



**SYLLABUS**

**Class – B.Com I Years**

**Subject – Business Regulatory Framework**

UNIT – I	Historical background of Business laws in India, Indian Contract Act 1872-GENERAL LAWAS
UNIT – II	Contact relating to Indemnity and Guarantee
UNIT – III	Negotiable instrument Act 1881-General Introduction Negotiable instrument (amendment) Act 2002
UNIT – IV	General introduction of Consumer Protection Act 1986 and 2018, FEMA
UNIT – V	Indian Partnership Act 1932-General introduction Limited Liability Partnership Act 2008



## 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:

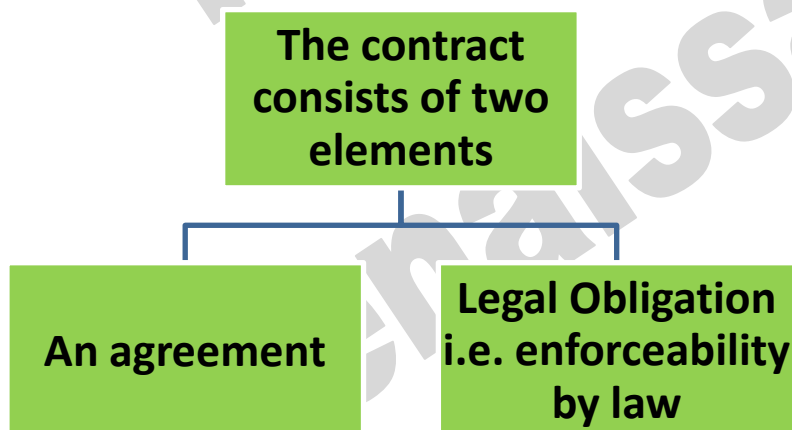
An Agreement consists of an offer by one party and its acceptance by other. In other words, an agreement comes into existence only when one party makes a proposal to the other party and that other party gives acceptance.

**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:**

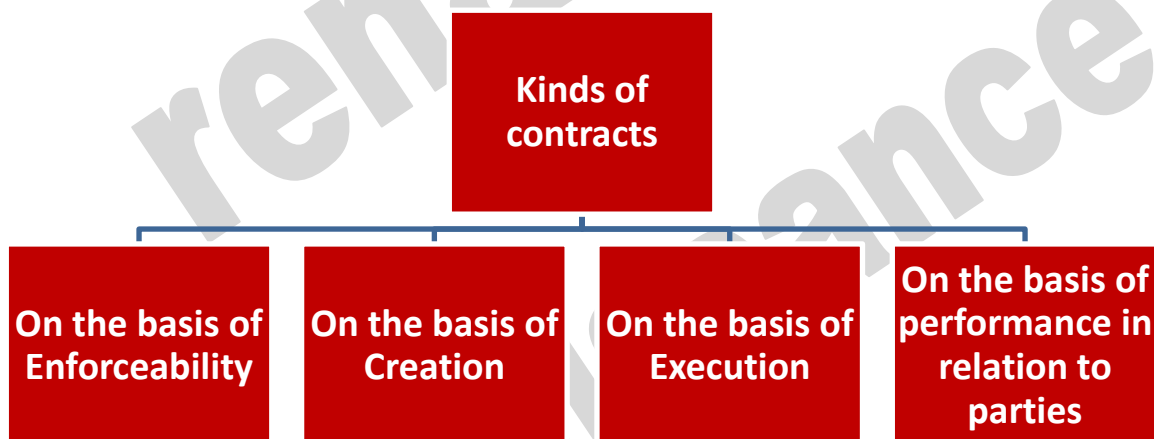


1. **Offer and Acceptance:** There must be a "lawful offer" and a "lawful acceptance" of the offer, thus resulting in an agreement.
2. **Intention to create legal relation:** There must be an intention among the parties that the agreement should be attached by legal consequences and create legal obligations. 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'

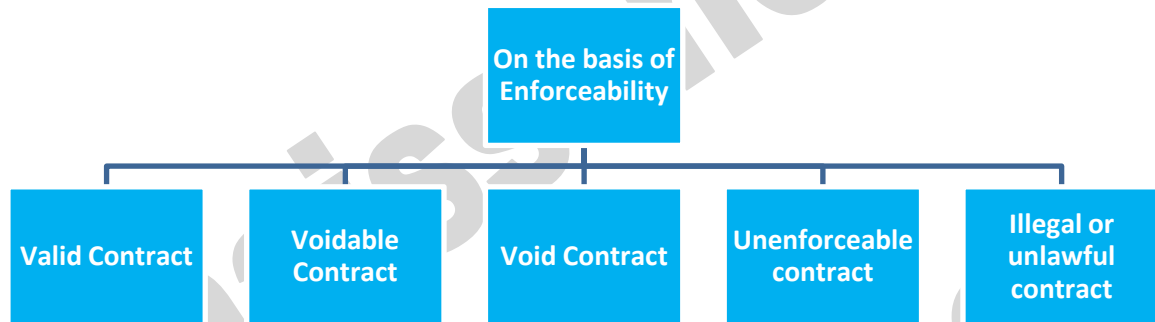


4. **Capacity of parties:** The parties to an agreement must be competent to contract, otherwise it cannot be enforced by a court. To be competent, the parties must be of majority age and of sound mind and must not be disqualified from contracting by any law to which they are subject.
5. **Free Consent:** “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 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:-

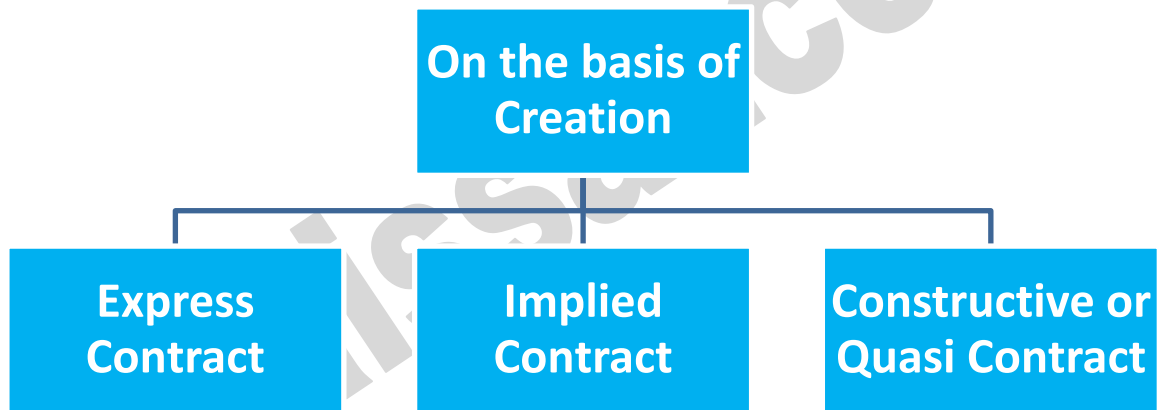


#### A. On the basis of Enforceability



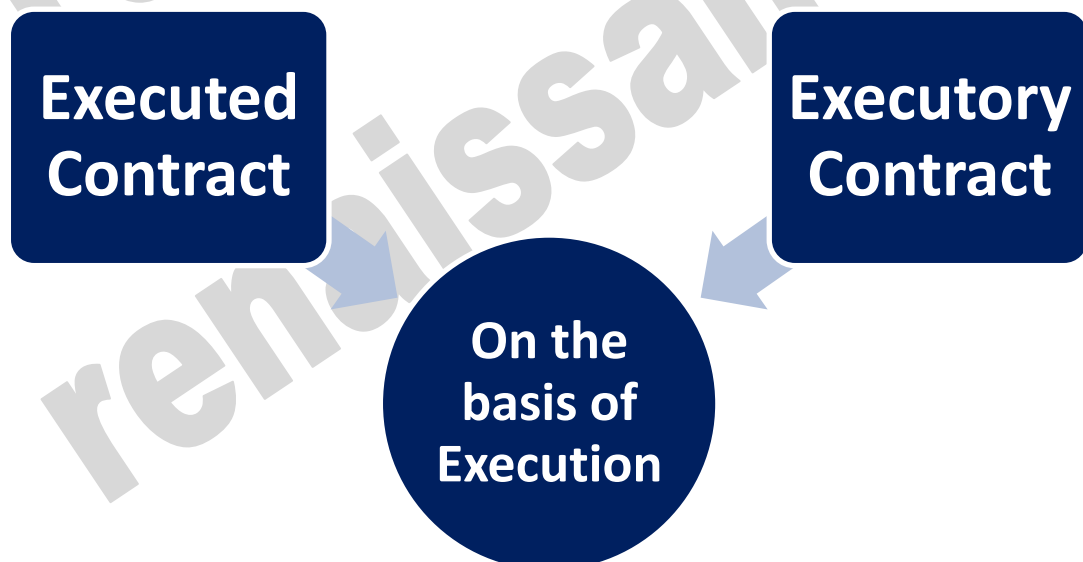
1. **Valid Contract:** A valid contract is an agreement enforceable by law. An agreement becomes enforceable by law when all the essential elements of a valid contract (as per section 10 of the act) are present.
2. **Voidable Contract:** "An agreement which is enforceable by law at the option of one 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.

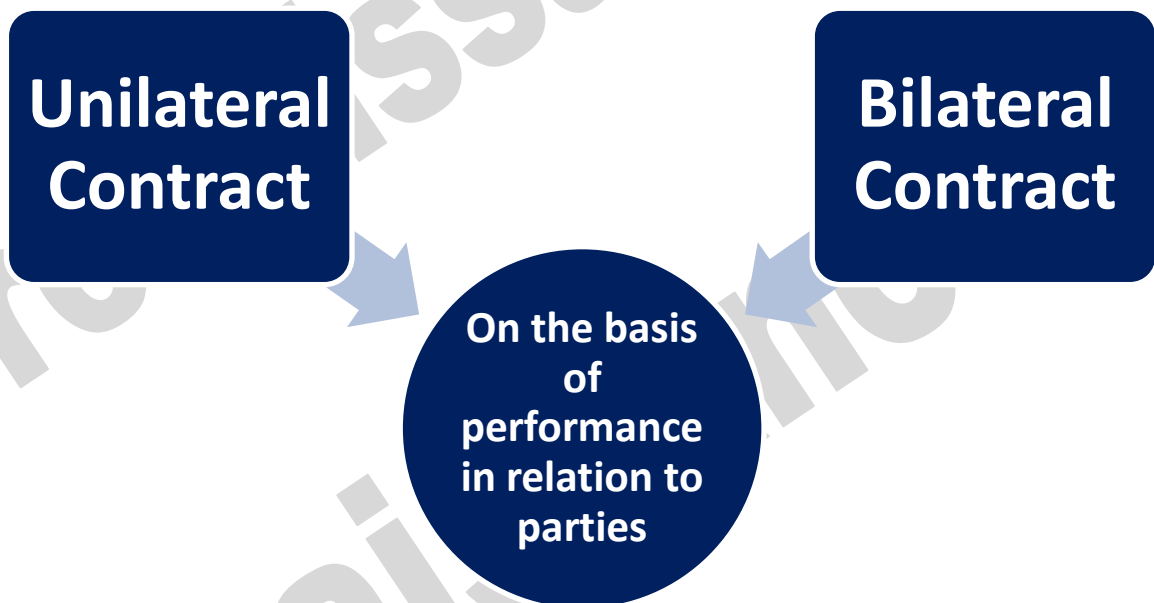
C. On the basis of Execution





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.

#### Capacities of Parties

##### **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.*

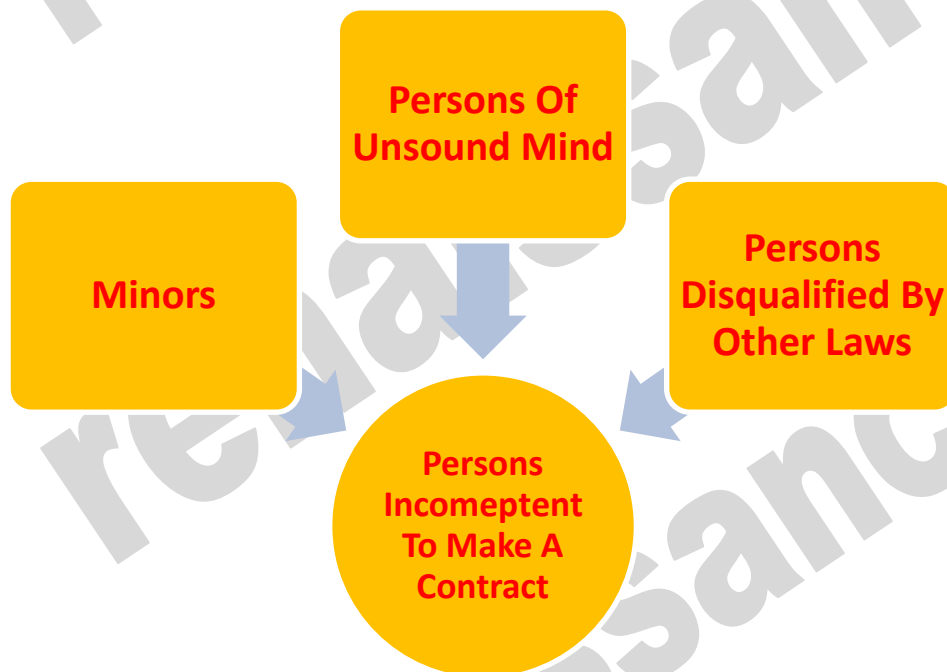


### ***Who are Competent to Contract?***

***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 :

- (i) Where a Court has appointed guardian of a minor's person or property or both (under the Guardians and Wards Act, 1890); or
- (ii) 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 necessities of life:** - A minor is incompetent to contract. A minor, therefore, is not personally liable for the payment of price of necessities 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 defence 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 promisee 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

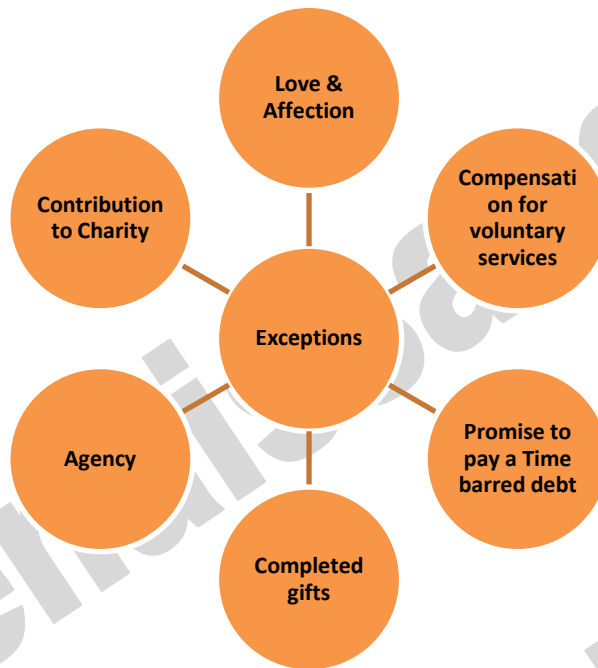


- **It must move at the desire of the promisor:** Consideration must have been done at the desire or request of the promisor & not at the desire of a third party or without the desire of the promisor.
- **It may move from the promisee or any other person:** An act constituting consideration may be done by the promisee 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 moved 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

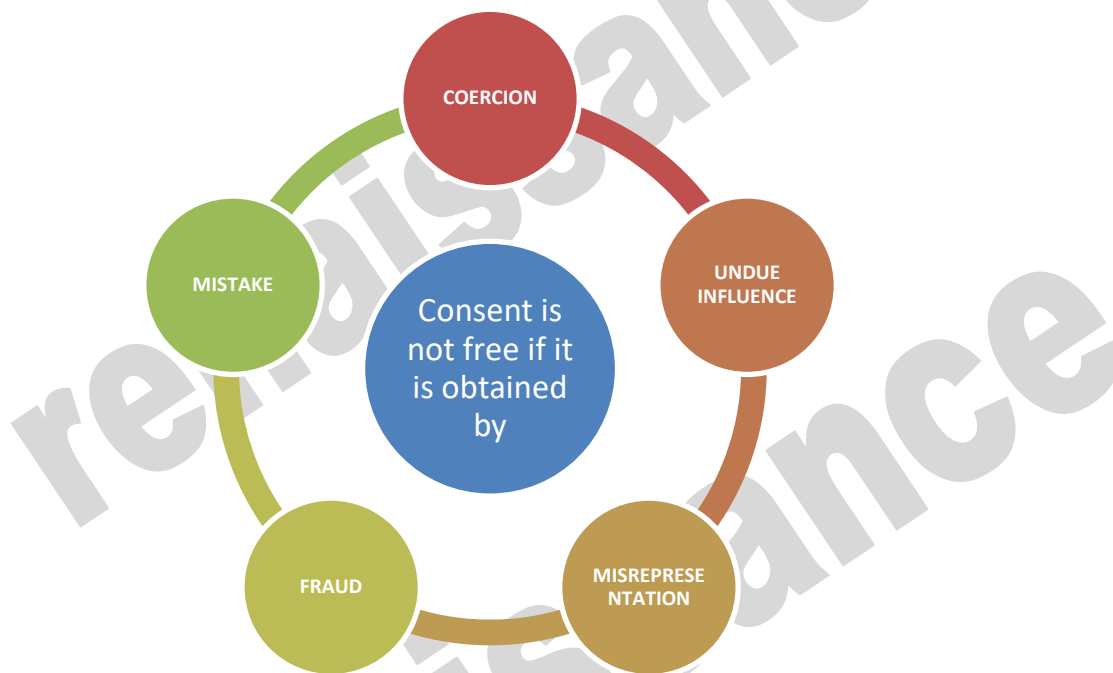
## MEANING OF CONSENT

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 intentional 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 to 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**

