract violation, unfair labour practices.
- (vii) Non-availability of materials in time.

PRINCIPLES OF GRIEVANCE HANDLING PROCEDURES

According to Baer¹⁵ following are the principles of grievance handling procedure.

1. Investigate and handle each and every case as thought it may eventually result into dispute.
2. Give employee a full hearing.
3. Enforce agreement in true spirit and ensure unions identify specific contractual provisions allegedly violated.

4. Do not by action or inaction cause the employee or the union to default on their compliance with any contractual obligations.
5. Do not deny the grievance for reason of non compliance.
6. Do not argue on grievance if it is untimely.
7. Do not apply grievance remedy to an improper grievant
8. Do not holds back the remedy if the organization is wrong and apply the remedy to the persons wronged.
9. Do not assume a judicial or arbitral role.
10. Remember always that the union is moving party.
11. Determine and ensure there has been equal treatment of employees.
12. Evaluate any political connotations of the grievance.
13. Do not practice Parkinson's Law in labour relations.
14. Permit reasonable latitude to the unions in the manner of its presentation, but do not relinquish your authority.
15. Do not permit misconduct of union representatives.
16. Admit errors and take corrective actions.
17. Use the grievance machinery as another channel of communication.
18. Demand proper productivity level.
19. Control your emotions, remarks and behaviour.
20. Recognize employees as individuals.

GRIEVANCE HANDLING PROCESS

The procedure of handling a grievance essentially varies from company to company, but the principles are practically same. A grievance should be handled in the first instance at the lowest level. Justice delayed is justice denied. So action on grievance should be taken promptly before rumors spread and tempers rest. Following chart exhibits a model grievance procedure.

Steps in Grievance Handling Procedure

Need for a Grievance Handling Procedure

Key Features of a Good Grievance Handling Procedure

Basic Elements of a Grievance Handling Procedure

Errors in the Grievance Handling Procedure

Objectives of a Grievance Handling Procedure

Benefits of a Grievance Handling Procedure

1. Steps in Grievance Handling Procedure:

At any stage of the grievance machinery, the dispute must be handled by some members of the management. In grievance redressed, responsibility lies largely with the management. And, grievances should be settled promptly at the first stage itself. The following steps will provide a measure of guidance to the manager dealing with grievances.

i. Acknowledge Dissatisfaction:

Managerial/supervisory attitude to grievances is important. They should focus attention on grievances, not turn away from them. Ignorance is not bliss, it is the bane of industrial conflict. Condescending attitude on the part of supervisors and managers would aggravate the problem.

ii. Define the Problem:

Instead of trying to deal with a vague feeling of discontent, the problem should be defined properly. Sometime the wrong complaint is given. By effective listening, one can make sure that a true complaint is voiced.

iii. Get the Facts:

Facts should be separated from fiction. Though grievances result in hurt feelings, the effort should be to get the facts behind the feelings. There is need for a proper record of each grievance.

iv. Analyze and Decide:

Decisions on each of the grievances will have a precedent effect. While no time should be lost in dealing with them, it is no excuse to be slipshod about it. Grievance settlements provide opportunities for managements to correct themselves, and thereby come closer to the employees.

Horse-trading in grievance redressed due to union pressures may temporarily bring union leadership closer to the management, but it will surely alienate the workforce away from the management.

v. Follow up:

Decisions taken must be followed up earnestly. They should be promptly communicated to the employee concerned. If a decision is favourable to the employee, his immediate boss should have the privilege of communicating the same.

Some of the common pitfalls that managements commit in grievance handling relate to:

- (a) Stopping the search for facts too soon;
- (b) Expressing a management opinion before gathering full facts;
- (c) Failing to maintain proper records;
- (d) Arbitrary exercise of executive discretion; and
- (e) Settling wrong grievances.

Need for a Grievance Handling Procedure:

Grievance procedure is necessary for any organisation due to the following reasons:

- (i) Most grievances seriously disturb the employees. This may affect their morale, productivity and their willingness to cooperate with the organisation. If an explosive situation develops, this can be promptly attended to if a grievance handling procedure is already in existence.
- (ii) It is not possible that all the complaints of the employees would be settled by first- time supervisors, for these supervisors may not have had a proper training for the purpose, and they may lack authority. Moreover, there may be personality conflicts and other causes as well.
- (iii) It serves as a check on the arbitrary actions of the management because supervisors know that employees are likely to see to it that their protest does reach the higher management.
- (iv) It serves as an outlet for employee gripes, discontent and frustrations. It acts like a pressure valve on a steam boiler. The employees are entitled to legislative, executive and judicial protection and they get this protection from the grievance redressal procedure, which also acts as a means of upward communication.

The top management becomes increasingly aware of employee problems, expectations and frustrations. It becomes sensitive to their needs, and cares for their well-being.

This is why the management, while formulating plans that might affect the employees for example, plant expansion or modification, the installation of labour-saving devices, etc., should take into consideration the impact that such plans might have on the employees.

- (v) The management has complete authority to operate the business as it sees fit subject, of course, to its legal and moral obligations and the contracts it has entered into with its workers or their representative trade union. But if the trade union or the employees do not like the way the

management functions, they can submit their grievance in accordance with the procedure laid down for that purpose.

A well-designed and a proper grievance procedure provide:

- (i) A channel or avenue by which any aggrieved employee may present his grievance;
- (ii) A procedure which ensures that there will be a systematic handling of every grievance;
- (iii) A method by which an aggrieved employee can relieve his feelings of dissatisfaction with his job, working conditions, or with the management; and
- (iv) A means of ensuring that there is some measure of promptness in the handling of the grievance.

Key Features of a Good Grievance Handling Procedure:

Torrington & Hall refer to four key features of a grievance handling procedures, which are discussed below:

(a) Fairness:

Fairness is needed not only to be just but also to keep the procedure viable, if employees develop the belief that the procedure is only a sham, then its value will be lost, and other means sought to deal with the grievances. This also involves following the principles of natural justice, as in the case of a disciplinary procedure.

(b) Facilities for Representation:

Representation, e.g., by a shop steward, can be of help to the individual employee who lacks the confidence or experience to take on the management single-handedly. However, there is also the risk that the presence of the representative produces a defensive management attitude, affected by a number of other issues on which the manager and shop steward may be at loggerheads.

(c) Procedural Steps:

Steps should be limited to three. There is no value in having more just because there are more levels in the management hierarchy. This will only lengthen the time taken to deal with matter and will soon bring the procedure into disrepute.

(d) Promptness:

Promptness is needed to avoid the bitterness and frustration that can come from delay. When an employee 'goes into procedure/ it is like pulling the communication cord in the train. The action is not taken lightly and it is in anticipation of a swift resolution. Furthermore, the manager whose decision is being questioned will have a difficult time until the matter is settled.

Essential Pre-requisites of a Grievance Handling Procedure:

Every organisation should have a systematic grievance procedure in order to redress the grievances effectively. As explained above, unattended grievances may culminate in the form of violent conflicts later on.

The grievance procedure, to be sound and effective should possess certain pre-requisites:

(a) Conformity with Statutory Provisions:

Due consideration must be given to the prevailing legislation while designing the grievance handling procedure.

(b) Unambiguity:

Every aspect of the grievance handling procedure should be clear and unambiguous. All employees should know whom to approach first when they have a grievance, whether the complaint should be written or oral, the maximum time in which the redressal is assured, etc. The redressing official should also know the limits within which he can take the required action.

(c) Simplicity:

The grievance handling procedure should be simple and short. If the procedure is complicated it may discourage employees and they may fail to make use of it in a proper manner.

(d) Promptness:

The grievance of the employee should be promptly handled and necessary action must be taken immediately. This is good for both the employee and management, because if the wrong doer is punished late, it may affect the morale of other employees as well.

(e) Training:

The supervisors and the union representatives should be properly trained in all aspects of grievance handling before hand or else it will complicate the problem.

(f) Follow up:

The Personnel Department should keep track of the effectiveness and the functioning of grievance handling procedure and make necessary changes to improve it from time to time.

