SYLLABUS

Class: - B.B.A. IV Semester

Subject: - Indian Legal System for Business

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

Unit-I

Subject: Indian Contract Act

The Indian Contract Act 1872

The law of contract in India contained in Indian Contract Act 1872, which is based on English common Law.
It extends to whole of India except the state of Jammu and Kashmir. It came into force on the first Sep. 1872. The Act lays down general principles governing all contracts, but not the rights and duties of the parties. The rights and duties are decided by the parties themselves.

Scheme of the Act: -

The scheme can be divided into two main groups:

1. General principles of the law of contract.
2. Specific kinds of contracts -
   a. Indemnity and Guarantee
   b. Contracts of Bailment and Pledge
   c. Contract of Agency.

Meaning and Definition of an Agreement:

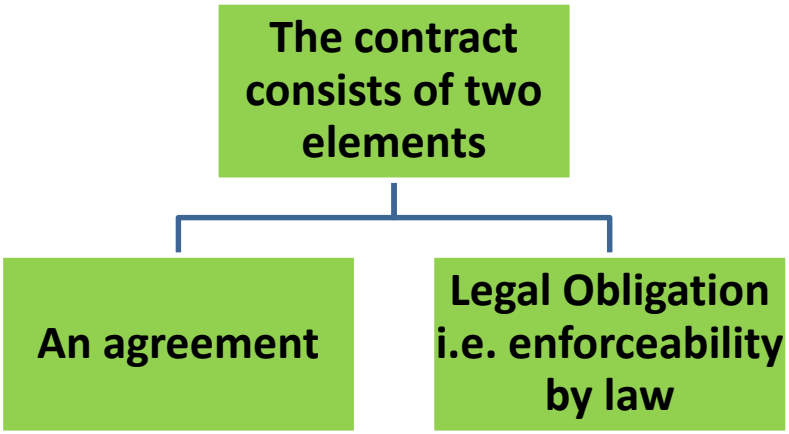
An Agreement consists of an offer by one party and its acceptance by other. In other words, an agreement comes into existence only when one party makes a proposal to the other party and that other party gives acceptance.

Agreement = Proposal + Acceptance of proposal

According to Section 2(e) of Indian Contract Act 1872 *"Every promise and every set of promises, forming the consideration for each other is an agreement."*

Meaning and Definition of a Contract:

A contract is a promise or set of promises for the breach of which the law gives a remedy or the performance of which the law in some way recognize as duty. In other words, a contract is an agreement the object of which is to create a legal obligation.



Contract = an Agreement + enforceability by law.

According to Section 2(h) of the Indian Contract Act 1872 *"An agreement enforceable by law is a contract."*

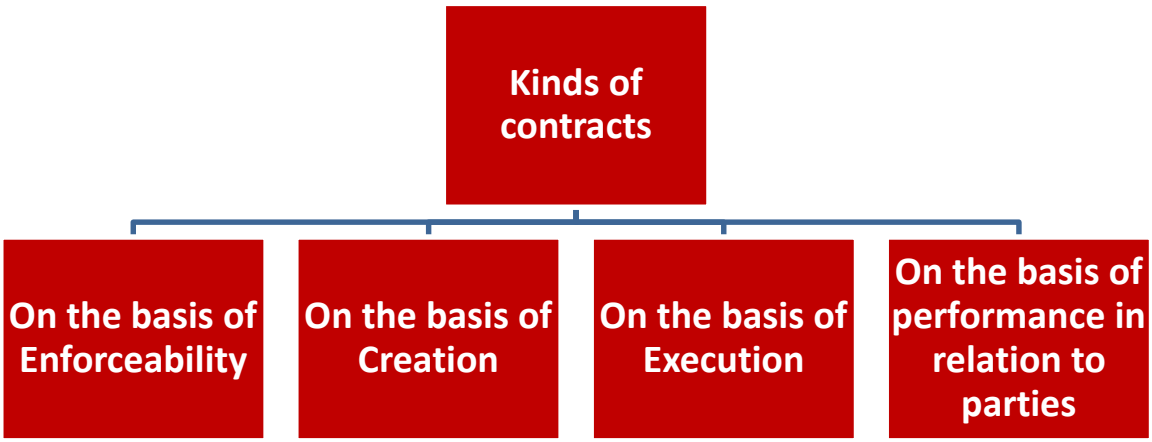
Essential Elements of a valid Contract:

1. **Offer and Acceptance:** There must be a "lawful offer" and a "lawful acceptance" of the offer, thus resulting in an agreement.
2. **Intention to create legal relation:** There must be an intention among the parties that the agreement should be attached by legal consequences and create legal obligations. Social agreements do not contemplate legal relations, and so they do not give rise to a contract.
3. **Lawful Considerations:** An agreement is legally enforceable only when each of the parties to it, give something and get something. This something is the price for the promise and is called "Consideration". Only those considerations are valid which 'Lawful'
4. **Capacity of parties:** The parties to an agreement must be competent to contract; otherwise it cannot be enforced by a court. To be competent, the parties must be on majority age and of sound mind and must not be disqualified from contracting by any law to which they are subject.
5. **Free Consent: "Consent "**means that the parties must have agreed upon the same thing in the same sense. Consent is not enough for making a contract. That to must be free. It is said to be free when it is not caused by-

   1. Coercion, or (i) undue influence, or (iii) fraud, or (IV) misrepresentation, or (v) mistake.
6. **Lawful object:** For the formation of a valid contract, it is also necessary that the parties to an agreement must agree for a lawful object. The object must not be fraud or illegal or immoral or must not imply injury to the person or property of other.
7. **Writing and Registration:** Generally the contracts may be oral or written. But in special cases, it lays down that the agreement must be in writing or registered to be valid.
8. **Certainty:** Any agreement can be enforced if its meaning is certain or capable of being made certain agreements the meaning of which is not certain, are void.

9. **Possibility of performance:** The terms of the agreement must also be capable of performance physically as well as legally.
10. **Not expressly declared void:** The agreement must not have been expressly declared void under the act. There are some types of agreements which have been expressly declared to be void.

Kinds or classification of Contracts:-



A. On the basis of Enforceability

1. **Valid Contract:** A valid contract is an agreement enforceable by law. An agreement becomes enforceable by law when all the essential elements of a valid contract (as per section 10 of the act) are present.
2. **Voidable Contract:** "An agreement which is enforceable by law at the option of one or more of the parties, but not at the option of one or more of the other, is a voidable contract."
3. **Void Contract:** Void means not binding in law. It is valid at the time of making it but becomes void subsequently due to change in circumstances.

   Void Agreement:" An agreement not enforceable by law is said to be void" Thus a void agreement does not give rise to any legal consequences and is void ab initio.
4. **Unenforceable contract:** It is one which is valid in it, but is not capable of being enforced in a court of law because of some technical defect such as absence of writing, registration requisite stamp.

5. **Illegal or unlawful contract:** An agreement which is expressly or impliedly prohibited or forbidden by law. It is *void ab initio*.

B. On the basis of Creation:

1. **Express Contract:** It is one in which parties make oral written declaration of the terms and conditions of the contract.
2. **Implied Contract:** It is one in which evidence of contract is gathered from acts and conduct of the parties and not from written or spoken words of parties.
3. **Constructive or Quasi Contract:** It is not a contract made intentionally by the parties by exchange of promises. It is a contract imposed by the law. The basis of this contract is that no one can be allowed to enrich himself at the cost of the other.
4.

C. On the basis of Execution

1. **Executed Contract:** When both the parties to a contract have completely performed their share of obligations and nothing remains to be done by either party under the contract.
2. **Executory Contract:** When either parties have still to perform their share of obligation in to or there remains something to be done under the contract on both sides.

D. On the basis of performance in relation to parties

1. **Unilateral Contract:** When one party has to perform his obligation, and the other party has performed his obligation at the time of formation of the contract or before it .This is why it is also called one-sided contract.
2. **Bilateral Contract:** When the obligations of both the parties are outstanding at the time of formation of contract. It is similar to Executory contract. It is also called contract with executory consideration.

<u>Capacities of Parties</u>

Meaning of Capacity to Contract

Capacity or competence to contract means legal capacity of parties to enter into a contract. In other words, it is the capacity of parties to enter into a legally binding contract.

Who are Competent to Contract?

Every person is legally competent to contract if he fulfills the following three condition :

i. He has attained the age of majority;

ii. He is of sound mind; and.

iii. He is not disqualified from contracting by any other law to which he is subject

Who are not competent to contract?

1) MINORS

Any person, who has not attained the age of majority prescribed by law, is known as minor.

Section 3 of the Indian Majority Act prescribes the age limit for majority and says a minor is a person who has not completed eighteen years of age. But the same Act also mentions that in the following two cases a person attains majority only after he completes his age of twenty one years:

Where a Court has appointed guardian of a minor's person or property or both (under the Guardians and Wards Act, 1890); or

(i) Where the minor's property has been placed under the superintendence of a Court of wards.

2) PERSONS OF UNSOUND MIND

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

Types of Persons of Unsound Mind and their Contracts:

1. Idiot

2. Lunatic
3. Delirious persons
4. Drunken or intoxicated persons
5. Hypnotized persons
6. Mental decay

3) PERSONS DISQUALIFIED BY OTHER LAWS

There are certain persons who are disqualified from contracting by the other laws of our country. They are as under:

1. Alien enemy
2. Foreign sovereigns, diplomatic staff etc.
3. Corporations and companies
4. Insolvents
5. Convicts

Rules /effects as to or Nature of Minor's Agreements

1. ***Void ab-initio: -*** Minor's agreement is absolutely void from very beginning, i.e. void ab- initio. It is nullity in the eye of law. An agreement with minor, therefore, can never be enforced by law.
2. ***Minor can be a promise or beneficiary*****: -** A minor can enforce such agreements in which he is a beneficiary or promise and does not create any obligation on his part.
3. ***No ratification*****: -** A minor cannot be ratify even after attaining the age majority because void agreement cannot be ratified.
4. ***Restitution/ Compensation possible*****: -** If a minor has received benefits under an agreement from the other party, the Court may require the minor to restore the benefit (so far as may be), to the other party at the time of rescission of the agreement. The minor may be asked to restore the benefit to the extent he or his estate has been benefited.
5. ***Contract by parent/ guardian/ manager*****: -** A minor's parent/ guardian/ manager can enter into contract on behalf of the minor provided:
   i. The parent/ guardian/ manager acts within the scope of his authority; and
   ii. The contract is for the benefit of the minor.

6. ***No liability of parents*: -** The parents (guardian) of a minor are not liable for agreements made by their minor ward. However, they can be held liable if the minor makes agreement as their authorized.
7. ***Minor as an agent*: -** A minor is not entitled to employ an agent; he can be an agent himself for someone else. As an agent he can represent the principal, and bind him for his acts done in the course of agency. But the minor is not responsible to the principal for his acts.
8. ***Minor and insolvency*: -** A minor cannot be declared insolvent because he is not competent to contract.
9. ***Minor as joint Promisor*: -** A minor can be a joint promisor with a major, but the minor cannot be held liable under the promise to the promises as well as to his co-promisor. But the major promise cannot escape liability. The major joint promisor can be forced to perform the promise.
10. ***Minor shareholder*: -** A minor can become a shareholder or member of a company if (a) the shares are fully paid up and (b) the articles of association do not prohibit so.
11. ***Liability for necessaries of life*: -** A minor is incompetent to contract. A minor, therefore, is not personally liable for the payment of price of necessaries of life supplied to him or to his legal dependents. However, the person who has furnished such supplies is entitled to be reimbursed from the property of the minor.
12. ***Minor Partner*:** - According to the Partnership Act, 1932, a minor cannot make a contract of partnership though he may be admitted to its benefits with the consent of all the partners. A minor partner cannot be made personally liable for any obligation of the firm, but his share in the firm's property can be made liable.
13. ***No estoppels against minor*:** - The term 'estoppels' means prevention of a claim. When a minor enter into contract, representing that he is a major, but in reality he is not, then later on he can plead his minority as a defense and cannot be estopped (prevent) from doing so.

Definition of Consideration

Consideration is one of the essential elements of a valid contract. The term "Consideration" means something in return i.e. quid –pro-quo. Consideration must result in a benefit to the promiser, & a detriment or loss to the promisee or a detriment to both. Without consideration a contract is void or nude i.e. nudum pactum

Section 2(d) of the Indian Contract act, 1872 defines Consideration as follows:

" When, at the desire of the promiser ,the promisee or any other person has done or abstained from doing, or does or abstains from doing ,or promises to do or abstain from doing something, such act or abstinence or promise is called a consideration for the promise."

ESSENTIAL ELEMENTS OF A VALID CONSIDERATION:-

1. **It must move at the desire of the promisor**
2. **It may move from the promise or any other person**
3. **It may be Past , Present or Future**
4. **It must be of some value**
5. **It must be real & not illusory**
6. **Must be Something other than the promisor's Existing obligation**
7. **It must not be illegal, immoral or opposed to public policy**

- **It must move at the desire of the promisor:** Consideration must have been done at the desire or request of the promisor & not at the desire of a third party or without the desire of the promisor.

- **It may move from the promise or any other person:** An act constituting consideration may be done by the promise himself or any other person. Thus, it is immaterial who furnishes the consideration & therefore may move from the promisee or any other person. This means that **even a stranger to the consideration can sue on a contract, provided he is a party to the contract (Case Chinayya V/s Ramayya)**
- **It may be Past , Present or Future:**
  - Past Consideration: The consideration which has already move before the formation of agreement.
  - Present consideration: The consideration which moves simultaneously with the promise.
  - Future Consideration: The consideration which is to be moved after the formation of agreement.

- **It must be of some value:** The consideration need not be adequate to the promise but it must be of some value in the eye of the law.
- **It must be real & not illusory:** Ex. A promise to put life into the B's dead wife & B promises to pay Rs 10,000. This agreement is void because consideration is physically impossible to perform.
- **Must be Something other than the promisor's Existing obligation:** Consideration must be something which the promisor is not already bound to do because a promise to do what a promisor is already bound to do adds nothing to the existing obligation.
- **It must not be illegal, immoral or opposed to public policy.**

A CONTRACT WITHOUT CONSIDERATION IS VOID

The general rule is **"*An Agreement made without consideration is void*".** Sec 25 & 185 deals with the **Exceptions** to this rule.

These cases are:

1) Love & Affection: A written & registered agreement based on natural love & affection between near relatives is enforceable even if it is without consideration.

Ex: X, for natural love & affection, promises to give his son, Y, Rs 1000. X puts his promise to Y in writing & registers it. This is a contract.

2) Compensation for voluntary services: A promise to compensate wholly or partly, a person who has already voluntarily done something for the promisor, is enforceable even without consideration.

Ex: A finds B's purse & gives it to him. B promises to give Rs 50 to A. This is a contract.

3) Promise to pay a Time barred debt: A promise by a Debtor to pay a time-barred debt if it is made in writing & is signed by the debtor or by his agent is enforceable.

4) Completed gifts: There need not be consideration in case of completed gifts.

5) Agency: No consideration is necessary to create an Agency.

6) Contribution to Charity

STRANGER TO A CONTRACT

Though a stranger to consideration can use because the consideration can be furnished or supplied by any person whether he is the promises or not, but a stranger to a contract cannot sue because of the absence of privity of contract (i.e. relationship subsisting between the parties to a contract.

Free Consent

MEANING OF CONSENT

Two or more persons are said to consent when they agree upon the same thing in the same sense at the same time.

MEANING OF FREE CONSENT

Sec. 14 describes the cases when the consent is not free. It lays down that consent is not free if it is caused by coercion, undue influence, fraud, misrepresentation, etc. if the consent is not free, the agreement is avoidable at the option of the party whose consent was not free.

1) **COERCION**

Coercion simply means forcing a person to enter in to a contract. Sec. 15 defines coercion as, "Committing or threatening to commit, any act forbidden by the Indian Penal Code, or unlawful detaining or threatening to detain, any property, to the prejudice of any person whatever with the intention of causing any person to enter into an agreement".

The essential elements of coercion are

(1) Committing or threatening to commit any act forbidden by Indian Penal Code.

(2) Unlawful detaining or threatening to detain any property.

(3) The act of coercion may be directed at any person and not necessarily at the other party to the agreement.

(4) The act of coercion must be done with the object of inducing or compelling any person to enter into an agreement.

2) **UNDUE INFLUENCE** : It is kind of moral coercion.

Sec. 16(1) defines undue influence as, "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 other and uses that position to obtain an unfair advantage over the other".

(a) Where he holds a real or apparent authority over the other e.g., in the relationship between master and servant.

(b) Where he stands in fiduciary relation to the other. It implies a relationship of mutual trust and confidence.

(c) Where a contract is made with a person whose mental capacity is affected by reason of age, illness, or mental or bodily distress.

Any innocent or unintentional false statement or assertion of fact made by one party to the other during the course of negotiation of a contract is called a misrepresentation.

3) **MISREPRESENTATION**

As per Sec. 18, misrepresentation is a wrong statement of fact made innocently, i.e., without any intention to deceive the other party. It may be caused.

(1) By positive statement.

(2) By breach of duty.

(3) By mistake regarding the subject matter of the agreement.

Essential of misrepresentation

(1) There must be a representation or omission of a material fact.

(2) The representation or omission of duty must be made with a view to inducing the other party to enter into contract.

(3) The representation or omission of duty must have induced the party to enter into contract.

(4) The representation must be wrong but the party making the representation should not know that it is wrong.

4) **FRAUD**

Fraud is the international misrepresentation or concealment of material facts of an agreement by a party to or by his agent with an intention to deceive and induce the other party to enter into an agreement.

Sec. 17 defines fraud as, any of the following acts committed by a party to a contract (or with his convenience or by his agent) with intention to deceive another party thereto (or his agent) or to induce him to enter into the contract.

(1) The suggestion that a fact is true when it is not true by a person who does not believe it be true.

(2) The active concealment of the fact by a person having knowledge or belief of the fact.

(3) A promise made without any intention to perform it.

(4) Any other act fitted to deceive.

(5) Any such act or omission as the law specifically declares to be fraudulent.

5) **MISTAKE**

According to Sec. 20 mistake means erroneous belief concerning some fact. The parties are said to consent when they agree upon the same thing in the same sense. If they do not agree upon the agreement in the same sense, there will be no contract.

When the consent of one or both the parties to a contract is caused by misconception or erroneous belief, the contract is said to be induced by mistake.

Mistake may be of following types:

(1) Mistake of law,

- (a) Mistake of law of the country.
- (b) Mistake of foreign law.
- (c) Mistake of private rights of the parties

(2) **Mistake of fact**,

- (A) Bilateral Mistake
- (1) Mistake as to subject mater
- (a) Mistake regarding existence
- (b) Mistake regarding identity
- (c) Mistake regarding title.
- (d) Mistake regarding price
- (e) Mistake regarding quality
- (f) Mistake regarding quantity
- (2) Mistake as to the possibility of performance
- (a) Physical impossibility
- (b) Legal impossibility
- (B) Unilateral Mistake
- (1) Mistake as to identify of the person contracted with.
- (2) Mistake as to the nature of contract.

Distinction between an Agreement and a Contract

Basis of distinction	Agreement	Contract
1. Definition	Every promise and every set of promises forming consideration for each other is an agreement	An agreement enforceable by law is a contract.

2. Creation	An agreement is created by acceptance of an offer.	Agreement and its enforceability together create a contract.
3. legal rights and obligations	An agreement may not create legal rights and obligations of the parties	A contract creates legal rights and obligation between the parties.
4. Necessity	No contract is required to make an agreement.	Valid agreement is necessary for making a contract.
5. Legally binding	An agreement is not a concluding or legally binding contact.	A contract is a concluding or legally binding on the parties.
6. Concept	Agreement is a wider concept and includes contacts.	Contract is a narrow concept and it is only a specific of agreement.

DISTINCTION BETWEEN VOID AGREEMENT AND VOID CONTRACT

Basis of distinction	Void Agreement	Void Contract
1. Definition	An agreement not enforceable by law is said to be void. [Sec. 2(g)]	A contract which cases to be enforceable by law becomes void when it ceases to be enforceable [Sec. 2(j)]
2. Time when becomes void	It is void from very beginning.	It becomes void subsequently due to change in law or change in circumstances.
3. Restitution	Generally no restitution is granted, however, the Court may on equitable grounds grant restitution in case of fraud or misrepresentation by minors.	Restitution may be granted when the contract is discovered to be void or becomes void.
4. Description in the Act	Such agreement have been mentioned as void in the Act. Agreements without consideration,	There is no mention of cases of void contracts in the Act. They are created by circumstances and law Courts decide whether they have become

	agreements with lawful object or consideration and some other agreements have expressly been declared to be void.	void or not.

DISTINCTION BETWEEN VOID AGREEMENT AND VOIDABLE CONTRACT

Basis of distinction	Void Agreement	Voidable Contract
1. Definition	An agreement not enforceable by law is said to be void.	A contract enforceable by law at the option of the aggrieved party is a voidable contract.
2. Period of validity	It is void from the beginning i.e. void ab initio	It is valid till it is avoided by the aggrieved party to the contract.
3. Legal existence	It is nullity, hence, does not exist in the eye of law.	It has its existence in the eye of law till it is repudiated.
4. Change in status	Status of void agreement does not change with the change in circumstances.	Status of such contract change when the aggrieved party elects to avoid it within a reasonable time. It becomes void when the aggrieved party elects to rescind it.
5. Causes	Any agreement is void when it is made with incompetent parties or for unlawful objects and consideration, or without consideration, or without consideration or it is expressly declared to be void under the law.	A contract is voidable when the consent of the party is caused by coercion or undue influence or fraud or misrepresentation.
6. Transfer of title	The party obtaining goods under void agreement cannot transfer a good title to the third party.	The party obtaining goods under voidable agreement can transfer a good title to the third party if the third party obtains it in good faith and for consideration and the aggrieved party has not avoided the contract before such transfer.
7. Restitution	Parties do not have right to restore the benefits passed on to the other unless the parties were unaware of the impossibility of performance at the time of agreement or the party to the agreement was minor.	Generally, right restitution is available if the party elects to avoid the contract.

8. Damages	No party as a right to get compensation for damages because such agreement has no legal effect.	If a party rightfully rescinds (i.e. puts and end) the contract, he can claim compensation, he can claim compensation of damages sustained by him due to non-fulfillment of the promise.

DISTINCTION BETWEEN VOID AND VOIDABLE CONTRACT

Basis of distinction	Void Contract	Voidable Contract
1. Definition	A contract which ceases to be enforceable by law becomes void, when it ceases to be enforceable.	A contract which is enforceable by law at the option of the aggrieved party is a voidable contract.
2. Period of validity	It remains valid till it does not cease to be enforceable.	It remains valid if the aggrieved party does not elect to avoid it within a reasonable time.
3. Will of the party	Its validity is not affected by the will of any party. It is decided by the Law Court.	Its validity is affected by the will of the aggrieved party. Aggrieved party has option to treat it either binding or repudiate it.
4. Causes	Contracts become void due to change in circumstances or in the law of land.	Contract is voidable when the consent of the party is caused by coercion, undue influence, fraud or misrepresentation. Sometimes, it may be voidable under the provisions of the Section. 39, 53 and 55.

DISTINCTION BETWEEN VOID AND ILLEGAL AGREEMENT

Basis of distinction	Void Agreement	Illegal Agreement
1. Definition	An agreement not enforceable by law is void.	An agreement which is expressly or impliedly prohibited by law is illegal.
2. Effect on collateral agreement	The agreement collateral to the void agreement is not necessarily void.	The agreement collateral to an illegal agreement is always void.
3. Scope	All void agreements need not necessarily be illegal agreements. Hence, the scope is wider than that of the illegal agreements.	All ill agreements are void.
4. Restitution	The Court may grant restitution of money advanced if is	Restitution of money is not

	minor or if the parties were unaware of the impossibility of performance of the agreement.	granted in case of an illegal agreement.

DIFFERENCE BETWEEN COERCION AND UNDUE INFLUENCE

Basis of distinction	**Coercion**	**Undue influence**
1. Definition	Coercions the committing or threatening to commit, any act forbidden by the I.P.C. or unlawful detaining or threatening to detain any property with the intention of causing any person to enter into an agreement.	Undue influence is an influence which arises 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.
2. Relations	In case of coercion, relation between the parities is immaterial.	In case of undue influence, in the relation between the parties the parties must be such that one of them is in a position to dominate the will of other.
3. Intention	Coercion is applied with the intention of causing any person to enter into an agreement.	It is exerted with the intention to obtain an unfair advantage over the other party.
4. Nature of force	It involves physical force.	It involves moral force.
5. Kind of act	It involves criminal act.	It does not involve criminal act.
6. Direction	The coercion may be directed against any person including a stranger.	Under influence is used against the weaker party only.
7. Who exercise	It can be exercised by any person. Even a stranger to contract can exercise it.	It is employed by the person who is in a position to dominate the will of the other.
8. Remedies	A contract caused by coercion, may be avoided by the aggrieved party's contract. [Sec. 19]	In case of undue influence, the aggrieved party may avoided the contract or the Court, may set aside the contract absolutely or conditionally. [Sec. 19 A]

DISTINCTION BETWEEN FRAUD AND MISREPRESENTATION

Basis of distinction	**Fraud**	**Misrepresentation**

1. Meaning	A fraud is an international misrepresentation or concealment of material fact to include the other party to enter into a contract.	An innocent or unintentional misrepresentation of material facts by one party fact by one party include the other party to enter into a contract.
2. Intention	Fraud is committed with an intention to deceive	There is no such intention.
3. Belief in the facts	The person committing of a fraudulent act does not believe it to be true.	The person making misrepresentation believes in its facts to be true.
4. Suit for damage	The aggrieved party has right to sue the other party for damages.	The aggrieved party cannot sue for damages.
5. Defense	A party cannot set up a defense that the aggrieved party had means of discovering the truth except in case of fraud by concealment or by silence.	In case of misrepresentation the other party always set up a defense that the aggrieved party that the aggrieved party had means of discovering the truth.

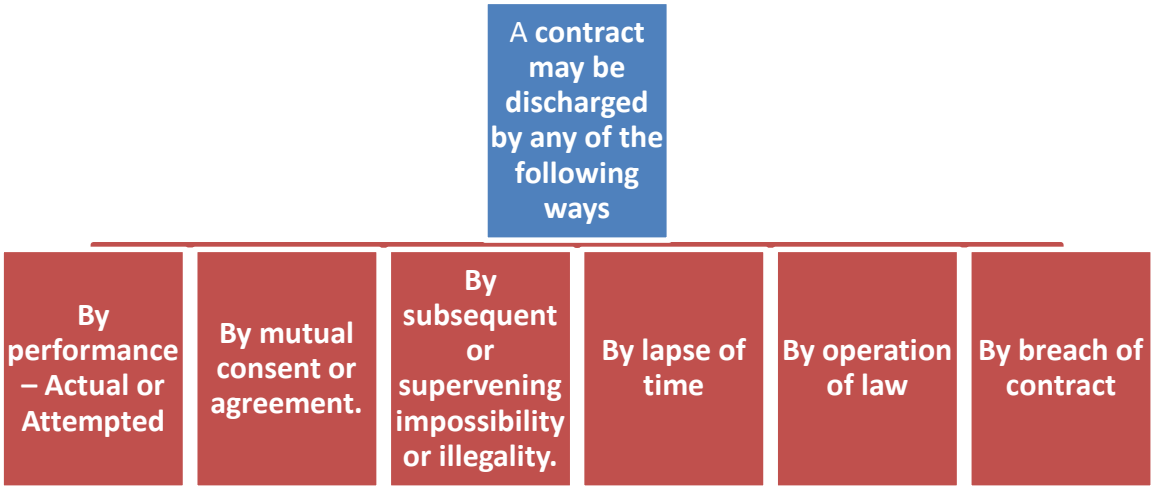
DISTINCTION BETWEEN COTANGENT TRACT AND WAGERING AGREEMENT

Basis of distinction	**Contingent contract**	**Wagering agreement**
1. Meaning	A contingent contract is contract in which the promisor undertakes to perform the contract upon the happening or non-happening of an event, which is collateral to the contract.	A wagering agreement is one in which one person agrees to pay certain amount of money to the other on happening or non-happening of a specific event.
2. Nature of event	The event is collateral to the contract, i.e. not a part of promise or consideration of the contract.	Even is the sole determining factor.
3. Reciprocal promise	There is no reciprocal promise is a contingent contract.	The wagering agreement consist of reciprocal promise.
4. Interest in the subject matter	The parties are interested in the subject-matter of such contracts. Therefore, the happening or non-happening of the event is material for them.	The parties to wagering agreement have no other interest in the subject matter of the agreement except the winning or losing the money at stake.
5. Validity	A contingent contract is valid contract.	A wagering agreement void agreement. In the State of Maharashtra and Gujarat it is

		illegal.
6. Nature of contract	All contingent contracts are not wagering agreements because all contingent contracts are not void.	All wagering agreements are contingent agreements because their performance is dependent upon uncertain future events.

DISCHARGE OF CONTRACT

When the rights and obligations arising out of a contract are extinguished, the contract is said to be discharged or terminated.



1.Discharge by Performance-

Performance of a contract is the most popular manner of discharge of a contract. The performance may be either Actual performance or attempted performance.

A**. Actual performance:-**When each party fulfils his obligations arising out of the contract within the time and in a manner prescribed, it is called the actual performance and the contract comes to an end.

B. **Attempted performance or Tender:-**When the promisor offers to perform his obligation, but is unable to do so because the promise does not accept the performance, it is called " **Attempted Performance**" or "**tender**". Thus

tender is not actual performance but is only an offer to perform the obligation under the contract. **A valid tender of performance is equivalent to performance.**

Essentials of a valid tender:-if it fulfills the following conditions:-

1. It must be unconditional. If A who is a debtor of company B, offers to pay if shares are allotted to him at par. IT is not a tender.
2. It must be made at proper time and place: - A is tenant of B. H offers him rent at a marriage party. B is not bound to accept as tender is not made at a proper place.
3. It must be of the whole obligation contracted for and not only of the part:- e.g. deciding of his own to pay in the installments and offering the first installment was held invalid tender as it was not of the whole amount due .
4. If the tender related to the delivery of goods, it must give a reasonable opportunity to the promise for inspection of goods so that he may be sure that the goods tendered are of contract description.
5. It must be made by a person who is in a position and is willing to perform the promise.
6. It must be made to the proper person i.e. the promisee or his authorized person.
7. If there are several joint promisees, an offer to any one of them is a valid tender (but the actual payment must be made to all joint promisees, and not to any one of them.)
8. In case of tender of money, exact amount should be tendered in the legal tender money.

Effect of refusal to accept a valid tender: The effect of refusal to accept a properly made "**offer of performance**" is that the contract is deemed to have been performed by the promisor. And the promise can be sued for breach of contract. Thus we can say that "**a valid tender discharges the contract."**

2. Discharge by Mutual Consent or Agreement:

A contract is created by means of an agreement, it may also be discharged by another agreement between the same parties.-

A. Novation: "Novation occurs when a new contract is substituted for an existing contract, either between the same parties or between different parties, the consideration mutually being the discharge of the old contract." If the parties are same, then small changes in the in the terms of contract is called "alteration" and not "Novation". For being "Novation", the changes must be of significant nature.

Novation cannot be compulsory; it can only be with the mutual consent of all the parties.

B. Alteration:-It means that change of one or more of the material terms of a contract. A material alteration is one which alters the legal effect of the contract. e.g. change in the amount of money, change in the rate of interest etc.

Note that a material alteration made in a contract by one party without the consent of the other will make the whole contract void and no person can maintain an action upon it.