Acc. 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 matter :
    - (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
<b>1. Definition</b>	Every promise and every set of promises forming consideration for each other is an agreement	An agreement enforceable by law is a contract.
<b>2. Creation</b>	An agreement is created by acceptance of an offer.	Agreement and its enforceability together create a contract.
<b>3. legal rights and obligations</b>	An agreement may not create legal rights and obligations of the parties	A contract creates legal rights and obligation between the parties.
<b>4. Necessity</b>	No contract is required to make an agreement.	Valid agreement is necessary for making a contract.
<b>5. Legally binding</b>	An agreement is not a concluding or legally binding contract.	A contract is a concluding or legally binding on the parties.
<b>6. Concept</b>	Agreement is a wider concept and includes contracts.	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
<b>1. Definition</b>	An agreement not enforceable by law is said to be void. [Sec. 2(g)]	A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable [Sec. 2(j)]
<b>2. Time when becomes void</b>	It is void from very beginning.	It becomes void subsequently due to change in law or change in circumstances.
<b>3. Restitution</b>	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.
<b>4. Description in the Act</b>	Such agreement have been mentioned as void in the Act.	There is no mention of cases of void contracts in the Act. They are created by



	Agreements without consideration, agreements with lawful object or consideration and some other agreements have expressly been declared to be void.	circumstances and law Courts decide whether they have become void or not.
--	---	---

**DISTINCTION BETWEEN VOID AGREEMENT AND VOIDABLE CONTRACT**

Basis of distinction	Void Agreement	Voidable Contract
<b>1. Definition</b>	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.
<b>2. Period of validity</b>	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.
<b>3. Legal existence</b>	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.
<b>4. Change in status</b>	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.
<b>5. Causes</b>	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.
<b>6. Transfer of title</b>	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.
<b>7. Restitution</b>	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.
<b>8. Damages</b>	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-fulfilment of the promise.

**DISTINCTION BETWEEN VOID AND VOIDABLE CONTRACT**

Basis of distinction	Void Contract	Voidable Contract
<b>1. Definition</b>	A contract which ceases to be enforceable by law become 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.
<b>2. Period of validity</b>	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.
<b>3. Will of the</b>	Its validity is not affected by the	Its validity is affected by the will of the aggrieved





<b>party</b>	will of any party. It is decided by the Law Court.	party. Aggrieved party has option to treat it either binding or repudiate it.
<b>4. Causes</b>	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 Secs. 39, 53 and 55.

### **DISTINCTION BETWEEN VOID AND ILLEGAL AGREEMENT**

<b>Basis of distinction</b>	<b>Void Agreement</b>	<b>Illegal Agreement</b>
<b>1. Definition</b>	An agreement not enforceable by law is void.	An agreement which is expressly or impliedly prohibited by law, is illegal.
<b>2. Effect on collateral agreement</b>	The agreement collateral to the void agreement is not necessarily void.	The agreement collateral to an illegal agreement is always void.
<b>3. Scope</b>	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.
<b>4. Restitution</b>	The Court may grant restitution of money advanced if is minor or if the parties were unaware of the impossibility of performance of the agreement.	Restitution of money is not granted in case of an illegal agreement.

### **DIFFERENCE BETWEEN COERCION AND UNDUE INFLUENCE**

<b>Basis of distinction</b>	<b>Coercion</b>	<b>Undue influence</b>
<b>1. Definition</b>	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.
<b>2. Relations</b>	In case of coercion, relation between the parties 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.
<b>3. Intention</b>	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.
<b>4. Nature of force</b>	It involves physical force.	It involves moral force.
<b>5. Kind of act</b>	It involves criminal act.	It does not involve criminal act.
<b>6. Direction</b>	The coercion may be directed against any person including a stranger.	Under influence is used against the weaker party only.
<b>7. Who exercise</b>	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.
<b>8. Remedies</b>	A contract caused by coercion, may be	In case of undue influence, the aggrieved party



**renaissance**

college of commerce & management

**B.Com I Year**

**Subject: Business Regulatory Framework**

	avoided by the aggrieved party's contract. [Sec. 19]	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 intentional misrepresentation or concealment of material fact to induce the other party to enter into a contract.	An innocent or unintentional misrepresentation of material facts by one party to induce 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 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. Defence	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 had means of discovering the truth.

## DISTINCTION BETWEEN CONTINGENT CONTRACT AND WAGERING AGREEMENT

Basis of distinction	Contingent contract	Wagering agreement
1. Meaning	A contingent contract is a 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 a certain amount of money to the other on the 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 the promise or consideration of the contract.	Event is the sole determining factor.
3. Reciprocal promise	There is no reciprocal promise in a contingent contract.	The wagering agreement consists of reciprocal promises.
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 a 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 a valid contract.	A wagering agreement is a 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.



## **Business Laws**

Many business laws in India precede the nation's independence in 1947. For example, the Indian Contract Act of 1872 is still in force, albeit specific contracts, for example, partnerships and the sale of merchandise are presently covered by newer laws. The Partnership Act of 1932 covering partnership firms in India. Business laws regulating chartered accountants and cost accountants were passed in 1949 and 1959, respectively. The Banking Regulation Act of 1949 continues to control private banking companies and manage banks in India. In 2012, it was modified by the Banking Law (Amendments) Act. Under these amendments, the Reserve Bank of India (RBI) was given the power to restrict voting rights and shares obtaining in a bank. The RBI established the Depositor Education and Awareness Fund. Banks are presently able to issue both equity and preference shares under RBI guidelines.

While India is often criticized for complex regulations, it is essential to keep in mind that that in some cases, these laws are simpler than those of the U.S. Furthermore, most regulations are consistent the nation over, and attorneys in India can practice in any state. Filing lawsuits is seldom productive in most commercial disputes since legal disputes can delay for quite a long time and collection can take even longer. For large deals, binding third-nation discretion can be the best method to resolve disputes.

After India's economic development in the 21st century, the Ministry of Corporate Affairs endorsed the Competition Act of 2002 and the Limited Liability Act in 2008. These promote sustainable competition in markets, preclude against competitive business practices, and protect consumer interests while ensuring free trade.

The Parliament of India passes and amends regulations for the two businesses and investors. Notwithstanding arrangements from the Companies Act of 1956, the Companies Act of 2013 features arrangements regarding mergers and acquisitions, board room decision-making, related gathering transactions, corporate social responsibility, and shareholding. The act was additionally modified through the Companies Act of 2015 which abolished the procedural regular seal, declarations for the commencement of businesses, and minimum settled up capital requirements. The amendment likewise relaxed governing-related gathering transactions while limiting access to strategic corporate resolutions in India.

As a member of the International Labor Organization, India offers security for employees. These include the Payment of Wages Act of 1936, the Industrial Employment Act of 1946, the Industrial Disputes Act of 1947, the Payment of Bonus Act of 1965, and the 1972 Payment of Gratuity Act. Protections include yearly bonuses of 8.33% and separation fees of around 15 days per year of employment. Other labor laws, for example, the Building and Other Construction Workers Acts of 1996 and the Workmen's Compensation Act of 1923 (amended in 2000) are in effect. Passed in 1926, the Trade Unions Act deals with the registration, rights, liabilities, and responsibilities of trade associations. The Industrial Disputes Act of 1946 regulates trade associations and matters between industrial employers and employees.

**Business laws** in India include consumer protection. The Consumer Protection Act, 1986 mandates Consumer Dispute Redressal Forums at neighborhood and public levels. Older laws, for example, the Standards of Weights and Measures Act of 1956, ensure reasonable competition in the market and free progression of the correct information from providers of merchandise and enterprises to consumers.

Due to the development of trade, the Indian government passed the Foreign Trade (Development and Regulation) Act of 1992 to facilitate imports and augment exports. The serving Exports from India Scheme (SEIS) substituted the Served from India Scheme. The SEIS extends the responsibility-free prescription to Indian service providers and provides notified services in a specified mode outside the nation. Under the Export Promotion Capital Goods Scheme, the export commitment requires six times the obligation saved on imported capital products; in the case of



neighbourhood sourcing of capital merchandise, the export commitment is reduced by 25%. Beyond merchandise and enterprises, the Foreign Exchange Management Act of 1999 regulates foreign exchange transactions including investments abroad.

As a founding member of the World Trade Organization in 1995, India has updated business laws in terms of copyrights, patents, and trademarks to meet the Agreement on Trade-Related Aspects of Intellectual Property Rights. Indian companies and the federal government honour worldwide IP rights. However, because music copyrights are different in India, both Indian and Western IP owners in the entertainment industry have suffered due to computerized theft. Even thus, there are few IP-related disputes outside of several celebrated pharmaceutical industry cases. In 2013, India's Supreme Court refused Novartis an extension to update its cancer drug Glivec due to "evergreening" charges.

E-commerce and online growth of companies prompt India to create regulations to cover cyber law and security agreements, for example, the techno legal regulating provisions in the Companies Act of 2013. The Information Technology Act of 2000 is the essential law for e-commerce regulation in India. In 2008, the IT Act was an amendment to provide clear legal recognition of digital transactions.

## DISCHARGE OF CONTRACT

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

A contract may be discharged by any of the following ways

By performance – Actual or Attempted	By mutual consent or agreement.	By subsequent or supervening impossibility or illegality.	By lapse of time	By operation of law	By breach of contract
--------------------------------------	---------------------------------	---	------------------	---------------------	-----------------------



## 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 promisee 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 fulfils 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 promisee 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 promisee 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 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 14<sup>th</sup> Nov. 2006. But before the date of performance i.e. 14<sup>th</sup> 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 is 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 contracts, 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 insolvent 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, For example an ordinary debt can be merged. In to rights, of ownership in such case the inferior right need not to be enforced because this right have merge in to a superior right of mortgage or ownership.

**(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.

## **UNIT-II**

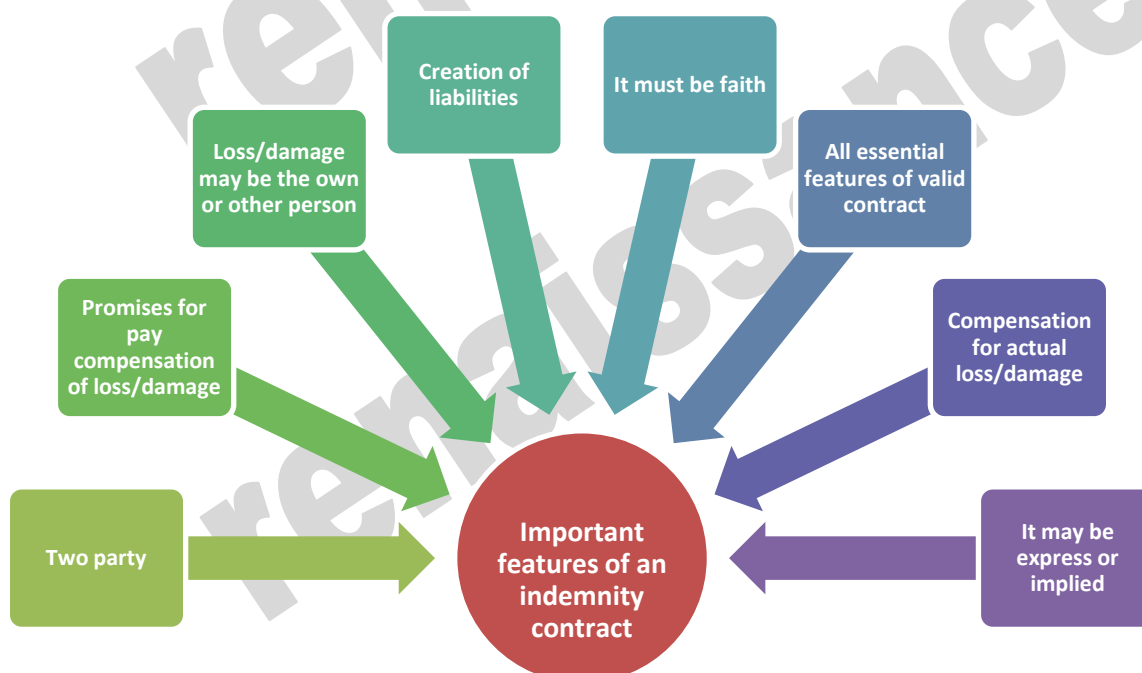
### **INDEMNITY AND GUARANTEE CONTROL**

The contract of indemnity and guarantee are special kinds of contracts. These contract 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'.

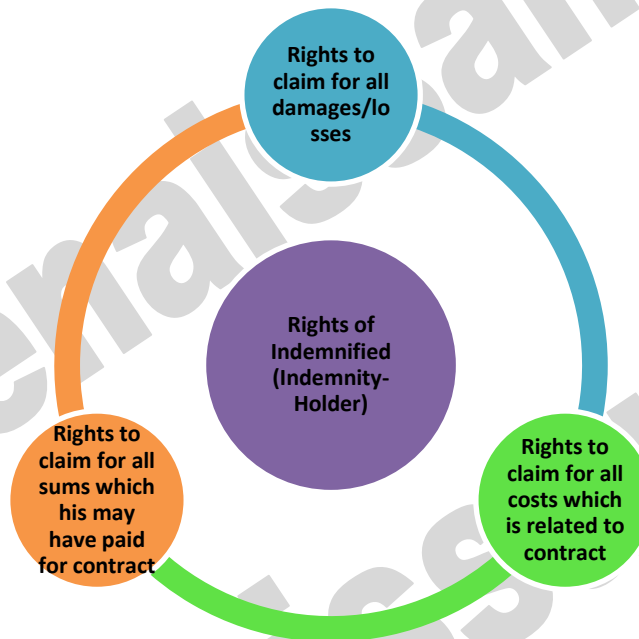




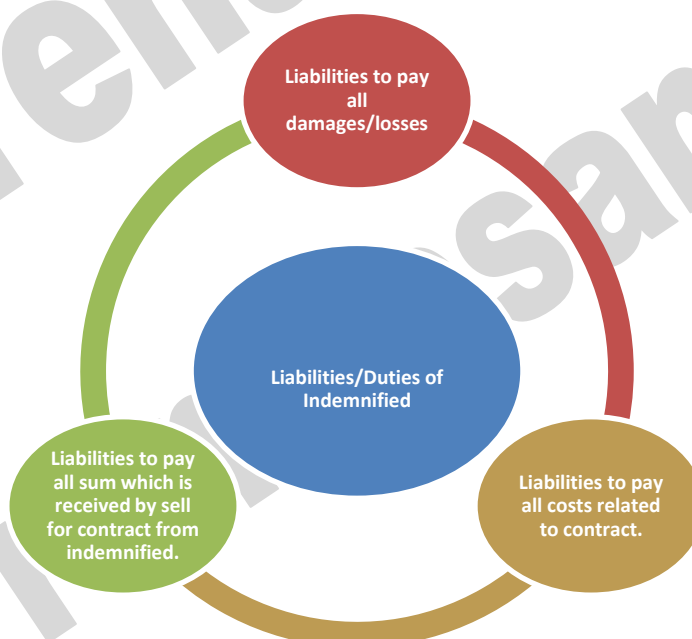


Loss/damage may be caused by some event, or accident, or some natural phenomenon or disaster.