Basic Elements of a Grievance Handling Procedure:

The basic elements of a grievance redressal procedure are:

- (i) The existence of a sound channel through which a grievance may pass for redressal if the previous stage or channel has been found to be inadequate, unsatisfactory or unacceptable. This stage may comprise three, four or five sub-stages.
- (ii) The procedure should be simple, definite and prompt, for any complexity or vagueness or delay may lead to an aggravation of the dissatisfaction of the aggrieved employee.
- (iii) The steps in handling a grievance should be clearly defined.

These should comprise:

- (a) Receiving and defining the nature of the grievance;
 - (b) Getting at the relevant facts, about the grievance;
 - (c) Analysing the facts, after taking into consideration the economic, social, psychological and legal issues involved in them;
 - (d) Taking an appropriate decision after a careful consideration of all the facts; and
 - (e) Communicating the decisions, to the aggrieved employee.
- (iv) Whatever the decision, it should be followed up in order that the reaction to the decision may be known and in order to determine whether the issue has been closed or no.

Errors in the Grievance Handling Procedure:

- I. Stopping too soon, the search for facts;
- II. Expressing the opinion of the management before all the pertinent facts have been uncovered and evaluated;
- III. Failing to maintain proper records;
- IV. Resorting to an executive fiat instead of dispassionately discussing the facts of the grievance of the employee;
- V. Communicating the decision to the grievance in an improper way; and

VI. Taking a wrong or hasty decision, which the facts or circumstances of the case do not justify.

Measures to Avoid the Errors:

Managements should try to avoid the errors in the grievance procedure by following the measures indicated hereunder:

- a. Helpful attitude and support of the management.
- b. Belief on the part of all concerned in the practice of the procedure.
- c. Introduction of the procedure with the concurrence of employees and trade unions.
- d. Following the simple, fair and easily comprehensible procedures.
- e. Formulating the clear policies and procedures of the company.
- f. Delegation of appropriate authority to the parties concerned.
- g. Functioning of the personnel department in the advisory capacity.
- h. A fact-oriented and issue-oriented rather than employee-oriented procedure.
- i. Respect the decisions taken at all levels.
- j. Adequate publicity to the procedure.
- k. Periodic evaluation and review of the procedure.

As already discussed, there are valid reasons to have the grievances processed through a machinery or a procedure.

6. Objectives of a Grievance Handling Procedure:

Jackson (2000) lays down the objectives of a grievance handling procedure as follows:

1. To enable the employee to air his/her grievance.
2. To clarify the nature of the grievance.
3. To investigate the reasons for dissatisfaction.
4. To obtain, where possible, a speedy resolution to the problem.
5. To take appropriate actions and ensure that promises are kept.
6. To inform the employee of his or her right to take the grievance to the next stage of the procedure, in the event of an unsuccessful resolution.

7. Benefits of a Grievance Handling Procedure:

According to Jackson (2000), further benefits that will accrue to both the employer and employees are as follows:

1. It encourages employees to raise concerns without fear of reprisal.

2. It provides a fair and speedy means of dealing with complaints.
3. It prevents minor disagreements developing into more serious disputes.
4. It saves employers time and money as solutions are found for workplace problems. It helps to build an organizational climate based on openness and trust.

Effects of Grievance:

Grievances, if not identified and redressed, may adversely affect workers, managers, and the organization.

The effects are the following:

1. On the production:

- a. Low quality of production
- b. Low productivity
- c. Increase in the wastage of material, spoilage/leakage of machinery
- d. Increase in the cost of production per unit

2. On the employees:

- a. Increase in the rate of absenteeism and turnover
- b. Reduction in the level of commitment, sincerity and punctuality
- c. Increase in the incidence of accidents
- d. Reduction in the level of employee morale.

3. On the managers:

- a. Strained superior-subordinate relations.
- b. Increase in the degree of supervision and control.
- c. Increase in indiscipline cases
- d. Increase in unrest and thereby machinery to maintain industrial peace

Need for a Formal Procedure to Handle Grievances:

A grievance handling system serves as an outlet for employee frustrations, discontents, and gripes like a pressure release valve on a steam boiler. Employees do not have to keep their frustrations bottled up until eventually discontent causes explosion.

The existence of an effective grievance procedure reduces the need of arbitrary action by supervisors because supervisors know that the employees are able to protect such behavior and make protests to be heard by higher management. The very fact that employees have a right to be heard and are actually heard helps to improve morale. In view of all these, every organization should have a clear-cut procedure for grievance handling.

Grievance Handling Procedure

Grievance procedure is a formal communication between an employee and the management designed for the settlement of a grievance.

The grievance procedures differ from organization to organization.

1. Open door policy

2. Step-ladder policy

Open door policy:

Under this policy, the aggrieved employee is free to meet the top executives of the organization and get his grievances redressed. Such a policy works well only in small organizations. However, in bigger organizations, top management executives are usually busy with other concerned matters of the company. Moreover, it is believed that open door policy is suitable for executives; operational employees may feel shy to go to top management.

Step ladder policy:

Under this policy, the aggrieved employee has to follow a step by step procedure for getting his grievance redressed. In this procedure, whenever an employee is confronted with a grievance, he presents his problem to his immediate supervisor. If the employee is not satisfied with superior's decision, then he discusses his grievance with the departmental head. The departmental head discusses the problem with joint grievance committees to find a solution. However, if the committee also fails to redress the grievance, then it may be referred to chief executive. If the chief executive also fails to redress the grievance, then such a grievance is referred to voluntary arbitration where the award of arbitrator is binding on both the parties.

GRIEVANCE PROCEDURE IN INDIAN INDUSTRY

The 15th session of Indian Labor Conference held in 1957 emphasized the need of an established grievance procedure for the country which would be acceptable to unions as well as to management. In the 16th session of Indian Labor Conference, a model for grievance procedure was drawn up. This model helps in creation of grievance machinery. According to it, workers' representatives are to be elected for a department or their union is to nominate them. Management has to specify the persons in each department who are to be approached first and the departmental heads who are supposed to be approached in the second step.

The Model Grievance Procedure specifies the details of all the steps that are to be followed while redressing grievances. These steps are:

STEP 1: In the first step the grievance is to be submitted to departmental representative, who is a representative of management. He has to give his answer within 48 hours.

STEP 2: If the departmental representative fails to provide a solution, the aggrieved employee can take his grievance to head of the department, who has to give his decision within 3 days.

STEP 3: If the aggrieved employee is not satisfied with the decision of departmental head, he can take the grievance to Grievance Committee. The Grievance Committee makes its recommendations to the manager within 7 days in the form of a report. The final decision of the management on the report of Grievance Committee must be communicated to the aggrieved employee within three days of the receipt of report.

An appeal for revision of final decision can be made by the worker if he is not satisfied with it. The management must communicate its decision to the worker within 7 days.

STEP 4:

If the grievance still remains unsettled, the case may be referred to voluntary arbitration.

MACHINERY FOR SETTLEMENT OF GRIEVANCES

The judicial machinery set up under the Consumer Protection Act, 1986 consists of consumer courts (forums) at the district, state and national levels. These are known as District forum, State Consumer Disputes Redressal Commission (State Commission) and National Consumer Disputes Redressal

Commission (National Commission) separately. Let us have a brief idea about their composition and roles.

1. District Forum

This is established by the state governments in each of its districts.

(a) **Composition:** The district forums consist of a Chairman and two other members one of whom shall be a woman. The district forums are headed by the person of the rank of a District Judge.

Jurisdiction: A written complaint can be filed before the District Consumer forum where the value of goods or services and the compensation claimed does not exceed Rs. 20 lakh.

(c) **Appeal:** If a consumer is not satisfied by the decision of the District forum, he can challenge the same before the State Commission, within 30 days of the order.

2. State Commission

This is established by the state governments in their respective states.

(a) **Composition:** The State Commission consists of a President and not less than two and not more than such number of members as may be prescribed, one of whom shall be a woman. The Commission is headed by a person of the level of High Court judge.

(b) **Jurisdiction:** A written complaint can be filed before the State Commission where the value of goods or services and the compensation claimed exceeds Rs. 20 lakh but does not exceed Rs. One crore.

(c) **Appeal:** In case the aggrieved party is not satisfied with the order of the State Commission he can appeal to the National Commission within 30 days of passing of the order.