C. Rescission. A contract may be discharged before the date of performance, by agreement between the parties to the effect that it shall no longer bind them. Such an agreement amounts to "**Rescission**" or cancellation of the contract, the consideration being the abandonment by the respective parties of their rights under the contract. Example A promises to deliver some goods to B on say 14th Nov. 2006. But before the date of performance i.e. 14th Nov. 2006, A and B mutually agree that the contract will not be performed. The contract stand discharged by rescission.

If there is non performance of a contract by both the parties for a long time without complaint, it amounts to an implied rescission.

Note: In rescission, the existing contract is cancelled by mutual consent without substituting a new contract in its place.

D. Remission. It is defined as "Acceptance of lesser amount than what was contracted for or a lesser fulfillment of the promise made"

E. Waiver. It means deliberate giving up of a right which a party is entitled to under a contract whereupon the other party to the contract is released from his obligation. Example A promises to stitch a Shirt for B if B sings a song in A's party and accepting it B sings a song in A's party. Then later on B says there is no need to stitch shirt for me, to which A gives his consent. Thus the contract is terminated.

3. Discharge by Subsequent or Supervening Impossibility or Illegality.

Impossibility at the time of contract. If you contract for something impossible, the agreement is void *ab initio* the promisor knows about the impossibility after using reasonable efforts, the promisor is bound to compensate the promisee for any loss he may suffer because of non performance of the promise, even if the agreement being void *ab initio*

Subsequent impossibility. Impossibility is found out after the contract is made, " A contract to do an act which, after making the contract, becomes impossible or unlawful, becomes void when the act becomes impossible or unlawful."

Conditions for It…

(i) the act should have become impossible.

(ii) The impossibility should be by reason of some event which the promisor could not prevent.

(iii) the impossibility should not be self induced by the promisor or due to negligence.

To be impossible, it is sufficient that it becomes impracticable or extremely hazardous or useless from the point of view of the object and purpose which the parties had in view,

If the performance of a contract becomes impossible by reason of supervening impossibility or illegality of the act, it s logical to absolve the parties from further performance of it as they never did promise to perform an impossibility.

4. DISCHARGE BY LAPSE OF TIME.

In some circumstances, the laps of time may also discharge a contacts, e.g. the period of limitation for simple contracts is three years the under limitation Act and therefore on default by a debtor, if the creditor does not file a suit of recovery against him within three years of default, the debt becomes time barred and the creditor will not get the help of the law. This in effect discharges the contract. 'Where times is of essence`, if the contract is not performed on time, the contract comes to an end, and the party not at fault need not perform his obligation and may sue the other party for damages.

5. DISCHARGE BY OPERATION OF LAW: -

A contract is discharged by operation of law in the following cases:-

(A) Death: Sometimes a contract is of a person nature and involves personal skills, of promiser, of promisor, In such cases the contract is discharged on the death of the promisor. In such cases the contract is discharged on the death of the promisor.

(B) Insolvency: When a person is adjudged in solvent the he is released from his all liabilities in current order of adjudication. His rights (Assets) and liabilities are transferred to the official assignee or official receiver, on the case may be.

(C) Merger of rights: Sometimes, inferior right of a person under the some or other contract, in such a case the inferior, right is vanished and is not required to be enforced.

(D) Loss of evidence of contract:-

There the evidence of the existence of the contract is lost or vanished. The contract is discharged for example document of contract is lost or destroyed and not other evidence is available the contract is discharged.

6. DISCHARGE BY BREACH OF CONTRACT:-

A contract is sometimes discharged, by its breach generally, Breach of contract means refused. Or future of any one party to perform his contractual obligation under the contract specifically a breach of contract occurs when a party to a contract does any of the other following things.

(1) Fails or refuses to perform his obligation under the contract.

(2) Disable himself from performing his past of the contract.

(3) Maker the performance of contract impossible by his own acts.

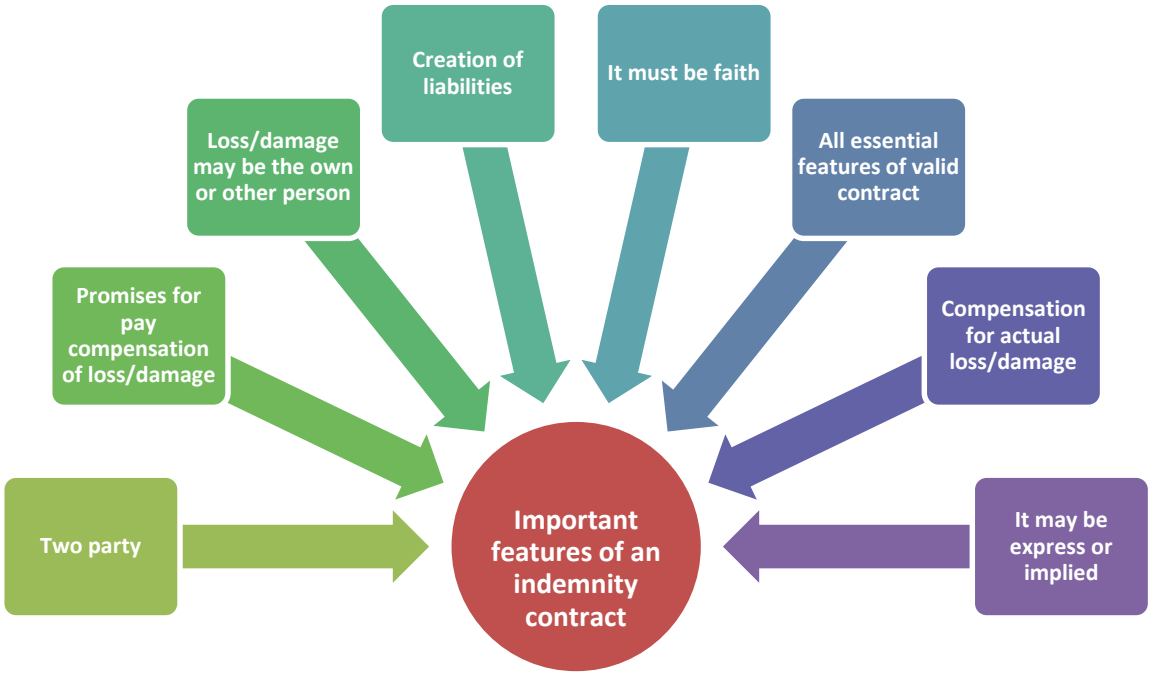
INDEMNITY AND GUARANTEE CONTROL

The contract of indemnity and guarantee are special kinds of contracts. These contracts are therefore also required to fulfill all the essential of a valid contract.

Indemnity Contract: *Indemnity contract is a type of contingent contract. The term 'Indemnity` Simply means 'Making Somebody Safe` or 'Paying somebody back`.*

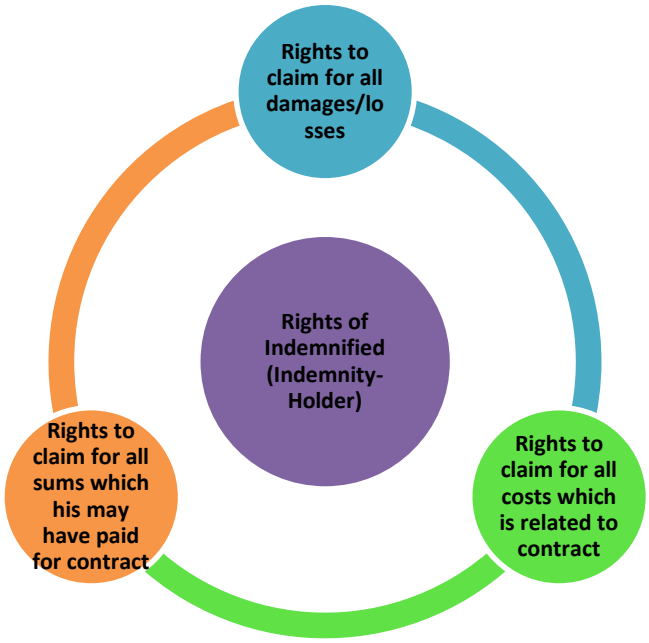
Section 124 *of contract Act defines that ''A contract by which one party. Promises to save the other from loss caused to him by the conduct of the promise himself by the conduct of any other person, is called a conduct of indemnity".*

The party who gives indemnity or who promises to compensate for or to make good the loss, is called. Indemnifier and the party for whose protection or safety the indemnity is given or the party whose loss is made good is called 'Indemnified' or 'indemnity holder'.

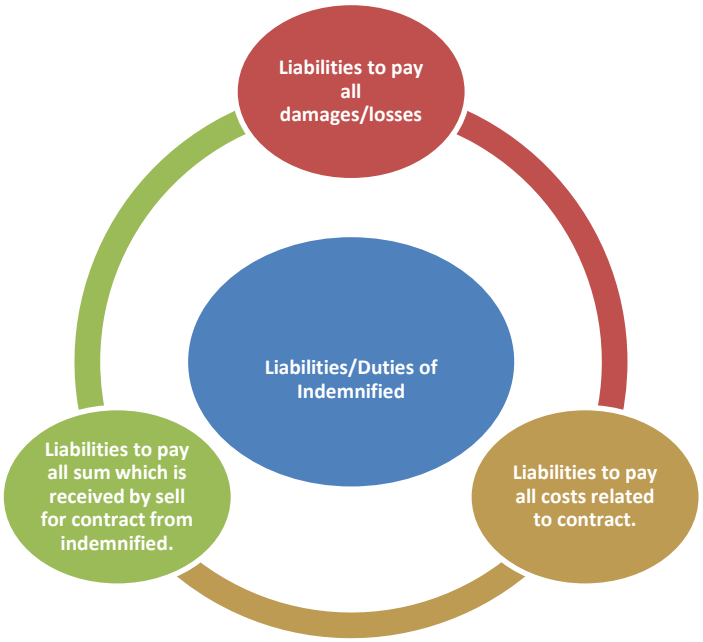


Loss/damage may be caused by some event, or accident, or some natural phenomenon or disaster.

Rights of Indemnified (Indemnity-Holder) –



Liabilities/Duties of Indemnified –



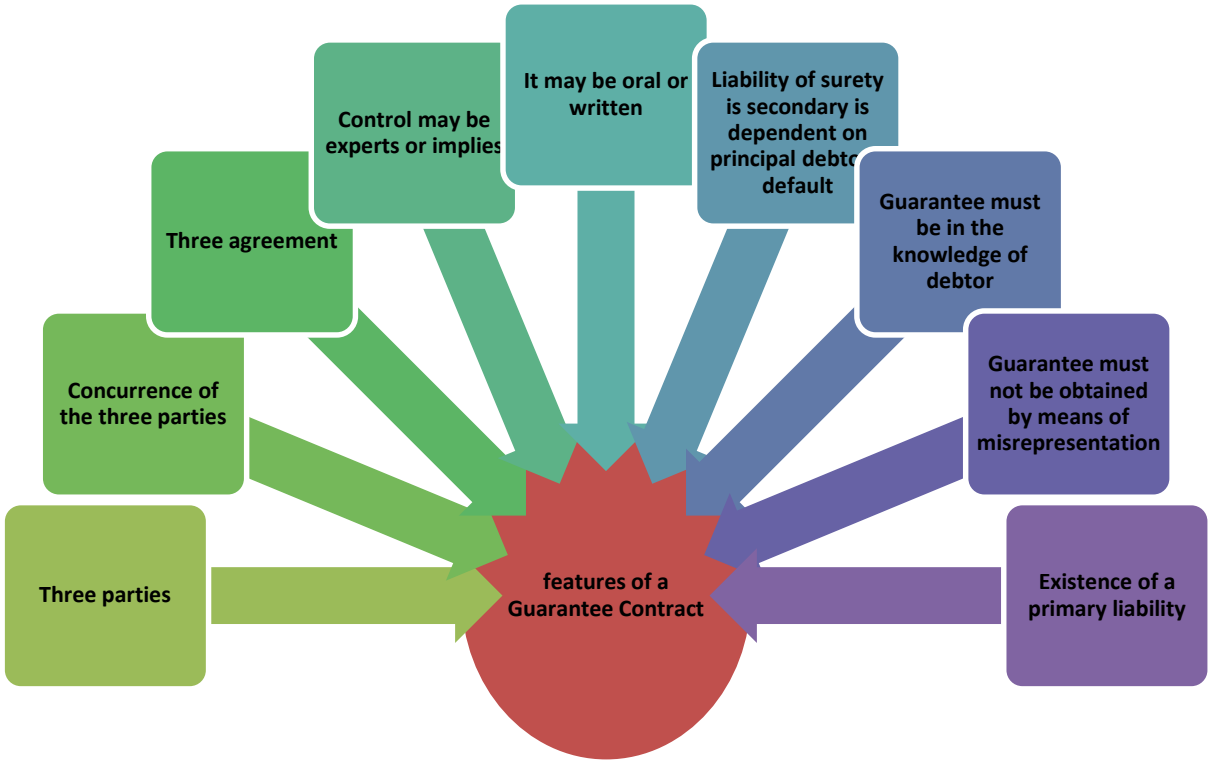
Guarantee Contract

The object of the contract of guarantee is to enable. A person to obtain an employment, or a loan, or some goods or service on credit,

According to section 126 *of the contract Act "A contract of guarantee is a contract to perform the promise, or discharge the liability, of a third person in case of his default."*

The person who gives the guarantee is called the '**Surety' or 'guarantor'** & the person in respect of whose default the guarantee is given is called the **principal debtor** or he is the party on whose behalf. Guarantee is given and the person to whom the guarantee is given is called the **'Creditor'.**

Essential features of a Guarantee Contract –

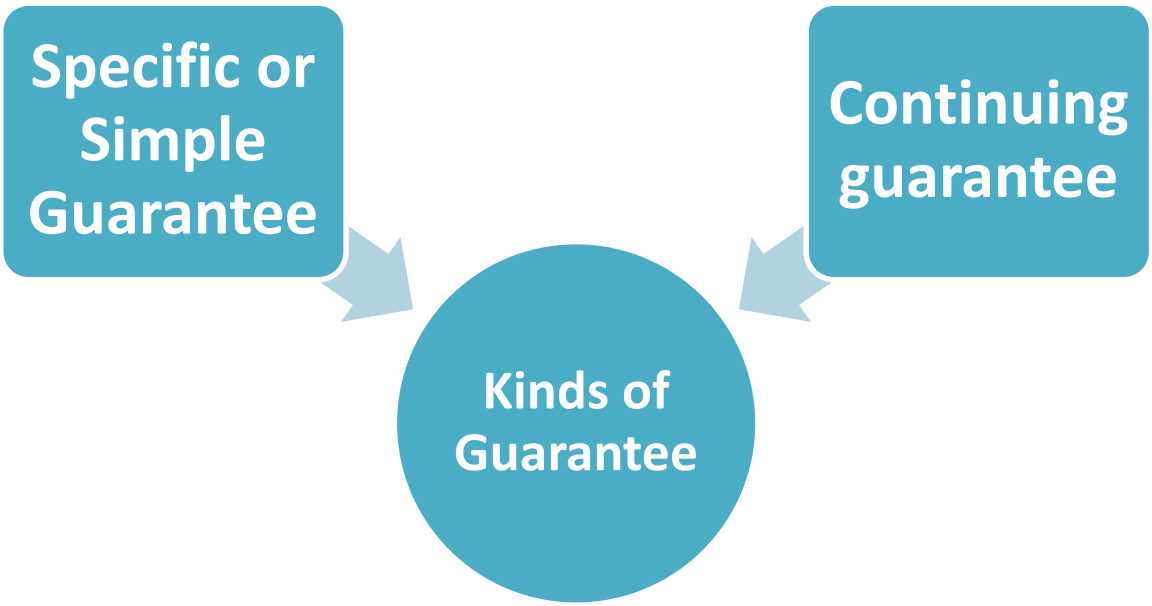


DISTINCTION BETWEEN A CONTRACT OF INDEMNITY AND GUARANTEE

S.No.	Different Basis	Indemnity Contract	Guarantee Contract
1.	Nature of Contract	Promises to save the other from loss.	One party promises to discharge the liability of the third party in case of his default.
2.	No. of Parties	Only two parties are there	There are three parties.
3.	No. of contracts	There is only one contract	There are three contracts between debtors, creditors and surety.
4.	Nature of Liability	The liability of the indemnifier is primary and independent.	The liability of the surely is secondary and dependent.
5.	Arising of Liability	Indemnifier's liability arises only on the	Arises only after the default of debtor in payment.

		happening of a contingency.	
6.	Existence of debt or duty	There is no existence debt or duty in this contract.	There is always some existing debt or duty in this contract.
7.	Request by the debtor	It is not necessary for the indemnifier to act at the request indemnified.	The surely generally gives guarantee to the request of the debtor.
8.	Right to sue	The indemnifier cannot sue the third party for loss in his own name.	It surely has discharged. The debt after the default of the principal debtor, he becomes entitled to sue the debtor in his own name.

Kinds of Guarantee –



1. **Specific or Simple Guarantee:** When a guarantee is given in respect to a single debt or specific transaction is to come to an end when the guarantee debt is paid or the promise is duly performed. It is called a specific or simple guarantee.

2. **Continuing guarantee:** Section 129, of the contract Act defines a guarantee which towards to a series of transaction is called a continuing guarantee; thus, a continuing guarantee is not confined to a single transaction but keeps on moving to several transactions continuously.

Revocation of Guarantee – Revocation of guarantee means cancellation of guarantee already accrued, it may be noted that the specific guarantee cannot be revoked if the liability has already secured. However a continuing guarantee can be revoked and on the revocation of such a guarantee. The liability of the surely or guarantor comes to an end for the future transaction. The surety continues to be liable for the transactions which have taken place up to the time of revocation. A continuing guarantee may be revoked in any of the following ways-

A Guarantee may be revoked in any of the following ways-

1. ***By notice of revocation.***
2. ***By death of surely.***
3. ***By discharge of surely in various circumstances***

A. By novation (Sec.62)

B. By variance in terms (Sec. 133)

C. By release/discharge of principal Debtor (Sec.-134)

D. When the creditor events in to an agreement with the principal debtors (Sec.13.)

E. By creditor act or omission impairing surety's eventual remedy (Sec. 139)

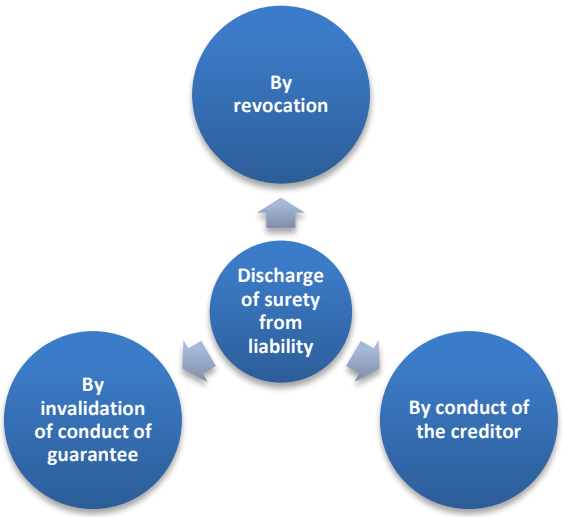
F. By loss of security "(Sec. 141)

G. By invalidation of contract (Sec.142,143,144)

Nature and Extent of Surety's Liability –

1. The liability of surety is co- extensive.
2. The liability of surety arises the same moment when default is made by the principal debtor.
3. The surety is free to restrict limit his liability.
4. Sometimes the surely is liable though the principal debtors is not liable.
5. If there is a condition precedent for the surety's liability; the surety will be liable, only when that condition is fulfilled first.
6. In a continuing guarantee liability of surety extends to a series of transaction over a period of time.
7. The surely will not be liable if the creditor has obtained guarantee either by misrepresenting a material fact regarding the transaction or by keeping silence to material circumstances.
8. A discharge of principal debtor by operation of law does not discharge the surely from liability.

Discharge of surety from liability -



The following are the modes or circumstances under which a surety is discharge from his liability –

1. By revocation
   a) Notice by surety
   b) Death of surety
   c) Notation.
2. By conduct of the creditor
   a) Variance (change) in terms of the contract
   b) Release or discharge or the principal debtor.
   c) Certain arrangements made by the creditors with the principal debtors without the consent of surety,
   d) Creditors act or omission impairing surety's eventual (ultimate) remedy.
   e) Loss of security.

3. By invalidation of conduct of guarantee
   a) Guarantee obtained by misrepresentations
   b) Guarantee obtained by concealment
   c) Failure of co-surety to join a surety

RIGHTS OF SURETY

I. Right against the Principal debtor

1. Right of subrogation
2. Right of indemnity

II. Right against the Creditor

1. Right to security
2. Right to claim set off

III. Right against the Co-Sureties

1. Equal contribution
2. Liability of co-securities bond in different sums
3. Right to share benefits of securities.

Bailment and pledge

Bailment

the world ‘bailment’ is derived from the French world the French world ‘baillier’ which means ‘to deliver Etymologically, it means any kind of handling over’. In legal sense, it involves change of possession of goods from one person to another for some specific purpose.

Definition of Bailment

Sec. 184 defines Bailment as the delivery of goods by one person to another for some purpose, upon a contract, that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the ‘bailor’ and the person the person to whom they are delivered is called the ‘bailee’.

Examples

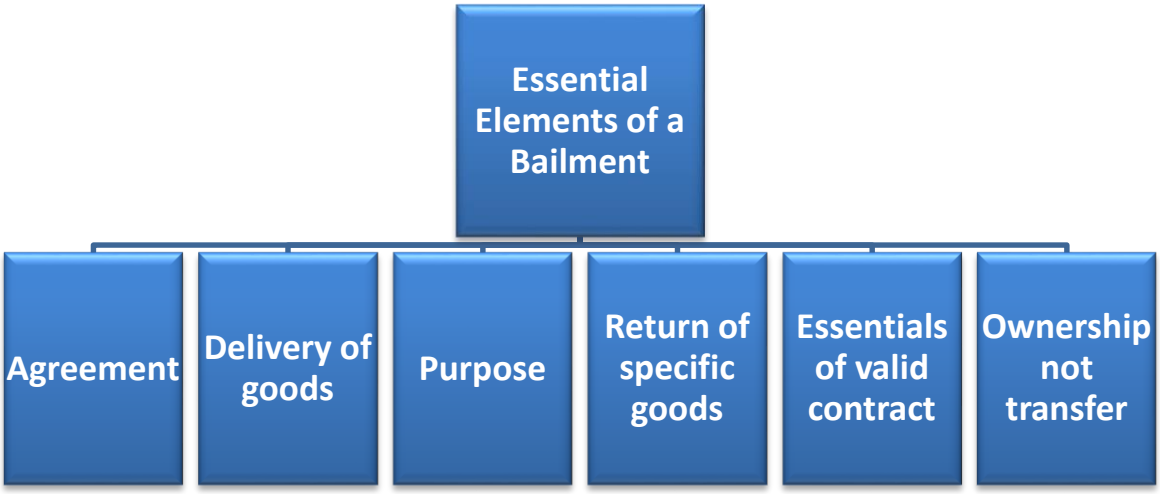
(a) A delivers a piece of cloth to B, a bailor, to be stitched into a suit. There is a contract or bailment between A and B.

(b) A sells certain goods to B who leaves them in the possession of A . The relationship between B and A is that of bailor and bailee.

Consideration in a contract of bailment

In a contract of bailment, the consideration is generally in the form money payment either by the bailor or the bailee, as for example, when A gives his bicycle to B for repair, or when A gives his car to B on hire. Such consideration in money form, however, is not necessary to support the promise on the part of the bailee to return to goods. The detrainment suffered by the bailor, in parting with possession of the goods, is a sufficient consideration to support the contract of bailment.

Essential Elements of a Bailment:-

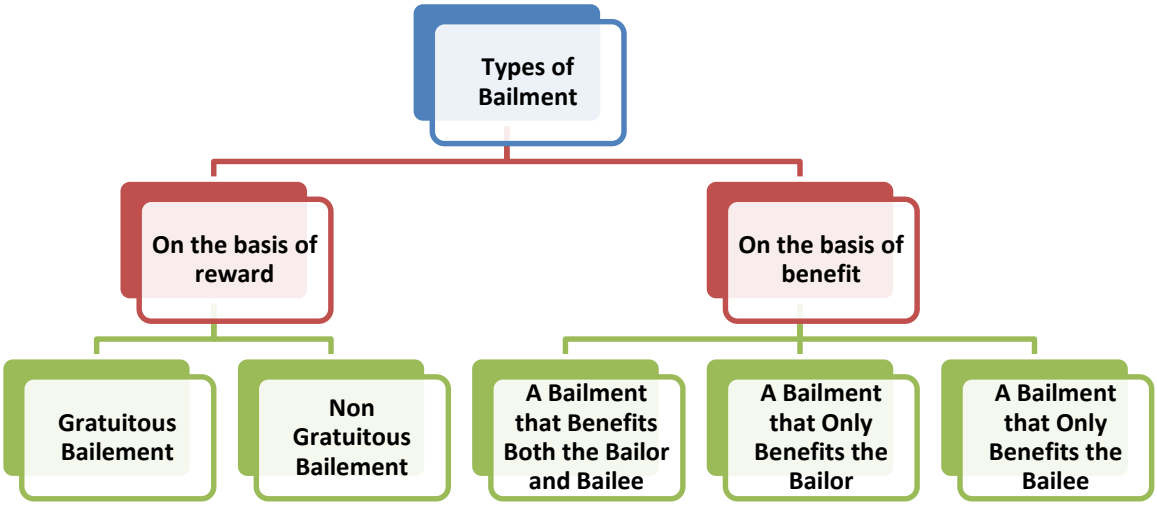


Distinction between Bailment and Contract of sale

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

S. No.	Basics of distinction	Bailment	Contract of sale
1	Transfers of ownership/possession	There is only a transfer of possession of goods from the bailor to the bailee.	There is a transfer of ownership of goods from the seller to the buyer.
2	Consideration not to be passed	The consideration need not be passed between bailor and bailee.	The consideration in terms of price must be passed between seller and buyer.
3	Return of goods	The bailee must return the goods to the bailor on the fulfillment of the purpose for which the bailment is made.	There is no question of such return of goods in contract of sale.

Kinds/types of Bailment:-



DUTIES OF A BAILOR

- Duty to disclose defects [Section 151]
- Duty to bear expenses [Section 158]
- Duty to indemnity the bailee in case of premature termination of gratuitous bailment [Section 159]
- Duty to indemnity the bailee against the defective title of bailor [Section 164]
- Duty to receive back the goods [Section 164
- Duty to bear the risk of loss [Section 152]
-

DUTIES OF A BAILEE

- Duty to take care of the goods bailed [Section 151&152]
- Duty not to make any unauthorized use of goods [Section 154]
- Duty not to mix bailor' s goods with his own goods [Section 155 to 157]
- Duty to return the goods [Section 160 & 161]
- Duty to return accretion to the goods [Section 163]

Rights of a Bailor

- Right to claim damage in case of negligence [Section152]

- Right to terminate the contract in case of unauthorized use [Section 153]
- Right to claim compensation in case of unauthorized use [Section 154]
- Right to claim the separation of goods in case of unauthorized mixture of goods which cannot be separated [Section 157]
- Right to demand return of goods [Section 160]
- Right to claim compensation in case of unauthorized retention of goods [Section 161]
- Right to demand accretions to goods[Section 163]

RIGHTS OF A BAILEE

- Right to claim damage [Section 150]
- Right to claim reimbursement of expenses [Section 158]
- Right to be indemnified in case of premature termination of gratuitous bailment [Section 159]
- Right to recover loss in case of bailor's defective title [Section 164]
- Right to recover loss in case of bailor's refusal to take the goods back [Section 164]
- Right to deliver goods to any one of the joint bailors [Section 165]
- Right to deliver goods to bailor in case of bailor's defective title [Section 166]
- Right to particulars lien [Section 170]

RIGHTS OF BAILOR AND BAILEE AGAINST WRONGDOERS

Rights of Bailor and Bailee against Wrongdoer [Section 180] If a third party wrongfully deprives a bailee of the use or possession of the goods bailed, or does them any injury, the bailee is entitled to such remedies as the owner might have used in the like case if no bailment had been made; and either the bailor or the baiolee may bring a suit against a third person for such deprivation or injury.

Apportionment of Relief or Compensation Obtained by Such Suits [Section 181] Whatever is obtained by way of relief or compensation in any such suit shall, as between the bailor and the bailee, be dealt with according to their respective interests.

Example X delivered a TV to Y for repairs. Z forcefully takes possession of TV from Y's shop. In this case, either X or Y may sue Z. If Y files the suit, he shall hand over the amount received after deducting his repairs charges to X.

TERMINATION OF BAILMENT

I. Termination of every Contract of Bailment (whether Gratuitous or not)

Every contract of bailment comes to end under the following circumstances:

(a) On the Expiry of Fixed Period

(b) On fulfillment of the Purpose

(c) Inconsistent Use of Goods

(d) Destruction of the subject Matter of Bailment

II. Termination of Gratuitous Bailment

A contract of gratuitous bailment is terminated in the following circumstances also.

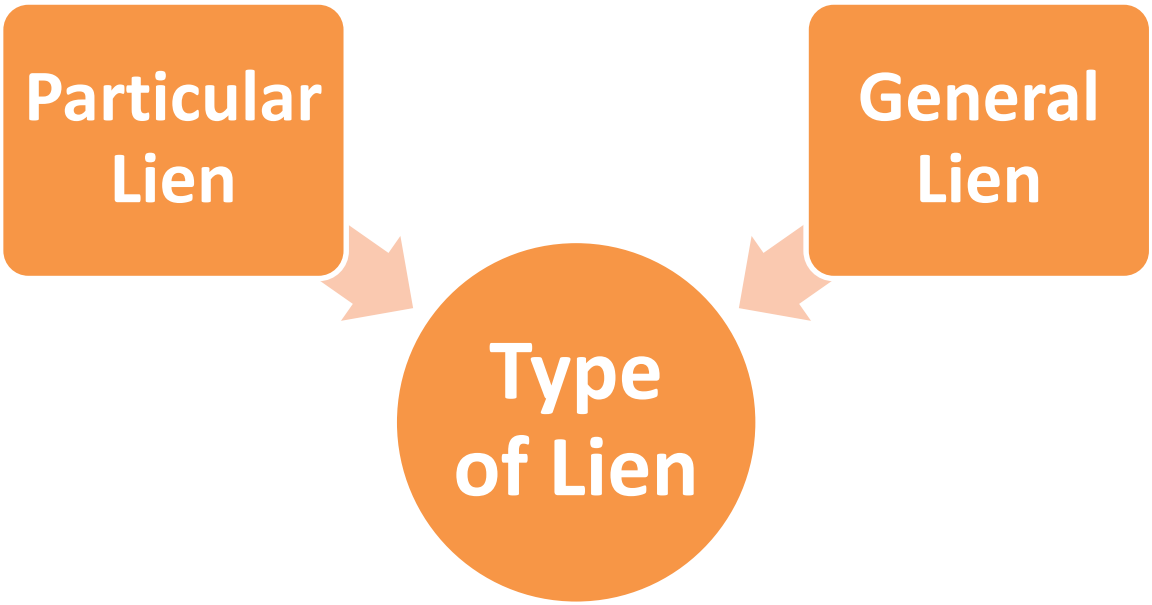
(a) Before the Expiry of fixed Period

(b) On Death of Bailor/Bailee

Meaning of Lien

Lien means the right of a person having possession of goods belonging to another to retain those goods until the satisfaction of sum claimed by the person in possession of the goods. If may be noted that the possession of goods must be lawful and continuous. For example, X took Y's godown on rent of Rs.5,000 p.m on an agreement that X cat at any time deposit or take out his goods from the godown. After six months, X stopped paying the rent. Y auctioned X's goods and claimed lien. Y cannot claim lien because it was agreed that X can take out his goods whenever he wanted.