### Rights of Indemnified (Indemnity-Holder) –



### Liabilities/Duties of Indemnified –





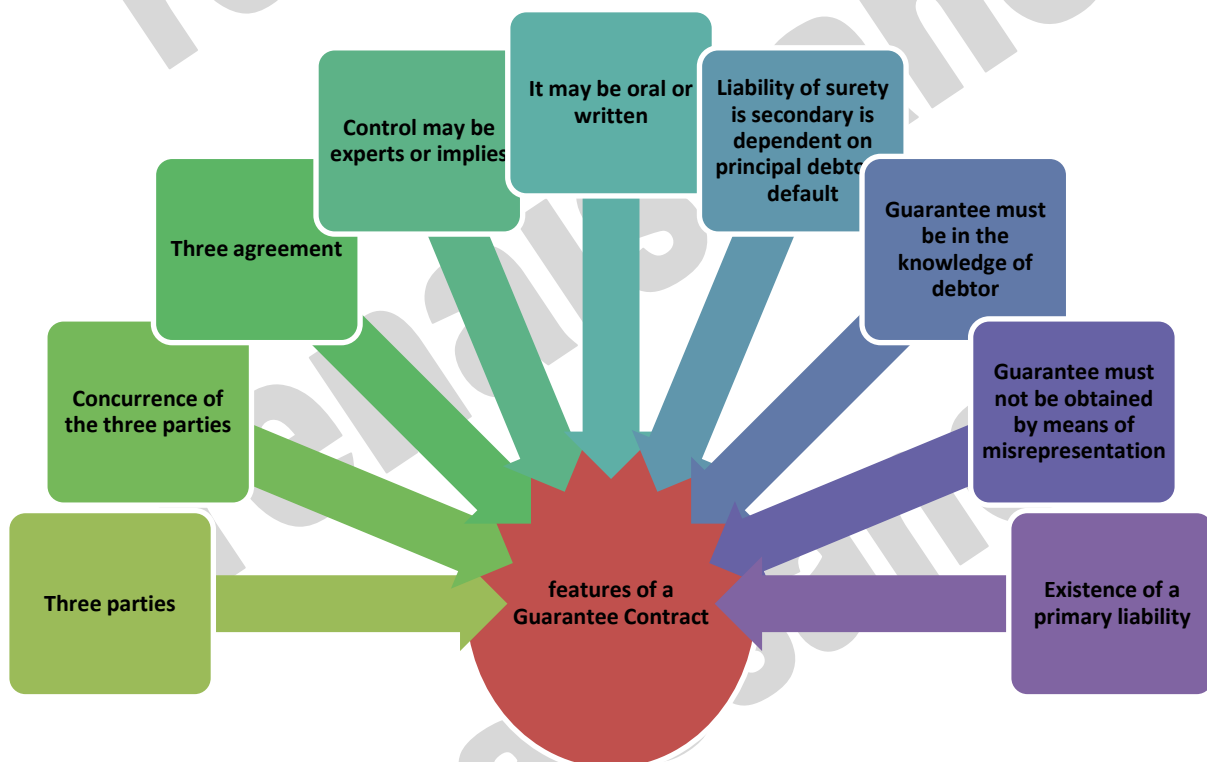
## Guarantee Contract

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 contract between debtors, creditors and surety.
4.	Nature of Liability	The liability of the indemnifier is primary and independent.	The liability of the surety is secondary and dependent.
5.	Arising of Liability	Indemnifier's liability arises only on the happening of a contingency.	Arises only after the default of debtor in payment.
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 surety 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 -

Specific or Simple Guarantee

Continuing guarantee

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 transaction 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 surety 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-

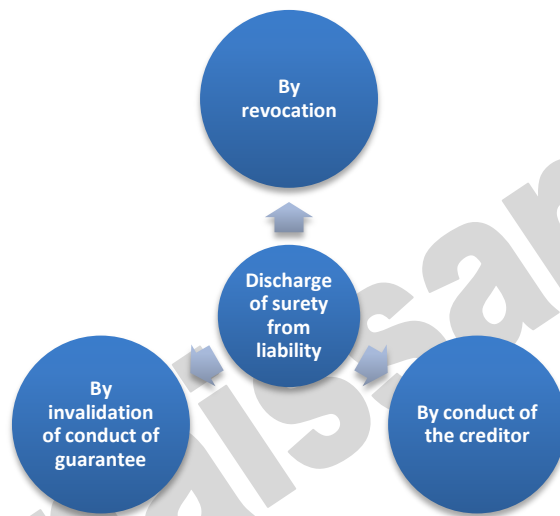
**A Guarantee may be revoked in any of the following ways-**

1. *By notice of revocation.*
2. *By death of surety.*
3. *By discharge of surety 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 surety 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 surety 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 surety 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**

**Right against  
the Principal  
debtor**

**Right against  
the Creditor**

**Right against  
the Co-Sureties**

**I.Right against the Principal debtor**

1. Right of subrogation



**renaissance**

college of commerce & management

**B.Com I Year**

**Subject: Business Regulatory Framework**

---

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.



### UNIT-III

## Negotiable Instruments 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 indorsement 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*

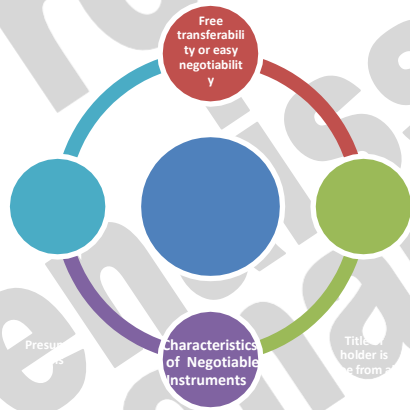
- 1. It is transferable, like cash, by delivery (which assumes it is in a deliverable state) so that the transferee can enforce the rights embodied in it in his own name.*
- 2. The transferee being a bonafide holder for value can acquire a better title to it than that of his transferor."*

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.



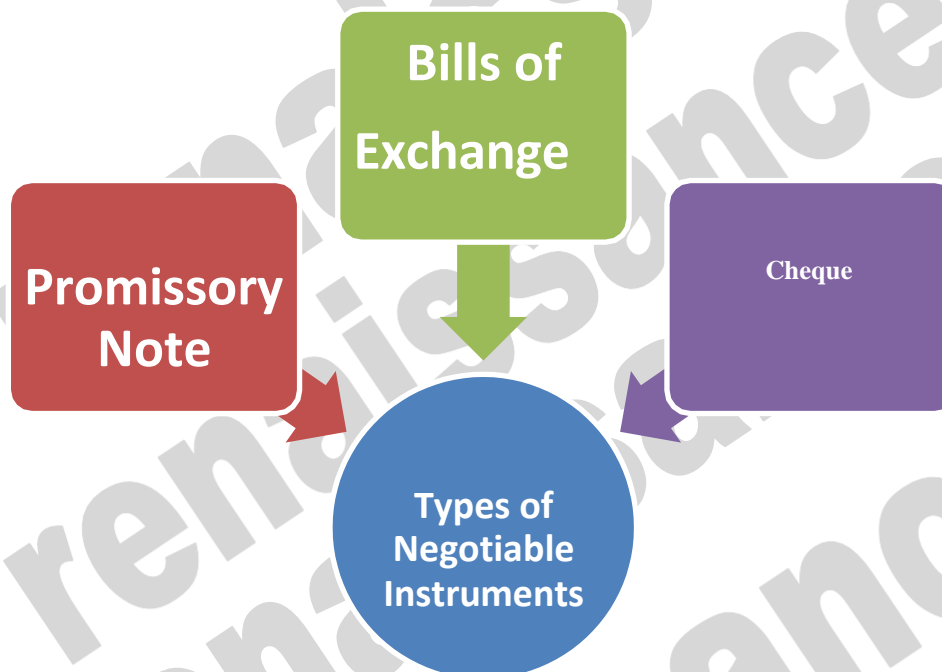
## Section 139 - Presumption in favour of holder:

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.

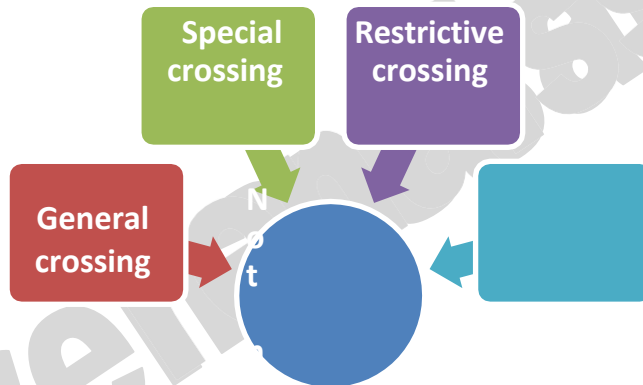
Crossing of Cheque is a direction to the drawee bank to pay the amount of the Cheque to a bank or to a particular bank. Therefore, a crossed Cheque is not payable to the payee or holder at the counter of the bank. In order to get the payment of the Cheque, it is required to be deposited in an account 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:-**







**renaissance**

college of commerce & management

**B.Com I Year**

**Subject: Business Regulatory Framework**

---

renaissance  
renaissance  
renaissance



## 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. Indorsee
- 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 indorsee 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**

<b>Basis of Distinction</b>	<b>Holder</b>	<b>Holder in Due Course</b>
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 after the maturity of the instrument.	A holder in due course must obtain the 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 following ways-



**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 thereof.

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



**renaissance**

college of commerce & management

**B.Com I Year**

**Subject: Business Regulatory Framework**

**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 by 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 or 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





**renaissance**

college of commerce & management

**B.Com I Year**

**Subject: Business Regulatory Framework**

**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.

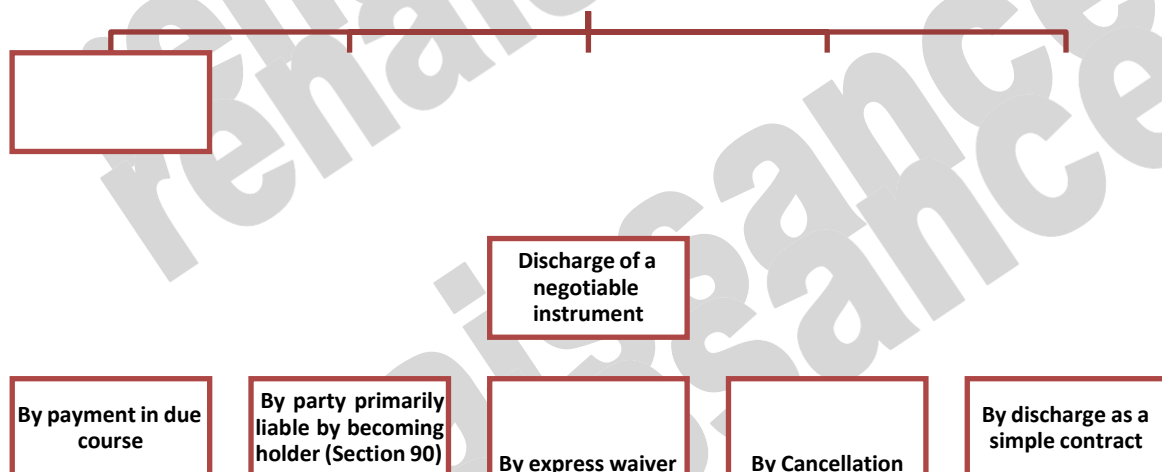
**Effects of Endorsement:**



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.



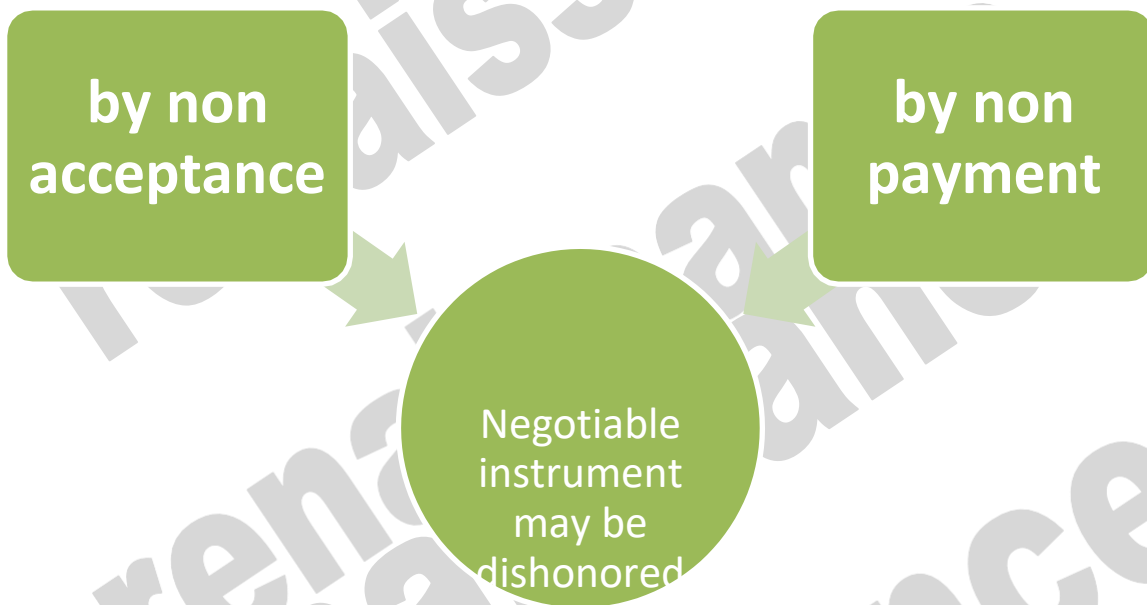
- 2) **By party primarily liable by becoming holder (Section 90)** : If the maker of a note or the acceptor of a bill becomes its holder at or after its maturity in his own right, The Negotiable Instruments Act, 1881 4.5 instrument is discharged.
- 3) **By express waiver**: When the holder of a negotiable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





**renaissance**

college of commerce & management

**B.Com I Year**

**Subject: Business Regulatory Framework**

- 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 having 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.



**renaissance**

college of commerce & management

**B.Com I Year**

**Subject: Business Regulatory Framework**

---

characterizes the fact that it is negotiable.

renaissance  
renaissance  
renaissance





## UNIT-IV

### Introduction

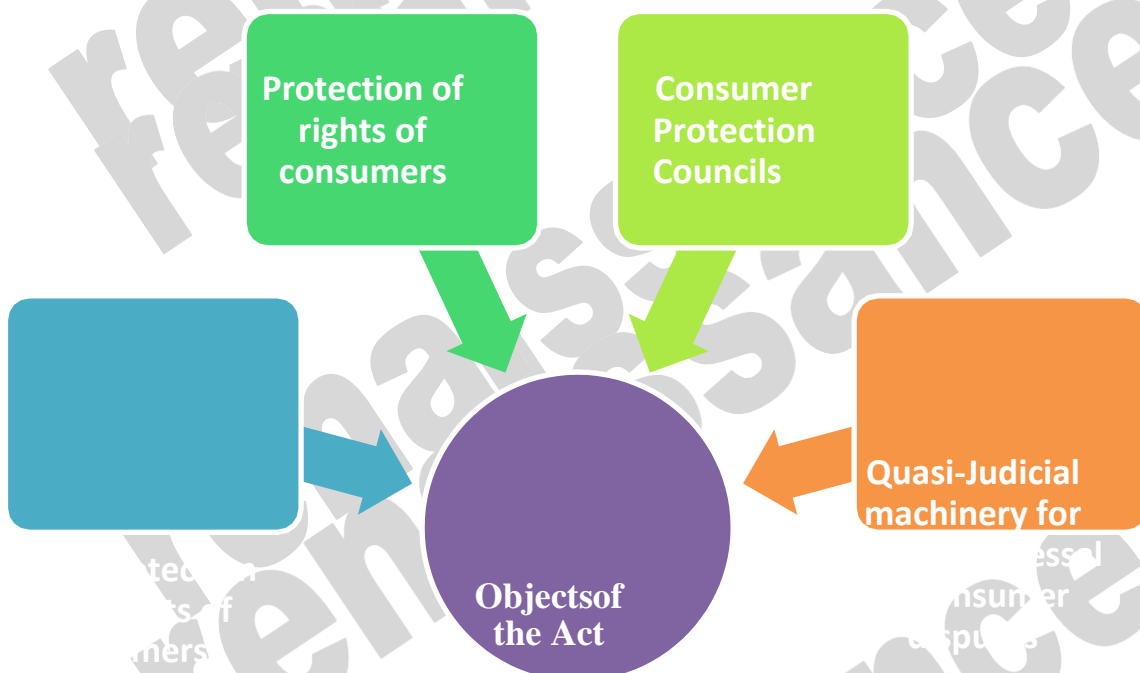
The Consumer Protection Act, 1986 has been enacted to provide for the establishment of consumer councils and other authorities for the settlement of consumers' disputes and for matters connected therewith.

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
  - f) 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 in 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 offence, which, in the opinion of the State Government, involves moral turpitude, or
- b) If he is an undischarged insolvent, 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 vacant 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 COMPLAINT 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 party
  4. Objection by any of the parties.
  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 service 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 trying a suit in respect of the following matter, namely-

1. The summoning and enforcing attendance of any defendant or witness and examining the witness 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 from 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 complainant the price or as the case may be the charge paid by the complainant.



### 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 bachelor'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 bachelor'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
2. Recognised by state government, subject to guidelines as may be prescribed by central government.
3. 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.