3. National Commission

The National commission was constituted in 1988 by the central government. It is the apex body in the three tier judicial machinery set up by the government for redressal of consumer grievances. Its office is situated at Janpath Bhawan (Old Indian Oil Bhawan), A Wing, 5th Floor, Janpath, New Delhi.

- (a) **Composition:** It consists of a President and not less than four and not more than such members as may be prescribed, one of whom shall be a woman. The National Commission is headed by a sitting or retired judge of the Supreme Court.
- (b) **Jurisdiction:** All complaints pertaining to those goods or services and compensation whose value is more than Rs. one crore can be filed directly before the National Commission.
- (c) **Appeal:** An appeal can be filed against the order of the National Commission to the Supreme Court within 30 days from the date of order passed.

It may be noted that in order to attain the objects of the Consumers Protection Act, the National Commission has also been conferred with the powers of administrative control over all the State Commissions by calling for periodical returns regarding the institution, disposal and pending of cases and issuing instructions for adoption of uniform procedures, etc.

Competition Act, 2002

Subject Matter of Competition Act, 2002:

On December 16, 2002, the Lok Sabha passed a Bill to replace the MRTP (Monopolies and Restrictive Trade Practices) Act, 1969 which was enacted to curb the tendency to create monopoly in commerce, trade and industry. The Act is known as Competition Act, 2002 or Antitrust Law.

In 1999, Government of India appointed a committee on “Competition Policy and Law” under the Chairmanship of Sri S.V.S. Raghvan. In the year 2000, this committee submitted its report. Accordingly, the competition Act, 2002 was framed and passed on the basis of recommendation of this committee.

This Act was enforced on 13th January 2003. Later on, the government made some amendments through passing of competition (Amendment) Bill, 2007. This Act covers whole of India except Jammu and Kashmir. This Act smoothly replaced the MRTP Act.

Under the new laws, hardly 100 of the 6,000 big industries would come under the purview of the Act. An industry having assets of Rs 1,000 crore Or more or having a annual turnover of Rs 3,000 crore or more would attract the provisions of the new law, i.e., Competition Law or Antitrust Law.

The Act provides for the constitution of Competition Commission of India (CCI) which is a corporate body with quasi-judicial powers. The order of this Commission can be challenged only in

the Supreme Court. The Commission shall be headed by a Chairman and there would not be more than 10 members of the Commission to be appointed by the Government of India.

After its formation, the CCI has taken over MRTP commission (MRTPC). Accordingly MRTPC was dissolved and all pending cases of MRTPC were either disposed within a year or shifted to CCI. The pending unfair Trade Practice (UTPs) cases have been shifted to concerned consumer courts formed under consumer protection Act. 1986.

Objectives of Competition Act, 2002:

The competition Act 2002 was formulated with following objectives:

1. To promote healthy competition in the market.
2. To prevent those practices which are having adverse effect on competition.
3. To protect the interests of concerns in a suitable manner.
4. To ensure freedom of trade in Indian markets.
5. To prevent abuses of dominant position in the market actively.
6. Regulating the operation and activities of combinations (acquisitions, mergers and amalgamation).
7. Creating awareness and imparting training about the competition Act.

Main Features of Competition Act, 2002:

Following are some important features of the competition Act:

1. Competition Act is a very compact and smaller legislation which includes only 66 sections.
2. Competition commission of India (CCI) is constituted under the Act.
3. This Act restricts agreements having adverse effect on competition in India.
4. This Act suitably regulates acquisitions, mergers and amalgamation of enterprises.
5. Under the purview of this Act, the central Government appointed director General for conducting detail investigation of anti-competition agreements for arresting CCI.
6. This Act is flexible enough to change its provisions as per needs.
7. Civil courts do not have any jurisdiction to entertain any suit which is within the purview of this Act.
8. This Act possesses penalty provision.
9. Competition Act has replaced MRTP Act.

10. Under this Act, “Competition Fund” has been created.

Non-Applicability of Competition Act:

Competition Act is not applicable in the following cases:

1. Public Financial Institutions.
2. Foreign Institutional Investors (FIIs).
3. Banks.
4. Venture capital Funds (VCFs).
5. Agreements related to intellectual property rights (IPRs) such as trademarks, patents, copyrights etc.
6. Central Government has the authority to exempt any class of enterprises from the provisions of Act in the common interest of national security or public interest.

Conclusion to the Competition Act:

It can now be concluded that the competition Act, 2002 is landmark legislation. The main aim of this Act is to promote competition and curb all anti-competitive agreements. This Act restricts the abuses of dominant enterprises. It can also regulate any kind of combinations beyond a particular size. Thus this Act does not curb monopolies rather it curbs abuses of monopolies.

Thus, the competition Act is expected to play a responsible role in changing the control mechanism related to monopoly and restrictive trade practices and is also expected to protect the interest of the small and medium industries in the country besides giving consumers more powers to redress their grievances.

Definitions

In this Act, unless the context otherwise requires,— (a) “acquisition” means, directly or indirectly, acquiring or agreeing to acquire— (i) shares, voting rights or assets of any enterprise; or (ii) control over management or control over assets of any enterprise; (b) “agreement” includes any arrangement or understanding or action in concert,— (i) whether or not, such arrangement, understanding or action is formal or in writing; or (ii) whether or not such arrangement, understanding or action is intended to be enforceable by legal proceedings; 2 [substituted by the finance act, 2017, w.e.f. 26th May, 2017. Prior to its substitution, clause (ba), as inserted by the competition (Amendment) Act,

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Unit V

Semester: I Year: 2019-21 Batch

2007, w.e.f. 12-10 -2007 read as under: “(ba) Appellate Tribunal” means the National Company Law Appellate Tribunal referred to in sub-section (1) of section 53A;]

(c) “cartel” includes an association of producers, sellers, distributors, traders or service providers who, by agreement amongst themselves, limit, control or attempt to control the production, distribution, sale or price of, or, trade in goods or provision of services;

(d) “Chairperson” means the Chairperson of the Commission appointed under sub-section (1) of section 9;

(e) “Commission” means the Competition Commission of India established under sub-section(1) of section 7;

(f) “consumer” means any person who— (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, whether such purchase of goods is for resale or for any commercial purpose or for personal use; (ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first-mentioned person whether such hiring or availing of services is for any commercial purpose or for personal use;

(g) “Director General” means the Director General appointed under sub- section (1) of section 16 and includes any Additional, Joint, Deputy or Assistant Directors General appointed under that section;

(h) “enterprise” means a person or a department of the Government, who or which is, or has been, engaged in any activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services, of any kind, or in investment, or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, either directly or through one or more of its units or divisions or subsidiaries, whether such unit or division or subsidiary is located at the same place where the

enterprise is located or at a different place or at different places, but does not include any activity of the Government relating to the sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defence and space.

Explanation.-For the purposes of this clause,— (a) “activity” includes profession or occupation; (b) “article” includes a new article and “service” includes a new service; (c) “unit” or “division”, in relation to an enterprise, includes (i) a plant or factory established for the production, storage, supply, distribution, acquisition or control of any article or goods; (ii) any branch or office established for the provision of any service;

(i) “goods” means goods as defined in the Sale of Goods Act, 1930 (8 of 1930) and includes— (A) products manufactured, processed or mined; (B) debentures, stocks and shares after allotment; (C) in relation to goods supplied, distributed or controlled in India, goods imported into India;

(j) “Member” means a Member of the Commission appointed under sub-section (1) of section 9 and includes the Chairperson;

(k) “notification” means a notification published in the Official Gazette;

(l) “person” includes— (i) an individual; (ii) a Hindu undivided family; (iii) a company; (iv) a firm; (v) an association of persons or a body of individuals, whether incorporated or not, in India or outside India; (vi) any corporation established by or under any Central, State or Provincial Act or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956); (vii) any body corporate incorporated by or under the laws of a country outside India; (viii) a co-operative society registered under any law relating to co-operative societies; (ix) a local authority; (x) every artificial juridical person, not falling within any of the preceding sub-clauses;

(m) “practice” includes any practice relating to the carrying on of any trade by a person or an enterprise;

(n) “prescribed” means prescribed by rules made under this Act;

(o) “price”, in relation to the sale of any goods or to the performance of any services, includes every valuable consideration, whether direct or indirect, or deferred, and includes any consideration which in effect relates to the sale of any goods or to the performance of any services although ostensibly relating to any other matter or thing;