Type of Lien:-



(a) Particular Lien [Section 170] A particular lien is right to retain only those goods in respect of which some charges are due.

Example:- X gives a piece of cloth to Y, a tailor, to make a coat. Y promises X to deliver the coat as soon as it is finished. Y is entitled to retain the coat till he is paid for (if he has not allowed any credit period) but is not entitled to retain the coat (if he has allow one month's credit for the payment.)

(b) General Lien [Section 171] A general lien is a right to retain all the goods as a security for the general balance of account until the full satisfaction of the claims due whether in respect of those goods or other goods. The general lien is available to other person only when there is an express contract to that effect.

Example: - X deposited US 64 units and shares of Reliance Industries Ltd. as security with Citi Bank and took a loan against the shares of Reliance Industries Ltd. Citi Bank may retain both the securities until its claim are fully satisfied.

S. No.	Basic of distinction	Particular lien	General lien
1	Goods 9in respect of which lien available	It is available against those goods in respect of which some charges are due.	It is available against all goods whether in respect of which claims are due or not.
2	Purpose	It is available only for non-	It is available for a general balance

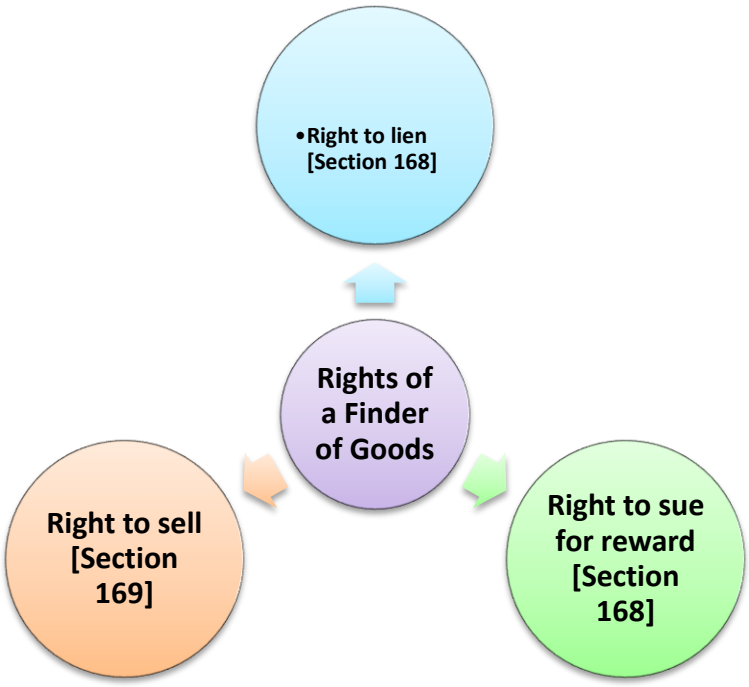
		payment of remuneration for the service.	of account.
3	To whom available in the absence of contract to contrary	It is available to every bailee to whom the goods have been bailed.	It is available only to specific bailees like bankers, factors, Wharfingers, attorneys of High Court policy brokers.
4	Rendering of service	It is available only when some service involving the exercise of labour of skill has been rendered.	It is available even when no such service has been rendered.
5	Purpose of delivery of goods	The purpose of delivery of goods is to confer an additional value as the goods bailed.	The purpose of delivery of goods is to deposit the goods as security.

FINDER OF GOODS

Finder of goods is the person whom finds some goods which do not belong to him.

Example if X finds a purse or a diamond ring or a watch, which does not belong to him, he will be called as a finder of goods.

Rights of a Finder of Goods:-



Duties of a Finder of Goods [Section 171] ;-

Finder of goods is subject to the same responsibility as a bailee. The duties of a finder of goods are as follows:-

PLEDGE

Meaning of pledge (or pawn) [Section 172]

The bailment of goods as security for payment of a debt or performance of a premise is called pledge (or pawn).

Example X borrows of Rs. 1,00,000 from Citi Bank and keeps his shares as security for payment of a debt. It is a contract of pledge.

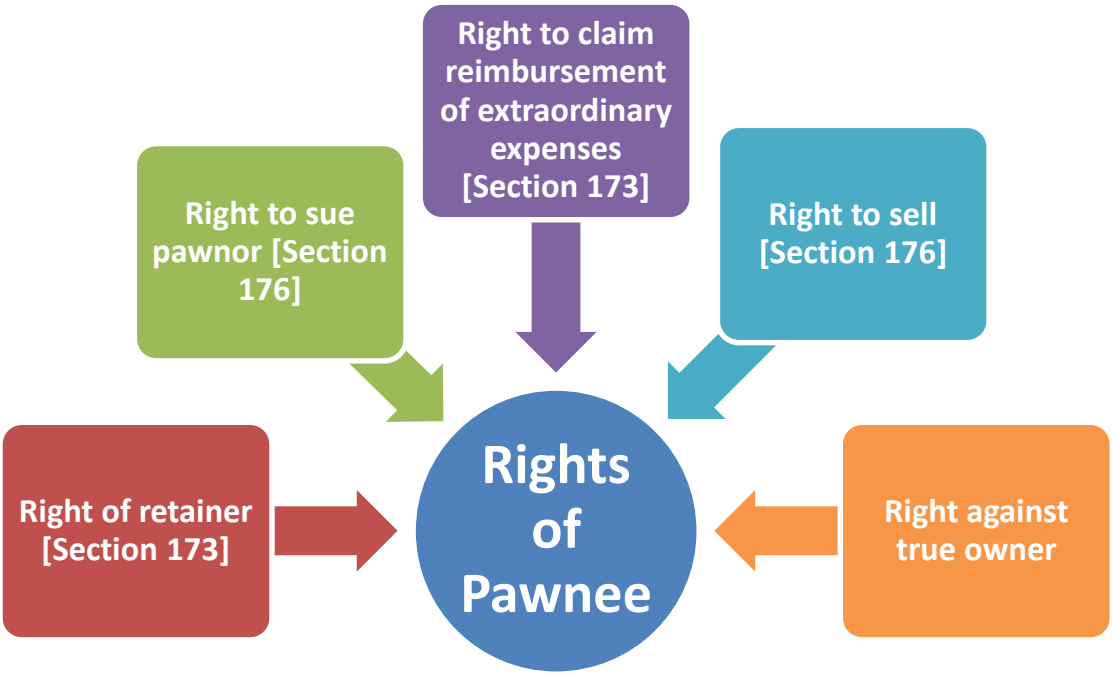
Meaning of A pawner (or pledgor) [Section 172)

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

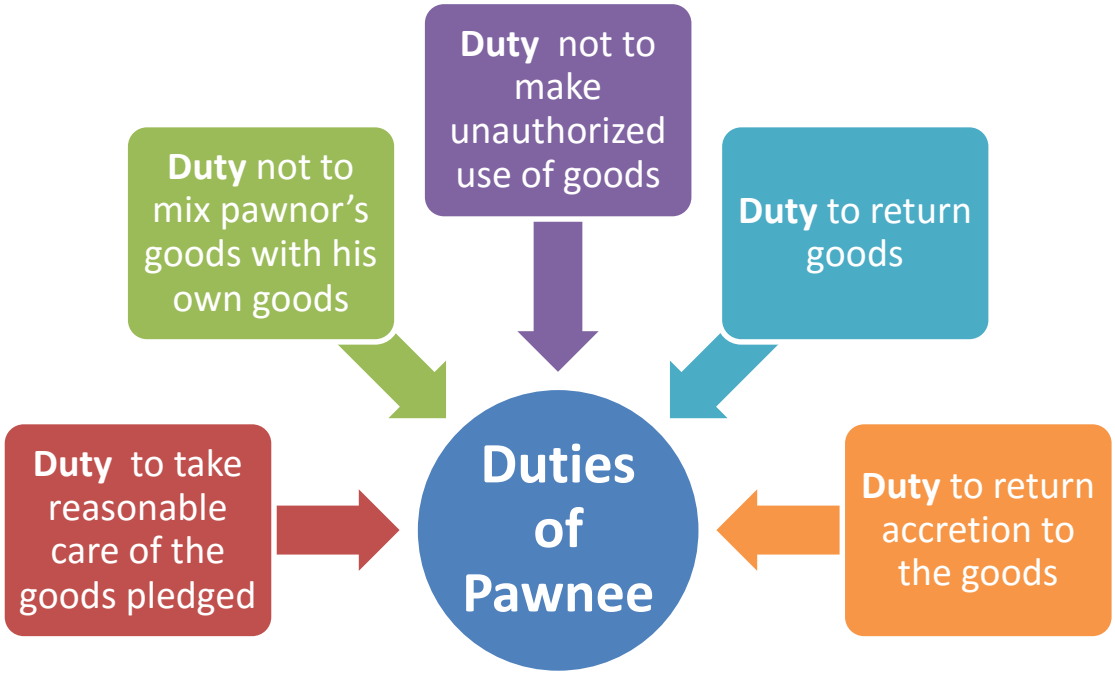
Meaning of Pawnee (or pledge) [Section 172)

The person to whom the goods are delivered as security for payment of a debt or performance of promise is called the Pawnee or Pledgee. In the aforesaid example. Citi Bank is the Pawnee.

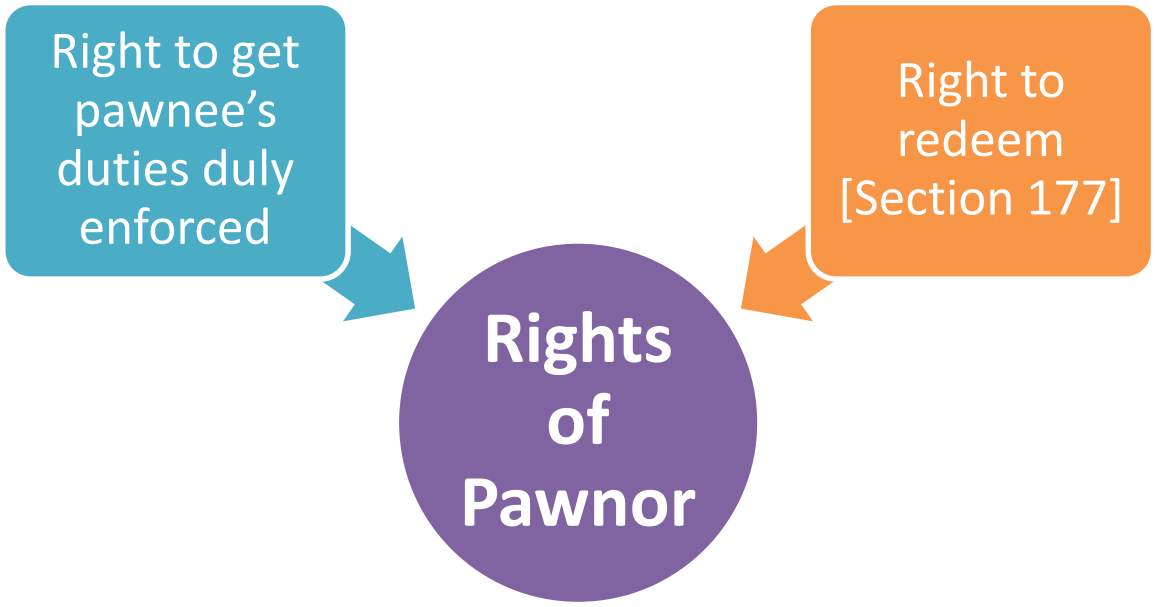
Rights of Pawnee:-



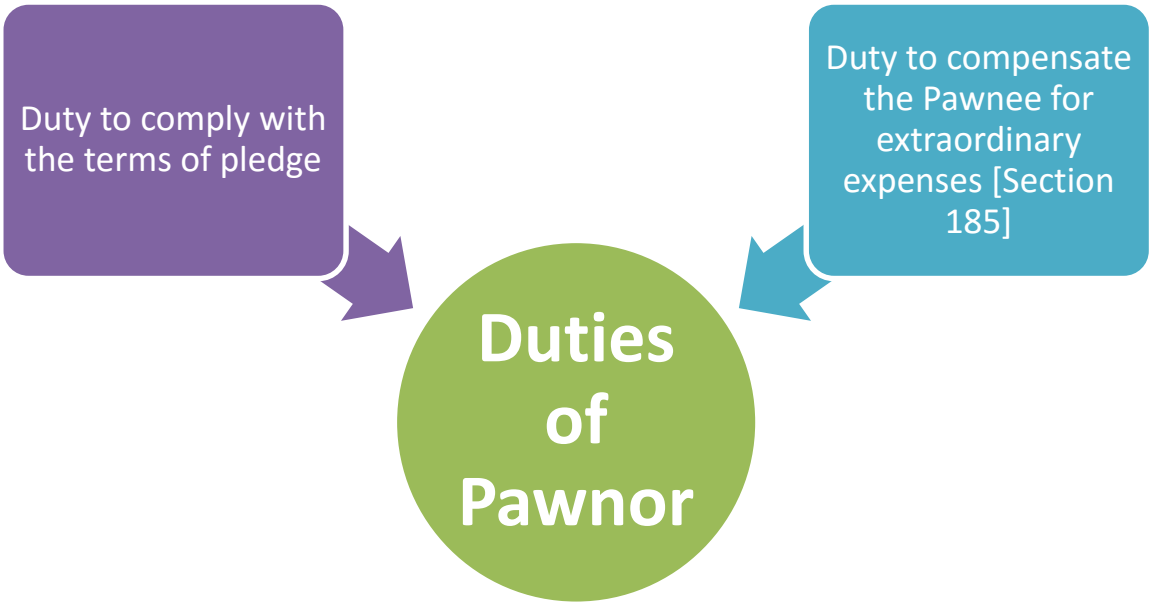
Duties of Pawnee :-



Rights of Pawnor :-



Duties of Pawnor:-



Distinction between Pledge and Bailment

Basic of distinction	Pledge	Bailment
1. Purpose	Pledge is bailment of goods for a specific purpose i.e. repayment of a debt or performance of a duty.	Bailment is for a purpose of any kind
2. Right to use	Pawnee cannot use the goods pledged	Bailee can use the goods as per terms of bailment
3. Right to sell	Pawnee can sell the goods pledge after giving notice to the pawnor in case of default by the pawnor.	Bailment can either retain the goods or sue the bailor for his dues.

Distinction between pledges and Hypothecation

Hypothecation is also one of the modes of providing security. However, it is different from pledge in the following respects:

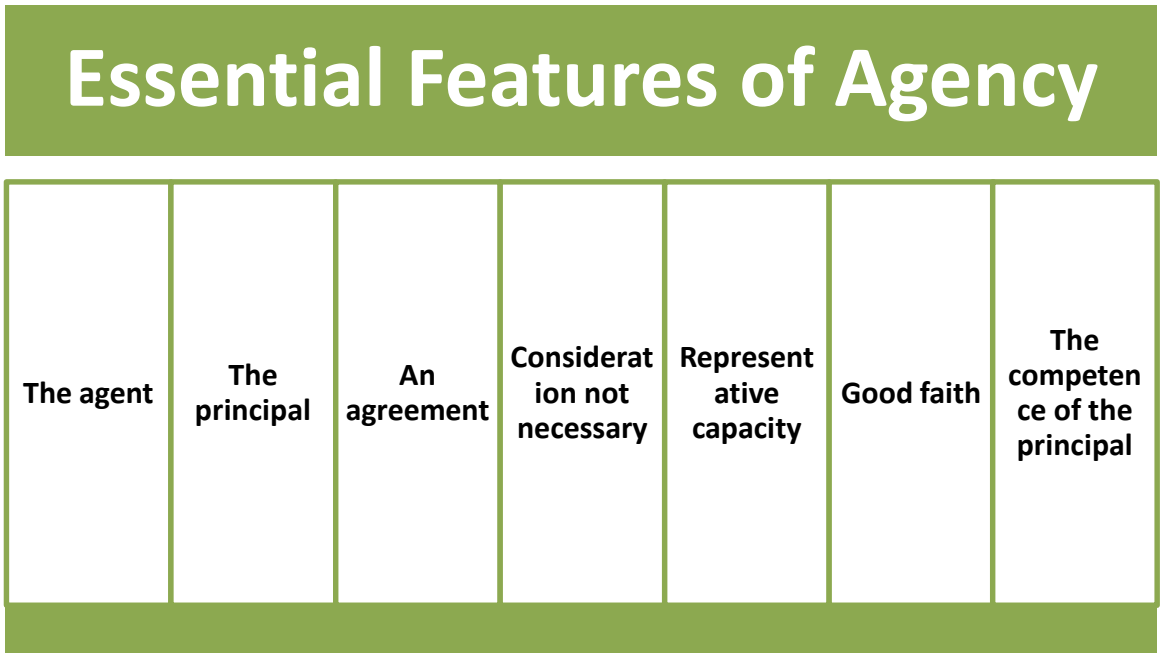
Basic of distinction	Pledge	Hypothecation
1. possession of goods	Borrower transfer the possession of goods.	Borrower is not transfer the possession of goods.
2. Right to deal with the goods.	Borrower has no right to deal with the goods pledged.	Borrower has a right to deal with the hypothecated.

AGENCY CONTRACT

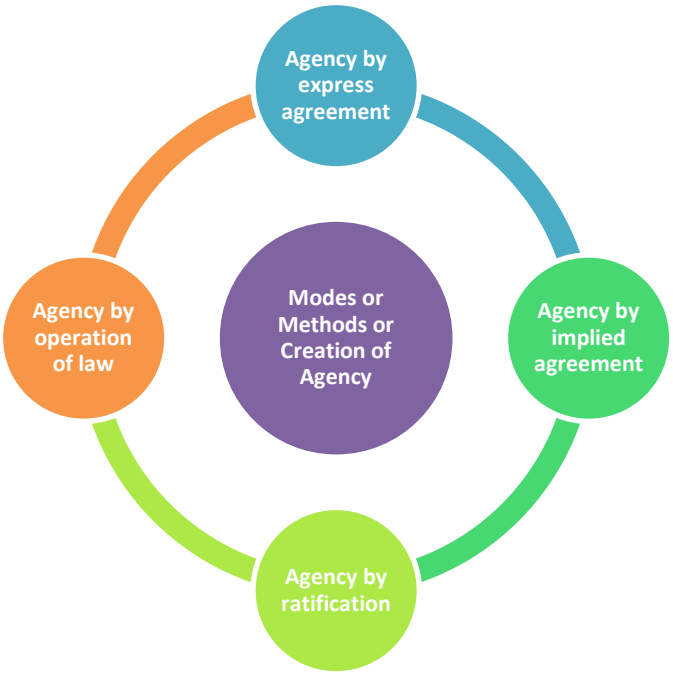
Meaning of Agency: Agency is relation between an agent his principal created by an agreement.

Section 182 of the Contract Act defines an Agent as ‘‘A person employed to do any act for another, or to represent another in dealings with third persons. The person for whom such act is done, or whom is so represented is called the principal”.

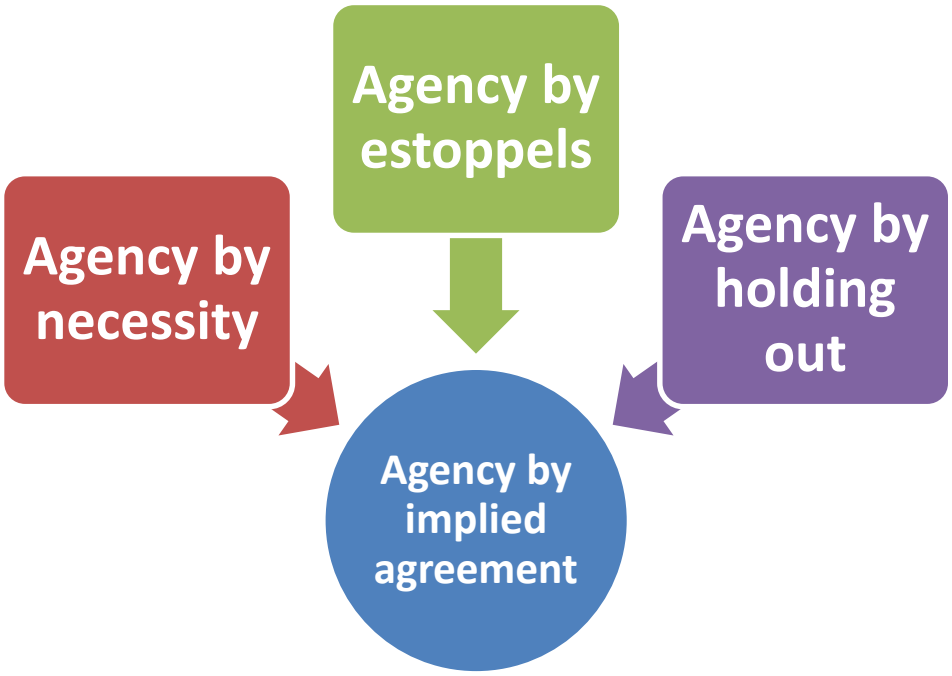
Essential Features of Agency:-



Modes or Methods or Creation of Agency-



1. **Agency by express agreement:** A contract of agency may be made by express words, whether written or oral.
2. **Agency by implied agreement:** ‘‘An authority is said to be implied when it is to be inferred from the circumstances of the case.



(a) **Agency by estoppels** : When a principal by his conduct or act cause a third person to believe that a certain person is his authorized agent the agency is aid to be an agency by estoppels.

(b) **Agency by necessity**: It means the agency which comes into existence when certain circumstances compel a person to act as an agent for another without his express authority.

(c) **Agency by holding out**: When a principal by his active conduct or act and without any objection permits another to act as his agent, the agency is the result of principal's conduct as to the agent.

3. **Agency by ratification:** Ratification means confirmation of an act which has already been done. Sometimes, an act is done by a person on behalf of another person but without another person's knowledge and authority. If he accepts and confirms the act, he is said to have ratified it.
4. **Agency by operation of law:** In certain circumstances the law treats a person as an agent of another person. For example, (a) when a partnership is formed, every partner automatically becomes agent o another partner. (b) When a company is formed its promoters are treated as its agents by operation of law.

RIGHTS AND DUTIES OF AGENT

Rights of an Agent

1. Right to retain money received on principal's account.
2. Right to receive remuneration.
3. Right of lien on principal's property.
4. Right to be indemnified.
5. Right to compensation for injury caused by principal's neglect.

Duties of an Agent

1. To follow the direction of the principal.
2. To conduct the business of agency with reasonable skill and diligence.
3. To render accounts on demand
4. To communicate with the principal.
5. Not to deal on his own account
6. To pay the amounts received for the principal
7. Not to delegate his authority
8. Not to act in excess of authority
9. Duty on termination of agency by principal's death or insanity.
10.

TERMINATION OF AGENCY

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

(**a)** Termination of Agency by the act of the Parties.

1. By revocation o authority by the principal
2. By renunciation (giving up) of business of agency by the agency
3. By mutual agreement

(**b**) **Termination of agency by Operation of Law**

1. Completion of business of agency
2. Death or insanity of principal or agent
3. Insolvency of the principal
4. Destruction of subject matter
5. Expiry of time
6. Agency subsequently becoming unlawful.
7. Termination of sub agent's authority

Revocable agency

When the authority of agent cannot be revoked by the principal it is said to be an irrevocable agency. An agency is irrevocable in the following cases:

1. If the agency is coupled with interest : when an agent himself has a special interest in the property which forms the subject matter of the agency, such agency is said to be coupled with interest.
2. Where the agent has partly exercised his authority
3. When the agent has incurred a personal liability.

DISTINCTION BETWEEN SUB-AGENT AND SUBSTITUTED AGENT

Basic of distinction	Sub-agent	Substituted Agent
1. Appointment	A sub-agent is appointed by the agent, i.e. original agent.	A substituted agent is named by the agent and appointed by the principal.
2. Delegation of Authority	Original agent delegates some of his authority to the sub-agent	Original agent does not delegate his authority to the substituted agent.
3. Control	A sub-agent acts under the control o the agent.	A substituted agent acts under the direction and control of the principal.
4. Privity of contract with principal	There is no privity of contract between sub-agent and the principal. Therefore, both of them cannot directly sue on each other.	There is a privity of contract between substituted agent and the principal. Therefore, both of them can sue each other directly.
5. Liability of the agent	`agent is liable to the principal for the acts of the sub-agent.	Agent is not responsible to the principal for the acts of the substituted agent.
6. Accountability	The sub-agent may be held accountable to the principal only for his wrongful acts or fraud.	A substituted agent is a accountable to the principal for each and every act.
7. Claim for remuneration	A sub-agent has no right to claim remuneration from the principal.	A substituted agent can claim remuneration from the principal.
8. Improper appointment	A sub-agent may be improperly appointed.	A substituted can never be improperly appointed.

UNIT-II

SALE OF GOODS ACT, 1930

The Sale of Goods Act, 1930 herein referred to as the Act, is the law that governs the sale of goods in all parts of India. It doesn't apply to the state of Jammu & Kashmir. The Act defines various terms which are contained in the act itself.

Buyer And Seller

As per the sec 2(1) of the Act, a buyer is someone who buys or has agreed to buy goods. Since a sale constitutes a contract between two parties, a buyer is one of the parties to the contract.

The Act defines seller in sec 2(13). A seller is someone who sells or has agreed to sell goods. For a sales contract to come into existence, both the buyers and seller must be defined by the Act. These two terms represent the two parties of a sales contract.

A faint difference between the definition of buyer and seller established by the Act and the colloquial meaning of buyer and seller is that as per the act, even the person who agrees to buy or sell is qualified as a buyer or a seller. The actual transfer of goods doesn't have to take place for the identification of the two parties of a sales contract.

Goods:-

One of the most crucial terms to define is the goods that are to be included in the contract of sale. The Act defines the term "Goods" in its sec 2(7) as all types of movable property. The sec 2(7) of the Act goes as follows:

"Every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale will be considered goods"

As you can see, shares and stocks are also defined as goods by the Act. The term actionable claims mean those claims which are eligible to be enforced or initiated by a suit or legal action. This means that those claims where an action such as recovery by auction, suit, refunds etc. could be initiated to recover or realize the claim.

We say that goods are in a deliverable state when their condition is such that the buyer would, under the contract, be bound to take delivery of these goods. Goods may be further understood in the following subtypes:

1. Existing Goods

The goods that are referred to in the contract of sale are termed as existing goods if they are present (in existence) at the time of the contract. In sec 6 of the Act, the existing goods are those goods which are in the legal possession or are owned by the seller at the time of the formulation of the contract of sale. The existing goods are further of the following types:

A) Specific Goods

According to the sec 2(14) of the Act, these are those goods that are "identified and agreed upon" when the contract of sale is formed. For example, you want to sell your mobile phone online. You put an advertisement with its picture and information. A buyer agrees to the sale and a contract is formed. The mobile, in this case, is specific good.

B) Ascertained Goods:

This is a type not defined by the law but by the judicial interpretation. This term is used for specific goods which have been selected from a larger set of goods. For example, you have 500 apples. Out of these 500 apples, you decide to sell 200 apples. To sell these 200 apples, you will need to separate them from the 500 (larger set). Thus you specify 200 apples from a larger group of unspecified apples. These 200 apples are now the ascertained goods.

C) Unascertained Goods:

These are the goods that have not been specifically identified but have rather been left to be selected from a larger group. For example, from your 500 apples, you decide to sell 200 apples but you don't specify which ones you want to sell. A seller will have the liberty to choose any 200 apples from the lot. These are thus the unascertained goods.

2. Future Goods

In sec 2(6) of the Act, future goods have been defined as the goods that will either be manufactured or produced or acquired by the seller at the time the contract of sale is made. The contract for the sale of future goods will never have the actual sale in it, it will always be an agreement to sell.

For example, you have an apple orchard with apples in it. You agree to sell 1000 apples to a buyer after the apples ripe. This is a sale that has to occur in the future but the goods have been identified already and the agreement made. Such goods are known as future goods.

3. Contingent Goods

Contingent goods are actually a subtype of future goods in the sense that in contingent goods the actual sale is to be done in the future. These goods are part of a sale contract that has some contingency clause in it. For example, if you sell your apples from your orchard when the trees are yet to produce apples, the apples are a contingent good. This sale is dependent on the condition that the trees are able to produce apples, which may not happen.

Delivery:

The delivery of goods signifies the voluntary transfer of possession from one person to another. The objective or the end result of any such process which results in the goods coming into the possession of the buyer is a delivery process.

The delivery could occur even when the goods are transferred to a person other than the buyer but who is authorized to hold the goods on behalf of the buyer.

There are various forms of delivery as follows:

- ***Actual Delivery***: If the goods are physically given into the possession of the buyer, the delivery is an actual delivery.
- ***Constructive delivery***: The transfer of goods can be done even when the transfer is effected without a change in the possession or custody of the goods. For example, a case of the delivery by attornment or acknowledgment will be a constructive delivery. If you pick up a parcel on behalf of your friend and agree to hold on to it for him, it is a constructive delivery.
- ***Symbolic delivery***: This kind of delivery involves the delivery of a thing in token of a transfer of some other thing. For example, the key of the godowns with the goods in it, when handed over to the buyer will constitute a symbolic delivery.

The Document of Title to Goods

From the Sec 2(4) of the act, we can say that this "includes the bill of lading, dock-warrant, warehouse keeper's certificate, railway receipt, multimodal transport document, warrant or order for the delivery of goods and any other document used in the ordinary course of business as proof of the possession or control of goods or authorizing or purporting to authorize, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented."

Mercantile Agent [Section 2(9)]

Mercantile agent is someone who has authority in the customary course of business, either to sell or consign goods under the contract on behalf of the one or both of the parties. Examples include auctioneers, brokers, factors etc.

Property [Section 2(11)]

In the Act, property means 'ownership' or the general property i.e. all ownership right of the goods. A sale constitutes the transfer of ownership of goods by the seller to the buyer or an agreement of the same.

Insolvent [Section 2(8)]

The Act defines an insolvent person as someone who ceases to pay his debts in the ordinary course of business or cannot pay his debts as they become due, whether he has committed an act of insolvency or not.

Price [Section 2(10)]

In the Act, the price is defined as the money consideration for a sale of goods.

Quality of Goods

In Sec 2(12) of the Act, the quality of goods is referred to as their state or condition.

Sale and Agreement of Sale (Section 4)

A contract is a formal or verbal agreement that is enforceable by law. Every contract must have an agreement but every agreement is not a contract. The section 4(1) of the Sale of Goods Act, 1930 states that – 'A contract of sale of goods is a contract whereby the seller either transfers or agrees to transfer the property in goods to the buyer for a decided price.'

In Section 4(4) of the Act, it is maintained that for an agreement of sale to become a sale, the time has to elapse or the conditions have to be fulfilled subject to which the property in the goods is to be is to be transferred.

The point that is to be understood from the above discussion is that a contract for the sale of goods can either be a sale or an agreement of sale. Let us see both the cases in the light of the Act.

Sale

Here the property in goods is transferred at once to the buyer from the seller. The Section 4(3) of the Act says that "where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is then known as a sale." A sale is carried out on deliverable goods. Goods are said to be in a deliverable state when they are in such a condition that the buyer would, under the contract, be bound to take delivery of them [Section 2(3)].

The transfer of goods may be affected directly, after the fulfillment of a contingency or to a party authorized by the seller.

Agreement to Sell

We saw that in a sale the property in the goods is transferred from the seller to the buyer. However, in an agreement to sell, the ownership of the property in goods is not transferred immediately. The objective of the agreement is to transfer the goods at a future date, once some contingent clauses in the agreement or certain conditions are satisfied.

The Act in Section 4(3), defines what an agreement to sell is. The section 4(3) of the sale of Goods Act defines it as, "where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell."