**M RTP Act**

*India has adopted the socialistic pattern of the society as its goal, so with view to restrict the monopolistic & obstructive trading operations of the vast expanding industrial units of managerial houses and to control economic concentration into few hands an act called MRTP Act was promulgated in 1969 except J & K. This act came into force from 1<sup>st</sup> June 1970 in India. The aim was to control natural resources at equal level and to restrict concentration of economic power.*

**Objectives of the MRTP Act-**

1. Restriction on concentration of Economic power & to control monopolies.
2. To prohibit monopolistic trade practice
3. To promote healthy competition in the Economy
4. To check on unfair trade practices
5. To check on restrictive trade practices

**Implementation of the Act:** The scheme of MRTP Act provides for a dual machinery for Implementation of its provisions. There two organs are : (i) the Central Government, and (ii) the MRTP commission. This Commission is to be assisted in its work of the Director General of Investigation and Registration including any Additional, Joint, Deputy or Assistant director General.



**Monopolistic Practices:-** defines dominant undertakings on the basis of market share. In the criteria of market share those undertakings is considered as dominant which by itself or along with inter connected undertakings controls not less than  $\frac{1}{4}$ <sup>th</sup> of total goods / services that are produced / supplied in India.

**Unfair Trade Practices:-** Provisions of UTP were incorporated in MRTP Act on 1<sup>st</sup> Aug. 1984. It is concerned with protection of customer interest. Unfair practices means deceptive Trade Practices and it mainly includes falsely representing Trade Practices.

**Restrictive Trade Practices :** Here give the definition under Section 2(o).

Under Section 33 : (a) Refusal to deal with particular persons and the right to select customers; (b) Tying arrangements; (c) Exclusive dealing; (d) Price fixing in a concerted manner (or collective agreement); (e) Discrimination in dealings; (f) Re-sale price maintenance; (g) Collaborative agreement;

(h) Restriction on competitive products; (i) Exclusion from trade association; (j) Price control





agreement; (k) Purchase inlet control agreement; (l) Knock-out agreements; (m) Any agreement which the Central Government may specify; and (n) Any enforcing agreement.

The MRTP Act has set up a permanent statutory body named as MRTPs. It is in quasi-judicial body. This commission has judiciary powers in controlling restrictive Trade Practices and Unfair Trade Practices but in case of monopolistic trade practices it only has recommendatory powers. In other words MRTPs are not decided by MRTPC but are decided by central Government. Appeal against orders issued by MRTPC can be made only in Supreme Court. This commission is headed by a chairman and has two other members all are appointed by Central Govt. for five years but also eligible for re-appointment. No member can hold this office for a period exceeding 1 year or on attaining the age of 65 years whichever is earlier. Chairmen will be a person who is qualified to be a judge of Supreme Court or High Court. The members should be well acquainted with Economics, laws, Commerce, Accountancy, Industry, Public Administration. The commission can issue cease and desist – order i.e. to stop such Trade Practice and not to repeat such practice in future.

The Commission has been empowered to take the following actions:

- (i) To exercise same powers as are vested in a Civil Court;
- (ii) To grant temporary injunction;
- (iii) To award compensation;
- (iv) To enforce the orders of temporary injunction and compensation;
- (v) To make conditional order and to amend or revoke order;
- (vi) To cause investigation to find out whether or not the orders have been complied with;
- (vii) To punish for contempt;
- (viii) To exempt particular classes of goods from the operation of provisions with regard to resale price maintenance;
- (ix) To enquire into unfair trade practice, and
- (x) To make regulations.



Director General of investigation and Registration : The Director General has two important functions :

- (i) to make investigation for the purposes of the Act. And
- (ii) to maintain a Register of Agreement which have to be registered under the Act.

Powers of The Central Government : The Central Government has the following powers : (i) To direct division of undertaking; (ii) To order for the separation of interconnection between undertaking; (iii) To decide the matters relating to the question of 'group' or the question of 'interconnected'



undertaking'; (iv) To decide the application of the Act; (v) To call for information; (vi) To appoint Inspectors; (vii) To regulate approvals' etc; (viii) To require the Commission to submit a report with regard to referred monopolistic or restrictive or unfair trade practices; (x) To make rules to carry out the provisions of the Act.

## DEFINITIONS

**Dominant Undertaking :** [Section 2(d)] *'Dominant undertaking means.*

- (a) *An undertaking which, by itself or alongwith interconnected undertaking, produces, supplies, distributes or otherwise controls not less than 25%, i.e., one-fourth (1/4) of the total goods that are produced, supplied or distributed in India or any substantial part thereof; or*
- (b) *An undertaking which provides or otherwise controls not less than 25%, i.e., one-fourth (1/4) of any services that are rendered in India or any substantial part thereof.*

*In a nutshell, dominant undertaking is one which has not less than 25%, i.e. one-fourth (1/4) market share in specified product or service, in the country, (In other words, it has 25% or more share)*

**Financial Institution [Section 2 (da)] :** *Financial Institution means :*

- (i) *A public financial institution specified in Section 4(A) of the companies Act, 1956;*
- (ii) *A State Financial, Industrial or Investment Corporation;*
- (iii) *The State Bank of India and its subsidiary banks;*
- (iv) *A nationalized bank;*
- (v) *The General Insurance Corporation of India;*
- (vi) *The Industrial Reconstruction Corporation of India; or*
- (vii) *Any other institution which the Central Government may, by specify in this behalf*

**Goods [Section 2(c)] :** *Goods' means goods as defined in the Sale of Goods Act, 1930, and includes :*

- (i) *products manufactured, processed or mixed in India;*
- (ii) *Shares and stocks including issue of shares before allotment;*
- (iii) *in relation to goods supplied, distributed or controlled in India, goods imported into India.*

**Service [Section 2(r)] :** *'Service' means service which is made available to potential user and includes the provision of facilities in connection with banking, financing , chit fund, real estate, transport, processing, supply of electrical or other energy, board or lodging or both, entertainment, amusement or the purveying of news or other information; but does not include the rendering of any service free of charge or under a contract of personal service.*

**Trade [Section 2 (s)] :** *'Trade' means any trade, business, industry, profession or occupation relating to the production, supply, distribution or control of goods and includes the provision of any services.*



**renaissance**

college of commerce & management

**B.Com I Year**

**Subject: Business Regulatory Framework**

---

Section 3 lays down that unless the Central Government otherwise directs by notification, this Act shall not apply to the following :

- (a) Any undertaking owned or controlled by a Government company;
- (b) Any undertaking owned or controlled by the Government;
- (c) Any undertaking owned or controlled by a corporation established by or under any Central, Provincial or State Act;



- (d) Any trade union or other association of workmen or employees formed for their own reasonable protection as such workmen or employees;
- (e) Any undertaking engaged in an industry, the management of which has been taken over by any person or body of persons in pursuance of any authorization made by the Central Government under any law for the time being in force;
- (f) Any undertaking owned by cooperative society formed and registered under any Central, Provincial or State Act relating to cooperative societies;
- (g) Any financial institution.

It should be noted that the Government has withdrawn the exemption to certain public undertakings wide its Notification No. GSR 605 (E) dated 27<sup>th</sup> September 1991, issued in exercise of the powers conferred by section 3, whereby the Government has brought all the undertakings specified in above mentioned clauses, except trade unions and associations of workmen or employees as given under clause (d) above, within the purview of the MRTP Act.

#### **THE MONOPOLIES AND RESTRICTIVE TRADE PRACTICES ACT, 1969 POLICY, PROVISIONS AND PERFORMANCE**

**1)** The MRTP Act, 1969 has its genesis in the Directive Principles of State Policy embodied in the Constitution of India. Clauses (b) and (c) of Article 39 of the Constitution lay down that the State shall direct its policy towards ensuring:

- (i) that the ownership and control of material resources of the community are so distributed as to best serve the common good; and
- (ii) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.

#### **Provisions Relating to Monopolistic, Restrictive and Unfair Trade Practices**

**2)** Section 10 of the MRTP Act, 1969 empowers the MRTP Commission to enquire into monopolistic or restrictive trade practices upon a reference from the Central Government or upon its own knowledge or on information. The MRTP Act, 1969 also provides for appointment of a Director General of Investigation and Registration for making investigations for the purpose of enquiries by the MRTP Commission and for maintenance of register of agreements relating to restrictive trade practices.

**3)** The MRTP Commission receives complaints both from registered consumer and trade associations and also from individuals either directly or through various Government Departments. Complaints regarding Restrictive Trade Practices or Unfair Trade Practices from an association are required to be referred to the Director General of Investigation and Registration for conducting preliminary investigation in terms of Sections 11 and 36C of the MRTP Act, 1969 and Regulation 119 of the MRTP Commission Regulations, 1974. The Commission can also order a preliminary investigation by the Director General of Investigation and Registration when a reference on a restrictive trade practice is received from the Central/ State Government, or when Commission's own knowledge warrants a preliminary investigation. Enquiries are instituted by the Commission under relevant Sections of the MRTP Act, 1969 after the Director General of Investigation and Registration has completed the preliminary investigation and as a result of the findings, submits an application to the Commission for an enquiry.



**renaissance**

college of commerce & management

**B.Com I Year**

**Subject: Business Regulatory Framework**

#### **Monopolistic Trade Practices**

4) Five enquiries under Section 10(b) were pending with the MRTP Commission at the beginning of the year 2005, while no fresh inquiry was instituted during the period April, 2005-December, 2005. All the 5 enquiries were pending as on 31.12.2005.

#### **Restrictive Trade Practices**

**Under Section 10(a)(i)**





5) 293 enquiries, including 267 brought forward from the previous year, were considered during April 2005-December 2005 of which 48 enquiries were disposed of during the said period and the remaining 245 enquiries were pending with the Commission as on 31st December 2005.

**Under Section 10(a)(ii)**

6) Neither any enquiry was brought forward from the previous year nor any enquiry was instituted under this Section during the year.

**Under Section 10(a)(iii)**

7) 39 enquiries including 37 brought forward from the previous year were taken up by the Commission during April 2005 to December 2005. One enquiry was disposed of during the period and the remaining 38 were pending with the Commission as on 31st December 2005.

**Under Section 10(a)(iv)**

8) 58 enquiries were brought forward from the previous year and 3 fresh enquiries were instituted by the Commission during the year from April 2005 to December 2005. 6 enquiries were disposed of during the said period and 55 enquiries were pending with the Commission as on 31st December 2005.

**Unfair Trade Practices**

9) Provisions relating to Unfair Trade Practices were incorporated in the MRTP Act, 1969 in 1984. Unfair Trade Practices have been defined in Section 36A as trade practices which for the purpose of promoting the sale, use or supply of any goods or for provision of any services, adopt one or more of the practices mentioned therein and thereby cause loss or injury to the consumers of such goods or services, whether by eliminating or restricting competition or otherwise.

**Under Section 36B(a)**

10) 491 enquiries including 410 enquiries brought forward from the previous year were considered by the Commission during April, 2005 - December 2005. Of these, 54 enquiries were disposed of and the remaining 437 enquiries were pending as on 31st December 2005.

**Under Section 36B(b)**

11) Neither any enquiry under Section 36B (b) of the MRTP Act, 1984 was initiated nor any enquiry was





brought forward during April, 2005- December, 2005.

**Under Section 36B(c)**

**12)** 1 enquiry brought forward from the previous year before the Commission is still pending as on 31.12.2005.

**Under Section 36B(d)**

**13)** 176 enquiries, including 169 brought forward from the previous year, were taken up by the Commission during April, 2005 - December 2005. Eight enquiries were disposed of and 168 enquiries were pending with the Commission as on 31st December 2005.

**Temporary Injunctions**

**14)** Besides 143 applications pending under Section 12A with the MRTP Commission as on 1st April, 2005, 43 applications were received by the Commission during the period April, 2005 - December 2005. Out of 186 applications, 55 were disposed of and the remaining 131 applications were pending under Section 12A with the Commission as on 31st December, 2005.

**Award of Compensation**

**15)** During the period April, 2005 - December 2005, 1341 applications under Section 12B including 1264 applications brought forward from the previous year were considered by the Commission. Of



these, 126 applications were disposed of by the Commission during the period and the remaining 1215 applications were pending as on 31st December, 2005

### **Registration of Agreements**

**16)** Section 35 of the MRTP Act, 1969 requires every agreement relating to Restrictive Trade Practices falling within one or more of the categories enumerated in Section 33(1) of the Act to be furnished for registration within 60 days of the making of such agreement.

**17)** In pursuance of this provision, during the period April, 2005 to December 2005, 7 agreements were received for registration. The same were registered and entered in the Register of Agreements.

**18)** A total number of 39,993 agreements were filed up to the end of 31st December, 2005, by various undertakings. Out of these, particulars of 39,116 agreements were entered in the Register of Agreements.

### **Investigation by Director General (Investigation & Registration)**

#### **Investigation**

**19)** The Director General is required to conduct preliminary investigation in respect of restrictive, monopolistic and unfair trade practices as and when an order of preliminary investigation is received from the MRTP Commission. As on 1.4.2005, one investigation was in progress. During the period from 1.4.2005 to 31.12.2005, 49 fresh orders of preliminary investigations were received. Out of 50 investigations, Preliminary Investigation Report was submitted in 11 cases and 39 investigations were pending at the end of the year. Besides, the Director General has suo motto powers to initiate preliminary investigations into monopolistic, restrictive and unfair trade practices, and in case any of these trade practices are detected during such investigation, the Director General is empowered to file applications under Sections 10(a)(iii)/10(b)/36B(c) of the Act for initiation of enquiry proceedings by the MRTP Commission. As a result of such suo moto investigations, 5 applications were filed under Section 36B(c) alongwith 4 applications under Section 12A of the Act for interim injunction during the period 1.4.2005 to 31.12.2005. In addition, 3 applications were filed under Section 10(a)(iii) of the Act for enquiry into restrictive trade practices during the said period. Thus, a total of 12 applications have been filed during the period 1.4.2005 to 31.12.2005.

### **Consumer Protection**

**20)** Of late, consumer protection movement has been sweeping across the whole country. The consumers have been organising themselves into consumer bodies all over the country to safeguard the public and consumers' interest against unfair trade practices being indulged in by parties through misleading advertisements, bargain-sales, organisation of sale promotion contests, marketing goods which do not



conform to standards of safety etc. An independent Chapter regarding unfair trade practices was inserted in the MRTP Act in 1984 and the consumers are taking full benefit of the provisions contained in this Chapter by filing complaints in this office. Facility of speedy redressal of their grievances is provided by this office. During the period April, 2005 to December, 2005, this office has handled as many as 123 complaints received from consumers and other parties including 22 brought forward from the previous year. Of these, 64 complaints were disposed of during the period and 59 complaints were pending as on 31.12.05.

**Carriage of proceedings  
Before the Commission**

**21)** The Director General is the custodian of public interest in the enquiry proceedings before the Commission and he has to appear in person or through his counsel to safeguard the public interest before the Commission. As on 31.12.05, 144 enquiries were being prosecuted before the MRTP Commission.



**renaissance**

college of commerce & management

**B.Com I Year**

**Subject: Business Regulatory Framework**

---

**Before the Supreme Court/ High Courts**

**22)** The position of appeals filed and pending before the Supreme Court/ High Courts is given in table:-



**renaissance**

college of commerce & management

**B.Com I Year**

**Subject: Business Regulatory Framework**

---

renaissance  
renaissance  
renaissance



Appeals filed and pending before the Supreme Court/High Courts  
Table

	Pending as on 1.4.2005	Filed during 1.4.2005 to 31.12.2005	Disposed of during 1.4.2005 to 31.12.2005	Pending as on 31.12.2005
Appeals before the Supreme Court	69	0	32	37
Writs in different High Courts	70	10	0	80

**23)** The Director General has been appearing in all the required Appeals/ Writ Petitions before the Supreme Court and High Courts through the counsels appointed by the Central Agency Section Litigation Branches of the Department of Legal Affairs, Ministry of Law & Justice.

[As amended by the Competition (Amendment) Act.2009]

*(The Monopolies and Restrictive Trade Practices Act. 1969 has been repealed by Competition Act.2002)*

In 2002, the Government of India enacted the Competition Act in view of the economic development of the country. Section 66 of the Competition Act, 2002 lays down as follows : “The Monopolies and Restrictive Trade Practices Act, 1969 is hereby repealed and the Monopolies and Restrictive Trade Practices Commission shall stand dissolved.”



Hence, the dissolution of the MRTP Commission is under process. As such, the MRTP Act, 1969 has lost its importance and relevance. Instead, the Competition Act has come into its place. Therefore, we are giving hereinafter the salient features of the Competition Act, 2002.

## **Salient features of the Competition Act, 2002 –**

### **1. The Background**

- The World economies are commonly pursuing globalization as their significant goal.
- India, too, has responded well in this regard by opening up its economy removing controls and resorting to liberalization.
- As a result, the changed environment will be more competitive.
- Hence, the Indian Market has to be geared to face competition from within the country as well as outside it.
- It is in this context that the Monopolies and Restrictive Trade Practice Act, 1969 has become obsolete in certain respects in the light of international economics developments especially relating to competition law; and there is a need to shift the focus from curing monopolies to promoting competition.
- A High Level Committee on Competition Policy and Law was constituted by the Central Government which submitted its report on 22<sup>nd</sup> May, 2002.
- The Central Government consulted all the concerned parties including the trade and industry associated and the general public.