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(p) “public financial institution” means a public financial institution specified under section 4A of the Companies Act, 1956 (1 of 1956) and includes a State Financial, Industrial or Investment Corporation;

(q) “regulations” means the regulations made by the Commission under section 62;

(r) “relevant market” means the market which may be determined by the commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets;

(s) “relevant geographic market” means a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighbouring areas;

(t) “relevant product market” means a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use;

(u) “service” means service of any description which is made available to potential users and includes the provision of services in connection with business of any industrial or commercial matters such as banking, communication, education, financing, insurance, chit funds, real estate, transport, storage, material treatment, processing, supply of electrical or other energy, boarding, lodging, entertainment, amusement, construction, repair, conveying of news or information and advertising;

(v) “shares” means shares in the share capital of a company carrying voting rights and includes— (i) any security which entitles the holder to receive shares with voting rights; (ii) stock except where a distinction between stock and share is expressed or implied;

(w) “statutory authority” means any authority, board, corporation, council, institute, university or any other body corporate, established by or under any Central, State or Provincial Act for the purposes of regulating production or supply of goods or provision of any services or markets therefor or any matter connected therewith or incidental thereto;

(x) “trade” means any trade, business, industry, profession or occupation relating to the production, supply, distribution, storage or control of goods and includes the provision of any services;

(y) “turnover” includes value of sale of goods or services;

(z) words and expressions used but not defined in this Act and defined in the Companies Act, 1956 (1 of 1956) shall have the same meanings respectively assigned to them in that Act.

Cybercrime

Cybercrime is any criminal activity that involves a computer, networked device or a network. While most cybercrimes are carried out in order to generate profit for the cybercriminals, some cybercrimes are carried out against computers or devices directly to damage or disable them, while others use computers or networks to spread malware, illegal information, images or other materials. Some cybercrimes do both -- i.e., target computers to infect them with viruses, which are then spread to other machines and, sometimes, entire networks.

History of Cyber Crime

When computers and networks came into being in the 1990s, hacking was done basically to get more information about the systems. Hackers even competed against one another to win the tag of the best hacker. As a result, many networks were affected; right from the military to commercial organizations. Initially, these hacking attempts were brushed off as mere nuisance as they did not pose a long-term threat. However, with malicious software becoming ubiquitous during the same period, hacking started making networks and systems slow. As hackers became more skillful, they started using their knowledge and expertise to gain benefit by exploiting and victimizing others.

Cyber Crime in Modern Society

Today, criminals that indulge in cyber crimes are not driven by ego or expertise. Instead, they want to use their knowledge to gain benefits quickly. They are using their expertise to steal, deceive and exploit people as they find it easy to earn money without having to do an honest day's work.

Cyber crimes have become a real threat today and are quite different from old-school crimes, such as robbing, mugging or stealing. Unlike these crimes, cyber crimes can be committed single handedly and does not require the physical presence of the criminals. The crimes can be committed from a remote location and the criminals need not worry about the law enforcement agencies in the country where they are committing crimes. The same systems that have made it easier for people to conduct e-commerce and online transactions are now being exploited by cyber criminals.

Categories of Cyber Crime

Cyber crimes are broadly categorized into three categories, namely crime against

1. Individual
2. Property
3. Government

Each category can use a variety of methods and the methods used vary from one criminal to another.

Individual: This type of cyber crime can be in the form of cyber stalking, distributing pornography, trafficking and “grooming”. Today, law enforcement agencies are taking this category of cyber crime very seriously and are joining forces internationally to reach and arrest the perpetrators.

Property: Just like in the real world where a criminal can steal and rob, even in the cyber world criminals resort to stealing and robbing. In this case, they can steal a person’s bank details and siphon off money; misuse the credit card to make numerous purchases online; run a scam to get naïve people to part with their hard earned money; use malicious software to gain access to an organization’s website or disrupt the systems of the organization. The malicious software can also damage software and hardware, just like vandals damage property in the offline world.

Government: Although not as common as the other two categories, crimes against a government are referred to as cyber terrorism. If successful, this category can wreak havoc and cause panic amongst the civilian population. In this category, criminals hack government websites, military websites or circulate propaganda. The perpetrators can be terrorist outfits or unfriendly governments of other nations.

Types of Cyber Crimes

When any crime is committed over the Internet it is referred to as a cyber crime. There are many types of cyber crimes and the most common ones are explained below:

Hacking: This is a type of crime wherein a person’s computer is broken into so that his personal or sensitive information can be accessed. In the United States, hacking is classified as a felony and punishable as such. This is different from ethical hacking, which many organizations use to check their Internet security protection. In hacking, the criminal uses a variety of software to enter a

person's computer and the person may not be aware that his computer is being accessed from a remote location.

Theft: This crime occurs when a person violates copyrights and downloads music, movies, games and software. There are even peer sharing websites which encourage software piracy and many of these websites are now being targeted by the FBI. Today, the justice system is addressing this cyber crime and there are laws that prevent people from illegal downloading.

Cyber Stalking: This is a kind of online harassment wherein the victim is subjected to a barrage of online messages and emails. Typically, these stalkers know their victims and instead of resorting to offline stalking, they use the Internet to stalk. However, if they notice that cyber stalking is not having the desired effect, they begin offline stalking along with cyber stalking to make the victims' lives more miserable.

Identity Theft: This has become a major problem with people using the Internet for cash transactions and banking services. In this cyber crime, a criminal accesses data about a person's bank account, credit cards, Social Security, debit card and other sensitive information to siphon money or to buy things online in the victim's name. It can result in major financial losses for the victim and even spoil the victim's credit history.

Malicious Software: These are Internet-based software or programs that are used to disrupt a network. The software is used to gain access to a system to steal sensitive information or data or causing damage to software present in the system.

Child soliciting and Abuse: This is also a type of cyber crime wherein criminals solicit minors via chat rooms for the purpose of child pornography. The FBI has been spending a lot of time monitoring chat rooms frequented by children with the hopes of reducing and preventing child abuse and soliciting.

Spam and Phishing

Spamming and phishing are two very common forms of cybercrimes. There is not much you can do to control them. Spam is basically unwanted emails and messages. They use Spambots Phishing is a method where cyber criminals offer a bait so that you take it and give out the information they want. The bait can be in form of a business proposal, announcement of a lottery to which you never subscribed, and anything that promises you money for nothing or a small favor. There are online loans companies too, making claims that you can get insecure loans irrespective of your location. Doing business with such claims, you are sure to suffer both financially and mentally. Phishing has its variants too – notably among them are Tabnabbing. Tabjacking and Vishing and Smishing.

Botnets

Botnets are networks of compromised computers, controlled by remote attackers in order to perform such illicit tasks as sending spam or attacking other computers. Computer Bots can also be used act like malware and carry out malicious tasks. Then can be used to assemble a network of computers and then compromise them

Malvertising

Malvertising is a method whereby users download malicious code by simply clicking at some advertisement on any website that is infected. In most cases, the websites are innocent. It is the cyber criminals who insert malicious advertisements on the websites without the knowledge of the latter. It is the work of advert companies to check out if an advertisement is malicious but given the number of advertisements they have to deal with, the malverts easily pass off as genuine ads.

PUPs

PUPs, commonly known as Potentially Unwanted Programs are less harmful but more annoying malware. It installs unwanted software in your system including search agents and toolbars. They include spyware, adware, as well as dialers. Bitcoin miner was one of the most commonly noticed PUPs in 2013.