Thus we see that a contract for the sale of goods may be either sale or agreement to sell. This depends on the condition whether it postulates an immediate transfer of property from the seller to the buyer or whether it postulates the transfer to take place at some future date.

Now the question is that how does this transition from agreement to sell to sale occur? The agreement to sell will become a sale if and only when the time elapses or the conditions are fulfilled subject to which the contract of sale is to be fulfilled.

Elements of A Contract Of Sale

From the Sale of Goods Act, 1930, we see that certain elements must co-exist for a contract of sale to be constituted. they are as follows:

1. The presence of two parties is a must. As is the case with a contract, there must be at least two parties in the contract of sale. One shall become the seller and the other a buyer.
2. The clauses therein present in the contract of sale must limit their scope to only the movable property. This "movable property" may constitute existing goods, goods in the possession or the ownership of the seller or future goods.
3. One of the important elements is the consideration of price. A price in value (currency and not in kind) has to be paid or promised. The price consideration or the actual payment could be partly in kind and partly in money but never in kind alone.
4. The ownership of the property of goods must change from the seller to the buyer. In the contract of sale, like we saw in the elements of a contract, an offer has to be made and then accepted. The offer is made by a seller and then accepted by the buyer.
5. The contract of sale may be absolute or conditional.
6. The other essential elements of a contract, that we have already seen must also be present here. The crucial elements of a contract like competency of parties, the legality of object and consideration etc. have to be present like in any other contract.

Ascertainment of Price

The Sale of Goods Act, 1930 has two sections that discuss the ascertainment of a price. Ascertainment of price means to specify without ambiguity the price of a commodity. The Act has two sections that discuss this – sec 9 and sec 10. Let us see each of these separately and try to understand what provisions exist herein.

The sec 9 of the Act states the following:

The price in a contract of sale may be fixed by the contract, or it may be left to be fixed in manner thereby agreed or it can be determined by the course of dealing between the parties to the contract.

- Where the price is not determined in accordance with the said provisions, the buyer shall pay the seller a reasonable price. Reasonable price will depend on the individual case or circumstance.

If you look at the first part, the term price has to be defined. Section 2 (10) of the Act defines price as the monetary consideration or value decided for the sale of goods . Thus we see that for a price to come into existence, a sale has to come into existence.

Price of a Contract

Also, from the Section 9 (1), we can see that the price in the contract of sale may be determined or stated by:

i. the contract, i.e. the price is explicitly mentioned or decided within the contract of sale itself or

ii. the contract has some clause(s) that has the or defines the authority that will eventually ascertain the price. For example, the contract asks for a valuer to be commissioned for the purpose of the ascertainment of price.

iii. The price may also be determined by the course of dealings. For example, if the two parties have a long history of dealing with each other, then the price if not specified clearly can be ascertained from the previous history of dealings and prices. Clearly, this portion of the section is only applicable if the parties have a tradition or history of similar deals.

Similarly, Sec 9 (2) says that if the price is not determined through either of the methods discussed in sec 9 (1) then the buyer will have to pay the seller a reasonable price. This price will be decided in accordance with the market value.

For example, if the Government of your State has been purchasing its electricity from a neighboring state at a given price. If they enter into a new contract, then the price will either be:

i. Explicitly mentioned in the contract.

ii. Fixed by the two parties after due consideration with each other.

iii. Or the price will be the same as was traditionally accepted by the two parties.

Agreement to sell at Valuation (Section 10)

Since now the sec 9 of the Act discussed what we can call the direct modes of ascertaining the price. However, there are other modes of price determination that we will define in the sec (10). Let us state the Section and then we will move on to explanation and analysis.

- Where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of a third party and such third party cannot or does not make such valuation, the agreement is thereby avoided; PROVIDED that, if the goods or any part thereof have been delivered to and appropriated by, the buyer, he shall pay a reasonable price, therefore.
- Where such third party is prevented from making the valuation by the fault of the seller or buyer, the party not in fault may maintain a suit for damages against the party in fault."

The method of determination or mode of ascertaining the price here is by a third party. This comes into effect when both the parties have decided to the clause that the price will be decided by the third party. However in case the third party is not capable or refuses to make a proper valuation of the goods to be purchased, then the agreement will be void.

In some cases, the third party may be obstructed by the default of one of the parties. In such case, the party at fault will be responsible to pay proper compensation in terms of damages to the other party, provided that the other party is not at fault. Once the goods have been appropriated and received, the buyer is liable to pay the price thereof.

Warranty and Conditions

In a contract of sale, parties may make certain statements about the stipulation or the course of trade. These stipulations in the contract of sale are made with reference to the subject matter of the sale. These stipulations may either be a condition or in the form of a warranty.

The provisions of the conditions and warranty are provided in the sections 11 to 17 of the Act. The stipulations are the essence of the contract of sale and a breach of these stipulations provides a remedy to the grieved party.

Stipulations as To Time – Sec 11

To understand the concept of warranty and conditions, we need to learn about the stipulation as to time. The stipulation as to time may be with regards to the delivery of goods or it may be with regards to the payment of the price.

However, it may be noted that stipulations as to the time of delivery of the goods are usually the essence of the contract. In Section 11 of the Act, the topic of the stipulation as to time has been discussed. The Sec 11 states the follows:

Stipulations as to time: Unless a different intention can be ascertained from the contract, stipulations as to the time of payment are not considered to be of the essence of a contract of sale. Whether any other stipulation as to time is of the essence of the contract or not will ultimately depend on the terms of the contract.

This means that whether the stipulations as to the time of payment of the price is of the essence of the contract or not depends on the terms of the contract. Unless the terms of the contract specify something different than this.

Conditions

A condition is a stipulation essential to the main purpose of the contract, the breach of which gives the right to repudiate the contract and to claim damages. (Sec 12 (2)). We can understand this with the help of the following example:

Say 'X' wants to purchase a car from 'Y', which can have a mileage of 20 km/lt. 'Y' pointing at a particular vehicle says "This car will suit you." Later 'X' buys the car but finds out later on that this car only has a top mileage of 15 km/ liter. This amounts to a breach of condition because the seller made the stipulation which forms the essence of the contract. In this case, the mileage was a stipulation that was essential to the main purpose of the contract and hence its breach is a breach of condition.

Warranty

A warranty is a stipulation collateral to the main purpose of the said contract. The breach of warranty gives rise to a claim for damages. However, it does give a right to reject the goods or treat the contract as repudiated. (Sec 12(3)). Let us understand this with the help of an example below.

A man buys a particular car, which is warranted to be quite to drive and very comfortable. It turns out that after some days the car starts to make a very unpleasant noise every time it is operated. Also sitting inside it is also not very comfortable.

Thus the buyer's only remedy is to claim damages. This is not a breach of the condition but rather a breach of warranty, because the stipulation made by the seller was only a collateral one.

Identification of a Stipulation as a Condition or Warranty

Whether a stipulation is a condition or a warranty is a very important aspect to have the knowledge about. A stipulation in a contract of sale is either a condition or is a warranty depending in either case on the construction of the contract. A stipulation may be a condition, though called a warranty in the contract.

Difference between Condition & Warranty

Difference Basis	Warranty	Condition
Nature	A warranty is only collateral to the main purpose of the contract.	It is essential to the main purpose of the contract.
Exemption from performance in case of a breach of the stipulation.	In this case, the aggrieved party can't rescind the contract but can claim damages only.	The aggrieved party can repudiate the contract and is exempted from performance and can also claim damages.
Treatment	Breach of warranty can't be treated as a breach of condition.	A breach of contract may be treated as a breach of warranty.

Express and Implied Conditions

The contract of sale is often very linear in its clauses but a good contract is diverse in expression. The Express Conditions and the Implied Conditions may help one to formulate a diverse and clear contract. Let us learn more about this topic.

Implied Conditions

Conditions and Warranties may be either express or implied. The implied conditions and warranties are those which are presumed by law to be present in the contract though they have not been put into it in expressed words. Implied

conditions are dealt with in Sections 14 to 17 of the Sale of Goods Act, 1930. Unless otherwise agreed, the law incorporates into a contract of a sale of goods the following implied conditions:

Condition as To Title

In every contract of sale, the first implied condition on the part of the seller is that:

a. in case of a sale, he has a right to sell the goods,

b. And in the case of an agreement to sell, he will have the right to sell the goods at the time when the property is to pass. Buyer is entitled to reject the goods and to recover the price if the title turns out to be defective. [Section 14(a)].

Let us try to understand this with the help of an example. Let us say that person A bought a tractor from another person B. The person B had no title to the tractor. Person a then goes on to use the tractor for three months. Three months later, the legal owner of the tractor spots it and demands it back from A. In this, the law holds that A is bound within the law to hand over the tractor to the real owner of the tractor. A has the right to sue B, for the recovery of the purchase price.

Condition as To Description

If there is a contract of sale of goods by description, a default implied condition is that these goods must correspond with this description. The buyer is not bound to accept and pay for the goods which are not in accordance with the description of goods. [Section (15)]

Let us consider an example. Suppose a ship was contracted to be sold as “copper-fastened vessel” but actually it was only partly copper-fastened. This means that the goods did not correspond to the description and hence they can be returned or if the buyer took the goods, he could claim damages for breach.

Sale by Sample

In a contract of sale by sample, there is an implied condition that:

a. the bulk shall correspond with the sample in the quality;

b. the buyer shall have or shall be given a reasonable opportunity/chance of comparing the bulk with the sample, and

c. The goods shall be free from any defect that may render them unmerchantable, which would not be apparent on a reasonable examination of the sample. [Section (17)]

For example, a company sells certain belts made up of a special material by sample for the Indian Army. The belts are found to be made up of plastic of cheaper quality, not discoverable by ordinary inspection. In this case, the buyer is entitled to the refund of the price plus damages.

Sale by Sample As Well As By Description

Where the goods are sold by a sample as well as by description the implied condition is that the bulk of the goods supplied must correspond both with the sample and the description. In case the goods correspond with the sample but do not tally with the description or vice versa, the buyer can repudiate the contract. [Section 15]

For example, A agrees to sell certain oil described as refined rapeseed oil to B, warranted only equal to sample. The goods that a tenders are found to be equal to the sample but containing a mixture of hemp oil. In such a case B can reject the goods.

Condition as To Quality or Fitness

Generally, there is no implied condition as to the quality or fitness of the goods that are sold for a particular purpose. However, the condition as to the reasonable fitness of goods for a particular purpose may be implied on the part of the seller for which the buyer wants them. Following are the conditions to be satisfied:

a. If the buyer had made known to the seller the purpose of his purchase
b. and the buyer relied on the seller's skill and judgment, and
c. Seller's business to supply goods of that description. [Section 16]

For example, A purchases a hot water bottle from a chemist. The bottle burst and injured A's wife. A breach of condition as to the fitness was thus committed. Hence A is liable for a refund of the price and also the damages.

Condition as To Merchantability

This is implied only where the sale is by description and the goods should be of 'merchantable quality' i.e. the goods must be such as are reasonably saleable under the description by which they are known in the market. [Section 16(2)]

For example, A purchases a certain quantity of black yarn from B who is a dealer in yarn. A finds the black yarn to be damaged by the white ants. Thus the condition as to merchantability has been broken and A is entitled to reject it as unmerchantable.

Conditions as To Wholesomeness

In the case of eatables and provisions, there is another implied condition that the goods shall be wholesome, in addition to the implied condition as to merchantability.

For example, A supplies B with milk. The milk contains bacteria and B's wife consumes the milk and is diagnosed with a disease. She later succumbs to the disease. Hence, there was a breach of condition as to the fitness of the supplies and A was liable to pay damages to B in this case.

Express Conditions

An express condition is any stipulation, essential to the main function of the contract, which is put in the contract at the will of the two parties.

Express and Implied Warranties

Implied Warranties and Express Warranties are essential concepts to understand in the contract of sale. Let us discuss the various aspects of the Implied Warranties and also define the Express Warranties present within a contract of sale.

Implied Warranties

In case the buyer is content is content with his right to damages or can't reject the goods, a condition (implied or express) may reach to the level of a warranty. Implied Warranties are disclosed in Section 14 and 16 of the Sale of Goods Act, 1930 and are the warranties which the law implies into the contract. In case the parties don't want any of the implied warranties to be included, they will have to expressly mention that in the contract. Implied Warranties are as follows.

Warranty as To Undisturbed Possession

Well once you buy the goods, they shouldn't be taken away from you. This warranty means that the buyer should have and enjoy quiet possession of the goods after having gotten the possession of the goods. If he is disturbed in his possession, he is entitled to sue the seller for the breach of the warranty.

For example, A buys a laptop from B. After the purchase, A spends some money on its repair and uses it for some time. Unknown to the parties, it turns out that the laptop was stolen and was taken from A and delivered to its rightful owner. B shall be held responsible for a breach and A is entitled to damages of not only the price but also the cost of repairs.

Warranty As To Non-Existence Of Encumbrances

This is an implied warranty which maintains that the goods are free from any encumbrance or charge from any third party who has not been introduced or known to the buyer at or before the time of the contract of sale is entered into.

For example, a person A pledges his computer to another person B against a loan of Rs. 30,000. “A” also promises B that A will produce the laptop and give it to B the next day. Later that day, A goes on to sell the laptop to C who is unaware of the course of dealings between A and B. In this case, C can ask A to clear the loan immediately or clear the loan by himself or herself and then proceed to file a suit against A for the recovery of the money spent including the interest.

Disclosure Of Dangerous Nature Of Goods

In case the goods are inherently dangerous or they are likely to be dangerous to the buyer and the buyer is ignorant or unaware of the danger, an implied warranty on the part of the seller emerges. The seller must warn the buyer duly about the dangerous nature of the goods if any. In case of a breach of this warranty, the seller will be liable in damages.

For example, a person X purchases a bottle of disinfectant from a person Y. Y knows that the cap of the bottle is defective or cheap and if opened by a novice without care, it may spill and result in partial burning or other damages of the person. When X opens the bottle, he is injured. In this case, X is liable in damages to Y as Y should have been duly warned of the probable danger.

Warranty As To Qualify Or Fitness By Usage Of Trade

An implied warranty as to the quality or the fitness for a particular purpose may be annexed by the usage of the trade. For example, consider the following example:

A drug was sold through an auction and according to the usage of trade. It was to disclose in advance any sea-damage, otherwise, it will be taken as a breach of warranty if no such disclosure has been made and the goods found to be defective.

This concludes the topic of the Implied Warranties. We can say that any warranty that is not expressed becomes an implied warranty. Let us now understand the Express Warranties.

Express Warranties

Warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated. [Section 12(3)]

Warranties that are inserted into the contract at the will and knowledge of the parties are said to be expressed warranties or the Express Warranties.

Doctrine of Caveat Emptor

"Caveat Emptor" is a Latin phrase that translates to "let the buyer beware". What exactly does this mean? Does the seller have no responsibilities? The answers lie in the Doctrine of Caveat Emptor. Let us learn more about it along with its exceptions.

The Doctrine of Caveat Emptor

The doctrine of Caveat Emptor is an integral part of the Sale of Goods Act. . It translates to "let the buyer beware". This means it lays the responsibility of their choice on the buyer themselves.

It is specifically defined in Section 16 of the act "*there is no implied warranty or condition as to the quality or the fitness for any particular purpose of goods supplied under such a contract of sale "*

A seller makes his goods available in the open market. The buyer previews all his options and then accordingly makes his choice. Now let's assume that the product turns out to be defective or of inferior quality.

This doctrine says that the seller will not be responsible for this. The buyer himself is responsible for the choice he made.

So the doctrine attempts to make the buyer more conscious of his choices. It is the duty of the buyer to check the quality and the usefulness of the product he is purchasing. If the product turns out to be defective or does not live up to its potential the seller will not be responsible for this.

Let us see an example. A bought a horse from B. A wanted to enter the horse in a race. Turns out the horse was not capable of running a race on account of being lame. But A did not inform B of his intentions. So B will not be responsible for the defects of the horse. The Doctrine of Caveat Emptor will apply.

However, the buyer can shift the responsibility to the seller if the three following conditions are fulfilled.

- if the buyer shares with the seller his purpose for the purchase
- the buyer relies on the knowledge and/or technical expertise of the seller
- and the seller sells such goods

Exceptions to the Doctrine of Caveat Emptor

The doctrine of caveat emptor has certain specific exceptions. Let us take a brief look at these exceptions.

1] Fitness of Product for the Buyer's Purpose

When the buyer informs the seller of his purpose of buying the goods, it is implied that he is relying on the seller's judgment. It is the duty of the seller then to ensure the goods match their desired usage.

Say for example A goes to B to buy a bicycle. He informs B he wants to use the cycle for mountain trekking. If B sells him an ordinary bicycle that is incapable of fulfilling A's purpose the seller will be responsible. Another example is the case study of Priest v. Last.

2] Goods Purchased under Brand Name

When the buyer buys a product under a trade name or a branded product the seller cannot be held responsible for the usefulness or quality of the product.. So there is no implied condition that the goods will be fit for the purpose the buyer intended.

3] Goods sold by Description

When the buyer buys the goods based only on the description there will be an exception. If the goods do not match the description then in such a case the seller will be responsible for the goods.

4] Goods of Merchantable Quality

Section 16 (2) deals with the exception of merchantable quality. The sections state that the seller who is selling goods by description has a duty of providing goods of merchantable quality, i.e. capable of passing the market standards.

So if the goods are not of marketable quality then the buyer will not be the one who is responsible. It will be the seller's responsibility. However if the buyer has had a reasonable chance to examine the product , then this exception will not apply.

5] Sale by Sample

If the buyer buys his goods after examining a sample then the rule of Doctrine of Caveat Emptor will not apply. If the rest of the goods do not resemble the sample, the buyer cannot be held responsible. In this case, the seller will be the one responsible.

For example, A places an order for 50 toy cars with B. He checks one sample where the car is red. The rest of the cars turn out orange. Here the doctrine will not apply and B will be responsible.

6] Sale by Description and Sample

If the sale is done via a sample as well as a description of the product, the buyer will not be responsible if the goods do not resemble the sample and/or the description. Then the responsibility will fall squarely on the seller.

7] Usage of Trade

There is an implied condition or warranty about the quality or the fitness of goods/products. But if a seller deviated from this then the rules of caveat emptor cease to apply. For example, A bought goods from B in an auction of the contents of a ship. But B did not inform A the contents were sea damaged, and so the rules of the doctrine will not apply here.

8] Fraud or Misrepresentation by the Seller

This is another important exception. If the seller obtains the consent of the buyer by fraud then caveat emptor will not apply. Also if the seller conceals any material defects of the goods which are later discovered on closer examination then again the buyer will not be responsible. In both cases, the seller will be the guilty party.

Passing of Property

A sale of goods or property implies a transfer or passing of ownership to the buyer. The passing of property is an important aspect to help determine the liabilities and rights of both the buyer and the seller. Once a property is passed to the buyer, then the risk in the goods sold is that of the buyer and not the seller. This is true even if the goods are in the possession of the seller. Let us learn more about the passing of property in the Sale of Goods Act.

Passing of Property

There are four primary rules that govern the passing of property:

- Specific or Ascertained Goods
- Passing of Unascertained Goods
- Goods sent on approval or “on sale or return”
- Transfer of property in case of reservation of the right to disposal

In this article, we will be looking at the first two rules.

Passing of Ascertained Goods

Section 19

This is the first rule of the passing of property. It deals with the passing of specified goods and states that –Specific or ascertained goods pass when intended to pass. Section 19 of The Sale of Goods Act, 1930, has three sub-sections as follows:

- **Sub-section (1)**: Imagine a contract for the sale of specific or ascertained goods with a clear mention of the time when the parties to the contract intend to transfer the property. In such cases, the property is transferred at the time mentioned in the contract.
- **Sub-section (2)**: To understand the intention of the parties, the terms of the contract, the conduct of the parties, and the circumstances of the case are considered.
- **Sub-section (3)**: Sections 20 to 24 of The Sale of Goods Act, 1930, contain rules to ascertain the intention of the parties. This intention is about the time at which the property in the goods will pass to the buyer. Let's look at these sections

Section 20

Section 20 relates to Specific goods in a deliverable state. It states that if the contract is unconditional for the sale of specific goods in a deliverable state, then the property in the goods passes to the buyer the moment the contract is made. This rule holds true even if the time of payment of price or delivery of the goods or both is postponed.

Example: Peter goes to an electronics store and buys a television set. He asks the shopkeeper to deliver it to his house. The shopkeeper agrees. The television immediately becomes the property of Peter.

Section 21

Specific goods to be put into a deliverable state (Section 21) – Imagine a contract for the sale of goods where the seller has to do something before the goods are ready for delivery. In such cases, the passing of property happens only after the seller does the things and informs the buyer.

Example: Peter buys a laptop from an electronics store and asks for a home delivery. The shopkeeper agrees to it. However, the laptop does not have a Windows operating system installed. The shopkeeper promises to install it and call Peter before making the delivery. In this case, the property transfers to Peter only after the shopkeeper has installed the OS making the laptop ready for delivery.

Section 22

Specific goods are in a deliverable state but the seller has to do something to ascertain the price – Imagine a contract of sale of goods which are in a deliverable state but the seller has to do something like weight, measure, test, or perform

any other act on the goods to ascertain the price. In such cases, the property does not pass until the seller does the act and informs the seller.

Example: Peter sells a carpet to John and agrees to lay it in John's house as a part of the contract. He delivers the carpet and informs John that he will lay it the next day. That night the carpet gets stolen from John's premises. In this case, John is not liable for the loss since the property had not passed to him. According to the terms of the contract, the carpet would be in a deliverable state only after it is laid.

Passing of Unascertained Goods

If there is a contract for the sale of unascertained goods, then the passing of the property of the goods to the buyer cannot happen unless the goods are ascertained. This is specified under Section 18 of The Sale of Goods Act, 1930.

Section 23

Further Section 23 lists two important rules for the passing of property of unascertained goods:

- **Sale of unascertained goods by description**: Imagine a contract for the sale of unascertained or future goods by description. If any goods of that description are appropriated to the contract either by the buyer or the seller with the consent of the other party, then the property of the goods passes to the buyer. The consent can be expressed or implied and given before or after the appropriation is made.
- **Delivery to the carrier**: If the seller delivers the goods to the buyer or a carrier or a bailee (whether named by the buyer or not) for the purpose of transmission to the buyer, but does not reserve the right of disposal, then he is deemed to have unconditionally appropriated the goods to the contract.

Some Points to Remember about the Appropriation of Goods:

If goods are selected with the intention of using them in performing the contract, with the mutual consent of the buyer and the seller, then it is called appropriation of goods. Here are some essentials:

- A contract for the sale of unascertained or future goods exists
- The goods conform to the quality and description stated in the contract
- They are in a deliverable state
- The goods are unconditionally appropriated to the contract either by delivery to the buyer of his agent or the carrier.
- The appropriation is made by the buyer with the assent of the seller or the seller with the assent of the buyer.

- The assent can be express or implied
- The assent can be given before or after the appropriation.

Contract of Sale of Goods

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

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

(ii) To the buyer,

(iii) For a money consideration called the price.

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

It is a bilateral contract because the property in goods has to pass from one party to another. A person cannot buy the goods himself. The object of a contract of sale must be the transfer of property (meaning ownership) in goods from one person to another.

The subject matter must be some goods. The goods must be sold for some price, where the goods are exchanged for goods it is barter system and it will not be considered as sale.

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

Distinction between Sale and Agreement to Sell

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

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

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

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

(d) In the case of an agreement to sell if the goods are destroyed by an accident, Seller will bear the loss, while in the case of a sale; the loss will fall on the buyer, even though the goods are with the seller.

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

Sale and Bailment

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

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

Sale and Contract for Work and Labor

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

Sale and Hire Purchase Agreement

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

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

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

Subject matter of Contract of Sale of Goods

Goods

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

Under the contract of sale. .

Actionable claims and money are not goods and cannot be bought and sold under this Act. Money means current money, i.e., the recognized currency in circulation in the country, but not old and rare coins which may be treated as goods. An actionable claim is what a person cannot make a present use of or enjoy, but what can

be recovered by him by means of a suit or an action. Thus, a debt due to a man from another is an actionable claim and cannot be sold as goods, although it can be assigned.

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

Existing Goods

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

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

Generic or unascertained goods are goods which are not specifically identified but are indicated by description.

Future Goods

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

Contingent Goods

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

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

Effect of Perishing of Goods

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

(i) Goods perishing before making a contract

Where in a contract of sale of specific goods, the goods without the knowledge of the seller have perished, at the time of making of the contract or become as damaged as no longer to their description in the contract, the contract is void. (Section 7)

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

(ii) Goods perishing after agreement to sell

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

Conditions and Warranties (Sections 10-17)

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

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

Conditions

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

Warranties

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

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

Implied Warranties/Conditions

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

There are two implied warranties:

Implied Warranties

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

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

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

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

Implied Conditions* as *to title

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

Implied conditions under* a *sale by description

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

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

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

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

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

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

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

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

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

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

In a sale by sample:

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

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

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

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

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

Implied Warranties

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

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

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

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

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

Doctrine of Caveat Emptor

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

Exceptions to the doctrine of *Caveat Emptor:*

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

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

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

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

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

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

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

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

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

agreement to sell.

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

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

Passing of property in specific goods

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

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

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

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

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

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

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

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

Ownership in unascertained goods

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

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

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

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

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

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

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

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

Passing of Risk **(Section 26)**

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

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

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

Exception to the General Rule

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

(a) ***Sale by*** **a** ***mercantile agent:*** A buyer will get a good title if he buys in good faith from a mercantile agent who is in possession either of the goods or' documents of title of goods with the consent of the owner,

and who sells the goods in the ordinary course of his business.

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

(c) ***Sale by*** **a** ***person in possession under*** **a** ***voidable contract:*** A buyer buys in good faith from a person in possession of goods under a contract which is voidable, but has not been. Rescinded at the time of the sale.

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

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

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

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

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

Performance of the Contract of Sale

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

Unless otherwise agreed, payment of the price and the delivery of the goods and concurrent conditions, *i.e.,* they both take place at the same time as in a cash sale over a shop counter.

Delivery

Delivery is the voluntary transfer of possession from one person to another. Delivery may be actual, constructive or symbolic. Actual or physical delivery takes place where the goods are handed over by the seller to

the buyer or his agent authorized to take possession of the goods. Constructive delivery takes place when the person in possession of the goods acknowledges that he holds the goods on behalf of and at the disposal of the buyer

Rules* as *to delivery

The following rules apply regarding delivery of goods:

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

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

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

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

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

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

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

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

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

Acceptance of Goods by the Buyer

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

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

(b) Retains the goods, after the lapse of a reasonable time without intimating to

The seller that he has rejected them; or

(c) Does any act on the goods which is inconsistent with the ownership of the seller, e.g., pledges or resells? If the

seller sends the buyer a larger or smaller quantity of goods than ordered, the buyer may:

(a) Reject the whole; or

(b) Accept the whole; or

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

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

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

Installment Deliveries

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

Suits for Breach of Contract

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

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

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

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

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

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

Anticipatory Breach

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

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

(a) his right of performance on the due date in spite of his prior repudiation or

(b) his rights to set up any defense for non-performance which might have actually arisen after the date of the prior repudiation.

Measure of Damages

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

Unpaid Seller

The seller of goods is deemed to be unpaid seller:

(a) When the whole of the price has not been paid or tendered; or

(b) When a conditional payment was made by a bill of exchange or other negotiable instrument, and the instrument has been dishonored.

Rights of an Unpaid Seller against the Goods

An unpaid seller's rights against the goods are:

(a) A lien or right of retention

(b) The right of stoppage in transit.

(c) The right of resale.

(d) The right to withhold delivery.

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

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

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

(ii) The buyer becomes insolvent.

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

A lien is lost

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

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

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

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

The right to stop goods is available to an unpaid seller

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

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

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

The transit comes to an end in the following cases:

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

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

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

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

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

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

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

(i) where the goods are perishable;

(ii) where the right is expressly reserved in the contract;

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

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

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

Rights of an unpaid seller against the buyer

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

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

Under Section 56, the seller may sue the buyer for damages for breach of contract where the buyer wrongfully neglects or refuses to accept and pay for the goods.

Thus an unpaid seller's right against the buyer personally is:

(a) a suit for the price.

(b) a :suit for damages.

Auction Sales (Section 64)

A sale by auction is a public sale where goods are offered to be taken by bidders. It is a proceeding at which people are invited to complete for the purchase of property by successive offer of advancing sums.

Section 64 lays down the rules regulating auction sales. Where goods are put up for sale in lots, each, lot is *prima facie* deemed to be the subject of a separate contract of sale. The sale is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner. Until such announcement is made, any bidder may retract his bid.

An auction sale is a public sale. The goods are sold to all members of the public at large who are assembled in one place for the auction. Such interested buyers are the bidders.

The price they are offering for the goods is the bid. And the goods will be sold to the bidder with the highest bid.

The person carrying out the auction sale is the auctioneer. He is the agent of the seller. So all the rules of the Law of Agency apply to him.

But if an auctioneer wishes to sell his own property as the principal he can do so. And he need not disclose this fact, it is not a requirement under the law.

Rules of an Auction Sale

As we saw previously, the rules regarding an auction sale are found in the Sale of Goods Act. Section 64 of the Act specifically deals with the rules governing an auction sale. Let us take a brief look.

1] Goods Sold in Lots

In an auction sale, there can be many goods up for sale of many kinds. If some particular goods are put up for sale in a lot, then each such lot will be considered a separate subject of a separate contract of sale. So each lot ill prima facie be the subject of its own contract of sale.

2] Completion of Sale

The sale is complete when the auctioneer says it is complete. This can be done by actions also – like the falling of the hammer, or any such customary action. Till the auctioneer does not announce the completion of the sale the prospective buyers can keep bidding.

3] Seller may Reserve Right to Bid

The seller may reserve his right to bid. To do so he must expressly reserve such right to bid. In this case, the seller on any person on his behalf can bid at the auction.

4] Sale Not Notified

If the seller has not notified of his right to bid he may not do so under any circumstances. Then neither the seller nor any person on his behalf can bid at the auction. If done then it will be unlawful.

The auctioneer also cannot accept such bids from the seller or any other person on his behalf. And any sale that contravenes this rule is to be treated as fraudulent by the buyer.

5] Reserve Price

An auction sale may be subject to a reserve price or an upset price. This means the auctioneer will not sell the goods for any price below the said reserve price.

6] Pretend Bidding

But if the seller or any other person appointed by him employs pretend bidding to raise the price of the goods, the sale is voidable at the option of the buyer. That means the buyer can choose to honor the contract or he can choose to void it.

7] No Credit

The auctioneer cannot sell the goods on credit as per his wishes. He cannot accept a bill of exchange either unless the seller is expressly fine with it.

UNIT-III

Negotiable Instrument Act 1881

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

Definition

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

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

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

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

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

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

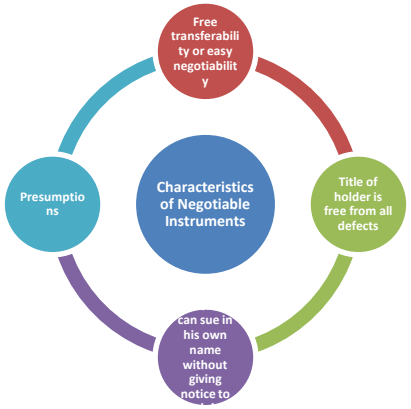
*"According to **Blackburn J**, a negotiable instrument has two characteristics namely*

1. It is transferable, like cash, by delivery (which assumes it is in a deliverable state) so that the transferee can enforce the rights embodied in it in his own name.