- Having considered the suggestion of the trade and industry and the general public, the Central Government decided to enact a law on competition. Accordingly, the Competition Bill was introduced in the Parliament.

## 2. Extent and Commencement

*The Competition Act, 2002 extends to the whole of India except the State of Jammu and Kashmir. It has come into force with effect from 31<sup>st</sup> March 2003.*

## 3. Objects and Reasons

The Competition Bill seeks to achieve the following objectives :

- A. *Need to shift the focus*
- B. *Report of the High Level Committee*
- C. *Curbing negative aspects of competition*
- D. *Curbing negative aspects of competition*
- E. *Investigation by the Director-General*
- F. *Levying of penalty*
- G. *Competition Fund*
- H. *Repealing the MRTP Act, 1969*
- I. *The specific objectives of the Competition Act, 2002*

## 4. Competition Appellate Tribunal

This Chapter VIIIA (containing Section 53A to 53U) has been inserted by the Competition (Amendment) Acts., 2007. Under Section 53A, Central Government has established on 12<sup>th</sup> October, 2007, an Appellate Tribunal to be known as competition Appellate Tribunal for the following two purposes :

1. To hear and dispose of appeals against any direction issued or decision made or order passed by the Commission
2. To adjudicate on claim for compensation that may arise from the finding of the commission or the orders of the Appellate Tribunal.

## 5. Powers of the Appellate Tribunal



Section 53-O provides that for the purpose of discharging its functions under this Act, the Appellate

Tribunal shall have the same powers as vested in a Civil Court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters:

- a. Summoning and enforcing the attendance of any person and examining him on oath;*
- b. Requiring the discovery and production of documents;*
- c. Receiving evidence on affidavits;*
- d. Requisitioning any public record or document or copy of such record or document from any office;*
- e. Issuing commissions for the examination of witnesses or documents;*
- f. Reviewing its decisions;*
- g. Dismissing a representation for default or deciding it ex parte;*
- h. Setting aside any order of dismissal of any representation for default or any order passed by it ex parte;*
- i. Any other matter which may be prescribed.*

#### **6.Power to punish for Contempt**



Section 53U lays down that the Appellate Tribunal shall have and exercise the same jurisdiction, powers and authority in respect of itself as a High Court has.

## 7. Appeal to Supreme Court

Section 53T provides that the Central Government or any State Government or Commission or any statutory authority or any enterprise or any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the Supreme Court within 60 days from the date of communication of the decision or order of the Appellate Tribunal to them.

## 8. Repeal of MRTP Act

Section 66 lays down that the Monopolies and Restrictive Trade Practices Act, 1969 is hereby repealed and the Monopolies and Restrictive Trade Practices Commission shall stand dissolved.

## FEMA 1999 (FOREIGN EXCHANGE MANAGEMENT ACT)

In the context of the ongoing process of economic liberalization, need for better foreign exchange management was felt. Therefore, the Foreign Exchange Regulation Act (FERA) 1973 was reviewed in 1993 in the light of the developments. Experience in relation to foreign trade & investment. The Government came to the conclusion that a better course would be to repeal the existing FERA & enact new legislation. Therefore, this new Act i.e. Foreign Exchange Management Act (FEMA), 1999 was enacted to replace & repeal the FERA, 1973. The FEMA, 1999 was passed by Lok Sabha on 2 Dec. 1999 & received the assent of the President of India on 9 Dec. 1999.

### **Extent, Application and Commencement:**

1. *The Foreign Exchange Management Act extends to the Whole of India.*
2. *It shall also apply to all Branches, offices and agencies outside India owned or controlled by a person resident in India and also to any contravention there under committed outside India by any person to whom this Act applies. Thus, the Act has extra territorial jurisdiction.*
3. *It shall come into force on such date as the Central government may, by notification in the Official Gazette, appoint.*

It may be noted that this Act came into effect from 1st June, 2000. Objectives of FEMA the main objectives of this Act are as follows —

1. To consolidate & amend the law relating to foreign exchange.
  2. To facilitate external trade & payments.
  3. To promote the orderly development & maintenance of foreign exchange markets in India.
- Terminology

1. **Capital Account Transaction** — CAT means a transaction which alters the assets or liabilities outside India of persons resident in India or assets or liabilities in India of person's resident outside India, & includes transaction referred in Section 6 (3). [Sec 2(e)].



2. **Currency** — Currency includes all currency notes, postal notes, postal orders, money orders, cheques, drafts, traveler's cheques, letters of credit, bills of exchange & promissory notes, credit cards or such other similar instruments as may be notified by the Reserve Bank of India (RBI). [Sec. 2(h)]
3. **Currency Notes** — It means & includes cash in the form of coins & bank notes [Sec. 20]1
4. **Current Account Transaction** — CAT means a transaction other than a capital account transaction & includes the following transactions.
  - a. Payments due in 'connection with foreign trade, other current business, services & short-term banking & credit facilities in the ordinary course of business.
  - b. Payments due as interest on loans & as net income from investments.
  - c. Remittances for living expenses of parents, spouse & children residing abroad.
  - d. Expenses in connection with foreign travel, education & medical care of parents, spouse & children [Sec. 2(f)]
5. **Export** — Export means:
  - a. The taking out of India to a place outside any goods, &
  - b. Providing services from India to any person outside India. [Sec. 2(l)]
6. **Import** — It means bringing into India any goods or services. [Sec. 2(p)].
7. **Foreign Currency** — It means any currency other than Indian currency. (Sec. 2(m))
8. **Foreign Exchange** — it means foreign currency & includes the following:
  - a. Deposits credit and balances payable in any foreign currency.
  - b. Drafts traveler's cheques, letters of credit or bills of exchange, expressed or drawn in Indian currency but payable in any foreign currency.
  - c. Drafts, traveler's cheques, letters of credit or bills of exchange drawn by banks; institutions or persons outside India, but payable in Indian Currency. (Sec. 2(n))
9. **Security** — Security means shares, stocks, bonds and debentures, Government securities, savings certificates, deposit receipts in respect of deposits of securities and units of the Unit Trust of India or of any mutual fund. The term also includes certificates to title to securities and government promissory notes. But it does not include bill of exchange or promissory notes other than Government promissory notes or any instruments which may be notified by the RBI as security for the purposes of this Act. [Sec. 2(za))



11. **Foreign Security** — Foreign security means any security, in the form of shares, stocks, bonds, debentures or any other instrument denominated or expressed in foreign currency. The term security also includes securities expressed in foreign currency, but where redemption or any form of return such as interest or dividends is payable in Indian currency. [Sec.2 (o)].
12. **Indian Currency** — Indian currency means which is expressed or drawn in Indian rupees but does not include special bank notes and special One rupee notes issued under Section 28A of the Reserve Bank of India Act, 1934. [Sec. 2 (q)]
13. **Persons — Person includes the following:**
- a. *An individual*
  - b. *A Hindu Undivided Family (HUF).*
  - c. *A company*
  - d. *A firm*
  - e. *An association of persons or a body of individuals, whether incorporated or not.*
  - f. *Every artificial juridical person, not failing within any of the [receding sub-clauses.*
  - g. *Any agency, office or branch owned or controlled by such person. (Sec. 2(u)).*
13. **Person resident in India** — Persons resident in India includes the following:
- a. A person who is residing in India for more than 182 days except (a) a person who stays outside India for any purpose (e.g. employment or business) and (b) a person who stays in India for any purpose for an uncertain period.
  - b. A body corporate registered in India.
  - c. An office or branch or agency outside India owned or controlled by a person resident in India. [Sec. 2 (w)].
14. **Person resident outside India** - Person resident outside India means a person who is not resident in India. (Sec. 2(w))
15. **Repatriate to India** - Repatriate to India means bringing into India the realized foreign exchange, and:
- a. The selling of such foreign exchange to an authorized person in India in exchange for



**renaissance**

college of commerce & management

**B.Com I Year**

**Subject: Business Regulatory Framework**

---

rupees, or

- b. The holding of realized amount in an account with an authorized person in India to the extent notified by the RBI.



The term also includes use of the realized amount for discharge of a debt on liabilitydenominated in foreign exchange. [Sec. 2 (y)]

16. **Service** - Service means, service of any description which is made available to potential users. Service also includes the provision of facilities in connection with banking, financing, insurance, Medical assistance, legal assistance, chit fund, real estate, transport, processing, supply of electrical or other energy, boarding or lodging or both, entertainment, amusement or the purveying of news or other information. But it does not include the rendering of any service free of charge or under a contract of personal service. [Sec. 2 (zb)].
17. **Transfer** - "Transfer" includes sale, purchase, exchange, mortgage, pledge, gift, loan or any other form of transfer of light, title, possession or lien. (Sec. 2 (ze))

## Regulation and Management of Foreign Exchange

The provisions with regard to the following aspects of regulation and management of ford& exchange are as follows -

- I. Provisions as to transactions in foreign exchange, security etc - According to these provisions[Sec. 3], no person shall do the following except as per the provisions of FEMA rules and regulations made under it or with the general or special permission of the RBI:.
  1. No person shall deal in or transfer any foreign exchange or foreign security to any person otherthan an authorized person.
  2. No person shall make any 'payment to-or for the credit of any person resident outside India inany manner.
  3. No person shall receive (otherwise through an authorized person) any payment by order or on behalf of any person resident outside India.
  4. No person shall enter into any financial transaction in India as consideration for or in association with acquisition or creation or transfer of a right to acquire any asset outside Indiaby any person.
- II. Provisions as to holding in foreign exchange, security etc. by residents - No person, resident in India, shall acquire, hold, own, possess or transfer any (i) foreign exchange, (ii) foreign security, or (iii) any immovable property situated outside India except as provided in this Act. [Sec.4]
- III. Provisions as to current account transactions-Any person may sell or draw foreign exchange to or from an authorizes person if such sale or drawl is a current account transaction. But the Central Government may, in public interest and in constitution with the RBI, impose such reasonable restrictions for current transductions as may be prescribed. [Sec. 5]
- IV. Provisions as to capital account transactions-Any person may sell or draw foreign exchange to or from an authorized person for a capital account transaction subject to the rules specified by the RBI. [Sec 6(1)]. However, the RBI may, in consultation with the Central Government specify the following —





1. Any class or classes of capital account transactions which are permissible.
2. The limit up to which foreign exchange shall be admissible for such transactions. But the RBI shall not impose any restriction on the drawal of foreign exchange for payments due on account of amortization of loans or for depreciation of direct investments in the ordinary course of business. [Sec. 6 (2)]
- V. Provisions as to export of goods and services — Certain provisions have been incorporated in

**FEMA**

With a view to ensure repatriation of the foreign exchange earned by export of goods and services.

These provisions are as follows in the form of duties of exporters —



1. Furnishing declaration as to the facts relating to export — Every exporter of goods shall furnish to the PSI or to such other authority a declaration in such form and in manner as may be specified. The declaration shall contain true and correct material particulars, including the amount representing the full export value. [Sec. 7 (1) (a)].
  2. Furnishing information to RBI — Every exporter of goods shall furnish to the RBI or to such other authority as may be required by the RBI for the purpose of ensuring the realization of the export proceeds by such exporter. [Sec. 7 (1) (b)].
  3. Duty of exporter of services — Every exporter of services shall furnish to the RBI or to such other authorities a declaration in such form and in such manner as may be specified. The declaration shall contain the true and correct material particulars in relation to payment for such services. [Sec. 7 (3)]
- VI. Provisions as to realization and repatriation of foreign exchange — Where any amount of foreign exchange is due or has accrued to any person resident in India, such person shall take all reasonable steps to realize and repatriate to India such foreign exchange within such period and in such manner as may be specified by the RBI. [Sec. 8]

In the following cases, foreign exchange earned can be held or invested outside India (i.e. against Section 4) or need not be repatriated (i.e. against Section 8) to India [Sec. 9]:

1. Possession of foreign currency up to specified limit
2. Holding foreign currency account
3. Foreign exchange received before July, 1947
4. Foreign exchange acquired by way of gift or inheritance
5. Foreign exchange acquired abroad
6. Any other receipt specified by RBI

### Authorized Person

Authorized person means an authorized dealer, money changer, off-shore banking unit or any other person authorized to deal in foreign exchange or foreign securities. [Sec. 2 (c)].

### INTELLECTUAL PROPERTY ACT

Intellectual property (IP) is the creation of human intellect. It refers to the ideas, knowledge, invention,



**renaissance**

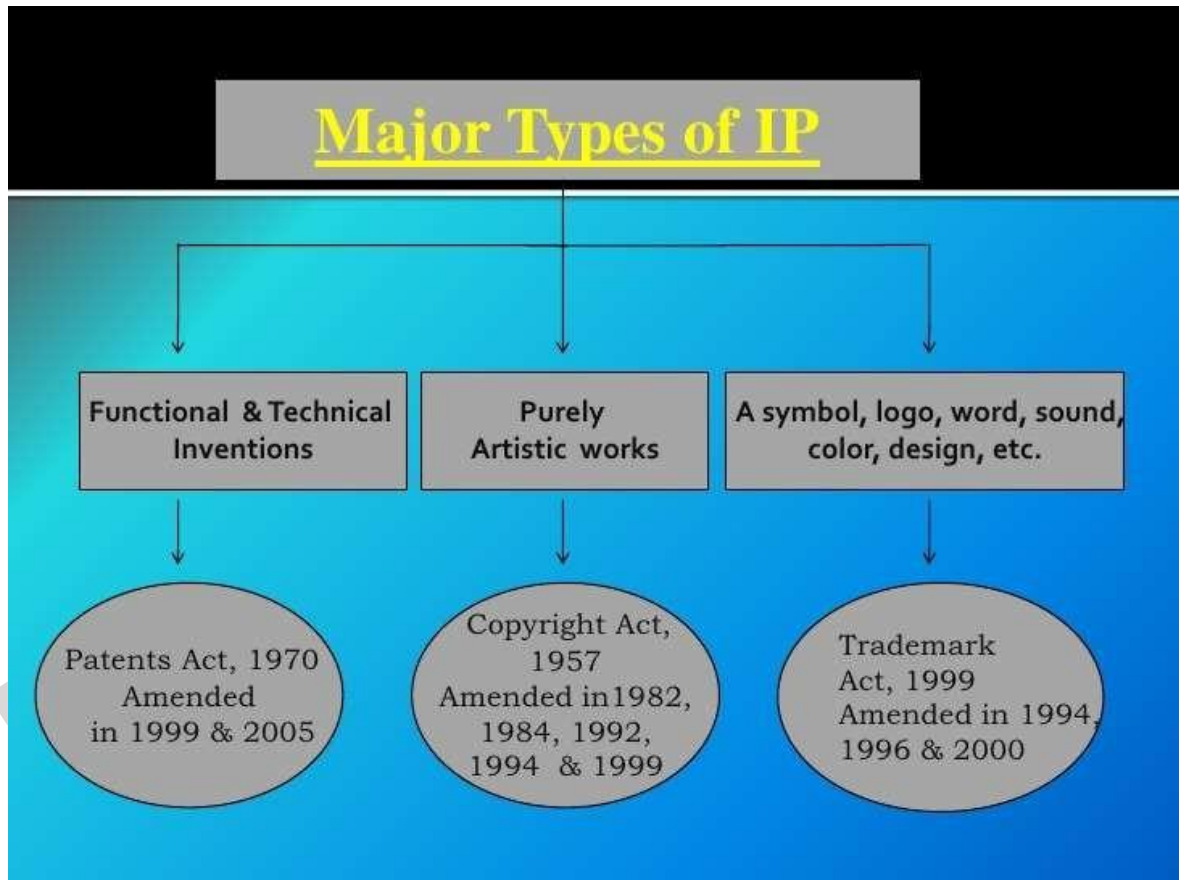
college of commerce & management

**B.Com I Year**

**Subject: Business Regulatory Framework**

---

innovation, creativity, and research etc, all being the product of human mind and is similar to any property, whether movable or immovable, wherein the proprietor or the owner may exclusively use his property at will and has the right to prevent others from using it, without his permission. The rights relating to intellectual property are known as 'Intellectual Property Rights'





## Copyrights

In India the first Copyright Act was passed in the year 1914. At present, the Copyright Act, 1957 (hereinafter referred to as the Act) governs copyright law in India. The original Act of 1957 has been amended in the year 1983, 1984, 1992, 1994, and recently in 1999.