Information Technology Act 2000 and 2002

Definitions (1) In this Act, unless the context otherwise requires, —

- (a) "access" with its grammatical variations and cognate expressions means gaining entry into, instructing or communicating with the logical, arithmetical, or memory function resources of a computer, computer system or computer network;
- (b) "addressee" means a person who is intended by the originator to receive the electronic record but does not include any intermediary;
- (c) "adjudicating officer" means an adjudicating officer appointed under subsection (1) of section 46;
- (d) "affixing digital signature" with its grammatical variations and cognate expressions means adoption of any methodology or procedure by a person for the purpose of authenticating an electronic record by means of digital signature;
- (e) "appropriate Government" means as respects any matter,— (i) Enumerated in List II of the Seventh Schedule to the Constitution; (ii) relating to any State law enacted under List III of the Seventh Schedule to the Constitution, the State Government and in any other case, the Central Government;
- (f) "asymmetric crypto system" means a system of a secure key pair consisting of a private key for creating a digital signature and a public key to verify the digital signature;
- (g) "Certifying Authority" means a person who has been granted a licence to issue a Digital Signature Certificate under section 24;
- (h) "certification practice statement" means a statement issued by a Certifying Authority to specify the practices that the Certifying Authority employs in issuing Digital Signature Certificates;
- (i) "computer" means any electronic magnetic, optical or other high-speed data processing device or system which performs logical, arithmetic, and memory functions by manipulations of electronic, magnetic or optical impulses, and includes all input, output, processing, storage, computer software, or communication facilities which are connected or related to the computer in a computer system or computer network;
- (j) "computer network" means the interconnection of one or more computers through— (i) the use of satellite, microwave, terrestrial line or other communication media; and (ii) terminals or a complex consisting of two or more interconnected computers whether or not the interconnection is continuously maintained;

(k) "computer resource" means computer, computer system, computer network, data, computer data base or software;

(l) "computer system" means a device or collection of devices, including input and output support devices and excluding calculators which are not programmable and capable of being used in conjunction with external files, which contain computer programmes, electronic instructions, input data and output data, that performs logic, arithmetic, data storage and retrieval, communication control and other functions;

(m) "Controller" means the Controller of Certifying Authorities appointed under sub-section (1) of section 17;

(n) "Cyber Appellate Tribunal" means the Cyber Regulations Appellate Tribunal established under sub-section (1) of section 48;

(o) "data" means a representation of information, knowledge, facts, concepts or instructions which are being prepared or have been prepared in a formalised manner, and is intended to be processed, is being processed or has been processed in a computer system or computer network, and may be in any form (including computer printouts magnetic or optical storage media, punched cards, punched tapes) or stored internally in the memory of the computer;

(p) "digital signature" means authentication of any electronic record by a subscriber by means of an electronic method or procedure in accordance with the provisions of section 3;

(q) "Digital Signature Certificate" means a Digital Signature Certificate issued under subsection (4) of section 35;

(r) "electronic form" with reference to information means any information generated, sent, received or stored in media, magnetic, optical, computer memory, micro film, computer generated micro fiche or similar device;

(s) "Electronic Gazette" means the Official Gazette published in the electronic form;

(t) "electronic record" means data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche;

(u) "function", in relation to a computer, includes logic, control arithmetical process, deletion, storage and retrieval and communication or telecommunication from or within a computer;

(v) "information" includes data, text, images, sound, voice, codes, computer programmes, software and databases or micro film or computer generated micro fiche:

(w) "intermediary" with respect to any particular electronic message means any person who on behalf of another person receives, stores or transmits that message or provides any service with respect to that message;

(x) "key pair", in an asymmetric crypto system, means a private key and its mathematically related public key, which are so related that the public key can verify a digital signature created by the private key;

y) "law" includes any Act of Parliament or of a State Legislature, Ordinances promulgated by the President or a Governor, as the case may be. Regulations made by the President under article 240, Bills enacted as President's Act under sub-clause (a) of clause (1) of article 357 of the Constitution and includes rules, regulations, byelaws and orders issued or made thereunder;

(z) "licence" means a licence granted to a Certifying Authority under section 24;

(za) "originator" means a person who sends, generates, stores or transmits any electronic message or causes any electronic message to be sent, generated, stored or transmitted to any other person but does not include an intermediary;

(zb) "prescribed" means prescribed by rules made under this Act;

(zc) "private key" means the key of a key pair used to create a digital signature;

(zd) "public key" means the key of a key pair used to verify a digital signature and listed in the Digital Signature Certificate;

(ze) "secure system" means computer hardware, software, and procedure that— (a) are reasonably secure from unauthorised access and misuse; (b) provide a reasonable level of reliability and correct operation; (c) are reasonably suited to performing the intended functions; and (d) adhere to generally accepted security procedures;

(zf) "security procedure" means the security procedure prescribed under section 16 by the Central Government;

(zg) "subscriber" means a person in whose name the Digital Signature Certificate is issued;

(zh) "verify" in relation to a digital signature, electronic record or public key, with its grammatical variations and cognate expressions means to determine whether— (a) the initial electronic record was affixed with the digital signature by the use of private key corresponding to the public key of the subscriber; (b) the initial electronic record is retained intact or has been altered since such electronic record was so affixed with the digital signature. (2) Any reference in this Act to any enactment or

any provision thereof shall, in relation to an area in which such enactment or such provision is not in force, be construed as a reference to the corresponding law or the relevant provision of the corresponding law, if any, in force in that area.

Cyberlaws

- Cyber law or Internet law is a term that encapsulates the legal issues related to use of the Internet. It is less a distinct field of law than intellectual property or contract law, as it is a domain covering many areas of law and regulation.” (source: Wikipedia) Cyberlaws, same as any other branch of law, help define what is legal and illegal, and stipulate mechanisms to detect, convict and punish offenders, and protect electronic property and its rightful use. Cyberlaws pertain to diverse aspects of the electronic world such as:
 - software licences, copyright and fair use
 - unauthorized access, data privacy and spamming
 - export of hardware and software
 - censorship
 - computerized voting
 -

IT Act, 2000 and IT (Amendment) Act, 2008

These two pieces of legislation form the bedrock of cyberlaw infrastructure in India. The Information Technology (IT) Act, 2000 was passed by the Indian Parliament in May 2000 and came into force in October of the same year. Its prime purpose is to provide the legal infrastructure for e-commerce in India. It was the first legal instrument to provide legal sanctity to electronic records and contracts expressed through electronic means of communication.

INTELLECTUAL AND INDUSTRIAL PROPERTY

Intellectual and Industrial Property, better known as IP, refers to creations of the mind: inventions; literary and artistic works; and symbols, names and images used in commerce. Intellectual property is divided into two categories:

Industrial Property includes patents for inventions, trademarks, industrial designs and geographical indications.

Intellectual Property is about copyright and covers literary works (such as novels, poems and plays), films, music, artistic works (e.g., drawings, paintings, photographs and sculptures) and architectural design. Rights related to copyright include those of performing artists in their performances, producers of phonograms in their recordings, and broadcasters in their radio and television programs.

Nature of Intellectual Property

Intellectual properties have their own peculiar features. These features of intellectual properties may serve to identify intellectual properties from other types of properties. Thus, we will discuss them in brief.

1. Territorial

Any intellectual property issued should be resolved by national laws. Why is it an issue? Because intellectual property rights have one characteristic which other national rights do not have. In ownership of intellectual property of immovable properties, issues of cross borders are not probable. But in intellectual properties, it is common. A film made in Hollywood can be seen in other countries. The market is not only the local one but also international. If a design in China is imitated by another person in France which law would be applicable?

2. Giving an exclusive right to the owner

It means others, who are not owners, are prohibited from using the right. Most intellectual property rights cannot be implemented in practice as soon as the owner got exclusive rights. Most of them need to be tested by some public laws. The creator or author of an intellectual property enjoys rights inherent in his work to the exclusion of anybody else.

3. Assignable

Since they are rights, they can obviously be assigned (licensed). It is possible to put a dichotomy between intellectual property rights and the material object in which the work is embodied. Intellectual property can be bought, sold, or licensed or hired or attached.

4. Independence

Different intellectual property rights subsist in the same kind of object. Most intellectual property rights are likely to be embodied in objects.

5. Subject to Public Policy

They are vulnerable to the deep embodiment of public policy. Intellectual property attempts to preserve and find adequate reconciliation between two competing interests. On the one hand, the intellectual property rights holders require adequate remuneration and on the other hand, consumers try to consume works without much inconvenience. Is limitation unique for intellectual property?

6. Divisible (Fragmentation)

Several persons may have legally protected interests evolved from a single original work without affecting the interest of other right holders on that same item. Because of the nature of indivisibility, intellectual property is an inexhaustible resource. This nature of intellectual property derives from intellectual property's territorial nature. For example, an inventor who registered his invention in Ethiopia can use the patent himself in Ethiopia and License it in Germany and assign it in France. Also, copyright is made up of different rights. Those rights may be divided into different persons: publishers, adaptors, translators, etc.