2. The transferee being a bonafide holder for value can acquire a better title to it than that of his transferor."

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

Characteristics of Negotiable Instruments:-



1. Free transferability or easy negotiability

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

2. Title of holder is free from all defects

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

3. Transferee can sue in his own name without giving notice to the debtor:

A bill, promissory note or a cheque represents a debt, i.e., an "actionable claim" and implies the right of the creditor to recover something from the debtor.

The creditor can either recover this amount himself or can transfer his right to another person.

In case he transfers his right, the transferee of a negotiable instrument is entitled to sue on the instrument in his own name in case of dishonour, without giving notice to the debtor of the fact that he has become holder.

In case of transfer or assignment of an ordinary "actionable claim" i.e., a book debt evidenced by an entry by the creditor in his account book, under the transfer of property act, notice to the debtor is necessary in order to make the transferee entitled to sue in his own name.

4. Presumptions:

Certain presumptions apply to negotiable instruments. Section 118, 119 and 139 lay down the following presumptions:

(a) For consideration : that every negotiable instrument, was made, drawn, accepted, endorsed or transferred for consideration.

(b) As to date : that every negotiable instrument bearing a date was made or drawn on such date.

(c) As to time of acceptance : that every bill of exchange was accepted within a reasonable time after its date and before its maturity.

(d) As to transfer: that every transfer of a negotiable instrument was made before its maturity

(e) As to time of endorsements : that the endorsements appearing upon a negotiable instrument were made in the order in which they appear thereon.

(f) As to stamps : that a lost promissory-note, bill of exchange or cheque was duly stamped.

(g) As to a holder in due course: that every holder of a negotiable instrument is holder in due course (this presumption would not arise where it is proved that the holder has obtained the instrument from its lawful owner, or from any person in lawful custody thereof, by means of an offence, fraud or for unlawful consideration and in such a case the holder has to prove that he is a holder in due course

(h) As to dishonour: that the instrument was dishonoured, in case a suit upon a dishonoured instrument is filed with the court and the fact of protest is proved.

Section 139 - Presumption in favour of holder:

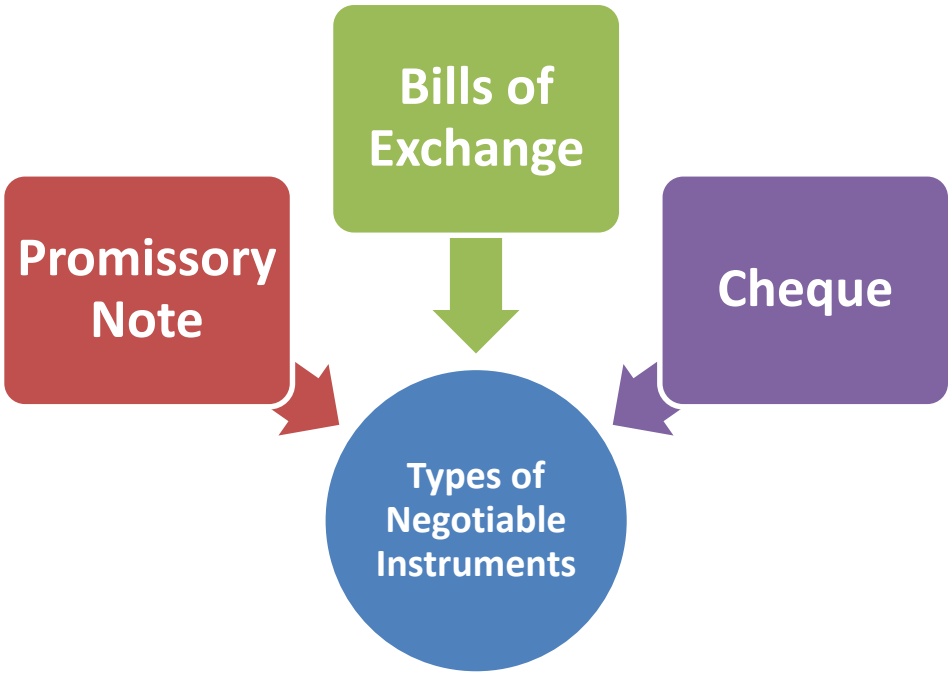
It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability.

"The effect of these presumptions is to place the evidential burden on the accused of proving that the cheque was not received by the complainant towards the discharge of any liability. Because both sections 138 and 139 require that the court shall presume the liability of the drawer of the cheques for the amounts for which the cheques are drawn…it is obligatory on the courts to raise this presumption in every case where the factual basis for the raising of this presumption had been established. It introduced an exception to the general rule as to the burden of proof in criminal cases and shifts the onus on to the accused."

Types of Negotiable Instruments

There are three types of Negotiable instruments:-

Negotiable Instruments recognized by statutes: The Negotiable Instruments Act mentions only three kinds of negotiable instruments **(Section 13)**.



Negotiable instruments recognized by usage or customs of trade: There are certain other instruments which have acquired the characteristic of negotiability by the usage or custom of trade.

For example: Exchequer bills, Bank notes, Share warrants, Circular notes, Bearer debentures, Dividend warrants, Share certificates with blank transfer deeds, etc.

Promissory Note

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

Parties to a Promissory Note

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

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

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

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

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

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

Characteristics of Promissory Note

1. It must be in writing:

A promissory note has to be in writing

An oral promise to pay does not become a promissory note

The writing may be on any paper or book

Illustrations: A signs the instruments in the following terms:

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

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

Both the above instruments are valid promissory notes.

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

There must be a promise or an undertaking to pay

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

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

Illustrations: A signs the instruments in the following terms:

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

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

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

Where A signs the instrument in the following terms:

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

3. The promise to pay must be unconditional:

A promissory note must contain an unconditional promise to pay

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

Illustrations: A signs the instruments in the following terms:

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

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

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

4. It must be signed by the maker: It is imperative that the promissory note should be duly authenticated by the 'signature' of the maker 'Signature' means the writing or otherwise affixing a person's name or a mark to represent his name, by himself or by his authority with the intention of authenticating a document.

5. The maker must be a certain person:

The instrument must itself indicate with certainty who is the person or are the persons engaging himself or themselves to pay Alternative promisors are not permitted in law because of the general rule that "where liability lies no ambiguity must lie"

6. The payee must be certain:

Like the maker the payee of a pronote must also be certain on the face of the instrument

A note in favour of fictitious person is illegal and void

A pronote made payable to the maker himself is a nullity, the reason being the same person is both the promisor and the promisee

7. The undertaking must be to pay a certain and definite sum of money only.

For a valid pronote it is also essential that the sum of money promised to be payable must be certain and definite

The amount payable must not be capable of contingent additions or subtractions

Illustrations: A signs the instruments in the following terms:

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

"I promise to pay B Rs.500, first deducting thereout any money which he may owe me"

The above instruments are invalid as promissory notes because the exact amount to be paid by A is not certain

8. The amount payable must be in legal tender money of India:

A document containing a promise to pay a certain amount of foreign money or to deliver a certain quantity of goods is not a pronote. The payment must be in a legal money of the country.

9. Revenue stamps or requisite value under the stamp Act of the country should be affixed.

10. Other matters of form like number, date, place etc, are usually found given in notes, but they are not essentials in law.

11. A bank note or a currency note is not a promissory note within the meaning of this section.

12. A promissory note cannot be made payable to bearer on demand.

Bill of Exchange

Definition: Section 5 of the Negotiable Instruments Act defines a Bill of Exchange as follows:

"A bill of exchange is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument." It is also called a Draft.

Illustration:

Mr. X purchases goods from Mr. Y for Rs.1000/-

Mr. Y buys goods from Mr. S for Rs.1000/-

Then Mr. Y may order Mr. X to pay Rs.1000/- Mr. S which will be nothing but a bill of exchange.

Parties to a Bill of Exchange

There are three parties involved in a bill of exchange

(i) The Drawer – The person who makes the order for making payment.

(ii) The Drawee – The person to whom the order to pay is made. He is generally a debtor of the drawer. The person directed to pay the money by the drawer is called the drawee.

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

The drawer can also draw a bill in his own name thereby he himself becomes the payee. Here the words in the bill would be Pay to us or order.

In a bill where a time period is mentioned, is called a Time Bill.

But a bill may be made payable on demand also. This is called a Demand Bill.

Essentials of a Bill of Exchange

1. **It must be in writing**
2. **It must contain an order to pay. A mere request to pay on account, will not amount to an order**
3. **The order to pay must be unconditional**
4. **It must be signed by the drawer**

   The drawer, drawee and payee must be certain. A bill cannot be drawn on two or more drawees but may be made payable in the alternative to one of two or more payees
5. **The sum payable must be certain**
6. **The bill must contain an order to pay money only**
7. **It must comply with the formalities as regards date, consideration, stamps, etc**

Cheque

Definition: A cheque is bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form. (Sec. 6, NIA)

Explanation I - For the purposes of this section, the expressions-

(a) a cheque in the electronic form means a cheque which contains the exact mirror image of a paper cheque, and is generated, written and signed in a secure system ensuring the minimum safety standards with the use of digital signature (with or without biometrics signature) and asymmetric crypto system;

(b) a truncated cheque means a cheque which is truncated during the course of a clearing cycle, either by the clearing house or by the bank whether paying or receiving payment, immediately on generation of an electronic image for transmission, substituting the further physical movement of the cheque in writing.

Explanation II - For the purposes of this section, the expression clearing house means the clearing house managed by the Reserve Bank of India or a clearing house recognised as such by the Reserve Bank of India.

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

1. **It is always drawn on a specified banker and**

2. **It is always payable on demand without any days of grace.**

Parties to a cheque

Drawer: Drawer is the person who draws or makes the cheque.

Drawee: Drawee is the drawer's banker on whom the cheque has been drawn.

Payee: Payee is the person who is entitled to receive the payment of a cheque.

Crossing of Cheque

A Crossed Cheque is one which bears across its face two parallel transverse lines with or without certain words. Such lines are usually drawn on the left side top corner of the face of the Cheque. However, such lines can be drawn anywhere on the face of the Cheque.

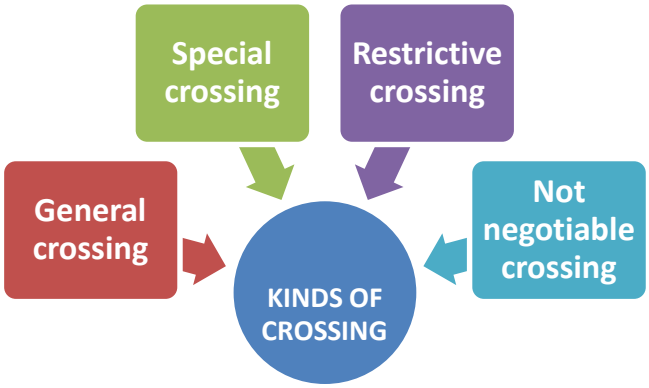
Crossing of Cheque is a direction to the drawee bank to pay the amount of the Cheque to a bank or to a particular bank. Therefore, a crossed Cheque is not payable to the payee or holder at the counter of the bank. In order to get the payment of the Cheque, it is required to be deposited in an account with a bank. The bank, in turn, presents the Cheque to the drawee bank and gets payment on behalf of the payee or indorsee of the Cheque.

The objects of crossing of a Cheque are as follows:

To direct the drawee bank to pay the amount of the Cheque only to a bank or a particular bank;

To prevent the payment of the Cheque to an unauthorized or wrong person.

Kinds of Crossing:-



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

a. When it bears across its face two parallel transverse lines without any words.

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

Effects of general crossing

The Cheque is not payable at the counter of the bank.

The drawee bank shall pay the amount of the Cheque only to a banker. Therefore, the holder will have to deposit the Cheque in an account with any banker. [Sec. 126 Para 1]

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

Effects of special crossing:

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

3. Restrictive crossing: Restrictive crossing has not been described anywhere in the Negotiable Instrument Act. It is a type of crossing which has evolved out of business and banking usage and now recognized by the law. Every Cheque crossed wither generally or specially may be crossed restrictively credit the proceeds of the Cheque only to the account of the payee.

4. Not negotiable crossing: Sometimes, a Cheque crossed generally or specially contains the words 'not negotiable' A crossing with such words is said to be 'not negotiable' crossing.

The words 'not negotiable' on a crossed Cheque destroy the negotiable character of the Cheque but not the transferability of the Cheque. Therefore, any person taking a crossed Cheque bearing the words 'not negotiable' shall not have and shall not be capable of giving a better title to the Cheque than the title of the person from whom he took it. [Sec. 130]

Parties to a Negotiable Instrument:

Holder and Holder in due course

Holder (Sec. 8, NIA)

Holder means any person entitled in his own name to the possession a promissory note bill of exchange or cheque and to recover or receive the amount due thereon from the parties thereon. A holder must therefore have the possession of the instrument and also the right to recover the money in his own name.

Therefore**,** holder of a negotiable instrument is the person:

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

Characteristics:

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

Who can be a Holder?

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

Who is Not a Holder?

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

Powers of Holder

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

“Holder in due course" (Sec. 9, NIA)

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

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

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

RIGHTS AND PRIVILEGES OF HOLDER IN DUE COURSE

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

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

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

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

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

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

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

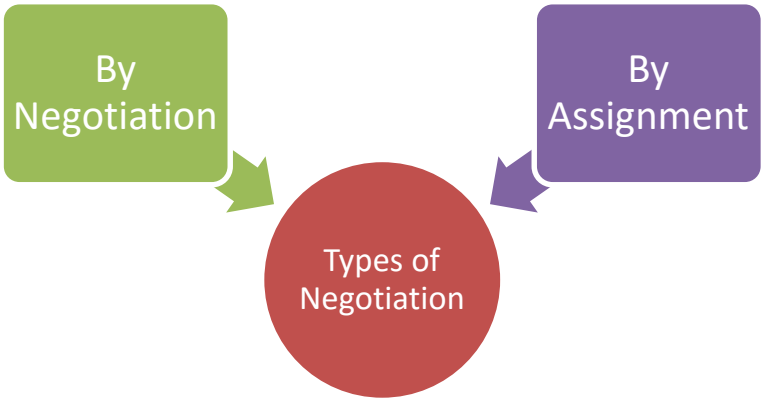
DISTINCTION BETWEEN HOLDER AND HOLDER IN DUE COURSE

Basis of Distinction	Holder	Holder in Due Course
1. Definition	Holder is a person who is entitled in his own name to the possession of the instrument and to receive the amount due on it.	Holder in due course is a person who becomes the possessor of the instrument for consideration before its maturity and in good faith. [Sec. 9]
2. Consideration	A holder need not necessarily acquire the instrument for consideration. For instance, a holder may get the instrument by way of gift.	A holder in due course can acquire the instrument for consideration only.
3. Before maturity	A holder may obtain possession before or	A holder in due course must obtain the

	after the maturity of the instrument.	possession before maturity of the instrument.
4. Good faith	A holder need not necessarily acquire possession of the instrument in good faith.	A holder in due course must always acquire possession of the instrument in good faith.
5. Inchoate instrument	A holder can claim only the amount which signer of the inchoate instrument intended to pay.	A holder in due course can claim any amount filled in the inchoate instrument provided it is covered by the stamp affixed on it. [Sec. 20]
6. Right against prior parties	A holder does not have rights against all the prior parties. He has rights against the original parties and his immediate indorser.	A holder in due course has rights against every prior party to the instrument. He can hold them liable jointly and severally.[Sec. 36]
7. Title better than the transferor	A holder can never get a better title than that of the transferor.	A holder in due course can acquire a better title than that of the transferor. In other words he gets the instrument cleansed of all prior defects.

Negotiation

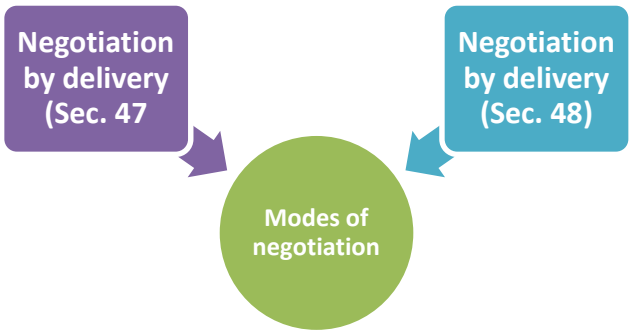
One of the essential features of a negotiable instrument is its transferability. A negotiable instrument may be transferred from one person to another in either of the followings way-



1) By negotiation - The transfer of an instrument by one party to another so as to constitute the transferee a holder is called Negotiation. Negotiation means as the process by which a third party is constituted the holder of the instrument so as to entitle him to the possession of the same and to receive the amount due thereon in his own name.

According to section 14 of the Act, “when a promissory note, bill of exchange or cheque is transferred to any person so as to constitute that person the holder thereof, the instrument is said to be negotiated.” The main purpose and essence of negotiation is to make the transferee of a promissory note, a bill of exchange or a cheque the holder there of.

Modes of negotiation (Sec. 47 and 48, NIA):-



1. Negotiation by delivery (Sec. 47): Where a promissory note or a bill of exchange or a cheque is payable to a bearer, it may be negotiated by delivery thereof.

Example: A the holder of a negotiable instrument payable to bearer, delivers it to B's agent to keep it for B. The instrument has been negotiated.

2. Negotiation by delivery (Sec. 48) :

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

2) By Assignment –

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

Difference between Assignment & Negotiation:-

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

Endorsement

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

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

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

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

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

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

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

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

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

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

8. It must be made by the holder of the instrument.

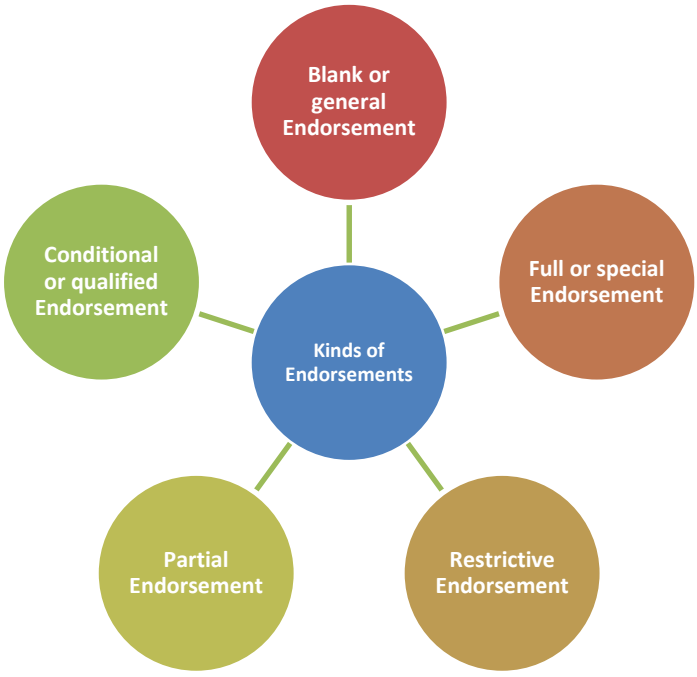
9. It must be completed by the delivery of the instrument.

10.It must be signed by the endorser. It must be on the back or face of instrument or on a slip of paper annexed thereto.

Persons Entitled to Indorse:

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

Kinds of Endorsements



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

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

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

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

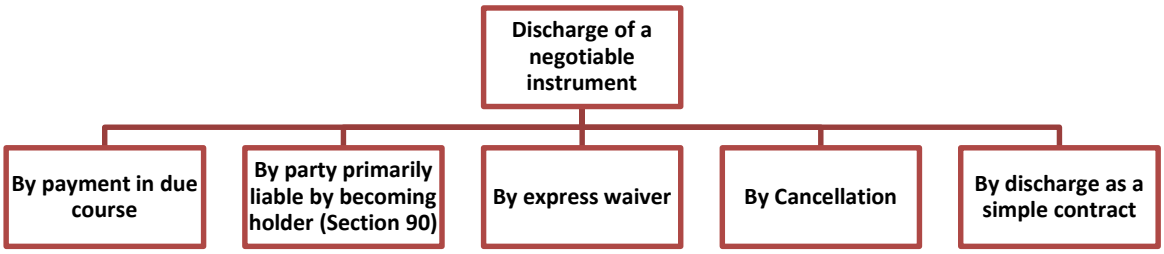
5. Conditional or qualified Endorsement: When an indorser inserts a condition in his Endorsement, it is called a conditional Endorsement. Sometimes, an indorser by express words in the Endorsement may exclude his liability on the instrument makes the right of the indorsee to receive the amount due thereon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

Effects of Endorsement:

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

Discharge of a negotiable instrument

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



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

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

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

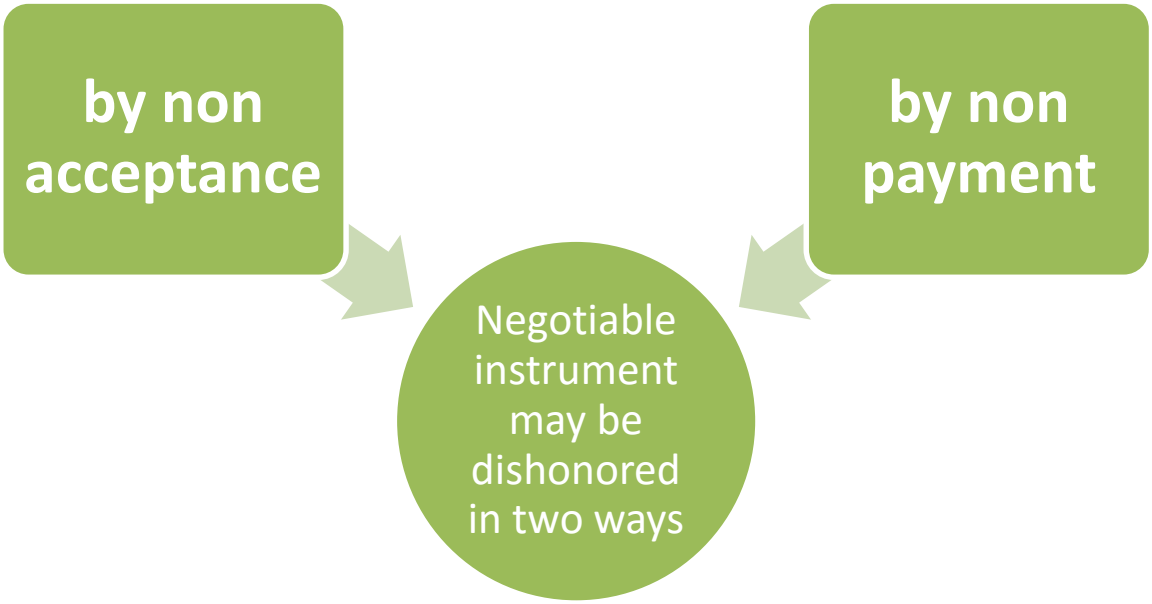
4) **By Cancellation:** Where an instrument is intentionally cancelled by the holder or his agent and the cancellation is apparent thereon, the instrument is discharged. Cancellation may take place; by crossing out signatures on the instrument, or by physical destruction of the instrument with the intention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

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

Dishonour of a negotiable instrument

An instrument is said to be dishonored when the acceptance and/or payment is refused on a duly presented instrument.

Thus, a negotiable instrument may be dishonored in two ways:



Dishonor by Non-acceptance:

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

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

Dishonour by Non-payment:

a. Default in payment
b. When excused from presentment

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

NOTICE OF DISHONOUR

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

The notice of dishonor is necessary for two reasons:

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

Notice by Whom?

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

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

Notice to Whom?

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

Time and Place of Notice:

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

Dishonour of certain cheques for insufficiency of funds

Provided that nothing contained in this section shall apply unless-

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

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

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

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

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

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

Section 139 - Presumption in favour of holder

It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability.

The effect of these presumptions is to place the evidential burden on the accused of proving that the cheque was not received by the complainant towards the discharge of any liability. Because both sections 138 and 139 require that the court shall presume the liability of the drawer of the cheques for the amounts for which the cheques are drawn…it is obligatory on the courts to raise this presumption in every case where the factual basis for the raising of this presumption had been established. It introduced an exception to the general rule as to the burden of proof in criminal cases and shifts the onus on to the accused.

NOTING

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

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

Procedure of Noting – When a promissory note or a bill of exchange is dishonoured, the holder may request within a reasonable time after its dishonor to a notary public for its noting. On receipt of the request, the notary public takes following steps:

The notary public makes a formal demand upon the acceptor or maker for acceptance or payment. It may be noted that such demand may be made either by the notary public personally or by his clerk. If authorized by agreement or usage, the demand may be made by a registered letter.

When it is not then accepted or paid, the notary public records the fact of dishonor upon the instrument, or upon a paper attached thereto or party upon each.

Such a note must specify the following things:

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

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

PROTEST

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

Contents of protest

1. The instrument itself or a literal transcript of it which must contain everything written or printed thereon.
2. The name of the person for whom and against whom the instrument has been protested.

3. A statement that payment or acceptance, or better security (as the case may be) has been demanded of such person by the notary public; and the terms of his answer, if any
4. If the person gave no answer, or that he could not be found a statement to that effect.
5. The date, place and time of dishonor of the instrument. If better security has been refused; the place and time of refusal.

Distinction between Noting and Protest

The notice is different from protest on the following grounds:

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

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

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

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

Conclusion

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

UNIT-IV

Introduction

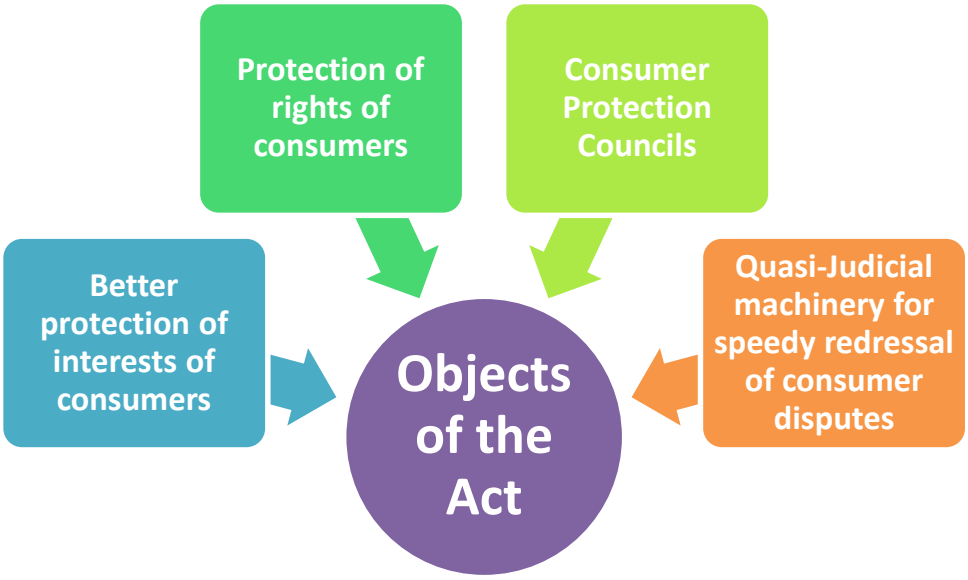
The Consumer Protection Act, 1986 has been enacted to provide for the establishment of consumer councils and other authorities for the settlement of consumers' disputes and for matters connected therewith.

In fact, the basic motive of enacting this important Act is to provide cheaper and speedy remedies to the consumers who are in disadvantageous position in comparison with the traders who are well organised and rule the market.

*The Consumer Protection Act, 1986' extends to the whole of India except the State of Jammu & Kashmir, and save as otherwise expressly provided by the Central Government, this Act shall apply to all goods and services [Section 1]. The Act has come into force on 15.4.1987**

Objects of the Act:-

The objects of the Act are as follows:



1. **Better protection of interests of consumers:-**

The Act seeks to provide for better protection of the interests of consumers. For that purpose, the Act makes provision for the establishment of Consumer Councils and other authorities for the settlement of consumer disputes and for matters connected therewith.

2.**Protection of rights of consumers:-** The Act seeks, inter alia, to promote and protect the rights of consumers such as—

a) The right to be protected against marketing of goods or services which are hazardous to life and property ;

b) The right to be informed about the quality, quantity, potency, purity, standard and price of goods or services so as to protect the consumers against unfair trade practices ;

c) The right to be assured, wherever possible, access to goods and services at competitive prices ;

d) The right to be heard and to be assured that consumers' interest will receive due consideration at appropriate forums ;

e) The right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers ; and right to consumer education.

3. **Consumer Protection Councils**:- The above objects are sought to be) promoted and protected by the Consumer Protection Councils established at the Central and State levels.

4. **Quasi-Judicial machinery for speedy redressal of consumer disputes:-** The Act seeks to provide speedy and simple redressal to consumer disputes. For this purpose, there has been set up a quasi-judicial machinery at the district, State and Central levels.

IMPORTANT DEFINITION

COMPLAINANT Sec. 2(1) (13):

"Complainant" means-

(i) a consumer; or

(ii) any voluntary consumer association registered under the Companies Act, 1956 (1 of 1956). Or under any other law for the time being in force; or

(iii) the Central Government or any State Government, who or which makes a complaint;

(iv) one or more consumers, where there are numerous consumers having the same interest

(v) in case of death of a consumer, his legal heir or representative"*

COMPLAINT Sec. 2(1) (C):

"Complaint" means any allegation in writing made by a complaint that-

(i) an unfair trade practice or a restrictive trade practice has been adopted by any trader; or **service provider***

(ii) the goods bought by him or agreed to be bought by him; suffer from one or more defect;

(iii) the services hired or availed of or agreed to be hired or availed by him suffer from deficiency in any respect;

(iv) a trader or the **service provider** has charged for the goods or for the service mentioned in the complaint a price in excess of the price (a) fixed by or under any law for the time being in force, (b) displayed on the goods or any package containing such goods, (c) displayed on the price list exhibited by him, (d) agreed between the parties.

(v) Goods which will be hazardous to life and safety when used, are being offered for sale to the public in contravention of any law for the time being in force.

(vi) service which are hazardous or likely to be hazardous to life and safety of the public when used*"

CONSUMER Sec. 2(1) (D):

'consumer' means any person who:

(i) Consumer of goods buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

(ii) Consumer of services hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person;"

CONSUMER DISPUTE:

"Consumer dispute" means a dispute where the person against whom a complaint has been made, denies or disputes the allegations contained in the complaint;

DEFECT

"Defect' means any fault, imperfection or shortcoming in the quality, quantity, potency, purity, or standard which is required to be maintained by or under any law for the time being for or under any contract, express or implied or as it claimed by the trader is any manner whatsoever in relation to any goods;"

"manufacture" means a person who-

(i) makes or manufactures any goods or parts thereof : or

(ii) does not make or manufacture any goods but assembles parts thereof made or manufactured by other; or

(iii) puts or causes to be put his own mark on any goods made or manufactured by any other manufacture.

PERSON

"person" includes-

(i) a firm whether registered or not;

(ii) a Hindu undivided family;

(iii) a co-operative society

(iv) every other association of persons whether registered under the Societies Registration Act.

Consumer Disputes Redressal Agencies

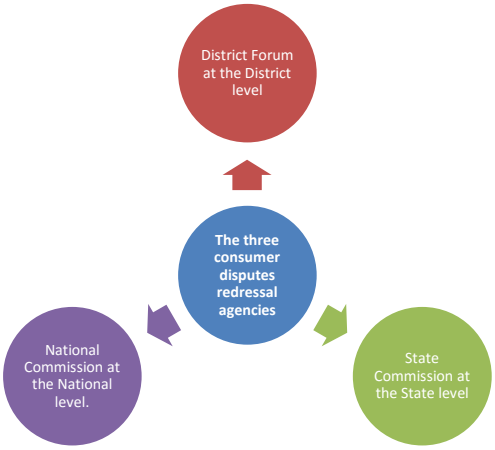
Three-Tier Redressal System

Introduction

The object of the Consumer Protection, 1986, is to provide better protection to consumers. To secure this object, the Act intends to provide simple, speedy and inexpensive redressal to the consumers' grievances. For this purpose, the Act provides for the establishment of three-tier quasi-judicial machinery at the District, State and National levels**.**

The three consumer disputes redressal agencies at the different levels are as under:

1. Consumer Disputes Redressal Forum to be known as District Forum at the District level.
2. Consumer Disputes Redressal Commission to be known as State Commission at the State level.
3. National Consumer Disputes Redressal Commission to be known as National Commission at the National level.