**What is copyright?**

*Like trademarks, a copyright is an intangible property. The subject matter of copyright, the thing protected is called a "work". Copyright subsists throughout India in (a) original literary, dramatic, musical and artistic works*

*(b) cinematograph film and  
(c) sound recording (Section 13).*

*These terms are defined in the Act. Apart from these works, no other work is entitled to copyright under the Act.*

*Section 14 of the Act defines a Copyright for the purposes of the Act. "A Copyright means the exclusive right to do or authorise the doing of acts in respect of a work or any substantial part thereof."*

**Which are these acts?**

**1. Literary, dramatic or musical work:** The owner has exclusive right to reproduce work in any material form including the storing of it in any medium by electronic means, to issue copies to the public, to perform or communicate the work to the public, to make cinematograph or sound recording in respect of the work, to translate or make any adaptation of the work. [14(a)].



2. **Computer programmes:** In addition to the above rights, the owner has exclusive right to sell or give on hire, or offer for sale or hire any copy of the programme. The Copyright (Amendment) Act, 1999 has added one more right; i.e., to sell or give on commercial rental or offer for sale or for commercial rental any copy of the programme. [14(b)].

3. **Cinematograph film:** A producer has exclusive right to make copy of the film including photograph of any image forming part thereof, to sell or give on hire, or offer for sale or hire any copy of the film, to communicate the film to the public.

4. **Sound recording:** A composer has exclusive right to make any other sound recording embodying it, or offer for sale or hire any copy of the film, to communicate the film to the public. [14(e)].

Rights conferred by section 14 upon the author are the economic rights, because exploitation of the work by himself or by licensing it for royalty may bring economic benefit to the author.

Object of copyright law is to encourage authors, composers and artists to create original works by giving them exclusive right for limited period to reproduce the work for the benefit of the public. It is a negative right to prevent others from copying their work.

### Term of copyright

Copyright is not a perpetual right. It exists for a specific term. After the expiry of the term, the work falls in the public domain and open to public to use without permission of the owner. **For literary, dramatic, musical and artistic works the term is 60 years from the death of the author; for photograph, cinematograph film, sound recording 60 years from the beginning of the calendar year next following the**

The provisions relating to copyright registration are as follows:

Register of Copyrights
Entries in register of Copyrights
Form and inspection of register
Register of Copyrights



Correction of entries in the Register of Copyrights
Rectification of Register by Copyright Board.
Entries in the Register of Copyrights, etc. to be published.

**1. Register of Copyrights**

There shall be kept at the Copyright Office a register in the prescribed form to be called the Register of Copyright in which may be entered the names or titles or works and the names and addresses of authors, publishers and owners of copyright and such other particulars as may be prescribed. [Section 44]

**Registration of Copyright [Sec. 44]**

Registration of Copyright is optional. The Act does not deprive an author of the right conferred by this Act on account of the non-registration. The main benefit of the registration is that it is a





prima facie evidence in the favour of person claiming the copyright. Copyright may be registered with Registrar of Copyright by filling Form No. 4 prescribed for this purpose.

**2. Entries in register of Copyrights**

1. The author or publisher of, or the owner of or other person interested in the copyright, in, any work may make an application in the prescribed form accompanied by the prescribed fee to the Registrar of Copyrights for entering particulars of the work in the Register of Copyrights.
2. On receipt of an application in respect of any work under sub-section (1), the Registrar of Copyrights may, after holding such inquiry as he may deem fit, enter the particulars of the work in the Register of Copyrights. [Section 45]

**3. Form and inspection of register**

The Register of Copyrights and indexes thereof kept under this Act shall at all reasonable times be open to inspection, and any person shall be entitled to take copies of, or make extracts from; such register or indexes on payment of such fee and subject to such conditions as may be prescribed. [Section 47]

**4. Register of Copyrights**

Register of Copyrights to be prima facie evidence of particulars entered therein. The Register of Copyrights shall be prima facie evidence of the particulars entered therein and documents purporting to be copies of any entries therein. [Section 48]

**5. Correction of entries in the Register of Copyrights**

The Registrar of Copyrights may, in the prescribed cases and subject to the prescribed conditions, amend or alter the Register of Copyrights by—

- (a) Correcting any error in any name, address or particulars ; or
  - (b) Correcting any other error which may have arisen therein by accidental slip or omission.
- [Section 49]

**6. Rectification of Register by Copyright Board.**

The Copyright Board, on application of the Registrar of Copyright or of any person aggrieved, shall order the rectification of the Register of Copyrights by—

- (a) the making of any entry wrongly omitted to the register, or
- (b) the expunging of any entry wrongly made in, or remaining on, the register, or
- (c) the correction of any error or defect in the register. [Section 50]

**7. Entries in the Register of Copyrights, etc. to be published.**

Every entry made in the Register of Copyrights or the particulars of any work entered under section 45, the correction of every entry made in such register under section 49, and every



rectification ordered under section 50 shall be published by the Registrar of Copyrights in the Official Gazette or in such other manner as he may deem fit. [Section 50A] 1

### **Assignment of Copyright [Sections 18-21]**

Assignment means transfer of ownership. Copyright is personal moveable property capable of being transferred by assignment. Copyright is a bundle of rights which may be assigned wholly or partially. The assignee becomes the owner of all that which is assigned to him and he alone can sue for the infringement of the rights assigned.

Assignment must be done in writing and it must be stamped according to provisions of Indian Stamp Act

Copyright being a beneficial interest in moveable property is capable of being transferred by assignment evidenced by writing executed by assignor or by his duly authorized agent. However, it need not be registered

### **Infringement of Copyright [Section 51-53]**

When en without authorization from the owner of act or competent authority under the Act any act is r  
cd out it constitutes infringement of copyright of the work.



### Copyright is infringed when any person

- (a) Without a licence does anything for which the exclusive right is by the Act conferred upon the owner of the copyright,
- (b) without licence permits for profit any place to be used for the communication of the work to the public where such communication constitutes an infringement of the right in work.
- (c) makes for sale or hire or sells or offers to sell either by trade displays or otherwise distributes or exhibits in public or imports into India any infringing copies of the work.

However, bringing one copy of the work for domestic and private use is permitted.

### Trade Mark

#### Meaning

A trade mark means a mark used in relation to goods for the purpose of indicating or so as to indicate a connection in the course of trade between the goods and some person having the right as proprietor to use that mark. The function of a trade mark is to give an indication to the purchaser or a possible purchaser as to the manufacture or quality of the goods, to give an indication to his eye of the trade source from which the goods come, or the trade hands through which they pass on their way to the market.

#### Definition :

"Trade Mark" means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours, and -

A registered trade mark or a mark used in relation to goods or services for the purpose of indicating or so as to indicate a connection in the course of trade between the goods or services, as the case may be, and some person having the right as proprietor to use the mark; and

- (ii) A mark used or proposed to be used in relation to goods or services for the purpose of indicating or so as to indicate a connection in the course of trade between the goods or services, as the case may be, and some person having the right, either as proprietor or by way of permitted user, to use the mark whether with or without any indication of the identity of that person, and includes a certification trade mark or collective mark.

### Procedure for Registration, of Trade Mark



**renaissance**

college of commerce & management

**B.Com I Year**

**Subject: Business Regulatory Framework**

The following arrangements and procedure setting up for registration of trade marks in India.

Appointment of Registrar and other officers

Trade Marks Registry and of faces thereof

Application for registration

Advertisement of application

Opposition to registration

Registration of Trade Mark

Registration Certificate



**1. Appointment of Registrar and other officers-** The Central Government appointed a person to be known as the Controller General of Patents, Designs and Trade Marks, who is the Registrar of Trade Marks for the purposes of this Act.

The Central Government also appointed such other officers with such designations as it thinks fit for the purpose of discharging, under the superintendence and direction of the Registrar, such functions of the Registrar under this Act.

**2. Trade Marks Registry and of places thereof-** For the purposes of registration of trademarks there shall be a trade marks registry and the Trade Marks Registry established under the Trade and Merchandise Marks Act, 1958 shall be the Trade Marks Registry under this Act. The Central Government may, by notification in the Official Gazette, define the territorial limits within which an office of the Trade Marks Registry may exercise its functions.

There shall be a seal of the Trade Marks Registry.

**3. Application for registration-** For the registration of a trade mark an application is to be made to the Registrar. A single application can be made for registration of a trade mark for different classes of goods and services by paying prescribed fee for each such class of goods and services.

In the case of a refusal or conditional acceptance of an application, the Registrar shall record in writing the grounds for such refusal or conditional acceptance and the materials used by him in arriving

**4. Advertisement of application -** When an application for registration is accepted, the Registrar shall, as soon as may be after acceptance, cause the application as accepted together with the conditions or limitations, if any, subject to which it has been accepted, to be advertised in the prescribed manner.

**5. Opposition to registration-** Any person may, within four months from the date of the advertisement or re-advertisement of an application for registration, give notice in writing in the prescribed manner and on payment of such fee as may be prescribed, to the Registrar, of opposition to the registration. The Registrar shall serve a copy of the notice on the applicant for registration.

registration and, within two months from the receipt by the applicant of such copy of the notice of opposition, the applicant shall send to the Registrar in the prescribed manner a counter statement of the grounds on which he relies for his application and if he does not do so he shall be deemed to have abandoned his application.

If the applicant sends such counter statement, the Registrar shall serve a copy thereof on the person giving notice of opposition.

Any evidence upon which the opponent and the applicant may rely shall be submitted in the prescribed manner and within the prescribed time to the Registrar, and the Registrar shall give an opportunity to them to be heard.

The Registrar shall, after hearing the parties, if so required, and if they so desire considering the evidence, decide whether and subject to what conditions or limitations, if any the registration is to be permitted, and may take into account a ground of objection whether relied upon by the opponent or not.



**6. Registration of Trade Mark-** This section makes it mandatory on the Registrar to register the trade mark where the procedure for registration of a trademark is completed. When an application for registration of a trade mark has been accepted, dismissed, and either-

- (a) The application has not been opposed and the time for notice of opposition has expired; or
- (b) The application has been opposed and the opposition has been decided in favour of the applicant.

The Registrar shall, unless the Central Government otherwise directs, register the said trade mark and the trade mark when registered shall be registered as of the date of the making of the said application and that date shall, be deemed to be the date of registration.





**7. Registration Certificate-** On the registration of a trade mark, the Registrar shall issue to the applicant a certificate in the prescribed form of the registration thereof, sealed with the seal of the Trade Marks Registry.

The Registrar may amend the register or a certificate of registration for the purpose of correcting a clerical error or an obvious mistake.

### Effect of Registration

No person shall be entitled to institute any proceeding to prevent, or to recover damages for, the infringement of an unregistered trade mark.

This section provides that no infringement action will lie in respect of an unregistered trade mark, but recognises the common law rights of the trade mark owner to take action against any person for passing off goods as the goods of another person or as services provided by another person or the remedies thereof.

### Infringement of registered trade marks

A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which is identical with, or deceptively similar to. The trade mark in relation to goods or services in respect of which the trade mark is registered and in such manner as to render the use of the mark likely to be taken as being used as a trade mark.

- (1) A person shall be deemed to falsify a trade mark who, either,
  - (a) Without the assent of the proprietor of the trade mark makes that trade mark or a deceptively similar mark; or
  - (b) Falsifies any genuine trade mark, whether by alteration, addition, effacement or otherwise,
- (2) A person shall be deemed to falsely apply to goods or services a trade mark who, without the assent of the proprietor of the trade mark,
  - (a) Applies such trade mark or a deceptively similar mark to goods or

Any person who (i) falsifies any trade mark; or (ii) falsely applies to goods or services any trade mark; or (iii) makes, disposes of, or has in his possession, any die, block, machine, plate or other instrument for the purpose of falsifying or of being used for falsifying, a trade mark; or (iv) applies any false description to goods or services; or (v) applies to any goods to which an indication of the country or place in which they are made or produced or the name and address of the manufacturer or person for whom the goods are manufactured is required to be applied, a false indication of such country, place, name or address; (vi) tempers with, alters or effaces an indication of origin; or (vii) causes any of the





things above mentioned to be done, shall be punishable with imprisonment for six months to three years and with fine of fifty thousand rupees to two lakh rupees.

## **Patents Act**

The present Patents Act, 1970 came into force in the year 1972, amending and incorporating the existing laws relating to Patents and Designs act 1911 in India. The Patent (amendment) Act 2005 came into force from 1<sup>st</sup> January 2005, which brought changes in the previous patent system of India wherein product patent was extended to all subjects of technology consisting of food, drugs, chemicals and micro organisms.

Moreover, Section 3(d) introduced in to the said amendment act 2005 and introduces pharmaceutical product patents in India for the first time. The Patent (amendment) Act 2005 defines what invention is and makes it clear that any existing knowledge or thing cannot be patented. The provision defines that a 'novelty' standard - which, along with 'non-obviousness' or 'inventive step' and industrial applicability, are the three prerequisites for 'patentability'. "Discovery" essentially refers to finding out



something which already existed in nature but was unknown or unrecognised. Therefore, discoveries are excluded from patent protection under section 3 of the Indian Patent Act 1970.

A patent is termed as the exclusionary rights given by the government or the authorized authority to its inventor for a particular duration of time, in respect of his invention. It is the part of the intellectual property right, which connotes with all those rights which are granted to any person for protecting its invention, process, discovery, composition or new useful development etc. from its further usage without any authentication.

If more than two persons have jointly applied for patent license, both will own the patent separately. The original word 'patent' has come up from the latin term 'patere', which means 'to lay open' or 'available for public usage'. Sometimes it is also related to the term 'letters patent', which marks to the royal decree granting exclusive rights to patentee. Unlike copyright, patent is not granted on giving mere suggestion or idea. An idea of mere manufacturing machine does not comes under the purview of obtaining patent.

## ADMINISTRATION

The Patent Office, under the Ministry of Commerce & Industry, Department of Industrial Policy & Promotion, has been established to administer the various provisions of the Patents Law relating to the grant of Patents & The Designs Law, relating to the registration of Industrial Designs.

## MEMBERSHIP OF INTERNATIONAL TREATIES

India is member of the following treaties governing patents:

- Convention establishing World Intellectual Property Organization (WIPO)
- Trips Agreement under the World Trade Organization.
- Paris Convention for the protection of Industrial Property with effect from Dec. 7, 1998.
- Patent Cooperation Treaty (PCT) with effective from Dec. 7, 1998.

- Ordinary Patent
- Patents of addition
- Convention



Application may be made, either alone or jointly with another, by the inventor, assignee, legal representative of deceased inventor or assignee. The inventor is entitled to be mentioned in the patent if he applies to do so.

Application may be made jointly by two or more corporations as assignees.

An invention means any new and useful art, process, method or manner of manufacture; machine, apparatus or other article; or substance produced by manufacture, and includes any new and useful improvement of any of them, and an alleged invention.

#### **DOCUMENTS REQUIRED FOR FILING AN APPLICATION**

- Application form in triplicate.
- Provisional or complete specification in triplicate. If the provisional specification is filed it must be followed by complete specification within 12 months (15 months with extension).
- Drawing in triplicate (if necessary).
- Abstract of the invention (in triplicate).



- Information and undertaking listing the number, filing date and current status of each foreign patent application in duplicate.
- Priority document (if priority date is claimed).
- Declaration of inventorship where provisional specification is followed by complete specification or in case of convention application.
- Power of attorney (if filed through Patent Agent).
- Fee in cash/by local cheque/by demand draft.

### Appropriate Office for Filing An Application

Application is required to be filed according to the territorial limits where the applicant or the first mentioned applicant in case of joint applicants for a patent normally resides or has domicile or has a place of business or the place from where the invention actually originated. If the applicant for the patent or party in a proceeding having no business, place or domicile in India, the appropriate office will be according to the address of service in India given by the applicant or party in a proceeding.

### Examination & Publication

All the applications for patent accompanied by complete specification are examined substantively. A first examination report stating the objection(s) is communicated to the applicant or his agents. Application or complete specification may be amended in order to meet the objection(s). Normally all the objections must be met within 15 months from the date of first examination report. Extension of time for three months is available, but application for extension therefore must be made before the expiry of normal period of 15 months. If all the objections are not complied with within the normal period or within the extended period the application will be deemed to have been abandoned. When the application is found to be suitable for acceptance it is published in the gazette of India (Part III, Section 2). It is deemed laid open to the public on the date of publication in the gazette of India.

### OPPOSITION

Notice of opposition must be filed within four months of notification in the Gazette. Extension of one month is available, but must be applied for before expiry of initial four month period.

### GRANT OR SEALING OF PATENT

If the application is not opposed or the opposition is decided in favour of the applicant or is not refused the patent is granted or sealed on payment of sealing fee within 6 months from the date of advertisement. However, it is extendable by three months.



---

**REGISTER OF PATENTS**

The Register of Patents will be kept in the Patent Office and its branch offices. Register of Patents can be inspected or extract from it can be obtained on payment of prescribed fee. Register of Patents contains full details of the Patent which include Patent number, the names and addresses of the patentee; notification of assignment etc.; renewals, particulars in respect of proprietorship of patent etc.