WHAT IS A TRADEMARK?

A "Trademark" is defined under Section 2(zb) of the Indian Trademarks Act, 1999 as "*mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include a shape of goods, their packaging and combination of colours.*"

A Trademark is a sign (logo) that serves to distinguish the goods or services of one organisation or individual from those of another. A trademark is a distinctive sign that identifies certain goods or services produced or provided by an individual or a company. The sign may consist of:

- Words (including personal names)
- Figurative elements
- Letters

- Numerals, shapes, signs, slogans or logos of the good or its packaging

For a trademark to be accepted, it has to be:

- Original
- Distinctive
- Non-descriptive

Exclusive right over a trademark is valid for 10 years, however it is possible to renew the trademark indefinitely.

The origin of trademarks dates back to ancient times when craftsmen reproduced their signatures, or “marks”, on their artistic works or products of a functional or practical nature.

Over the years, these marks have evolved into today’s system of trademark registration and protection. The system helps consumers to identify and purchase a product or service based on whether its specific characteristics and quality – as indicated by its unique trademark – meet their needs.

What are the types of Trademarks?

A trademark may be divided into the following categories:

1. Word marks: Word marks may be words letters or numerals. A word mark gives the proprietor a right only in the word, letter or numerical. No right is sought with respect to the representation of the mark.

2. Device marks: Where the trademark lies in the unique representation of a word, letter or numerical, it is called as a device mark.

3. Service Marks: A service mark is nothing but a mark that distinguishes the services of one person from that of another. Service marks do not represent goods, but the services offered by a person/company.

4. Collective Marks: Marks being used by a group of companies can now be protected by the group collectively. Collective marks are used to inform the public about a particular feature of the product for which the collective mark is used. The owner of such marks may be an association or public institution or cooperative. Collective marks are also used to promote particular products which have certain characteristics specific to the producer in a given region.

5. Certification Marks: Certification marks are used to define standards. They assure the consumers that the product meets certain prescribed standards. The presence of certification mark on a product

indicates that the product has successfully gone through a standard test specified. It assures the consumer that the manufacturers have gone through an audit process to ensure the quality of the product. For example, Toys, Electrical goods, etc. have such marking that indicates the safety and the quality of the product.

6. Well-known marks: When a mark is easily recognised among a large percentage of the population it achieves the status of a well-known mark. Well-known marks enjoy greater protection. In order to be well-known, a trademark needs to be known/ recognised by a relevant section of people. These people includes actual or potential customers, people involved in the distribution and business service dealing with the goods/services.

7. Unconventional Trademarks: Unconventional trademarks are those trademarks which get recognition for their inherently distinctive feature.

Benefits of registering trademarks

1. Exclusive rights

Trade mark registration gives the proprietor the right to exclusive use of the mark in respect of the goods or services covered by it. Possibly the most important reason for registration of a trade mark is the powerful remedies against unauthorised use. A trade mark registration allows the proprietor to sue for infringement and to obtain very powerful remedies such as interdict, delivery up infringing articles and damages. At the same time, the trade mark infringement provisions do not preclude a person.

2. Hypothecation / security

A registered trade mark can be hypothecated as security, meaning that a registered trade mark can be pledged as security to secure loan facilities much the same way as immovable property can be bonded.

3. Intangible property

A very important reason for registration is to create the trade mark as an identifiable intangible property in the legal sense. Trade mark registration is a value store or receptacle of the value attaching to the reputation or goodwill that the product enjoys.

A common law trade mark attaches to the goodwill and, generally speaking, the goodwill is not severable from the business in its entirety. This has the practical effect that an unregistered trade mark will never have a separate and independent existence. It will always form part of the goodwill and it will always be attached to the business. The only way in which to acquire a common law trade mark is to acquire the business as a going concern. Trade mark registration, by contrast, can be transferred like any other asset owned by a person or a company.

4. Licensing

A registered trade mark can be licensed. A trade mark licence can be recorded on the trade mark register, giving the licensee rights to institute legal proceedings in the event of infringement.

5. Assignment

A registered trade mark can be transferred. The same is not possible for a common law trade mark, which can only be transferred with the business.

6. Deterrent

Trademark registration deters other traders from using trademarks that are similar or identical to yours in relation to goods and services like yours. By using the ® symbol, you put others on notice of your rights. Moreover, a registered mark can be found when others search the official register before choosing to commence using a particular name.

7. Use in proceedings

A trade mark registration is prima facie evidence of validity of the registration and the rights conveyed by registration. In legal proceedings relating to a registered trade mark the fact that a person is registered as the proprietor of the trade mark is evidence of the validity of the original registration of the trade mark, unless the contrary is proved.

8. The right to use the symbol ® or “R” or word registered

Once the trade mark is registered the symbol ® or “R” or word “Registered” may be used for the goods and services listed in the registration.

9. Foreign territories

A registered mark can be used as a basis to obtain registration in some foreign countries, facilitating protection of the brand worldwide as the business expands.

10. Counterfeit Goods Act 1997

A registered trademarks empowers customs authorities at South African ports of entries to prevent the importation of counterfeit foreign goods. The Counterfeit Goods Act 1997 (CGA) affords the proprietor of an intellectual property right or anybody with an interest in goods bearing or representing such rights, to take civil or criminal action against a person or company that is involved in counterfeiting.

WHAT IS A PATENT?

A patent is an exclusive right granted for an invention, a product or process that provides a new way of doing something, or that offers a new technical solution to a problem. For an invention to be patentable it has to be:

- Novel - it does not form part of the prior art
- Involves and Inventive Step - it is not obvious to a skilled person in the art
- Has an Industrial Application - it can be used in any kind of industry

A patent provides patent owners with protection for their inventions. Protection is granted for a limited period, generally 20 years if maintenance fees are paid.

WHAT IS AN INDUSTRIAL DESIGN?

An industrial design refers to the ornamental or aesthetic aspects of an article. A design may consist of three-dimensional features, such as the shape or surface of an article, or two-dimensional features, such as patterns, lines or colour. Industrial designs are applied to a wide variety of industrial products and handicrafts: from technical and medical instruments to watches, jewellery and other luxury items; from house wares and electrical appliances to vehicles and architectural structures; from textile designs to leisure goods.

To be protected under most national laws, an industrial design must be new or original and non-functional. This means that an industrial design is primarily of an aesthetic nature, and any technical

features of the article to which it is applied are not protected by the design registration. However, those features could be protected by a patent.

COPYRIGHT

Copyright laws grant authors, artists and other creators protection for their literary and artistic creations, generally referred to as “works”. A closely associated field is “related rights” or rights related to copyright that encompass rights similar or identical to those of copyright, although sometimes more limited and of shorter duration. The beneficiaries of related rights are:

- performers (such as actors and musicians) in their performances;
- producers of phonograms (for example, compact discs) in their sound recordings;
- broadcasting organizations in their radio and television programs.

Works covered by copyright include, but are not limited to: novels, poems, plays, reference works, newspapers, advertisements, computer programs, databases, films, musical compositions, choreography, paintings, drawings, photographs, sculpture, architecture, maps and technical drawings.

There is no formal registration at the Industrial Property Registration Directorate and thus there is no fee. Despite this, although not formally registered, copyrights still receive statutory protection once they are placed in the public domain.

REGISTRATION OF IP

The Industrial Property Registration Directorate office receives and processes applications for the registration of Trademarks, Industrial Designs and Patents in-line with local and international legislation and regulations. All applications are to be filed on the relevant application form. Power of Attorney and Priority Documents must accompany each application where applicable together with the respective registration fees.

Patent types

There are three major types of patents:

- **Design patents** – anyone who creates a new design for a product can apply for a design patent. Examples include beverage bottles (think of the shape of the Coca-Cola container) or furniture (such as the kneeling chair).

- **Plant patents** – botanists involved in grafting and creating new hybrid plant forms can apply for a plant patent. Examples include the Smooth Angel rose or drought-tolerant corn.
- **Utility patents** – anyone who invents or discovers “any new and useful process, machine, article of manufacture, or composition of matter, or any new and useful improvement thereof” can apply for a utility patent. Examples include the little green drink stopper Starbucks gives out with its cups or the hover board type of skateboard.