ESTABLISHMENT OF AGENCIES

1 DISTRICT FORUM

The 'District Forum' is the short name of the Consumer Disputes Redressal Forum established in the District under Section 9(a) of the Consumer Protection Act, It is the redressal agency to deal with the complaints of the consumers at the District level.

Legal provision relating to District forum:

1. **Composition of the district forum**

The District Forum is a body of three persons appointed by the State Government. The qualifications of the President and other members are as follow:

(a) President: A person who is, or has been or is qualified to be, a District Judge shall be the President of the District Forum.

(b) Other Member: A part from the President, the District Forum shall consist of two other members one of whom shall be a woman. The qualification for appointment of other members are:

(i) He/She must not be less than 36 years of age.

(ii) He/She must possess a bachelor's degree from a recognised university.

(iii) He/She must be a person of ability, integrity and standing and have adequate knowledge and experience of at least 10 years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administrations.

2. **Appointment of members of District Forum:** The appointment of the President and of the members shall be made by the State Government on the recommendation of the selection committee consisting of (a) the President of the State Commission, (b) Secretary, Law Department of the State, and (c) Secretary, in charge of the Department dealing with consumer affairs in the State.

3. **Disqualifications of members :**

a) If he has been convicted and sentenced to imprisonment for an office, which, in the opinion of the State Government, involves moral turpitude, or

b) If he is an undercharged insolvents, or

c) If he is of unsound mind and stands so declared by a competent court, or

d) If he has been removed or dismissed from the services of the Government or a body corporate owned or controlled by the Government,

4. **Tenure of office of the members of the District Forum**

A person may act as a President or a member of the District Forum for 5 years or up to the age of 65 years, whichever is earlier. Thus, in any case, a person cannot hold the office of the President or that of the member beyond the age of 65 years.

5 **Vacancy in the office of the District Forum**

The officer of the President or of any member of the forum may become vacation on his attaining the age of sixty-five years.

5. **Jurisdiction of the District Forum**

The District Forum has the jurisdiction to entertain complaints where the value of the goods or services and the compensation, if any, claimed does not exceed rupees 20 lakhs.

The limit has been enhanced from Rs. 5 lakhs by the Consumer Protection (Amendment) Act 2002

PROCEDURE ON RECEIPT OF COMPLAIN SECTION-13

The district forum has to observe the procedure mentioned in section. It may be summarised as follows-

I. **Reference of complaint to opposite party –** Whenever the district forum receives a complaint, relating to a goods, it should refer a copy of the complaint to the opposite party. It must be given within 30 days of receiving the complaint. However, it may be extended by a further period not exceeding 15 days.

II. On refusal or dispute by opposite party – When the opposite party, on receipt of a complaint, refusal/disputes the allegations contained in the complaint or fails to take any action within the time given by the district forum, the forum shall proceed to settle the consumer dispute in the following manner –

1. Reference of sample to laboratory
2. Deposit of fees
3. Forwarding of report to opposite partly
4. Objection by any of the parities.
5. Reasonable opportunity to parties of being heard and issue order.

Who can complaint in the District Forum

A complaint in relation to any goods sold or delivered or any serviced provided may be filed with a district forum by –

1. Consumer of goods/service
2. Any recognized consumer association.
3. Central or state government

For the purpose of this section "recognised consumer association" means any voluntary consumer association registered under the companies Act 1956 or any other law for the time being in force (Sec. 12)

Power of the District forum –

The district forum shall have the same power as are vested in a civil court under the code of civil procedure, 1908 while typing a suit in respect of the following matter, namely-

1. The summoning and enforcing attendance of any defendant or witness and examining the itness on oath.
2. The discovery and production of any document or other material object producible as evidence.
3. The reception of evidence on affidavits
4. The requisitioning of the report of the concerned analysis or test from the appropriate laboratory or form any other relevant source.
5. Issuing of any commission for the examination of any witness and
6. Any other matter which may be prescribed.

Every proceeding before the district forum shall be deemed to be a judicial proceeding within the meaning of Sec. 193 and 228 of the Indian Penal code; 1860 and the District forum shall be deemed to be a civil court for the purposes of Sec. 195 and chapter XXVI of the code of criminal procedure 1973.

Findings of the District forum (Sec. 14)

If the district forum is satisfied that the goods suffer from any of the defects specified in the complaint or that any of the allegations contained in the complaint about the services are proved, it shall issue an order to the opposite party directing him to take one or more of the following things namely-

a) To remove the defect pointed out by the appropriate laboratory from the goods in question.
b) To replace the goods with new goods of similar description which shall be free from any defect.
c) To return to the complaint the price or as the case may be the charge paid by the complaint.

STATE COMMISSION

'State Commission' is the short name given to the Consumer Disputes Redressal Commission established in the State under Section 9(b) of the Consumer Protection Act, 1986 [Section] 2(1) (p). It is the redressal agency to deal with the complaints of the consumers at the State level.

Legal provision relating to District forum

Composition of the State Commission

Section 16(1) makes the following provisions regarding the qualifications of the President and other members:

(a) President: A person who is or has been a judge of a High Court shall be the President of the State Commission.

(b) Other members: Apart from the President, the State Commission shall consist of two other member one of whom shall be a woman. The qualifications for appointment of the other member are:

(i) He/She must not be less than 35 year of age.

(ii) He/She must possess a bachlor's degree from a recognised university.

(iii) He/She must be a person of ability, integrity and standing and have adequate knowledge or experience of at least 10 years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration.

1. **Appointment of members of State Commission**

The appointment of the President shall be made by the State Government after consultation with the Chief Justice of the High Court of the State. And the appointment of the other members shall be made by the State Government on the recommendation of the selection committee consisting of (a) President of the State Commission, (b) Secretary of the Law Department of the State and (c) Secretary, in charge of Department dealing with consumer affairs in the State.

2. **Disqualification of members**

These disqualifications are the same as already discussed the District Forum.

3. **Tenure of office of the members of the State Commission**

The President or the member of the State Commission shall hold office for a term of 5 years or up to the age of 67 year, whichever is earlier. Thus, in any case, a person cannot hold the office of President or that of a member beyond the age of 67 years.

4. **Jurisdiction of the State Commission**

(a) Pecuniary jurisdiction: The State Commission has the jurisdiction to entertain complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees 20 lakhs but does not exceed rupees one crore.

(b) Appellate jurisdiction: Any person aggrieved by an order made by the District Forum may prefer an appeal to the State Commission with a period of 30 days from the date of the order.

NATIONAL COMMISSION

The 'National Commission' is the short name given to the National Consumer Disputes Redressal Commission established in the country under Section 9(c) of the Consumer Protection Act, 1986.

Legal provision relating to District forum

1. **Composition of the National Commission**

The 'National Commission' is a body of minimum five persons appointed by the Central Government. Legally, the National Commission shall consist of a President and at least four other members.

(a) President: A person who is or has been a judge of the Supreme Court shall be the President of the National Commission. Thus, only the sitting or retired judges of the Supreme Court are eligible for appointment as President.

(b) Other members: A part from the President, the National Commission shall consist of at least four other members one of whom shall be a woman. The qualifications for appointment of other members are:

(i) He/She must not be less than 35 year of age.

(ii) He/She must possess a bachlor's degree from a recognised university.

He/She must be a person of ability, integrity and standing and have adequate knowledge or experience of at least 10 years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration.

2. **Appointment of the members of the National Commission [Section 20(1) (a) (b):**

The appointment of the President shall be made by the Central Government after consultation with the Chief Justice of India .The appointment of the other four members shall be made by the Central Government on the recommendation of the selection committee consisting of (a) sitting judge of the Supreme Court, (b) Secretary

in the Department of Legal Affairs, Government of India, (c) Secretary of the Department dealing with consumer affairs in the Government of India

3. **Disqualification of members**

These disqualifications are the same as already discussed in case of members of District Forum and of State Commission. Any other disqualification may also be prescribed the Central Government.

4. **Tenure of office of the members of the National Commission**

The President or the members of the National Commission shall hold the office for a term of 5 year or up to the age of 70 years, whichever is earlier. Thus, in any case, a person cannot hold the office of President or that of a member beyond the age of 70 years.

5. Jurisdiction of the National Commission

(a) Pecuniary jurisdiction: The National Commission has the jurisdiction to entertain complaints where the value of the goods or services and compensation, if any claimed exceeds rupees 1 crore .Prior to the Consumer Protection (Amendment) Act, 2002, the National Commission had the jurisdiction where the value of this claim exceeded rupees twenty lakhs.

(b) Appellate jurisdiction: The National Commission also has the appellate jurisdiction to entertain appeals against the order of any State Commission.

CONSUMER PROTECTION COUNCILS

Consumer protection councils have been set up at national and state levels. Their object is to protect rights of consumers. Provisions with regard to consumer protection councils are contained in the consumer protection act wide section 4 to 8.

II. Central consumer protection Council –

1. Establishment of this council by a notification of the central government.
2. Central government nominates government and private members from different departments and sectors.
3. At present there are 150 members in the council.
4. Chairman of the council is central government food & civil supplies minister.
5. 3 years term of office of council.
6. If any post of the council falls vacant, it shall be filled up by a same cadre member.
7. 3 meetings are compulsory in a year time and place is fixed by chairman.
8. Main object of council is to expand and protect the rights of consumers.
   - Protection against fatal advertisement of goods/for human life services.
   - Protection against improper trade transaction and service.
   - As far as possible, a right of satisfaction about the various qualities.
   - A right of belief and confidence on goods & services.

- A right of compensation against mis-behaviour in restricted trade polices.
- A right of consumer education.

III. State consumer protection council –

1. Establishment of this council by notification of state government.
2. Chairman of the council is state minister of food and civil supplies.
3. State government nominated government or private member from different sectors.
4. There must be at least two meetings in a year or arrange according to convened any time.
5. Time and place of meetings shall be fixed by the chairman.
6. Object of council is to protect the interest and rights of consumer in state which is same central council.

APPROPRIATE LABORATORY [Sec. 2(1) (a)]

If means a laboratory or organization –

1. Recognised by central government ,Recognised by state government, subject to guidelines as may be prescribed by central government.
2. Any laboratory or organization established by or under any law for the time being in force, which is maintained, financed or aided by the central government or state government.

Amendment in Consumer Protection Act :

The Consumer Protection Bill, 2019 has been passed by the Lok Sabha on Jul 30, 2019, and Rajya Sabha on Aug 06, 2019.

Meaning of Consumer Protection Act, 2019:

Consumer Protection Act, 2019 is a law to protect the interests of the consumers. This act was inevitable to resolve a large number of pending consumer complaints in consumer courts across the country. It has ways and means to solve the consumer grievances speedily. The consumer protection act 2019 will replace the consumer protection act 1986.

Aim of the Consumer Protection Act:-

The basic aim of the Consumer Protection Act, 2019 to save the rights of the consumers by establishing authorities for timely and effective administration and settlement of consumers' disputes.

Definition of consumer: As per the act; a person is called a consumer who avails the services and buys any good for self-use. Worth to mention that if a person buys any good and avail any service for resale or commercial purpose, is not considered a consumer. This definition covers all types of transactions i.e. online and offline.

Key features of the Consumer Protection Act, 2019

1. Establishment of the Central Consumer Protection Authority (CCPA):

The act has the provision of the Establishment of the CCPA which will protect, promote and enforce the rights of consumers. The CCPA will regulate cases related to unfair trade practices, misleading advertisements, and violation of consumer rights.

The CCPA will have the right to impose a penalty on the violators and passing orders to recall goods or withdraw services, discontinuation of the unfair trade practices and reimbursement of the price paid by the consumers.

The Central Consumer Protection Authority will have an investigation wing to enquire and investigate such violations. The CCPA will be headed by the Director-General.

2. Rights of consumers:

The act provides 6 rights to the consumers;

i. To have information about the quantity, quality, purity, potency, price, and standard of goods or services.

ii. To be protected from hazardous goods and services.

iii. To be protected from unfair or restrictive trade practices.

iv. To have a variety of goods or services at competitive prices

3. Prohibition and penalty for a misleading advertisement:

The Central Consumer Protection Authority (CCPA) will have the power to impose fines on the endorser or manufacturer up to 2-year imprisonment for misleading or false advertisement (Like Laxmi Dhan Warsha Yantra).

Worth to mention that repeated offense, may attract a fine of Rs 50 lakh and imprisonment of up to 5 years.

4. Consumer Disputes Redressal Commission:

The act has the provision of the establishment of the Consumer Disputes Redressal Commissions (CDRCs) at the national, state and district levels.

The CDRCs will entertain complaints related to;

i. Overcharging or deceptive charging

ii. Unfair or restrictive trade practices

iii. Sale of hazardous goods and services which may be hazardous to life.

iv. Sale of defective goods or services

Jurisdiction under the Consumer Protection Act, 2019

The act has defined the criteria of Consumer Disputes Redressal Commission (CDRCs). The National CDRC will hear complaints worth more than Rs. 10 crores. The State CDRC will hear complaints when the value is more than Rs 1 crore but less than Rs 10 crore. While the District CDRC will entertain complaints when the value of goods or service is up to Rs 1 crore.

Provision	Consumer Protection Act,1986	Consumer Protection Bill, 2019
Regulator	No Central Regulator	Central Consumer Protection Authority to be set up.
Filing of Complaint	A complaint needs to be filed in the consumer court under whom jurisdiction of the seller falls under	A complaint can be filed from anywhere or from where the consumer resides.
Mediation	No Provision	Courts can work towards settlement through mediation cells.
Jurisdiction	The jurisdiction at District level was complaints worth of Rs. 20 Lakh	District level authorities can take-up complaints with goods and services worth up to Rs.1 crore.
Product Liability	No Provision	Consumers have the right to seek compensation for any harm caused.
E-Commerce	No Provision	E-Commerce transactions will come under the provisions involving direct sales.
Video Conferencing	No Provision	Consumers can seek hearing through Video Conference.

UNIT-V

Definition of company:-

In India Company termed as a company which is formed and registered under the companies act 2013 or an existing company formed and registered under any of the previous laws.

According to section 2(20) of the companies act, 2013 "A company is a company formed under the companies Act 2013 or under any of the previous acts relating to companies."

A company may be defined as "an incorporated association which is an artificial person, having a separate legal entity, with a perpetual succession, a common seal, a common capital compromised of transferable shares and limited liability."

Popular Definitions of a Company:-

Chief justice Marshall- "A corporation is an artificial being, invisible, intangible and existing only in contemplation of the law. Being a mere creation of law, it possesses only the properties which the charter of its creation confers upon it either expressly or as incidental to its very existence."

Prof. L.H. Haney- "A Joint Stock Company is a voluntary association of individuals for profit, having a capital divided into transferable shares, the ownership of which is the condition of membership."

James Stephenson- A company is "associations of many persons who contribute money or money's worth to a common stock and employs it in some trade or business, and who share the profit and loss (as the case may be) arising there from."

Lord Justice Lindley - a company is defined as

"an association of many persons who contribute money (or) money's worth to a common stock, and employed it in some common trade (or) business (i.e., for a common purpose), and who share the profit and loss arising there from.

- The common stock so contributed is denoted in money and is the capital of money.
- The persons who contribute it, (or) to whom it belongs, are members.
- The proportion of capital to which each member is entitled is his share.

Shares are always transferable although the right to transfer them is often more (or) less restricted".

On incorporation a company becomes a body corporate (or) a corporation with a perpetual succession, separate legal identity and a common seal.

Characteristics of Company

A company formed and registered under the Companies Act has certain special characteristics, which reveal the nature of a company. These characteristics are also called the **advantages** of a company because as compared with other business organization, these are in fact, beneficial for a company

Characteristics of Company

1) **Artificial legal Person**
2) **Separate Legal Entity**
3) **Perpetual Succession**
4) **Limited Liability**
5) **Transferability of Shares**
6) **Common Seal**
7) **Capacity to sue and being sued**
8) **Audit Of Account And Publication Of Financial Statements**

9) **Diffused Ownership**

10) Termination of Existence

11) **Social character of the Company**

12) Company is not a Citizen

1. Artificial legal Person:-

Natural persons - i.e. human beings and

Artificial person - such as companies, firms, institutions etc.

A company is purely a creation of law. It is invisible, intangible and exists only in the eyes of law. It has no soul, no body, but has a position to enter or exit into a contract, to appoint people as its employees. It has to act through a board of directors elected by shareholders. The boards of directors (BOD) are the brains and only brains of the company. Which is body and the company does act only through them. But for many purposes, a company is a legal person like a natural person. It has the right to acquire and dispose of the property, to enter into contract with third parties in its own name, and can sue and be sued in its own name. However, it is not a citizen as it cannot enjoy the rights under the country's constitution. In short it can do everything just like a natural person.

2. Separate Legal Entity: - Under Incorporation law, a company becomes a separate legal entity as compared to its members. The company is distinct and different from its members in law. It has its own seal and its own name, its assets and liabilities are separate and distinct from those of its members. It is capable of owning property, incurring debt, and borrowing money, employing people, having a bank account, entering into contracts and suing and being sued separately.

3. Perpetual Succession:-

Members may come and go but the company goes on forever.

In company law, **perpetual succession** is the continuation of a corporation's or other organization's existence despite the death, bankruptcy, insanity, change in membership or an exit from the business of any owner or member, or any transfer of stock, etc.

4. Limited Liability: - The limited liability is another important feature of the company. As a company has a separate legal entity, its members cannot be held liable for the debts of the company. The liability of every member is limited to the nominal value of the shares bought by him or to the amount of guarantee given by him. The liability of the members of the company is limited to contribution to the assets of the company up to the face value of shares held by him. A member is liable to pay only the uncalled money due on shares held by him.

For example- if a member has 50 shares of Rs. 10 each, his liability is limited to Rs 500. Even if the assets of the company are insufficient to satisfy fully the claims of the creditors, no member can be called to pay anything more than what is due from him.

However, if the members of the company so desire, they may form a company with unlimited liability.

5. Transferability of Shares: - The capital of a company is divided into parts. Each part is called a share. These shares are generally transferable. A shareholder can transfer his shares to any person without the consent of other members. A shareholder is free to withdraw his membership from the company by transferring his shares. Under Articles of Association, a company can put certain restriction on the transfer of shares but it cannot altogether stop it. Private company can put more restrictions on the transferability of shares.

6. Common Seal: - Being an artificial entity, a company cannot act and sign itself. Therefore, it acts through human beings. All the acts of the company are authorized by its common seal. The common seal of the company is of great importance. It acts as the official signature of the company. The name of the company must be engraved on the common seal. A document not bearing the common seal of the company is not authentic and has no legal importance.

7. Capacity to sue and being sued: - As a separate legal entity, an incorporated company has the right to sue other people in addition to companies. In turn, it can be sued by other companies and people. However, the managing directors and other directors are not liable to be sued in the name of the company.

8. Audit of Account and Publication of Financial Statements

it is compulsory for each and every company to get its accounts to be audited. A joint stock company has to publish its financial statement at the end of every fiscal year.

9. Diffused Ownership: The ownership of a company is scattered over a large number of persons (Shareholders). According to the provisions of the Companies Act, a private company can have a maximum of fifty members. While, no upper limit is put on the maximum number of members in public companies.

10. Termination of Existence: A company is created by law, carries on its affairs according to law and ultimately is terminated also by law. Generally, the existence of a company is terminated by means of winding up.

11. Company is not a Citizen: - A Company or Corporation cannot be regarded as Citizen of India. As the Company or Corporation is an Artificial Person which is created by operation of Law it cannot hold citizenship of any Country.

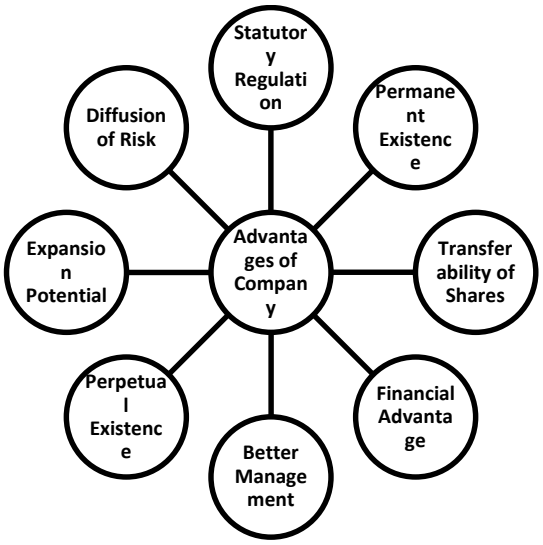
As per the Citizenship Act, 1955 of India only a 'Natural Person' can be a Citizen and not any 'Juristic' person like Company or any other Body corporate. Hence, company being an Artificial Person or we can say Juristic person cannot get status of the Citizenship of country, although Juristic person can get the Residential Status in India.

12. Social character of the Company – if we talk about modern scenario company is not only works as a monetary organization it is also responsible for the society and giving their efforts for welfare of the society .This is called "Corporate Social Responsibility''.

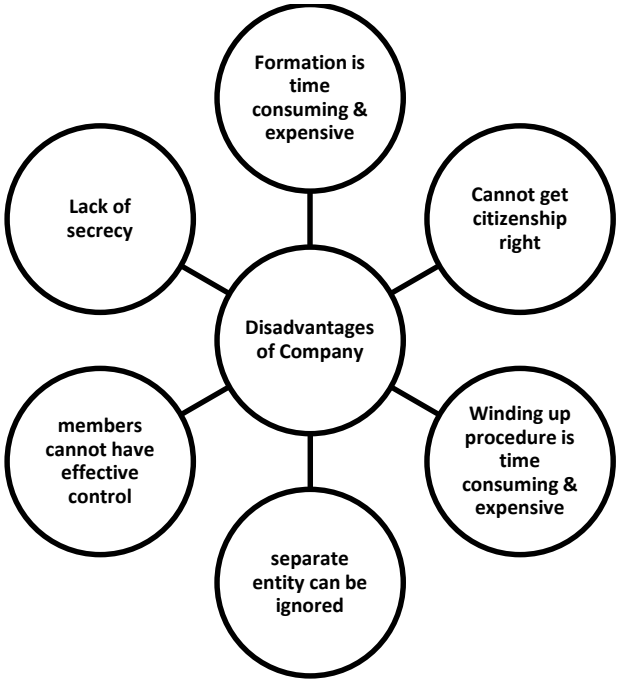
India is the first country in the world to make corporate social responsibility (CSR) mandatory, following an amendment to The Company Act, 2013 in April 2014. Businesses can invest their profits in areas such as education, poverty, gender equality, and hunger.

As per the Companies Act 2013, section 135 requires companies to spend 2% of their net profit on socially responsible projects, if they have a net worth of over rupees 500 crore, or a turnover of over rupees 1,000 crore, or a net profit over rupees 5 crore.

Advantages of Company :



Disadvantages of Company :



Lifting of corporate veil

The separate legal entity of a company is one of its most unique features. In other words, the company alone is liable for all the acts done and the debts incurred by it and not the directors or the shareholders who are in fact the beneficial owners of the company. This principle is known as "**The Veil of Incorporation**". In the eyes of law, a company is a legal person with a separate entity distinct from its members of shareholders. In essence it means that there is a veil or curtain separating the legal entity of the company from its members or shareholders. The term 'lifting of corporate veil' means ignoring the separate legal entity of the company.

But, as per company law, a company can be created for lawful purpose only. If a company is created for

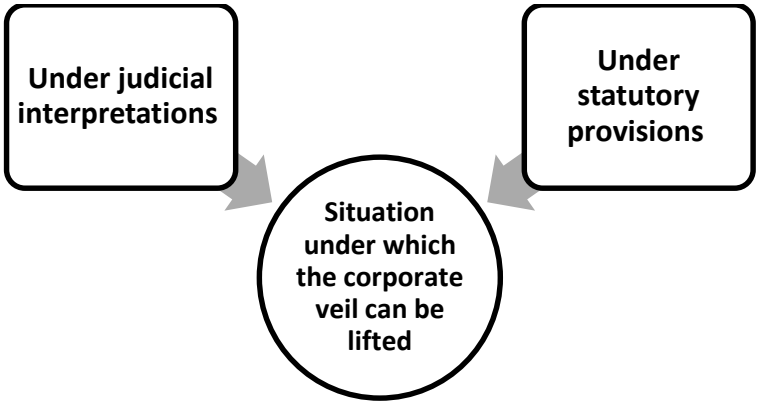
- dishonest use
- fraudulent purpose
- unlawful purpose
- evading taxes
- any other purpose which is against the public interest

Than law can identify the persons who are behind it and are responsible for any fraud/unlawful act Concept is very simple. Company cannot work or think on its own. Its directors and members are its mind and body. Therefore,

company can't do anything wrong own its own. Thus, for any wrong act in the name of company, members/directors can be held liable. So, the law can remove at any time the "Corporate Veil' and identify the persons who are responsible for such fraud or dishonest activities.

This concept is called "Lifting of Corporate Veil".

Situation under which the corporate veil can be lifted: - Under two situation corporate veil can be lifted. They are-



A. Under judicial interpretations

1. Protection of revenue: - sometimes, the lifting of corporate veil is necessary for the benefit of revenue e.g., where the separate entity concept of the company is used for evasion of tax. In such cases, the court may lift the corporate veil and the income of the company and its members may be taxed as that of one person.

2. Determination of character i.e. Whether enemy company or not: - A company is an artificial person and cannot be an enemy or friend. But during the war, the corporate veil may be lifted to identify that who is the real owner or controller of the company, does he belongs to enemy country or not. As a matter of fact, the lifting of corporate veil in such cases is necessary because trading with an enemy is against the public policy.

3. Protection of public policy: - courts shall lift the corporate veil without hesitation to protect the public policy and prevent transactions opposed to public policy.

4. Prevention of fraud or improper conduct: - the most common ground when the courts lift the corporate veil is when the members of the company are involved in fraudulent acts.
Where a company is used for -

- committing fraud, or
- for a fraudulent purpose, or

- to defraud creditors or
- to avoid legal obligations or
- to defeat the provisions of the law

The corporate veil shall be lifted.

5. Company avoiding legal obligations or welfare legislations: - when a company tries to avoid its legal obligations or intends to avoid its obligations on welfare measures, the corporate veil shall be lifted, to look at the real situation.

Eg - where in order to reduce the liability to pay bonus to its workers, the company splits up its profits by creating another company, the court may refuse to recognize the new company. In fact, the legislation requiring the payment of bonus to workers is for the welfare of the workers, and the company should not be allowed to escape liability imposed by such legislation.

6. Company acting as an agent of its members or of another company: - sometimes, a company acts as an agent or trustee of its members or of another company. In such cases, the court may lift the corporate veil and the person for whom the company acts may be held liable for the acts of the company.

7. Holding and subsidiary company relationship: - A holding company is one, which has control over another company and the company, over which the control is exercised, is called a subsidiary company. Sometimes, the holding company completely controls and dominates the activities of its subsidiary company in such a way that the subsidiary company becomes purely an agent of the holding company. In such cases, the court may lift the corporate veil and consider the subsidiary company a part and parcel of the holding company.

8. Dummy companies: - sometimes, a company formed by certain persons is not intended to be a corporate body i.e., a separate legal entity. It is formed simply to carry on their own personal business. In such cases, the court may lift the corporate veil, if it appears that the separate entity of the company is being misused.

B. Under statutory provisions

1. Reduction of membership [Section. 45]:-

Under section 45 of the Companies Act, when the number of members of a company are reduced below 7 in case of a public company and below 2 in case of a private company and the company continues to carry on its business for more than 6 months while the number is so reduced, every person who is a member of such company, knows this fact, is severally liable for the debts of the company contracted during that time.

2. Improper use of Name [Section. 147]:- where an officer of a company who signs on behalf of the company on any contract, Bill of Exchange, Hundi, Promissory note, cheque, without mentioning the company's name, such person shall be held personally liable to the holder of such Bill of exchange, hundi, promissory note or cheque as the case may be; if the company does not pay it, and shall be punishable with fine of Rs. 5000.

3. Fraudulent conduct [Section. 542]:- If in the course of winding up of a company, it appears that any business of the company has been carried on -

(a) With the intent to defraud the creditors of the company or

(b) Any other person or for any other fraudulent purpose,

The persons who were knowingly parties to such conduct of business may be made personally liable for all or any of the debts or other liabilities of the company, as the court may direct.

4. Failure to return application money [Section. 69(5)]:- The directors of a company are jointly and severally liable to repay the application money with interest, if the company fails to refund the application money of those applicants who have not been allotted shares within 130 days from the date of issue of the prospectus. However, this does not in any way affect the very existence of the company or indeed its subsequent independent personality and other features.

5. Misrepresentation in prospectus [Section. 62 & 63]:-

(a) In case of misrepresentation in a prospectus, every director, promoter and every other person, who authorizes such issue of Prospectus, incurs liability towards those who subscribed for shares on the faith of untrue statement.

(b) Such persons may be charged criminally and fined up to Rs. 50,000 or imprisoned up to two years or may be fined as well as imprisoned.

6. Holding and Subsidiary companies [Section. 212]

(a) A holding company is required to disclose to its members the accounts of the subsidiaries. Every holding company is supposed to attach to its balance sheet, copies of the balance sheet, profit and loss account, directors report and auditors' report etc. in respect of each subsidiary company.

(b) It amounts to lifting of the corporate veil because in the eyes of law a subsidiary company is a separate legal entity and through this mechanism their identity is known.

7. for facilitating the task of an inspector to investigate the affairs of the company [section. 239]:-

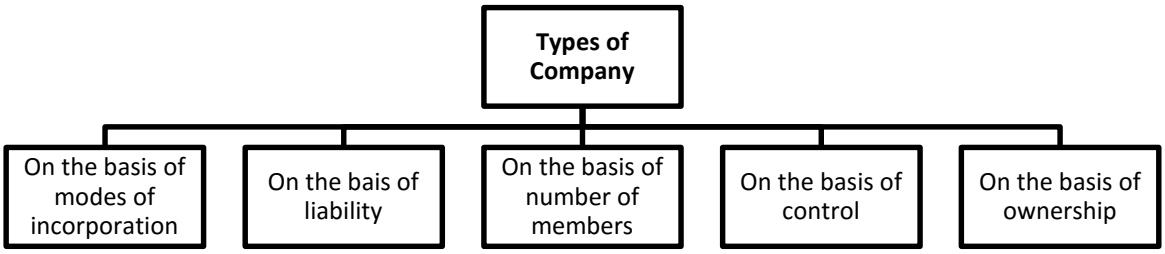
If it is necessary for the satisfactory completion of the task of an inspector appointed to investigate the affairs of a company for alleged mismanagement, or oppressive policy towards its members, he may investigate into the affairs of another related company in the same management or group. In such cases, the separate entity of the other company is lost.

8. For investigation of ownership [section. 247] :- The Central Government may appoint one or more inspectors to investigate and report on the membership of any company for the purpose of determining the true persons who are financially interested in the company and who control its policy or materially influence it. In such cases, the corporate veil is lifted, as the inspector may look into the real persons behind the company.