---

**RIGHTS OF PATENTEE**

A patent grant gives the patentee the exclusive right to make or use the patented article or use the patented process. He can prevent all others from making or using the patented process. A patentee has also the right to assign the patent, grant licenses under, or otherwise deal with it for any consideration. These rights created by statute are circumscribed by various conditions and limitations.

---

**RENEWAL FEE**

Renewal fees are payable every year. The first renewal fee is payable for third year of the patent's life, and must be paid before the patent's second anniversary. If the patent has not been issued within that period, renewal fees may be accumulated and paid immediately after the patent is sealed, or within three months of its recordal in the Register of the Patents.

Date of payment of Renewal fees is measured from the date of the patent. Six months' grace is available with Extension fee. No renewal fees are payable on patents of addition, unless the original patent is revoked and the patent of addition is converted into an independent patent; renewal fees then become payable for the remainder of the term of the main patent.

No renewal fees are payable during the pendency of the application for a patent; renewal fees that become overdue during pendency are payable upon sealing within three months of recordal in the Patent Register.

### **WORKING**

Annual reports as to the extent of working, by every patentee and licensee, are a statutory requirement and must be submitted by March, 31 each year for the previous year ending December, 31.

### **COMPULSORY LICENSE AND LICENSE OF RIGHT**

On failure to work a patent within three years from the date of its sealing, an interested party may file petition for grant of a compulsory license.

Every patent for an invention relating to a method or process for manufacture of substances intended for use, or capable of being used, as food, medicines, or drugs, or relating to substances prepared or produced by chemical process (including alloys, optical glass, semi-conductors and inter-metallic compounds) shall be deemed to be endorsed "Licenses of Right" from the date of expiry of three years from the date of sealing the patent.

### **ASSIGNMENT**

Applications must be filed on the prescribed form with the Controller for the registration of assignments and any other documents creating an interest in a patent in order for them to be valid. In order to be valid, an assignment must be recorded within six months from the date of the document. A six-months extension may be obtained.

### **LICENSE**

Applications must be filed on the prescribed form with the Controller for the registration of licenses and any other documents creating an interest in a patent in order for them to be valid. A license must be recorded within six months from the date of the document.

### **DURATION**

A patent lasts for 14 years from the date of filing the complete specification (if an application is filed

with provisional specification on January 1, 1989, and a complete specification is filed on January 1, 1990, the duration is counted from January 1, 1990). However, for food, drug and insecticide patents, the life is seven years from the date of complete specification, or five years from date of sealing, whichever is shorter.

#### **RESTORATION**

Application for restoration of a patent that lapses due to nonpayment of renewal fees must be made within one year of lapse. If an overdue annuity is not paid within the extension period, the one-year period for seeking restoration commences from the date of recordal.

#### **INFRINGEMENT**

Infringement can consist of taking away essential features of the patented invention; utilizing claimed features; copying patented substances; mechanical equivalence; taking part of the invention. while the patent is in force. Use by the government or for government purposes is not infringement. Such use must be paid for on terms to be agreed upon before or after use. Accidental or temporary use, use for research, use on foreign vessels, do not constitute infringement.

#### **APPEAL**

Appeal lies in the High Court. Appeal must be lodged within three months from the decision of the Controller.



## UNIT-V

### INDIAN PARTNERSHIP ACT, 1932

#### Introduction –

- Indian Partnership Act, 1932 is applicable to whole of India.
- Act was applicable from 1st October 1932 except for section 69 (effect of non registration) which
- The Act is based on the English Partnership Act, 1890

#### Meaning of Partnership – Section 4

- Partnership = relationship between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.

Persons, who have entered into partnership with one another are called individually 'partners'. Firm' is the collective of the partners.

The 'firm name' is the name under which the business is carried on.

#### Important Points on firm's name –

- ✓ The name of the firm should not be such which will misled or confuse the people with the name of the firm which is already in existence.
- ✓ The name of the firm should not show patronage (connection) with the government.

### Essential elements to constitute partnership firm –

- Atleast 2 parties. Persons must be competent to enter into a contract. Parties may be natural or artificial
- Agreement between the parties. Agreement may be oral or in writing. It may be express or implied.
- Agreement must be to share the profits of the business; and
- Business must be carried on by all or any of them acting for all;

### Important Points –

Members of HUF carrying on family business together are not partners.

### Sharing of Profits is not the only evidence for partnership –

This means that of two person are only sharing profit then it does not means that they both are partners.

**Example –**

- 1) A joint owner of a property sharing its return with the other owner does not make joint owners partner.
- 2) “Arnab” a trader, owed money to X, Y & Z. He agreed to pay XY & Z out of the profits

**Minor as a partner of the firm – Section 30**

- 1) Minor can become **partner for the benefits of the partnership** with the **consent of all the**

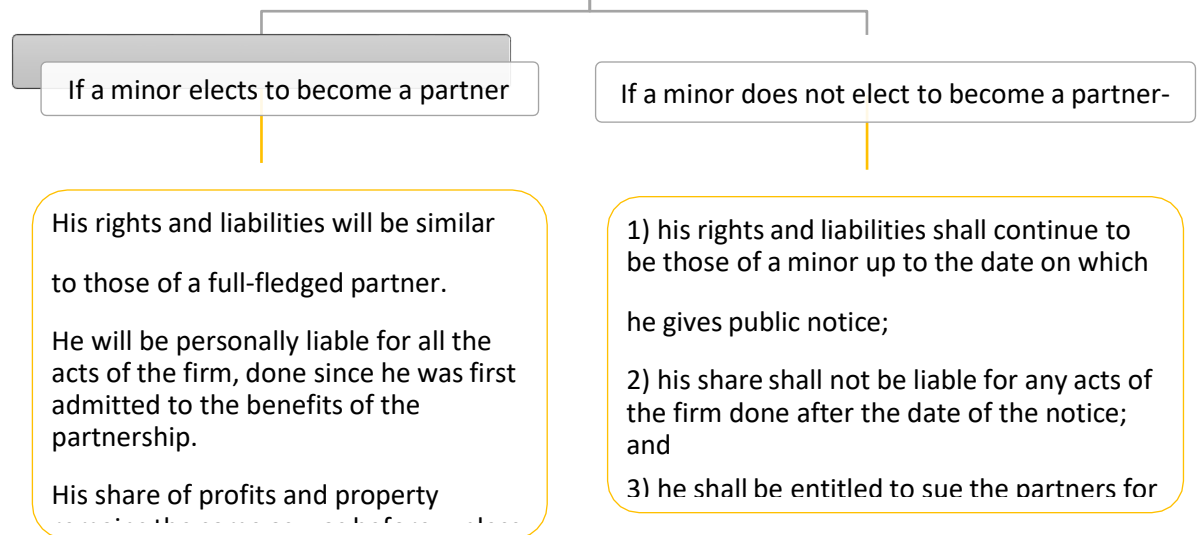
**partners**

- 2) For admitting minor as a partner, an agreement shall be executed through his guardian

<b>Rights of minor in partnership firm</b>	<b>Liabilities of minor in partnership firm</b>
<ul style="list-style-type: none"> <li>• Right to share profits of the firm</li> <li>• Right to share property of the firm</li> <li>• Right to inspect accounts of the firm</li> <li>• Right to take copy of the accounts</li> </ul>	<ul style="list-style-type: none"> <li>• Minor is not personally liable</li> <li>• However, share of minor in the firm is liable</li> </ul>

### Election on majority –

- a) On attaining majority, **or** his obtaining knowledge that he had been admitted to the benefits of partnership;  
**whichever date is later**, minor may **within six months** from such date give public notice that he has elected to a partner in the firm or not.
- b) If a minor fails to give such notice, he **shall become a partner in the firm** on the expiry of the said six months.



### Partnership Deed –

- 1) Written document which contains the mutual rights and obligations of partners is known as partnership deed.
- 2) Partnership Deed is not mandatory.
- 3) However, it is advisable to have partnership deed in writing.
- 4) If there is partnership deed then each partner should have 1 copy.
- 5) If the firm is to be registered then a copy of the deed should be filed with the Registrar of Firms.

### What are the contents of partnership deed?

Partnership deed should contain the following details –

- Firm name;
- Names and addresses of partners;
- Details of business of partnership;
- Address of business place;
- Profit sharing ratio
- Date of commencement of partnership firm;
- Duration of partnership firm;
- Amount of capital contribution;
- Salaries, commission and remuneration to partners;
- Rights of the partners;
- Liabilities of the partners;
- Details of retirement of partners;

### Difference between Co-ownership and partnership –

Partnership	Co-ownership
It arises from agreement	It may or may not arise from agreement
Purpose of partnership is to carry business	It may or may not involve carrying business
It involves profit and loss	It may or may not involve profit or loss
Partners have mutual agency	Co-owners do not have mutual agency
Persons who form partnership are called as partners	Persons who own property jointly are called as co-owner
A partner has a lien on the firm property.	A co-owner has no lien on the property

## Types of partnership –

## Types of partnership

### Partnership at will -

Partnership at will is a partnership formed for an indefinite period. Time period of partnership is not fixed nor specified.

- 1) Such type of partnership can continue for any period of time depending upon the will of the partners.
- 2) It can be dissolved by any partner by giving a notice to the other partners of his desire to quit the firm.

### Particular Partnership -

Particular Partnership is a partnership formed for a specific time or for a specific purpose.

Once the time is over or purpose is achieved, it ceases to exist.

## Types of partners

### 1) Working partner or Active partner -

- Active partner contributes capital and also takes active part in the management of the firm.
- He bears an unlimited liability for the firm's debts.
- He is known to outsiders.
- He shares profits of the firm.
- He is a full-fledged partner.

### 2) Sleeping or dormant partner -

- Only contributes capital;
- Does not take active part in the business;
- He shares in the profits or losses of the firm;
- His liability is unlimited;
- He is not known to the outsiders.
- A sleeping partner can retire from the firm without giving any public notice.

### 3) Secret partner -

- Secret partner contributes capital;
- Takes active part in the business;
- He shares in the profits or losses of the firm;
- His liability is unlimited;
- His connection with the firm is not known to the outside world.

### 4) Limited partner -

- The liability of such a partner is limited to the extent of his share in the capital and profits of the firm.
- He does not take active part in the business;
- The firm is not dissolved in the event of his death, lunacy or bankruptcy.



**5) Partner in profits only –**

- Partners in profit only share in the profits of the firm but not in the losses;
- His liability is unlimited;

- He is not allowed take active part in the business;
- Such a partner is associated for his money and goodwill.

#### 6) **Nominal Partner –**

- Nominal partner only lends his name and reputation for the benefit of the firm.
- He represents himself or knowingly allows himself to be represented as a partner
- Such type of partner neither contributes capital nor takes part in the management of business.
- He does not share in the profits or losses of the firm.
- He becomes liable to outsiders for the debts of the firm.

Nominal partner can be of two types -

Partner by estoppels

Partner by holding out.

A **partner by estoppel** is someone who is not a **partner** of a firm, but allows others to think that he is a **partner**,



##### **Example –**

Jalal, is not a partner but he tells Ramu that he is a partner in a firm called Alpha Enterprises. On this impression, Ramu sells good worth ` 20,000 to the firm. Later on the firm is unable to pay the amount. Ramu can recover the amount

A **partner by holding out** is someone who is not a **partner** of a firm, but knowingly allows the firm to project to



##### **Example –**

Alpha tells Ramu in the presence of Jalal that Jalal is a partner in the firm of Alpha Enterprises. Jalal does not deny it. Later on Ramu gives a loan of ` 20,000 to Alpha Enterprises on the basis of the impression that Jalal is a partner in the firm. The firm fails to repay the loan to Ramu. Jalal is liable to pay ` 20,000 to Ramu. Here, Jalal

#### **Partnership is a creation of contract – Section 5**

- Partnership is created out of contract and not by status.
- The members of a Hindu Undivided Family carrying on a family business or a Burmese Buddhist husband and wife, carrying on business as such, are not partners in such business.

**Difference between Partnership firm and other forms of business –**

BASIS FOR COMPARISON	PARTNERSHIP FIRM	COMPANY
Meaning	When two or more persons agree to carry on a business and share the profits & losses mutually, it is known as a Partnership firm.	A company is an association of persons who invests money towards a common stock, for carrying on a business and shares the profits & losses of the business.
Governing Act	Indian Partnership Act, 1932	Indian Companies Act, 2013
How it is created?	Partnership firm is created by mutual agreement between the partners.	The company is created by incorporation under the Companies Act.
Registration	Voluntary	Compulsory
Management of the concern	Partners itself.	Directors
Liability	Unlimited	Limited
Contractual capacity	A partnership firm cannot enter into contracts in its own name	A company can sue and be sued in its own name.
Use of word limited	No such requirement.	Must use the word 'limited' or 'private limited' as the case may be.
Legal formalities in dissolution / winding up	No	Yes
Separate legal entity	No	Yes
Mutual agency	Yes	No
Audit	Audit is not compulsory	Various types of audit are compulsory
Number of members	Minimum required is two. Maximum number is 100 subject to some exceptions	Minimum number of members for a private company is 2 and maximum 200. Minimum number of members for a public limited company is 7 and there is no limit for maximum.

BASIS FOR COMPARISON	PARTNERSHIP	LIMITED LIABILITY PARTNERSHIP (LLP)
Meaning	Partnership refers to an arrangement wherein two or more person agree to carry on a business and share profits & losses mutually.	Limited Liability Partnership is a form of business operation which combines the features of a partnership and a body corporate.
Governed By	Indian Partnership Act, 1932	Limited Liability Partnership Act, 2008
Registration	Optional	Mandatory
Charter document	Partnership deed	LLP Agreement
Liability	Unlimited	Limited to capital contribution, except in case of fraud.
Contractual capacity	It cannot enter into contract in its name.	It can sue and be sued in its name.
Legal Status	Partners are collectively known as firm, so there is no separate legal entity.	It has a separate legal status.
Maximum partners	100 partners	No limit
Property	Cannot be held in the name of firm.	Can be held in the name of the LLP.
Perpetual Succession	No	Yes
Relationship	Partners are agents of firm and other partners as well.	Partners are agents of LLP only.


BASIS FOR COMPARISON	Partnership	Hindu undivided family
Relationship	Relation subsists between the partners.	It is a single person and it cannot have a partnership by itself
Management	All of the partners may involve in the management	Karta of HUF is managing the business
Share of profit	Partners can share profit as per the agreement	No such sharing of profits in HUF

Property	The properties even though in the name of partnership firm belongs to all partners	This business is a species of ancestral joint property in which every member of a family acquires
----------	--	---

Authority	Each partner is the agent of others	It has implied authority to contract debts and pledge the properties and credit of the family for the ordinary purposes of the family business
Dissolution	Firm can be dissolved on the eve of death of partner, retirement of partner etc., unless otherwise than agreed to in the agreement	The death of Karta will not lead to the dissolution of the HUF business

### Rights and Liabilities of Partners –

#### Duties of partners – Section 9

- 
- to carry on the business of the firm to the greatest common advantage;
  - to be just and faithful to each other; and
  - to render true accounts and full information of all things affecting the firm, to any partner or his legal representative

### Rights of Partners –

- ✓ Every partner has a right to take part in the conduct of the business;
- ✓ Every partner, has a right of free access to all records, books and accounts of the business.
- ✓ the partners are entitled to share equally in the profits earned and shall contribute equally to the losses sustained by the firm (however, this is subject to the contract)
- ✓ where a partner is entitled to interest on the capital subscribed by him, such interest shall be payable only out of profits;
- ✓ a partner shall indemnify the firm for any loss caused to it by his willful neglect in the conduct of the business of the firm.
- ✓ A partner has power to act in an emergency for protecting the firm from loss
- ✓ Every partner has a right to retire by giving notice where the partnership is at will
- ✓ Every partner has a right to continue in the partnership and not to be expelled from it
- ✓ Any difference, arising as to ordinary matters connected with the business, may be decided by a



majority of the partners, and every partner shall have the right to express his opinion before the matter is decided.

- ✓ No change may be made in the nature of the business without the consent of all the partners;

#### Property of the firm –

- 1) The property of the firm includes all property and rights and interests in property, originally brought into the stock of the firm or acquired by purchase for the firm and includes the goodwill of the business – **Section 14**

- 2) The property of the firm shall be held and used by partners exclusively for the purposes of the business – **Section 15**

**3) The property of the firm belongs to the firm and not to the individual partner or partners.**

The ultimate test to determine the property of the firm is the real intention of the partners and the Court can take into consideration the following facts:

- (1) The source of the purchase money.
- (2) The reason due to which the property was purchased or acquired.
- (3) The object for which the property was purchased or acquired.
- (4) The mode in which the property was obtained.

**Partner to be agent of the firm – Section 18**

- 1) Every partner is an agent of the firm and of other partners for the purpose of the business of the firm.
- 2) Any act done by the partner binds the firm and all the partners in the firm.
- 3) However, following acts of the partner does not bind firm and other partners –
  - a) If any act was done by the partner for which he had no authority and the person with whom he is dealing knows that he has no authority; or
  - b) The party with which the partner was dealing does not know or believe him to be a partner.