What kind of inventions can be protected?

Patents may be granted for inventions in any field of technology, from an everyday kitchen utensil to a nanotechnology chip. An invention can be a product – such as a chemical compound, or a process, for example – or a process for producing a specific chemical compound. Many products in fact contain a number of inventions. For example, a laptop computer can involve hundreds of inventions, working together.

How long does patent protection last?

Patent protection is granted for a limited period, generally 20 years from the filing date of the application.

Validity of patent

Patents are territorial rights. In general, the exclusive rights are only applicable in the country or region in which a patent has been filed and granted, in accordance with the law of that country or region.

How are patent rights enforced?

Patent rights are usually enforced in a court on the initiative of the right owner. In most systems a court of law has the authority to stop patent infringement. However the main responsibility for monitoring, identifying, and taking action against infringers of a patent lies with the patent owner

HISTORY OF INDIAN PATENT SYSTEM

1856 The Act VI of 1856 on protection of inventions based on the British Patent Law of 1852. Certain exclusive privileges granted to inventors of new manufacturers for a period of 14 years.

1859 The Act modified as Act XV; Patent Monopolies called exclusive privileges (making, selling and using inventions in India and authorizing others to do so for 14 years from date of filing specification.

1872 The Patents and Designs Protection Act.

1883 The Protection of Inventions Act.

1888 Consolidated as The Inventions & Designs Act.

1911 The Indian Patents & Designs Act.

1972 The Patents Act (Act 39 of 1970) came into force on 20th April 1972.

1999 The Patents (Amendment) Act 1999 came into force from 1st January 1995.

2002 The Patents (Amendment) Act 2002 came into force from 20th May 2003.

2005 The Patents (Amendment) Act 2005 came into force from 1st January 2005.

SALIENT FEATURES OF THE PATENTS ACT 1970

- Elaborate definition of invention.
- No product patents for substances intended for use as food, drugs and medicines including the product of chemical processes.
- Codifying certain inventions as non-patentable.
- Furnishing of information made mandatory for foreign application.
- Absolute novelty criteria adopted in case of publication.
- Grounds for opposition to the grant of a patent expanded.
- Certain categories exempted of prior publication, prior communication and prior use from anticipation.
- Provisions for secrecy of inventions relevant for defence purposes.
- Provisions for use of inventions for the purpose of Government or for research or instruction to pupils.

- Reduction in the term of patents relating to process in respect of substances capable of being used as food or as medicine or drugs.
- Grounds for revocation of a patent enlarged.
- Provision for non-working as ground for compulsory licences, licences of right, and revocation of patents.
- Additional powers to Central Government to use an invention for purposes of government including Government undertakings
- Preventing the abuse of patent rights by making restrictive conditions in licence agreements/contract as void.
- Provisions for appeal to High Court on certain decisions of the Controller.
- Provisions for opening of branches of the Patent Office.

SALIENT FEATURES OF PATENTS (AMENDMENT) ACT 2005

- Extension of product patents to all fields of technology including food, drugs, chemicals and microorganisms.
- Provisions relating to Exclusive Marketing Rights (EMRs) deleted.
- Introduced provisions relating to grant of compulsory licence for export of medicines to countries, which have insufficient or no manufacturing capacity to meet emergent public health situations.
- Modification in the provisions relating to opposition procedures with a view to streamlining the system by having both pre-grant and post grant opposition in the Patent Office.
- Strengthened provisions relating to national security to guard against patenting abroad of dual use technologies.
- Rationalisation of provisions relating to time-lines with a view to introduce flexibility and reduce the processing time for patent application.

Part A (ONE Mark)

Multiple Choice Questions
Online Examination

Part – B (2 Marks)

1. Define Consumerism.
2. Define consumer according to Consumer Protection Act, 1986
3. What are the essential roles of Consumer Protection Act?
4. What is a complaint under Consumer Protection Act?
5. What are unfair trade practices?
6. What do you mean by consumer dispute?
7. What are the needs for consumer protection?
8. What is meant by consumer protection?
9. List the importance of consumer protection.
10. How are consumers exploited?
11. What is Essential Commodities Act, 1955?
12. List the rights of consumers.
13. What are consumer's rights to be heard?
14. What is right to safety?
15. What is right to be informed?
16. List any five consumer's responsibilities.
17. Give the consumers redressal agencies under consumer protection act.
18. What is national commission?
19. What is state commission?
20. What is district forum?
21. Who can file a complainant?
22. List the role consumer's organisation.
23. Name any four cyber crimes.
24. What is the function of encryption and decryption in cyber crimes?

25. What is digital signature?
26. What is Hacking?
27. Define 'Cyber Laws'.
28. What are cyber crimes?
29. What is digital Signature?
30. What is trademark?
31. What is patent?
32. What is copyright?
33. What is the difference between trademarks and patents?
34. What are intellectual property rights?
35. What can be patented?
36. Who can apply for a patent?
37. What are the criteria of patentability?
38. What does copyright cover?
39. What are the objectives of IPR?

Part – C (8 Marks)

1. Explain the importance of consumer protection from the point of view of a business.
2. Enumerate the various Acts passed by the Government of India which help in protection of consumers' interests.
3. Explain the responsibilities of a consumer?
4. Explain the procedures to file a complaint in a consumer court.
5. Discuss the types of cases filed in a State Commission.
6. Explain the role of consumer organisations and NGOs in protecting and promoting consumers' interests.
7. Explain the rights and responsibilities of a consumer.
8. What are various ways in which the objective of consumer protection can be achieved?
9. Explain the redressal mechanism available to consumers under the Consumer Protection Act, 1986
10. Discuss the consumerisms and consumer movement in India.

11. Trace out the cyber crimes, how does I-T Act 2000 control these cyber crimes?
12. Explain the role and functions of Consumer Protection Act in maintaining the consumerism.
13. Trace out the cyber crimes in the current scenario of business application.
14. Evaluate the relevance of cyber laws in India.
15. Explain the three tiers Redressal Machinery under the act.
16. Discuss the powers of the district consumer form.
17. Who are the persons competent to file the complaint in the consumer court? What are their rights and duties?
18. Discuss the important provisions of Consumer Protection Act.
19. Highlight the scope, merit and demerits of Cyber Acts in India.
20. Discuss the functions of consumer guidance society in India.
21. What are the suggestion and recommendations to reduce the cyber crimes?
22. Discuss the legislations covering IPRs in India?
23. Discuss the rights of a copyright holder.
24. Discuss the procedure for filing and getting patents rights.

Unit 5

QUESTIONS	OPTION 1	OPTION 2	OPTION 3	OPTION 4	ANSWERS
The Consumer Protection Act 1986 enacted in	15-Jun-05	24-Oct-86	24-Dec-86	1-Jan-86	24-Dec-86
The Consumer Protection Act 1986 extends to	The whole India	The whole India except Nagaland tribal area,	The whole India except Nagaland tribal area and Jammu and Kashmir	The whole India except Jammu and Kashmir	The whole India except Jammu and Kashmir
Consumer Protection Act is applicable to	Immovable goods	Moveable goods	Specific goods and services	All goods and services	All goods and services
----- is a social movement seeking to augment the rights and powers of buyers.	Consumer Movement	Consumerism	Consumer law	Consumer Panel	Consumerism
_____ Provides the adequate and accurate information about quality, quantity, purity, standard and the price of the goods and services.	Right to choose	Right to be heard	Right to be informed	Right to consumer education	Right to be informed
___ of a business denote its obligations to the customer, investor, employers, supplies, government and general public.	Sales objective	Social objective	Economic objective	Market objective	Social objective
_____ provides the consumer must be assured whenever possible access to a variety of goods and services at competitive prices.	Right to choose	Right to be heard	Right to be informed	Right to consumer education	Right to choose
When the seller manipulates the price then it is	Restrictive Trade Practices	Unfair Trade Practices	Caveat emptor	Fair Trade Practices	Restrictive Trade Practices
The total number of rights given to consumer as per the consumer protection act is	5	4	6	8	6
The chairman of the district consumer protection council is	District magistrate	Collector of the District	MP of the district	Commissioner	Collector of the District
Who will work as president in case absence of the president of state commission?	Governor	Chief minister	A sitting judge of High court	Chief justice of highcourt	A sitting judge of High court
The complaint shall ordinarily be decided within	Twenty one days from the date on which the complaint was received	Thirty days from the date on which the complaint was received	Forty five days from the date on which the complaint was received	No time limit	Twenty one days from the date on which the complaint was received