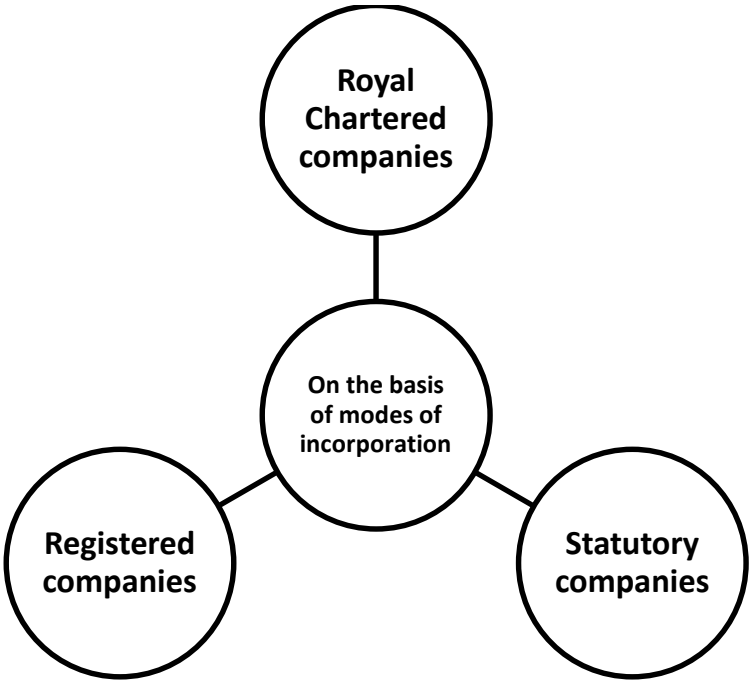
9. Liability for ultra virus acts :- when some acts are done which are ultra virus (i.e. Beyond powers) the company Directors and other officers of a company will be personally liable for all those acts which they have done on behalf of a company if the same are *ultra virus* the company.

10. Non- payment of income tax: - sometimes, a private company is wound up, and the income tax in respect of its any income of any previous year is unpaid. In such cases, every person who was a director of the company at any time during the relevant previous year shall be personally liable for the payment of the tax.

Types of Company



[I] On the basis of modes of incorporation: - On the basis of incorporation, companies can be classified as:

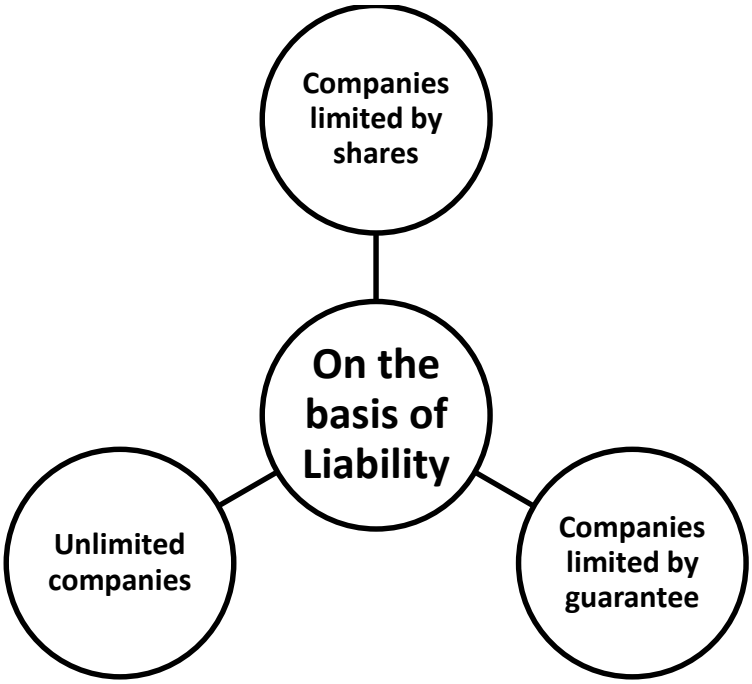


(i) Chartered companies: - An Incorporated Company founded by the royal Charter granted by the Crown is called a **Chartered Company**. The best example of a chartered company is the East India Company, Bank of England, And Standard Chartered Bank. The chartered companies are governed by the provisions of the special Charter. Under which they formed. The charter defines the nature and power of such companies. It may be noted that after independence, the chartered companies are rarely found in India. Moreover, the company's act 2013 does not apply to such companies.

(ii) Statutory companies: - A company may be incorporated by means of a special Act of the Parliament or any state legislature. It may be noted that an Act is specially passed to create a statutory company e.g., The Life Insurance Corporation (LIC) of India was created by the life Insurance Corporation Act, the Food Corporation of India (FCI) was created by the Food Corporation of India Act. The statutory companies are also known as '*Corporations*'. Such companies are generally created for the public utility services, and the main object is not to earn profits, but to serve the general public.

(iii) Registered companies: - Company registered under the Indian Companies Act is known as Registered Company. These companies are governed and regulated by the provisions of the Companies Act, 2013. It also includes an existing company, which was formed and registered under the earlier companies act. They may be limited by shares or limited by guarantee or unlimited companies.

[II] On the basis of Liability: - On the basis of liability, companies can be classified as:



(i) Companies limited by shares: - This is a company having the liability of its members limited by the memorandum of association to the amount unpaid on the shares respectively held by them. A large majority of the companies registered in India belong to this category. The last word of the name of such companies should be "Limited".

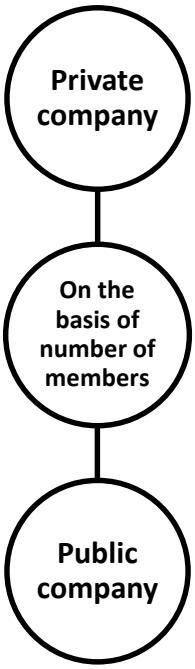
For example, if Bajaj Ltd. has a share capital of 10,000 shares of Rs. 10 each, and Mr. Ram has purchased 100 shares on which he has paid so far Rs. 6 per share, the maximum liability of Mr. Ram is only Rs. 4 per share.

(ii) Companies limited by guarantee:- A company limited by guarantee is one in which the liability of the members is limited to such amount as he undertakes to contribute to the assets of the company in the event of being wound up. The amount of guarantee is fixed in the "memorandum of association (MOA)" of the company .The guaranteed amount may be differ from member to member. It may be noted that the liability of the member can be enforced only at the time of winding up of the company. Thus, the members cannot be asked to pay the guaranteed amount during the continuation of the company. Such companies may or may not have share capital. If it has share capital, the liability of the members becomes two-fold; firstly, the amount unpaid on the shares held by them and secondly, amount payable under the guarantee.

(iii) Unlimited companies: - The unlimited company is a company where there is no limit on the liability of its members. This means that if the company suffers a loss and the company's property is not enough to pay off its debts, the private property of its members is used to meet the claims of the creditors. This means that there is a

huge risk in such companies. Unlimited companies are not found in India; instead, their space is occupied by the proprietary kind of businesses.

[III]On the basis of number of members: On the basis of number of members, companies can be classified as:



(i) Private company: The term 'Private Company' has been defined under section 2(68) of companies act 2013.

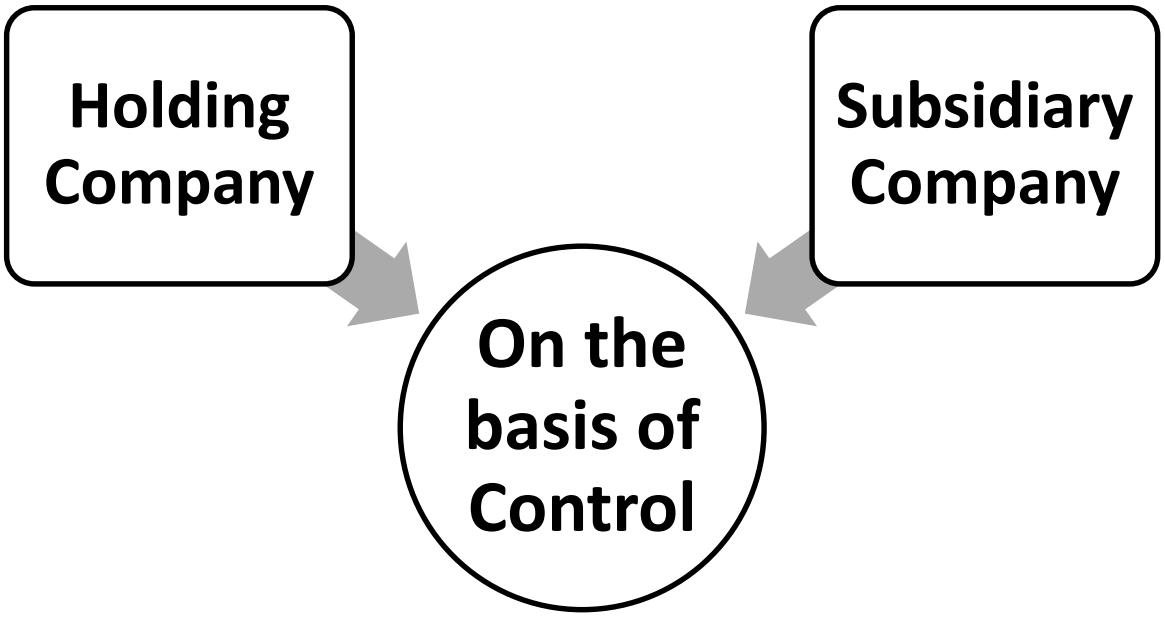
- A private company is the one which has a minimum paid up share capital of Rs. 100000 or such higher capital as prescribed by the Companies Act.
- Article of association restricts the right to transfer the shares of private company.
- There should be at least two persons to form a private company and the maximum number of members in a private company cannot exceed 50.
- Where two or more persons hold one or more shares in a company jointly, they are treated as a single member.
- Private company Cannot go for invitation from public to subscription to any of its shares
- Private company cannot accept deposits from persons other than its members, directors and relatives.

- A private limited company is required to add the words “Private Ltd” at the end of its name.

(ii) Public company: The term ‘Public Company’ has been defined under section 2(71) of companies act 2013**.**

- Public Company has a minimum paid-up share capital of five lakh rupees or such higher paid-up capital, as may be prescribed.
- There must be at least seven persons to form a public company
- There is no upper limit for the maximum no. of members.
- It has at least 3 directors.
- Its name end with the word ‘limited’.
- It can accept public deposits and invite public for subscription of its shares and debentures.
- A private company which is a subsidiary of a public company will also be considered a public company under this act.
- Only the shares of a public company are capable of being deal in on a stock exchange.

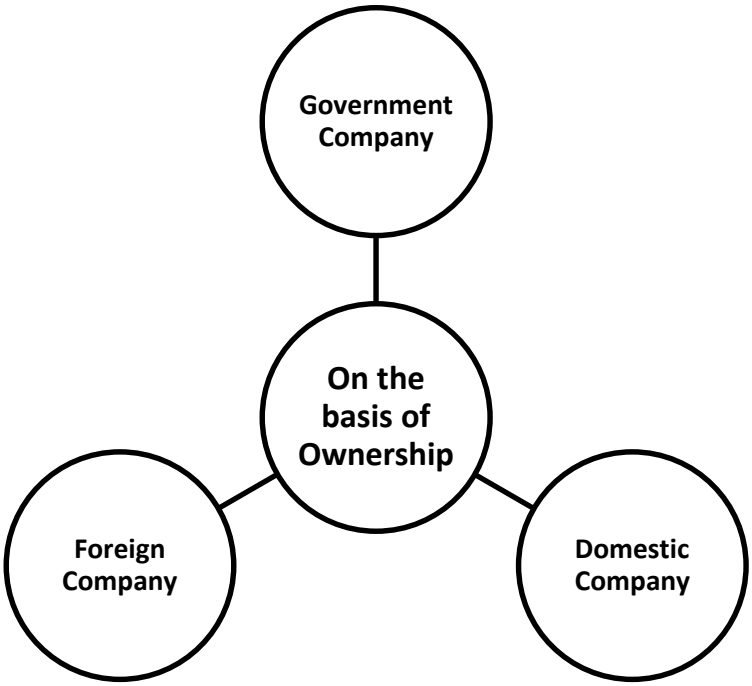
[III] On the basis of Control: - On the basis of Control, companies can be classified as:



i. Holding Company: - Section 2(46) of the Companies Act, 2013 defines Holding Company. The company is said to be the holding company if that particular company holds/owns at least 50% of the other companies and has the authority to make management decisions, influences and controls the company's board of directors. A holding company may exist for the sole purpose of controlling and managing subsidiary companies.

ii. Subsidiary Company: - Section 2(87) of the Companies Act, 2013 defines the Subsidiary Company. The subsidiary company is the company that is controlled by the holding or parent company. It is defined as a company/body corporate where the holding company controls the composition of the Board of Directors. As per the Companies Amendment Act, 2017, Section 2(87)(ii), if the holding company have control over more than one-half of the voting power of another company, that particular company will be identified as the subsidiary company.

[IV]On the basis of Ownership: - On the basis of Ownership, companies can be classified as:



i. **Government Company: -** Section 2(45) defines a "Government Company" as any company in which not less than 51% 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. The subsidiary of a Government company is also a Government company.

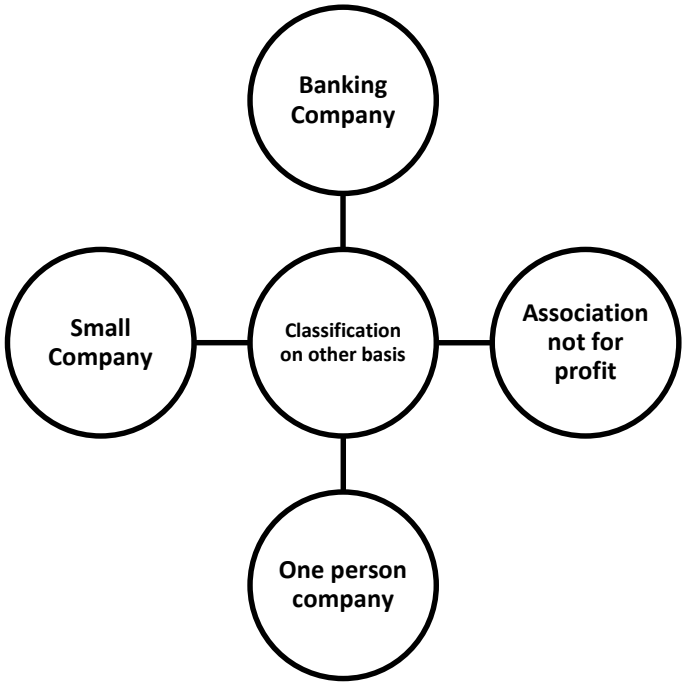
ii. **Domestic Company: -** A company formed and registered in India is known as an Indian Company or Domestic Company.

iii. **Foreign Company: -** A 'foreign company' is an entity which is incorporated outside India, but has a place of business in India or conducts any business activity in India in any other manner. The term 'foreign company' is clearly laid down under Section 2 sub-section 42 of the Companies Act, 2013 (New Act). A foreign company is any company or body corporate incorporated outside India which,

(a) Has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

(b) Conducts any business activity in India in any other manner.

[IV] Classification on other basis: - On other basis, companies can be classified as:



1. Banking Company: - A banking company means and includes any company which carries on the business or which transacts the business of banking in India. According to Sec. 5 of the Banking Regulation Act, 1949, a banking company means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise and withdrawn by Cheque, Draft, Order, or otherwise.

2. Association not for profit/ Not for profit organization/ Charitable company :- A non-profit organizations can be registered in India as a Society, under the Registrar of Societies or as a Trust, by making a Trust deed, or as a Section 8 Company, under the Companies Act, 2013. Not-for-Profit Organisations are organizations which are set up for the welfare of the society or for the promotion of art

and culture in the society. These are usually set up as a charitable institution with the service motive. The trustees manage these organizations. The members of the organization elect the trustees. The Not-for-Profit Organizations raise funds from its members as well as from the general public for meeting their objectives. A Non - Profit organization is an organization which works for promoting science, commerce, art or any other charitable purpose.

3. One person company: - One person company is a new concept in India which has been introduced by the company's act 2013. Section 2(62) of Companies Act defines a one person company as a company that has only one person as its member. Furthermore, members of a company are nothing but subscribers to its memorandum of association, or its shareholders. So, an OPC is effectively a company that has only one shareholder as its member.

Features of one person Company-

- The founding member should be an Indian born and should have stayed in India for more than one hundred and eighty-two days in the preceding calendar year.
- It is mandatory for him to appoint a nominee on his behalf who can take over his company after he is incapacitated.
- The company shall have a minimum paid up capital of Rs. 1 Lac and an average annual turnover of less than Rs. 2 crores.
- The words **OPC** must be mentioned in the brackets below the name of the company
- No minor can be appointed as a nominee or member of OPC as it cannot be incorporated as a company under section 8.
- OPC cannot convert itself into a private or public company unless it completes two years of its existence.

Privileges of One Person Company -

1. OPCs would provide the start-up entrepreneurs with new business idea.

2. Unlike a private limited or public limited company (listed or unlisted), OPCs need not bother too much about compliances.

3. Businesses currently run under the proprietorship model could get converted into OPCs without any difficulty.

4. OPCs require minimal capital to begin with. Being a recognized corporate, could well raise capital from others like venture capital financial institutions etc., thus graduating to a private limited company.

5. Mandatory rotation of auditor after expiry of maximum term is not applicable.

6. The annual return of a One Person Company shall be signed by the company secretary, or where there is no company secretary, by the director of the company.

4. Small Company: - Small Company is a new form of private company under the Companies Act, 2013. A classification of a private company into a small company is based on its size i.e. paid up capital and turnover. In other words, such companies are small sized private companies.

As per section 2(85) ''small company'' means a company, other than a public company,—

(i) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees; or

(ii) turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than twenty crore rupees:

Provided that nothing in this defintion shall apply to—

a) A holding company or a subsidiary company;
b) A company registered under section 8; or
c) A company or body corporate governed by any special Act;

Difference between Private Company & Public Company :

S.No.	Basis	Private Company	Public Company
1.	**Minimum number of members (Section 3)**	The minimum number of persons required to form a private company it is only two.	The minimum number of persons required to form a 'public company is seven.

2.	**Maximum number of members**	A private company cannot have more than 50 members	There is no maximum limit on the members of a public company.
3.	**Transferability of shares (Section 44)**	The articles of association (AOA) of a private company must restrict its right to transfer its shares.	There is no restriction on the transfer of shares in the case of a public company.
4.	**Number of directors**	A private company must have at least two directors.	A public company must have at least three directors.
5.	**Commencement of business**	A private company can commence its business as soon as it is incorporated.	A public company can commence its business only after getting the certificate of commencement of business.
6.	**Restriction on name**	In the case of a private company the word private limited must be used at the end of the name.	The name of a public company must end with the word, "limited".
7.	**Prospectus**	A private company cannot issue a prospectus.	A public company must issue a prospectus or statement in lieu of prospectus for inviting public to subscribe to its shares or debentures.
8.	**Managerial Remuneration**	No restrictions apply to a Private Company as like Public Company**.**	The managerial remuneration in a public company cannot exceed 11% of the Net profit.
9.	**Quorum for general meetings**	For the General meetings of Private Company quorum required is two	In the case of Public Company, for the General meetings of a public company quorum required is Five.
10.	**Restrictions on the**	In a Private Company, there is	In the case of Public Company, the

	appointment of directors	no restrictions on the on appointment of directors	directors must files with the Registrar a consent to act as a director or sign the memorandum of association or enter into a contract for their qualification shares

Memorandum of Association (MOA) of a Company

Meaning & definitions of Memorandum of Association (MOA):-Memorandum is the document of the company which contains all the information regarding company and also known as company foundation. It contains name, registered office, objects and company capital as well as limit of liabilities of the members of the company. It is signed by the company members and required for registration of company to its registrar.

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. The definition given in the company's act 2013 is not exhaustive. Neither states the nature and scope of the memorandum, nor does it highlight its significance in the life of a company.

Characteristics of Memorandum of Associations: - Some characteristics of MoA are **-**

(1) Memorandum of Association defines the fundamental conditions and objects for which company is granted incorporation.

(2) Acts done by the company beyond the scope of the memorandum are absolutely void.

(3) It defines the scope of the company's activities and relations with outside the world.

(4) It is essential to every company to prepare its own memorandum.

(5) Memorandum is a public document after registration and inspected by any person.

(6) On registration of memorandum, the company is deemed to have been registered.

(7) It contains details about the powers and rights of the company.

(8) The MOA of a company contains the object for which the company is formed. It identifies the scope of its operations and determines the boundaries it cannot cross.

(9) It is a public document according to Section 399 of the Companies Act, 2013. Hence, any person who enters into a contract with the company is expected to have knowledge of the MOA.

(10) MoA serves as a basis of contract between outsider & the company.

(11) MoA signed by the subscribers.

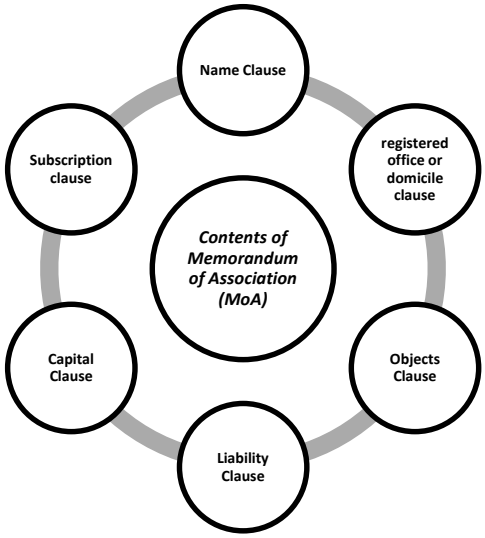
(12) On registration, the MoA becomes binding on the company and its members.

(13) MoA lays down limitations of powers of the company.

(14) MoA contains fundamental conditions upon which a company is allowed to be incorporated.

(15) MoA is also called life giving document. It regulates the external relationship of the company.

Contents of Memorandum of Association (MoA):- According to the Companies Act, the Memorandum of Association of a company must contain the following clauses:



Doctrine of Ultra Vires :

Meaning of doctrine - Doctrine is a legal principle that is widely adhered to. It is a rule or principle of the law established through the repeated application of legal precedents. A **legal doctrine** is a framework, set of rules, procedural steps, or test, often established through precedent in the common law, through which judgments can

be determined in a given legal case. A doctrine comes about when a judge makes a ruling where a process is outlined and applied, and allows for it to be equally applied to like cases.

Therefore Doctrine of Ultra Vires Means: - The Doctrine of Ultra Vires is a fundamental rule of the Company Law. It states that the objects of a company, as specified in its Memorandum of Association, can be departed from only to the extent permitted by the Act.

Hence, if the company does an act, or enters into a contract beyond the powers of the directors and/or the company itself, then the said act/contract is void and not legally binding on the company. It has also an implied power to do all such things that are fairly incidental to its main objects. If the company does anything which is beyond the powers specified in the Memorandum it shall be construed as an Ultra Vires act.

Objective of Doctrine of Ultra Vires:-

(a) To protect the investors of the company so that they may know the objects in which their money is to be employed, and

(b) To protect the creditors by ensuring that the Company's funds, to which they must look for payment, are not dissipated in unauthorized activities.

Ultra Vires Act: - In the following cases, the acts of a company are said to be ultra vires –

(i) Acts which do not fall within the main objects of the company: - acts or contracts which do not fall within the main objects of the company are ultra vires. Such acts are null and void and cannot be ratified even by unanimous consent of the members of the company.

(**ii) Acts which do not fall within the objects incidental or ancillary to the main objects of the company :-** Sometimes, the acts done or contracts made by a company do not fall within the objects incidental or ancillary to the main objects of the company. Such acts or contracts are also said to be ultra vires.

(iii) Acts which are ultra-vires to the memorandum of the company: - An act is called ultra-vires the memorandum of the company if, it is done beyond the powers provided by the memorandum to the company. If a part of the act or contract is within the authority provided by the memorandum and remaining part is beyond the authority, and both the parts can be separated. Then only that part which is beyond the powers is considered as ultra-vires, and the part which is within the authority is considered as intra-vires. However, if they cannot be separated then whole contract or act will be considered as ultra-vires and hence, void. Such acts cannot be ratified even by shareholders as they are void-ab-initio.

(iv) Acts ultra vires directors: - All the acts or contracts which are made by the directors beyond the powers provided to them are called acts ultra-vires the directors but intra-vires the company. The company can ratify such acts and then they will be binding.

(v) Acts which are ultra-vires to the Articles but intra-vires to the memorandum:- All the acts or contracts which are made or done beyond the powers provided by the articles but are within the powers and authority given by the memorandum are called ultra-vires the articles but intra-vires the memorandum. Such acts and contracts can be ratified by the shareholders (even retrospectively) by making alterations in the articles to that effect.

Effects of ultra vires Transactions:-

(i) Void ab initio – The ultra vires acts are null and void ab initio. The company is not bound by these acts. Even the company cannot sue or be sued upon [Ashbury Railway Carriage and Iron Company v. Riche]. Ultra vires contracts are void ab initio and hence cannot become intra vires by reason of estoppel or ratification.

(**ii) Injunction:** The members can get an injunction to restrain a company wherein ultra vires act has been or is about to be undertaken [Attorney General v. Gr. Eastern Rly. Co., (1880) 5 A.C. 473].

(iii) Personal liability of Directors: It is one of the duties of directors to ensure that the corporate capital is used only for the legitimate business of the company and hence if such capital is diverted to purposes alien to the company's memorandum, the directors will be personally liable to replace it.

(iv) Where a company's money has been used ultra vires to acquire some property, the company's right over such property is held secure and the company will be the right party to protect the property. This is because, though the property has been acquired for some ultra vires object, it represents the money of the company.

(v) Ultra vires borrowing does not create the relationship of creditor and debtor [In Re. Madras Native Permanent Fund Ltd., (1931) 1 Com Cases 256 (Mad.)

Exception to the doctrine of ultra vires: - Following are the exceptions to Doctrine of Ultra Vires:

1. An act intra vires of the company but outside the authority of the directors may ratified by the shareholders.
2. An act intra vires of the company but done in an irregular manner. It can turn into valid by shareholders consent.
3. If the company has acquired any property through an investment, ultra vires of the contract, the company's right over such a property shall still secured.
4. While applying doctrine of ultra vires, the effects incidental or consequential to the act shall not invalid unless they expressly prohibited by the Company's Act.

5. There are certain acts under the company law, which though not expressly stated in the memorandum, are deemed impliedly within the authority of the company and therefore they are not deemed ultra vires. For example, a business company can raise its capital by borrowing.
6. If an act of the company is ultra vires the articles of association, the company can alter its articles in order to validate the act.

Article of Association :

Meaning: - Articles of Associations of a Company lays down rules and regulations for its internal management. They are the Companys Bye-laws or Rules and Regulations that govern the management of its internal affairs and the conduct of its business.

The articles of association are concerned with the internal management of the company and aims at carrying out the objectives as mentioned in the memorandum. These define the company's purpose and lay out the guidelines of how the task is to be carried out within the organization. The articles of association cover the information related to the board of directors, general meetings, voting rights, board proceedings, etc.

Definitions: - Some popular definition of Articles of Associations is-

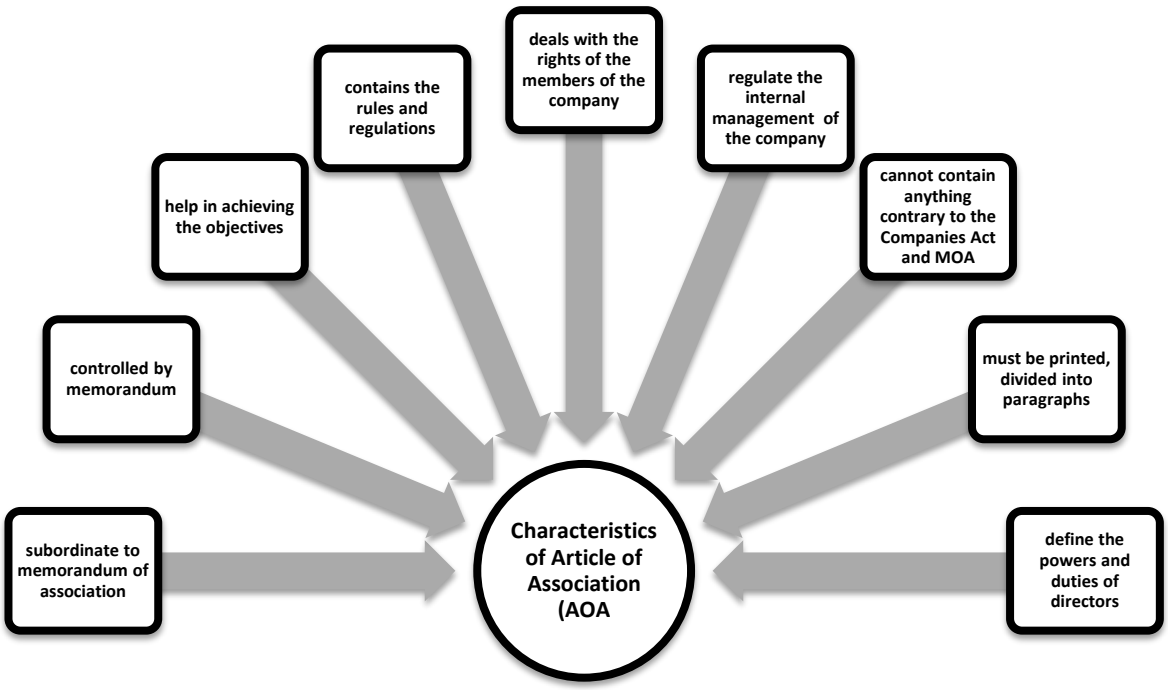
According to Section 2(5) of the Companies Act, 2013, 'articles' means the articles of association of a company as originally framed or as altered from time to time or applied in pursuance of any previous company law or of this Act. It also includes the regulations contained in Table A in Schedule I of the Act, in so far as they apply to the company

Importance of article of association:-

The articles play a very important role in the affairs of a company. As this document is subordinate to the 'memorandum of association' therefore in framing the rules and regulations it must be kept in view that they do not exceed the powers of the company given by the 'memorandum of association'. Moreover, these rules and regulations must not be contrary to the provisions of the companies act. Following are the point that shows the need of the articles of associations:-

1. •articles of association is obligatory for private limited company, public company limited by guarantee, unlimited company
2. •the articles of a company shall contain the regulations for management of the company
3. •The articles of association are the contracts between the shareholders and the organization and among the shareholder themselves
4. •it is a user manual for the organization

Characteristics of Article of Association (AOA):-



Difference Between Memorandum & Articles of association:

Basis	Memorandum of Association	Articles of Association

Definition	Memorandum of Association (MOA) is a document that contains all the fundamental data which are required for the company incorporation.	Articles of Association (AOA) is a document containing all the rules and regulations that govern the company
Registration	MOA must be registered at the time of incorporation.	The articles may or may not be registered.
Scope	The Memorandum is the charter, which characterizes and limits powers and constraints of the company.	The articles demonstrate obligations, rights, and powers of individuals, who are endowed with the responsibility of running the organization and administration.
Status	Supreme document.	It is subordinate to the memorandum.
Power	The memorandum cannot give the company power to do anything opposed to the provision of the companies act.	The articles are constrained by the act, but they are also subsidiary to the memorandum and cannot exceed the powers contained therein.
Major contents	A memorandum must contain six clauses.	The articles can be drafted as per the choice of the company.
Obligatory	Memorandum is compulsory for all companies.	A public company limited by shares can adopt Table A in place of articles.
Alteration	Alteration can be done, after passing Special Resolution (SR) in Annual General Meeting (AGM) and previous approval of Central Government (CG) or Company Law Board (CLB) is required.	Alteration can be done in the Articles by passing Special Resolution (SR) at Annual General Meeting (AGM)
Relation	Defines the relation between company and outsider.	Regulates the relationship between company and its members and also between the members inter se.