QUESTIONS	OPTION 1	OPTION 2	OPTION 3	OPTION 4	ANSWERS
_____ means a consumer disputes redressal forum established under clause (a) of section 9 ?	District Forum	National forum	State forum	Local forum	District Forum
The minimum age limit for being a member of a District Forum as per the Consumer Protection Act is	65	35	30	40	35
To be a member in any redressal forum the person should have the maximum_____ years of experience	5	10	12	15	10
In which of the forum there is a compulsion that a female should be a member of the forum	No Forum	International Forum	Null Forum	National Forum	National Forum
Appeal against the national forum can be done in	District court	High court	Supreme court	State forum	Supreme court
In case of goods for which testing is available the forum must decide the case within_____	6	5	3	9	5
State commission hears the plea of customer's product whose worth is Rs. 20 lakh to _____	1 Crore	2 Crore	3 Crore	4 Crore	1 Crore
Which act was replaced with the introduction of the Competition Act 2002 ?	FERA	MRTTP	POTA	FEMA	FERA
Which committee recommended the enactment of Competition Act?	High Level committee on competition policy and Law	A committee on Law and Order	A Central committee for Research and Policy	High Power Committee	High Level committee on competition policy and Law
Information Technology Act was passed in the year	1950	1975	2000	1990	2000
Cyber risk leads to	Risk of financial profit	High Returns	Damage to the reputation	Low Risk	Damage to the reputation
What risks and challenges should be considered in the Internet of Everything?	Privacy and security	Energy usage	Network collaboration	Network Areas	Privacy and security
Which of the following is not an external threat to a computer or a computer network?	Ignorance	Trojan horses	Adware	Crackers	Ignorance
Exploring appropriate and ethical behaviors related to online environments and digital media is known as	Cyber ethics	Cyber security	Cyber safety	Cyber law	Cyber ethics

QUESTIONS	OPTION 1	OPTION 2	OPTION 3	OPTION 4	ANSWERS
CFAA stands for _____	Computer Fraud and Abuse Act	Cyber Fraud and Abuse Act	Computer Fraud Activity Analysis	Computer Fraud Activity Act	Computer Fraud and Abuse Act
Cyber Crimes are considered as _____	White Collar Crimes	Blue collar crimes	Brutal Crimes	General crimes	White Collar Crimes
_____ can be implemented using Brute force attack and trojan attacks	White Collar Crimes	Blue collar crimes	Password Attack	Key attack	Password Attack
The value of alters and information in a computer is called _____?	Hacking	overlapping	Hiding	transferring	Hacking
What is a person called when they try to hurt a group of people with the use of a computer?	White-hat intruder	Cracker	Social engineer	Cyber terrorist	Cyber terrorist
Firewalls are used to protect against -----	data driven attacks	fire attacks	virus attacks	unauthorised access	unauthorised access
When did the cyber-security discourse emerge?	1970s	1990s	1960s	1980s	1970s
What is the referent object in contemporary cyber-security?	Digitalised sensitive information	Critical Information Infrastructures	Government IT systems	Telecommunication networks	Critical Information Infrastructures
Which of the following concepts does NOT form part of the technical discourse on cyber-security?	Business networks	Computer experts	Anti-virus industry	Computer networks	Business networks
What is meant by the term 'cyber-crime'?	The theft of digital information	Any crime that involves computers and networks	The use of computer networks to commit financial or identity fraud	Any crime that uses computers to jeopardise or attempt to jeopardise national security	Any crime that involves computers and networks
Continuous online sexual harrasment by a male to female,comes under which category of cyber crime.	Cyber Harrasment	Cyber spoofing	Cyber Phising	Cyber Stalking	Cyber Stalking
_____ is a fraudulent or malicious practice in which communication is sent from an unknown source disguised as a source known to the receiver.	Cyber Harrasment	Cyber spoofing	Cyber Phising	Cyber Stalking	Cyber spoofing

QUESTIONS	OPTION 1	OPTION 2	OPTION 3	OPTION 4	ANSWERS
Which one of the following does not comes under cyber crime?	Intellectual Property Crime	Pornography	Online gambling	Lottery	Lottery
Under the I.T.Act, whoever commits cyber terrorism shall be punishable with the imprisonment which may extend to	Two years	Five years	Ten years	Imprisonment for life	Imprisonment for life
Tampering with computer source documents shall be punishable with imprisonment and fine upto	Two lakh	Three lakh	Four lakh	Five lakh	Two lakh
All of the following are examples of real security and privacy risks EXCEPT:	hackers.	spam.	viruses.	identity theft	spam.
The term “WIPO” stands for:-	World Investment Policy Organization	World Intellectual Property Organization	Wildlife Investigation and Policing Organization	World Institute for Prevention of Organized Crime	World Intellectual Property Organization
A company wishes to ensure that no one else can use their logo.	Copy rights	Trade mark	Patent	Industrial designs	Trade mark
A singer wishes to assign the rights to reproduce a video she has made of her concert.	Copy rights	Trade mark	Patent	Industrial designs	Copy rights
A new way to process milk so that there is no fat in any cheese made from it.	Trade mark	Copy rights	Industrial designs	Patent	Patent
A company decides to use a logo that has the same shape as its competitor but with a different color	Copy rights	Trade mark	Patent	Industrial designs	Industrial designs
Which of the following is not an intellectual property law?	Copyright Act, 1957	Trademark Act, 1999	Patent Act, 1970	Customs Act, 1962	Customs Act, 1962
Copyright law applies to forms of expression contained in,-	Song lyrics and musical compositions	Drawings	Theory	Practical	Song lyrics and musical compositions
A trademark is represented by several key characteristics. Which of the following is one of them?	A trademark identifies a product's origin	Slogans are not covered under trademark law	Trademarks are never an indicator of quality	Trademarks are "shorthand" for retailers to use in determining pricing strategy	A trademark identifies a product's origin

QUESTIONS	OPTION 1	OPTION 2	OPTION 3	OPTION 4	ANSWERS
Which of the following statements is true?	Trademark registrations can be renewed for an unlimited number of ten year periods	Trademark law is intended to protect the owner's original work	To qualify for federal protection, a mark must be distinctive and have a "secondary meaning."	Surnames alone can be trademarked	Trademark registrations can be renewed for an unlimited number of ten year periods
Trademark law protects.....	Words, symbols or devices that differentiate goods or services from one another.	Only brand names	Names of specific people and places	Inventions that feature some sort of utility function	Words, symbols or devices that differentiate goods or services from one another.
Which of the following principles is applicable to trademarks?	A trademark should be distinctive	A trademark should be capable of distinguishing goods or services	A trademark should not cause confusion with previous trademarks	A trademark should not be deceptive	A trademark should be capable of distinguishing goods or services
The rights provided by copyrights are	Reproduction of the work in various forms	Public performance and translate into other languages	Broadcasting by radio or cable	Newspaper	Broadcasting by radio or cable
The rights of a patentee are	Buy	Theft	Assign the property to others	Build Property	Assign the property to others
In your view, who can be the right holder of IPR?	Tenant of the intellectual property.	The Predecessor in title of the owner of intellectual property.	A licensee duly authorized by the owner of the intellectual property.	Ownership	A licensee duly authorized by the owner of the intellectual property.

QUESTIONS	OPTION 1	OPTION 2	OPTION 3	OPTION 4	ANSWERS
What is the duration of copyright protection for a novel?	A novel will not gain copyright protection.	The day the author dies	The end of the calendar year in which the author died.	70 years from the end of the calendar year in which the author died.	70 years from the end of the calendar year in which the author died.
Which one of the following statements is true?	A patent must be registered in order to gain protection.	Copyright must be registered in order to gain protection.	The owner of a patent cannot sell it but can prevent others using his invention.	The definition of an invention is set out in the Patents Act 1977.	A patent must be registered in order to gain protection.
_____ are a bundle of exclusive rights over creations of mind, both artistic and commercial	Intellectual Property Rights	Copyright	Trademark	Patent	Intellectual Property Rights