Objectives	The memorandum contains the objectives and powers of the company.	The articles provide the regulations by which those objectives and powers are to be conveyed into impact.
Acts done beyond the scope	Absolutely void	Can be ratified by shareholders.

Prospectus :

Meaning Of prospectus: - It is a document containing detailed information about the company. It is an invitation to the public for subscribing to the shares or debentures of the company.

Private limited companies are strictly prohibited from issuing prospectus and they cannot invite public to subscribe to their shares. Only public limited companies can issue prospectus. Thus, it is an open invitation extended to the public at large.

In other words, it is a document which invites deposits from the public or invites offers from the public for the subscription of shares in, or debentures of, a company.

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

Definition of Prospectus:-

As per companies act 2013 ;- Section 2(70) of the Companies Act, 2013 defines a prospectus as "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."

On the basis of aforesaid definition, it may be said that a document should have following ingredients to constitute a prospectus:

(a) There must be an invitation to the public;

(b) The invitation must be made "by or on behalf of the company or in relation to an intended company";

(c) The invitation must be "to subscribe or purchase";

(d) The invitation must relate to any securities of the company

Characteristics of a Prospectus: - Characteristics of Prospectus are:-

(i) It is a written document Issued by the corporate body to the public the invitation of subscription or purchase of any securities.

(ii) Prospectus is only issued by the public companies, private companies cannot issue prospectus.

(iii) It is an invitation to the public by public company.

(iv) A prospectus may be in the form of a notice, circular, advertisement, or any other document.

(v) It is an invitation to the public by a company:-

(a) For inviting public deposits; or

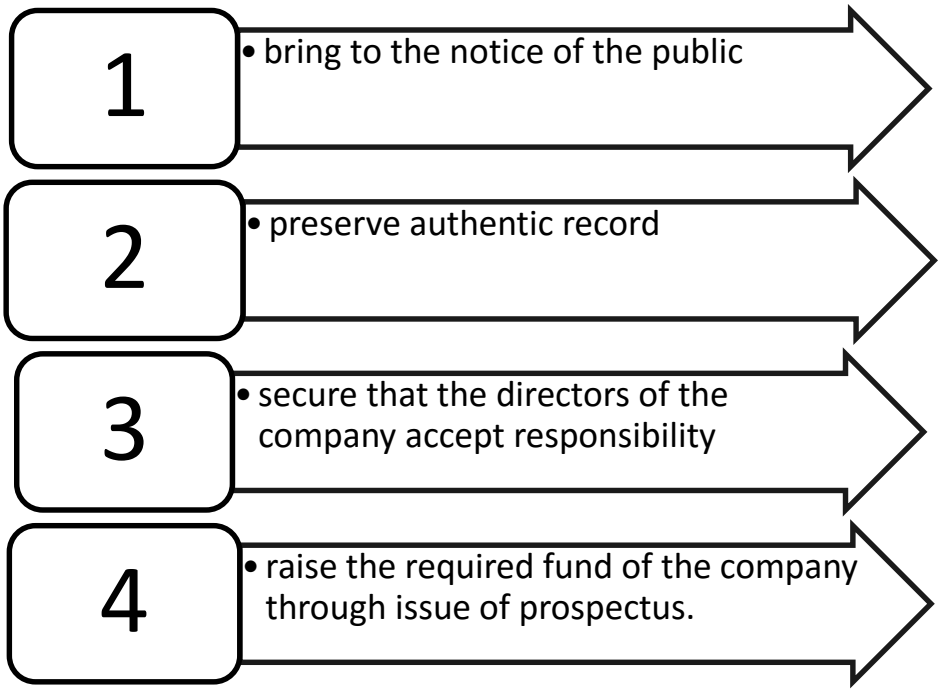
(b) For inviting offers from the public for the purchase of its shares or debentures.

(vi) Every prospectus issued must contain the matters specified by the provisions of the companies act.

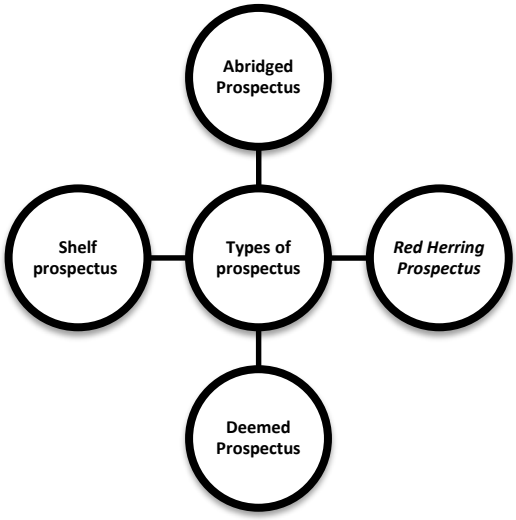
(vii) A prospectus can be issued to the public only after its registration with the Registrar.

(viii) The provisions of the companies act relating to prospectus are administered by the Securities and Exchange Board of India (SEBI).

Objectives of prospectus:-



Types of Prospectus:



I. **Abridged Prospectus: -** "Abridged Prospectus" means a memorandum containing such salient features of a prospectus as may be specified by the Securities and Exchange Board by making regulations in this behalf. [Section 2(1)]

(i) Abridged Prospectus is the actual *summary* of a prospectus. It contains all the salient features of a prospectus.

(ii) The original prospectus that a company files to the exchange regulator is too large. The abridged prospectus contains the summary of the same prospectus.

(iii) Reading the entire prospectus may be too much time consuming for an investor. Instead, they go through the abridged prospectus, which gives them the basic idea about the company.

(iv) The abridged prospectus contains all the important and materialistic information.

(v) No company will issue the share buying from without the abridged prospectus attached to it so that investors can take a well-informed decision.

II. Red Herring Prospectus: - "Red Herring Prospectus" means a prospectus which does not include complete particulars of the quantum or price of the securities included therein. In other words a prospectus for stocks and bonds are issued in different stages – the first stage is the preliminary prospectus, which contains the details of the business and proposed financial action. It is nicknamed as *Red Herring*. Here price means the actual price to be issued per share in the IPO and *quantum* means the quantity or the total number of shares to be offered in the IPO.

III. Shelf prospectus: - "Shelf Prospectus" means a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without theissue of a further prospectus.

IV. Deemed Prospectus*:* - Section 25 of the companies Act, 2013 provides that all documents containing offer of shares or debentures for sale shall be included within the definition of the term prospectus and shall be deemed as prospectus by implication of law.
Deemed means to presume something. When a company agrees to allot shares to an issuing house (which is a different company) which they will later sell to the public, then the document by which offer is made is deemed to be a prospectus. The document by which the issuing house offers share to the public is said to be deemed prospectus. Any one condition from the following two conditions should be fulfilled:

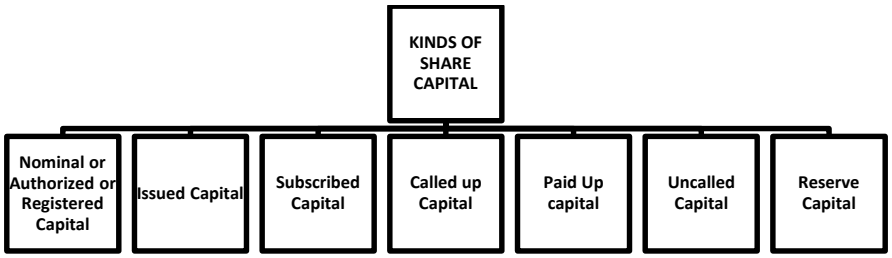
- The issuing house should issue the shares to the public 6 months after the agreement with the company whose shares are to be issued.
- The issuing house shouldn't give the share price to the company until they bring it to the public.

SHARE CAPITAL

Share capital is the money invested in a company by the shareholders. Share capital is a long-term source of finance. Share capital consists of all funds raised by a company in exchange for shares of either common or preferred shares of stock. The amount of share capital or equity financing a company has can change over time. A

company that wishes to raise more equity can obtain authorization to issue and sell additional shares, thereby increasing its share capital.

KINDS OF SHARE CAPITAL :



SHARE :

Meaning of Share :- A share in the share capital of the company, including stock, is the definition of the term 'Share'. This is in accordance with Section 2(84) of the Companies Act, 2013. In other words, a share is a measure of the interest in the company's assets held by a shareholder.

The person who is the owner of the shares is called 'Shareholder' and the return he gets on his investment is called 'Dividend'.

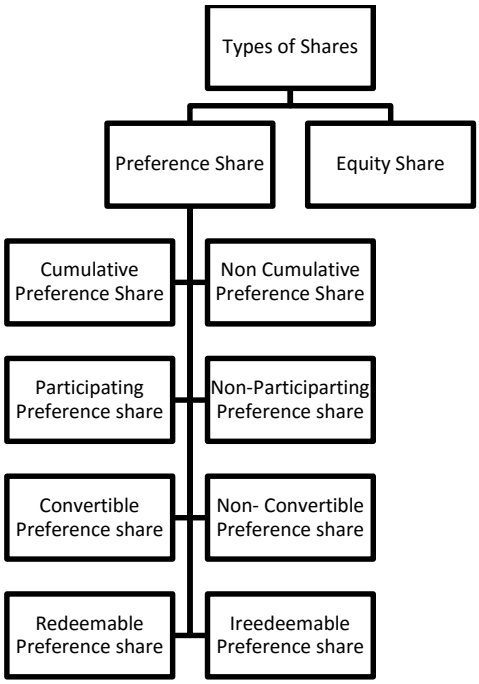
Characterisitics of Share :-

(1) Share is a movable property.

(2) Shares are freely transferable in the manner provided in the AOA of the company.

(3) Each share is distinguished by its appropriate number.

(4) Share held by a member is represented by a Certificate issue the common seal of the company, specifying the number of shares held by him, which is prima facie evidence of his title to such shares.



DEBENTURES :

Definition of Debenture :- According to Section 2(*30*) of Companies Act 2013 "debenture" includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not; It is evident from the definition that the term debentures covers both secured and unsecured debentures.

In the words of Chitty J. "Debenture means a document which either creates a debt acknowledges it, and any document which fulfills either of these conditions is a debenture.

According to Palmer defines a debenture as "any instrument under seal of the company, evidencing a deed the essence of it being admission of indebtedness"

Characteristics of Debentures:-

Debentures are ranked as creditors of the company. Debenture is long-term debt and issued under the common seal of the company. In brief, a debenture possesses the following characteristics.

1. Debenture is an instrument of loan.
2. Interest is paid at fixed rate every year and debentures is known as "fixed cost bearing capital".
3. Debenture has common seal of the company.
4. Debenture is redeemable at a fixed and specified time.
5. Debenture-holders are the creditors of company not owners.
6. Debenture is a form of long-term borrowed capital.

7. Debenture-holders have no right to cast vote in company's general meeting.

8. At the time of liquidation, first priority is given to debenture-holders at the time of repayment.

9. Debentures can be issued to fulfill the requirement of huge capital. Small firms most often find it more expensive source of financing.

Difference between Debenture holder & Shareholder:

Difference between shareholders and debenture-holders are discussed in detail as follows:

Shareholders:

1. They are owners of company.

2. Dividend is paid only when company earns sufficient profits.

3. They are unsecured.

4. except redeemable preference shares, share capital is not repaid without legal formalities.

5. They are authorized to attend general meeting of company.

6. There are some restrictions on issue of shares at discount.

7. They are to be repaid after all other claims have been satisfied.

8. They have control over the administration of company.

9. Shares can be forfeited for non-payment of calls.

10. Shareholders are paid at last.

Debenture holders:

1. They are creditors of company.

2. Interest on debentures must be paid whether there are profits or not.

3. They are generally secured and carry charges on assets of company.

4. Debentures are repayable in accordance with terms of issue.

5. Generally debenture holders have no right to attend general meeting of company.

6. There are no restrictions on issue of debentures at discount.

7. They have priority of the refund of their loan prior to shareholders.

8. They are not involved in the control of the affairs of a company.

9. As per S. 122, the debentures can't be forfeited for non-payment of calls.

10. Debenture holders are paid off before shareholders.

UNIT-VI

A partnership is a kind of business where a formal agreement between two or more people is made and agreed to be the co-owners, distribute responsibilities for running an organization and share the income or losses that the business generates.

In India, all the aspects and functions of the partnership are administered under 'The Indian Partnership Act 1932'. This specific law explains that partnership is an association between two or more individuals or parties who have accepted to share the profits generated from the business under the supervision of all the members or behalf of other members.

Features of Partnership:

Following are the few characteristics of a partnership:

(1) Contract or Formation – A firm having multiple owners must have a legal agreement between all the partners. So, it is compulsory to have a partnership contract to establish a partnership firm.

(2) Unlimited Liability – All the partners are liable for the payment of the debts, even if they have to liquidate their personal assets.

(3) Continuity – In the context of death, bankrupt, and retirement of any partners, etc., the partnership will be dissolved and the remaining partners must make a fresh agreement amongst each other. Similarly, a son cannot

inherit his father's partnership, but with the agreement of other partner members, he can be added as a new partner.

(4) Number of Members – There is no specific number as to the maximum number of members a partnership firm can have. However, according to the Companies Act, 2013, for banking only 10 members are allowed. For companies, the maximum member should not exceed more than twenty.

(5)Mutual Agency- This means all the partners should take responsibility for a company's operation. But sometimes one partner on behalf of the rest of the partners can supervise or take actions.

Types of Partnerships:

A partnership is divided into different types depending on the state and where the business operates. Here are some general aspects of the three most common types of partnerships.

(1) General Partnership:-

A general partnership comprises of two or more owners to run a business. In this partnership, each partner represents the firm with equal right. All partners can participate in management activities, decision making, and have the right to control the business. Similarly, profits, debts, and liabilities are equally shared and divided equally.

In other words, the general partnership definition can be stated as those partnerships where rights and responsibilities are shared equally in terms of management and decision making. Each partner should take full responsibility for the debts and liability incurred by the other partner. If one partner is sued, all the other partners are considered accountable. The creditor or court will hold the partner's personal assets. Therefore, most of the partners do not opt for this partnership.

(2) Limited Partnership:-

In this partnership, includes both the general and limited partners. The general partner has unlimited liability, manages the business, and the other limited partners. Limited partners have limited control over the business (limited to his investment) and are not associated with everyday operations of the firm.

In most of the cases, the limited partners only invest and take a profit share, and they do not have any interest in participating in management or decision making. This noninvolvement means they don't have the right to compensate the partnership losses from their income tax return.

(3) Limited Liability Partnership:-

In Limited Liability Partnership (LLP), all the partners have limited liability. Each partner is guarded against other partners legal and financial mistakes. A limited liability partnership is almost similar to a Limited Liability Company (LLC) but different from a limited partnership or a general partnership.

(4)Partnership at Will:-

Partnership at will can de be defined as when there is no clause mentioned about the expiration of a partnership firm. Under section 7 of the Indian Partnership Act 1932, the two conditions that have to be fulfilled by a firm to become a Partnership at Will are:

The partnership agreement should have not any fixed expiration date.

No particular determination of the partnership should be mentioned.

Therefore, if the duration and determination are mentioned in the agreement, then it is not a partnership at will. Also, initially if the firm had a fixed expiration date, but the operation of the firm continues beyond the mentioned date that it will be considered as a partnership at will.

Indian Partnership Act 1932 :

Most of the businesses in India adopt a partnership business, so to monitor and govern such partnership The Indian Partnership Act was established on the 1st October 1932. Under this partnership act, an agreement is made between two or more person who agrees to operate the business together and distribute the profits they gain from this business.

The five important elements of The Indian Partnership Act 1932 are:

(1) Agreement for Partners – It is an association of two or more individuals and a partnership arises from an agreement or a contract. The agreement (accord) becomes the basis of the association between the partners. Such an agreement is in the written form. An oral agreement is evenhandedly legitimate. In order to avoid controversies, it is always good, if the partners have a copy of the written agreement.

(2)Two or More Persons – In order to manifest a partnership, there should be at least 2 persons possessing a common goal. To put it in other words, the minimal number of partners in an enterprise can be 2. However, there is a constraint on their maximum number of people.

(3)Sharing of Profit – Another significant component of the partnership is, the accord between partners has to share gains and losses of a trading concern. However, the definition held in the Partnership Act elucidates –

partnership as an association between people who have consented to share the gains of a business, the sharing of loss is implicit. Hence, sharing of gains and losses is vital.

(4)Business Motive – It is important for a firm to carry some kind of business and should have a profit gaining motive.

(5)Mutual Business – The partners are the owners as well as the agent of their firm. Any act performed by one partner can affect other partners and the firm. It can be concluded that this point act as a test of partnership for all the partners.

Advantages of Partnership:
(1)Easy Formation – An agreement can be made oral or printed as an agreement to enter as a partner and establish a firm.

(2)Large Resources – Unlike sole proprietor where every contribution is made by one person, in partnership firm partners can contribute more capital and other resources as required.

(3)Flexibility – The partners can initiate any changes if they think it is required to meet the desired result or change circumstances.

(4)Sharing Risk – All loss incurred by the firm is equally distributed amongst each partner.

(5)Combination of different skills – The partnership firm has the advantage of knowledge, skill, experience, and talents of different partners.

Partnership Examples:
Few co-branding partnership examples are listed below:

Red Bull and GoPro
Spotify and Uber
Levi's & Pinterest
Maruti Suzuki
Hindustan Petroleum

Partnership Deed, clauses covering the following:

1. The name of the firm and the nature and location of the partnership business.

2. The commencement and duration of the partnership.

3. The amount of capital to be contributed by each partner.

4. The rate of interest to be allowed to each partner on his capital and on his loan to the firm, and that to be charged on his drawings.

5. The disposal of profits, particularly the ratio in which the profits are to be shared by the partners.

6. The amount to be allowed to each partner as drawings and the timing of such drawings.

7. Whether a partner will be allowed a salary.

8. Any variations in the usual rights and duties of partners.

9. The method by which goodwill is to be calculated on the retirement or death of a partner.

10. The procedure by which a partner may retire and the method of payment of his dues to him.

11. The basis of determination of the sums due to the executors of a deceased partner and the method of payment.

12. The treatment of losses arising out of the insolvency of a partner.

13. The procedure to be followed for settlement of disputes among partners.

14. Preparation of accounts and their audit.

The Deed has to be properly stamped.

Often there is no Partnership Deed or, even if there is one, it may be silent on a particular point. If on any point, the Partnership Deed contains a clause, it will hold good; otherwise the provisions of the Partnership Act relating to the question will apply.

Rights of Partners:

(a) Every partner has a right to take part in the conduct and management of business.

(b) Every partner has a right to be consulted and heard in all matters affecting the business of the partnership.

(c) Every partner has a right of free access to all records, books and accounts of the business, and also to examine and copy them.

(d) Every partner is entitled to share the profits equally.

(e) A partner who has contributed more than the agreed share of capital is entitled to interest at the rate of 6 per cent per annum. But no interest can be claimed on capital.

(f) A partner is entitled to be indemnified by the firm for all acts done by him in the course of the partnership business, for all payments made by him in respect of partnership debts or liabilities and for expenses and disbursements made in an emergency for protecting the firm from loss provided he acted as a person of ordinary prudence would have acted in similar circumstances for his own personal business.

(g) Every partner is, as a rule, joint owner of the partnership property. He is entitled to have the partnership property used exclusively for the purposes of the partnership.

(h) A partner has power to act in an emergency for protecting the firm from loss, but he must act reasonably.

(i) Every partner is entitled to prevent the introduction of a new partner into the firm without his consent.

(J) Every partner has a right to retire according to the Deed or with the consent of the other partners. If the partnership is at will, he can retire by giving notice to other partners.

(k) Every partner has a right to continue in the partnership.

(l) A retiring partner or the heirs of a deceased partner are entitled to have a share in the profits earned with the aid of the proportion of assets belonging to such outgoing partner or interest at six per cent per annum at the option of the outgoing partner (or his representative) until the accounts are finally settled.

Duties of Partners:

(a) Every partner is bound to diligently carry on the business of the firm to the greatest common advantage. Unless the agreement provides, there is no salary.

(b) Every partner must be just and faithful to the other partners.

(c) A partner is bound to keep and render true, proper, and correct accounts of the partnership and must permit other partners to inspect and copy such accounts.

(d) Every partner is bound to indemnify the firm for any loss caused by his willful neglect or fraud in the conduct of the business.

(e) A partner must not carry on competing business, nor use the property of the firm for his private purposes. In both cases, he must hand over to the firm any profit or gain made by him but he must himself suffer any loss that might have occurred.

(f) Every partner is bound to share the losses equally with the others.

(g) A partner is bound to act within the scope of his authority.

(h) No partner can assign or transfer his partnership interest to any other person so as to make him a partner in the business.

FORMATION OF PARTNERSHIP

For the formation of a partnership under The Indian Partnership Act,1932 the following are the basic necessities:

(1)There should be at least 2 persons to form a partnership.

(2) There must be an agreement between these two or more persons. This agreement can be oral or written or by conduct. The partnership can be oral was seen in the landmark case of " Niadar Mal Jagdish Parshad vs

Commissioner Of Income-Tax", where the partnership was formed by an oral agreement and the firm later applied for registration but the application was rejected.

(3)There are certain restrictions in keeping the firm name like the restriction of usage of words like an emperor, supreme, empress and other descriptive names, restriction on keeping names of existing firms or names similar to existing firms, keeping fraudulent names etc.
(4)Also known as the cardinal principle of partnership law each partner must act as a principal and an agent to the partnership firm. This was seen in Holme v Hammond case,(1872).

(5)The agreement must be there for carrying out a legal business or profession.

(6)The parties must be competent to enter into a partnership that is they should be a major person, a person of sound mind and should not be barred by law to entered in such form of agreement. But as per section 30 of Indian Partnership Act,1932 a minor can be admitted as a partner to enjoy the benefits of partnership but will not be liable for the losses incurred.

(7) The agreement must be there to share all the profits and losses of the business in a particular predefined ratio. If no ratio is decided it is assumed that the profit and losses will be shared equally by all the partners.

(8)For formation of a partnership, all the partners should be jointly and severally liable for all the losses that take place.

(9)The partnership starts not when an agreement is made but after the business starts.

(10) All the elements of a valid contract under the Indian Contract Act,1872 must be present in a contract of partnership. Eg free consent, lawful consideration etc.

ROLE OF PARTNER IN THE FORMATION OF PARTNERSHIP

(1) A partner must perform several duties to ensure the formation of a partnership without any constraint.

(2) As per section 11(2) of The Indian Partnership Act,1932 a partner shall not carry on any business other than that of the firm while he is a partner.

(3) Every partner has a right to take part in the conduct of the business.

(4) Every partner must perform his duties diligently and should not conduct fraudulent activities.

(5) Every person has the right to express his opinions in decision making and in case of dispute the decision of the majority of partners will be considered.

PARTNERSHIP DEED :

A partnership deed is a written document which outlines the rights and duties of the partners at the time of partnership. It is a document which is created to avoid unnecessary disputes, unpleasantness, and harassment among the partners regarding any issue. The formation of a partnership deed is not mandatory and is prepared only for the smooth functioning of the firm. The unregistered partnership deed cannot be enforced as a valid agreement in view of section 9 of the Partnership act, but it can act as evidence at the time of the dissolution of the firm. A partnership deed usually contains the following:

(1) Name of the firm.
(2) Address of the firm.
(3) Address of any other office of the firm.
(4) Names, addresses, and occupations of the partners.
(5) The object of the firm that is the nature of the business and the date of commencement.
(6) The capital invested by each partner.
(7) The proportion of sharing profit and loss of the firm.
(8) Arbitration clause.
(9) Duration of the partnership.
(10) Period of the accounting year.
(11) The appointment of the auditor and his remuneration.
(12) The name of the active partners and the dormant partners.
(13) Remuneration to the active partners.
Interest on capital if any.
(14) Interest on advances made by the partners if any.
(15) Periodical drawing by the partners for their expenses.
(16) Nomination of representative to be a partner on the death of a partner.
(17) Bank accounts and the persons capacity to operate them.
(18) Powers, rights, duties, and liabilities of the partners in the management and the affairs of the firm.
(19) Meeting of partners.
(20) Signature of all the partners with date and the signature and addresses of witnesses attesting the signatures of partners.

REGISTRATION OF PARTNERSHIP :

It is not compulsory under Indian Law to get a partnership firm registered but a registered firm enjoys various benefits over a non registered partnership firm.

In a registered partnership partner have a right to file a case against the firm or co-partners or any other 3rd party and can claim against any 3rd party in the court for the repayment or damages. A number of steps are to be followed to get a firm registered and avail the benefits of a registered firm.

Dissolution of partnership :

When the partnership between all the partners of a firm is dissolved, then it is called dissolution of a firm. It is important to note that the relationship between all partners should be dissolved for the firm to be dissolved.

Modes of Dissolution of a Firm:

A firm can be dissolved either voluntarily or by an order from the Court.

Voluntary Dissolution of a Firm (without the order of the Court)

Voluntary dissolution can be of four types.

1] By Agreement (Section 40)

According to Section 40 of the Indian Partnership Act, 1932, partners can dissolve the partnership by agreement and with the consent of all partners. Partners can also dissolve the partnership based on a contract that has already been made.

2] Compulsory Dissolution (Section 41)

An event can make it unlawful for the firm to carry on its business. In such cases, it is compulsory for the firm to dissolve. However, if a firm carries on more than one undertakings and one of them becomes illegal, then it is not compulsory for the firm to dissolve. It can continue carrying out the legal undertakings. Section 41 of the Indian Partnership Act, 1932, specifies this type of voluntary dissolution.

3] On the happening of certain contingencies (Section 42)

According to Section 42 of the Indian Partnership Act, 1932, the happening of any of the following contingencies can lead to the dissolution of the firm:

Some firms are constituted for a fixed term. Such firms will dissolve on the expiry of that term.
Some firms are constituted to carry out one or more undertaking. Such firms are dissolved when the undertaking is completed.
Death of a partner.
Insolvent partner.

4] By notice of partnership at will (Section 43)
According to Section 43 of the Indian Partnership Act, 1932, if the partnership is at will, then any partner can give notice in writing to all other partners informing them about his intention to dissolve the firm.

In such cases, the firm is dissolved on the date mentioned in the notice. If no date is mentioned, then the date of dissolution of the firm is the date of communication of the notice.

Dissolution of a Firm by the Court:
According to Section 44 of the Indian Partnership Act, 1932, the Court may dissolve a firm on the suit of a partner on any of the following grounds:
(1) Insanity/Unsound mind : If an active partner becomes insane or of an unsound mind, and other partners or the next friend files a suit in the court, then the court may dissolve the firm.
Two things to remember here:

- The partner is not a sleeping partner
- The sickness is not temporary

2] Permanent Incapacity:If a partner becomes permanently incapable of performing his duties as a partner, and other partners file a suit in the court, then the court may dissolve the firm. Also, the incapacity may arise from a physical disability, illness, etc.

3] Misconduct:When a partner is guilty of conduct which is likely to affect prejudicially the carrying on of the business, and the other partners file a suit in the court, then the court may dissolve the firm.
Further, it is not important that the misconduct is related to the conduct of the business. The court looks at the effect of the misconduct on the business along with the nature of the business.

4] Persistent Breach of the Agreement:A partner may willfully or persistently commit a breach of the agreement relating to the management of the affairs of the firm, or a reasonable conduct of its business, or

conduct himself in matters relating to business that is not reasonably practicable for other partners to carry on the business in partnership with him.
In such cases, the other partners may file a suit against him in the court and the court may order to dissolve the firm.
The following acts fall in the category of breach of agreement:

- Embezzlement
- Keeping erroneous accounts
- Holding more cash than allowed
- Refusal to show accounts despite repeated requests, etc.

5] Transfer of Interest :A partner may transfer all his interest in the firm to a third party or allow the court to charge or sell his share in the recovery of arrears of land revenue. Now, if the other partners file a suit against him in the court, then the court may dissolve the firm.

6] Continuous/Perpetual losses:If a firm is running under losses and the court believes that the business of the firm cannot be carried on without a loss in the future too, then it may dissolve the firm.

7] Just and equitable grounds:The court may find other just and equitable grounds for the dissolution of the firm. Some such grounds are:

- Deadlock in management
- Partners not being in talking terms with each other
- Loss of substratum (the foundation of the business)
- Gambling by a partner on the stock exchange.

Limited Liability Partnership (LLP)

Meaning and Concept of LLP :

LLP stands for Limited Liability Partnership. It is an alternative corporate business form which offers the benefits of limited liability to the partners at low compliance costs. It also allows the partners to organize their internal structure like a traditional partnership. A limited liability partnership is a legal entity, liable for the full extent of its assets. The liability of the partners, however, is limited. Hence, LLP is a hybrid between a company and a partnership. But it should not be confused with limited liability company.

Salient Features of LLP:

(1) LLP is a body corporate:- According to Section 3 of the Limited Liability Partnership Act (LLP Act), 2008, an LLP is a body corporate formed and incorporated under the Act. It is a legal entity separate from its partners.

(2) Perpetual Succession:- Unlike a general partnership firm, a limited liability partnership can continue its existence even after the retirement, insanity, insolvency or even death of one or more partners. Further, it can enter into contracts and hold property in its name.

(3) Separate Legal Entity:-Just like a corporation or a company, it is a separate legal entity. Further, it is completely liable for its assets. Also, the liability of the partners is limited to their contribution in the LLP. Hence, the creditors of the limited liability partnership are not the creditors of individual partners.

(4) Mutual Agency:-Another difference between an LLP and a partnership firm is that independent or unauthorized actions of one partner do not make the other partners liable. All partners are agents of the LLP and the actions of one partner do not bind the others.

(5) LLP Agreement:-The rights and duties of all partners are governed by an agreement between them. Also, the partners can devise the agreement as per their choice. If such an agreement is not made, then the Act governs the mutual rights and duties of all partners.

(6) Artificial Legal Person:-For all legal purposes, an LLP is an artificial legal person. It is created by a legal process and has all the rights of an individual. It is invisible, intangible and immortal but not fictitious since it exists.

(7) Common Seal:- If the partners decide, the LLP can have a common seal [Section 14(c)]. It is not mandatory though. However, if it decides to have a seal, then it is necessary that the seal remains under the custody of a responsible official. Further, the common seal can be affixed only in the presence of at least two designated partners of the Limited Liability Partnership.

(8) Limited Liability:-According to Section 26 of the Act, every partner is an agent of the LLP for the purpose of the business of the entity. However, he is not an agent of other partners. Further, the liability of each partner is limited to his agreed contribution in the Limited Liability Partnership. It provides liability protection to its partners.

(9) Minimum and Maximum Number of Partners in an LLP :Every Limited Liability Partnership must have at least two partners and at least two individuals as designated partners. At any time, at least one designated partner should be resident in India. There is no maximum limit on the number of maximum partners in the entity.

(10) Business Management and Business Structure:-The partners of the Limited Liability Partnership can manage its business. However, only the designated partners are responsible for legal compliances.

(11) Business for Profit Only:-Limited Liability Partnerships cannot be formed for charitable or non-profit purposes. It is essential that the entity is formed to carry on a lawful business with a view to earning a profit.

(12)Investigation:-The power to investigate the affairs of a Limited Liability Partnership resides with the Central Government. Further, they can appoint a competent authority for the same.

(13) Compromise or Arrangement:-Any compromise or arrangement like a merger or amalgamation needs to be in accordance with the Act.

(14) Conversion into LLP:-A private company, firm or an unlisted public company can convert into an LLP in accordance with the provisions of the Act.

(15) E-Filing of Documents:-If the entity is required to file any form/application/document, then it needs to be filed in an electronic form on the website of mca. Further, a partner or designated partner has to authenticate the same using an electronic or digital signature.