**Authority of a Partner –**

Authority of a partner

**Express Authority -**

When authority is given by words, spoken or written the it is called as Express Authority

## **Implied Authority -**

Act done in the normal course of  
business and in a usual way and  
done for the firm

### **Implied Authority –**

- 1) A partner acting on behalf of the firm has an implied authority to bind the firm.
- 2) The authority of a partner to bind the firm is called his 'implied authority'
- 3) The implied authority of a partner does not give him power to –
  - a) submit a dispute relating to the business of the firm to arbitration;
  - b) open a banking account on behalf of the firm in his own name;
  - c) compromise or relinquish any claim or portion of a claim by the firm;
  - d) withdraw a suit or proceeding filed on behalf of the firm;
  - e) admit any liability in a suit or proceeding against the firm;
  - f) acquire immovable property on behalf of the firm;
  - g) transfer immovable property belonging to the firm; or

### Liability of a partner – Section 25

Every partner is liable, jointly and severally, for all acts of the firm done while he is a partner.

### Rights of Transferee of a partner's interest – Section 29

- 1) This section allows a partner to transfer his interest in the firm, either absolutely or by mortgage or by the creation of a charge on such interest during the continuance of the firm.
- 2) The transferee who receives such interest in the firm, does not entitled to-
  - a) interfere in the conduct of the business; or
  - b) to require accounts; or
  - c) to inspect the books of the firm
- 3) Rights of the transferee –
  - a) Transferee is entitled to receive the share of profits of the transferring partners;
  - b) If the firm is dissolved or the transferring partner ceases to be a partner, the transferee is entitled to receive the share of the assets of the firm to which the transferring partner is entitled

### Reconstitution of Firm –

Any change in the existing agreement / relationship of partnership amounts to reconstitution of a firm.

This results in change in the partnership agreement.

Reconstitution of a partnership firm may take place in the following occasions-

	the existing partners	
Change in profit sharing ratio of		Admission of a new partner

Retirement of existing partner	Amalgamation of two partners hip firm.
-----------------------------------	---

### Expulsion of a partner – Section 33

- A partner cannot be expelled by majority of the partners.
- For a partner to be expelled, express power should be there in partnership agreement.

### Death or Insolvency of a partner –

- 1) Where a partner in a firm is adjudicated (declared) as insolvent or is dead, he ceases to be a partner immediately whether or not the firm is thereby dissolved.
- 2) The estate of a partner who dies, or who becomes insolvent, is not liable for partnership debts contracted after the date of the death or insolvency.
- 3) However, estate of the partner will liable for debts incurred before death or insolvency.

### Rights of outgoing partners –

- 1) Outgoing partner may carry on a business competing with that of the firm.

Note –

- Outgoing partner cannot use the firm name.
- Outgoing partner cannot represent himself as carrying on the business of the firm

- 2) The outgoing partner of the representative of the deceased partner is entitled at the option-
  - a) to such share of the profits made since he ceased to be a partner; or
  - b) to interest at 6% per annum on the amount his share in the property of the firm.

### Registration of the Firm –

For the purpose of registration a statement in the prescribed form containing the following details should be submitted –

- the name of the firm;
- the place of business of the firm;
- the names of any other places where the firm carries on business;
- the date when each partner joined the firm;
- the names, in full, and permanent address of the partners; and
- the duration of the firm.

Statement shall be prepared and duly signed by all partners, or by their agents having authority.

### Effect of non-registration – Section 69

The consequences of non-registration of a firm are as under –

- ✓ A partner cannot sue the partnership firm for his claims;
- ✓ The firm cannot sue any 3<sup>rd</sup> party for any debts arising out of the contract;
- ✓ No partner can file a suit against other partners of the firm.

### Note –

**Third parties can file a suit against the firm to enforce their rights.**

However, even if a firm is not registered, it allows following suits –

- a) A suit for the dissolution of a firm
- b) A suit for rendering of accounts of a dissolved firm
- c) A suit for realisation of the property of a dissolved firm.
- d) A suit or claim of set-off, the value of which does not exceed one hundred rupees,

**Dissolution of a firm –**

## Modes of Dissolution of a firm

Dissolution by	Compulsory	Dissolution on the happenings of certain	Dissolution by notice of partnership at	Dissolution by
----------------	------------	--	---	----------------

### A) **Dissolution by agreement – Section 40**

A firm may be dissolved with the consent of all partners or in accordance with a contract between the parties.

### B) **Compulsory dissolution – Section 41**

a firm is dissolved –

- 1) If all the partners or of all the partners but one as insolvent; or
- 2) By the happening of any event which makes the business unlawful.

### C) **Dissolution on the happenings of certain contingencies – Section 42**

A firm is dissolved –

- a) if constituted for a fixed term, by the expiry of that term;
- b) if constituted to carry out one or more adventures or undertakings, by the completion thereof;
- c) by the death of a partner; and
- d) by the adjudication of a partner as an insolvent.

### D) **Dissolution by notice of partnership at will – Section 43**

Where the partnership is at will, the firm may be dissolved by any partner giving notice, in writing, to all the other partners, of his intention to dissolve the firm. The firm is dissolved as from the date mentioned in the notice as the date of dissolution or, if no date is mentioned, as from the date of the communication of then notice.

### E) **Dissolution by the court – Section 44**

Court may direct dissolution of a firm on the following grounds –

- ✓ if a partner has become of unsound mind;



- ✓ if a partner has become permanently incapable of performing his duties as partner;
- ✓ if a partner is guilty of conduct which is likely to affect prejudicially the carrying on of business, regarding being had to the nature of business;
- ✓ if a partner wilfully or persistently commits breach of agreements relating to-
  - a) the management of the affairs of the firm; or
  - b) the conduct of its business; or
  - c) otherwise so conducts himself in matters relating to the business that it is not reasonably practicable for the other partners to carry on the business in partnership with him;
- ✓ If a partner has in any way –
  - a) transferred the whole of his interest in the firm to a third party; or
  - b) has allowed his share to be charged; or
  - c) has allowed it to be sold in the recovery of the arrears of land revenue; or

- d) of any dues recoverable as arrears of land revenue due by the partner;
- ✓ the business of the firm cannot be carried on save at a loss; or
- ✓ on any other ground which renders it just and equitable that the firm should be dissolved.

### Effect of Dissolution –

#### A) Continuing authority of partners –

- 1) Authority of the partners continues even after dissolution so long as is necessary to wind up the business.
- 2) each partner has an equitable lien over the firm's assets which he can apply to pay the debts of the firm and to receive any amount due from partnership firm.

#### B) Continuing liability of partners –

- 1) Liability of partners continues till the public notice of dissolution is given.
- 2) Liability of partners continues for all things necessary for the winding up of the business. The partners may complete unfinished transactions

#### Note –

This authority is only for winding up and not for new transactions.

#### c) Right to Return of Premium –

- a) To buy entry into an existing firm, a new partner sometimes has to pay a premium to the existing partners in addition to any investment of capital.
- b) On dissolution, he is entitled to demand the return of a proportion of the premium if the partnership was for a fixed term and was dissolved before the expiry of that term
- c) However, in the following 3 cases, partner will not get the premium return –
  - 1) Where the partnership was dissolved by agreement; or
  - 2) misconduct of the party seeking return of the premium; or
  - 3) death of a partner.

#### d) Settlement of Accounts on Dissolution (order of payment) –

- a) Losses shall be paid first out of undistributed profits next out of capital, and lastly, if necessary, by the partners individually in the profit sharing ratio.
- b) The assets of the firm including the losses contributed by the partner as above shall be applied in the following manner –
  - 1) in paying outside creditors;
  - 2) in repaying advances made by partners
  - 3) in repaying capital to partners; and
  - 4) if any amount is left then it shall be divided in PSR.

**Loss due to insolvency of partners –**

In case a partner is insolvent and is not able to contribute towards the deficiency, then –

- a) The solvent partners will contribute only their share of deficiency in cash;

**Sale of Goodwill –**

Where goodwill is sold the value is divisible among the partners in the same manner as they share profits and losses.

## Rights in case of sale of goodwill -

### Rights of buyer

a) represent himself in continuing  
the business,

**b) Buyer can use  
the firm name**

**c) Buyer can solicit the former  
customers and will restrict the  
seller of the goodwill from doing so.**

### Rights of seller

Seller may enter into  
competition with the  
purchaser unless he is  
prevented by a valid  
restraint clause in the  
contract of sale.

#### **Suit for Libel or Slander –**

- a) A firm is merely a collection of partners and cannot bring a suit for libel or slander.
- b) Libel or slander against a firm means a libel or slander of its partners. Such partners themselves or any one may file the suit for libel or slander

### **The Limited Liability Partnership Act, 2008**

#### **a) Salient Features of LLP**

The salient features of LLP Act, 2008, inter alia, are as follows:

1. It is a body corporate with separate legal entity from its partners. The mutual rights and duties of the partners of an LLP are governed by LLP Agreement.
2. LLP is liable to the extent of its assets. Partner's liability is limited to the extent of agreed contribution (capital) in the LLP Agreement.
3. No partner is liable on account of the independent or unauthorized action of other partners or for their misconduct.
4. Every LLP should have at least two partners with at least two individuals as "designated partners", of whom at least one must be resident in India. Only designated partners are responsible for compliance with the Act.
5. A firm, private company or an unlisted public company can be converted into LLP.
6. The Act empowers Central Government to apply provisions of the Companies Act, 1956 as appropriate, by notification with such changes as deemed necessary, in the LLP Act, 2008.
7. The winding up of LLP is either voluntary or by the High Court.

#### **b) Difference between LLP and Partnership, LLP and Company**

S. No.	Basis	Partnership	Private Limited Company	Limited Liability Partnership
1	Prevailing Law	Partnership is prevailed by 'The Indian Partnership Act, 1932' and various Rules made thereunder	Companies are prevailed by ' <b>Companies Act, 2013</b> '	Limited Liability Partnership are prevailed by ' <b>The Limited Liability Partnership Act, 2008</b> ' and various Rules made thereunder
2	Capital Required	No minimum amount	Normally Rs. 1 Lacs	No minimum amount
3	Time of Registration	5-7 days	7-10 days in complete process	7-10 days in complete process
4	Name of Entity	Any name as per choice	Name to contain 'Private Limited' in case of Private Company assuffix.	Name to contain 'Limited Liability Partnership' or 'LLP' as suffix.

5	Registration	Registration is optional	Registration with Registrar of ROC required.	Registration with Registrar of LLP required.
6	Creation	Created by contract with 2 persons	Created by Law	Created by Law
7	Distinct entity	Not a separate legal entity	Is a separate legal entity under the Companies Act, 2013.	Is a separate legal entity under the Limited Liability Partnership Act, 2008.
8	Cost of Formation	The Cost of Formation is negligible	Minimum Statutory fee for incorporation of Company is Relatively High	The cost of Formation is statutory filing fees, comparatively lesser than the cost of formation of Company.
9	Perpetual Succession	It does not have perpetual succession as this depends upon the will of partners	It has perpetual succession and members may come and go.	It has perpetual succession and partners may come and go
10	Charter Document	Partnership Deed is a charter of the firm which denotes its scope of operation and rights and duties of the partners	Memorandum and Article of Association is the charter of the company that defines its scope of operations.	LLP Agreement is a charter of the LLP which denotes its scope of operation and rights and duties of the partners vis-à-vis LLP.
11	Common Seal	There is no concept of common seal in partnership	It denotes the signature of the company and every company shall have its own common seal	It denotes the signature and LLP may have its own common seal, dependant upon the terms of the Agreement
12	Formalities of Incorporation	In case of registration, Partnership Deed along with form /affidavit required to be filled with Registrar of firms along with requisite filing fee	Various eforms along the Memorandum & Articles of Association are filled with Registrar of Companies with prescribed fees	Various eforms are filled with Registrar of LLP with prescribed fees

13	Foreign Participation	Foreign Nationals can not form Partnership Firm	Foreign Nationals can be a member in a Company.	Foreign Nationals can be a Partner in a LLP.
----	-----------------------	---	---	--



		in India		
14	Number of Members	Minimum 2 and Maximum 20	2 to 200 members in case of Private Company	Minimum 2 partners and there is no limitation of maximum number of partners.
15	Ownership of Assets	Partners have joint ownership of all the assets belonging to partnership firm	The company independent of the members has ownership of assets	The LLP independent of the partners has ownership of assets
16	Legal Proceedings	Only registered partnership can sue third party	A company is a legal entity which can sue and be sued	A LLP is a legal entity can sue and be sued
17	Liability of Partners/Members	Unlimited. Partners are severally and jointly liable for actions of other partners and the firm and liability extend to their personal assets.	Generally limited to the amount required to be paid up on each share.	Limited, to the extent their contribution towards LLP, except in case of intentional fraud or wrongful act of omission or commission by the partner.
18	Tax Liability	Income of Partnership is taxed at a Flat rate of 30% plus education cess as applicable.	Income of Company is Taxed at a Flat rate of 30% Plus surcharge as applicable.	Income of LLP is taxed at a Flat rate of 30% plus education cess as applicable.
19	Principal/Agent Relationship	Partners are agents of the firm and other partners.	The directors act as agents of the company and not of the members	Partners act as agents of LLP and not of the other partners.
20	Transfer / Inheritance of Rights	Not transferable. In case of death the legal heir receives the financial value of share.	Ownership is easily transferable.	Regulations relating to transfer are governed by the LLP Agreement.
21	Transfer of Share / Partnership rights in case of death	In case of death of a partner, the legal heirs have the right to get the refund of the capital	In case of death of a member, shares are transmitted to the legal heirs.	In case of death of a partner, the legal heirs have the right to get the refund of the capital contribution + share in accumulated profits, if

		contribution + share in accumulated profits, if any. Legal heirs will not become partners		any. Legal heirs will not become partners
22	Director Identification Number / Designated Partner Identification Number (DIN / DPIN)	The partners are not required to obtain any identification number	Each director is required to have a Director Identification Number before being appointed as Director of any company.	Each Designated Partners is required to have a DPIN before being appointed as Designated Partner of LLP.
23	Digital Signature	There is no requirement of obtaining Digital Signature	As eforms are filled electronically, atleast one Director should have Digital Signatures	As eforms are filled electronically, atleast one Designated Partner should have Digital Signatures.
24	Dissolution	By agreement, mutual consent, insolvency, certain contingencies, and by court order.	Voluntary or by order of National Company Law Tribunal.	Voluntary or by order of National Company Law Tribunal.
25	Admission as partner / member	A person can be admitted as a partner as per the partnership Agreement	A person can become member by buying shares of a company.	A person can be admitted as a partner as per the LLP Agreement
26	Admission as partner / member	A person can be admitted as a partner as per the partnership Agreement	A person can become member by buying shares of a company.	A person can be admitted as a partner as per the LLP Agreement
27	Cessation as partner / member	A person can cease to be a partner as per the agreement	A member / shareholder can cease to be a member by selling his shares.	A person can cease to be a partner as per the LLP Agreement or in absence of the same by giving 30 days prior notice to the LLP.

28	Requirement of Managerial Personnel for day today administration	No requirement of any managerial; personnel, partners themselves administer the business	Directors are appointed to manage the business and other statutory compliances on behalf of the members.	Designated Partners are responsible for managing the day to day business and other statutory compliances.
29	Statutory Meetings	There is no provision in regard to holding of any meeting	Board Meetings and General Meetings are required to be conducted at appropriate time.	There is no provision in regard to holding of any meeting.
30	Maintenance of Minutes	There is no concept of any minutes	The proceedings of meeting of the board of directors / shareholders are required to be recorded in minutes.	A LLP by agreement may decide to record the proceedings of meetings of the Partners/Designated Partners
31	Voting Rights	It depends upon the partnership Agreement	Voting rights are decided as per the number of shares held by the members.	Voting rights shall be as decided as per the terms of LLP Agreement.
32	Remuneration of Managerial Personnel for day today administration	The firm can pay remuneration to its partners	Company can pay remuneration to its Directors subject to law.	Remuneration to partner will depend upon LLP Agreement.
33	Contracts with Partners/Director	Partners are free to enter into any contract.	Restrictions on Board regarding some specified contracts, in which directors are interested.	Partners are free to enter into any contract.
34	Maintenance of Statutory Records	Required to maintain books of accounts as Tax laws	Required to maintain books of accounts, statutory registers, minutes etc.	Required to maintain books of accounts.
35	Annual Filing	No return is required to be filed with	Annual Financial Statement and Annual Return is	Annual Statement of accounts and Solvency & Annual Return is

		Registrar of Firms	required to be filed with the Registrar of Companies every year.	required to be filed with Registrar of Companies every year.
36	Share Certificate	The ownership of the partners in the firm is evidenced by Partnership Deed, if any.	Share Certificates are proof of ownership of shares held by the members in the Company	The ownership of the partners in the firm is evidenced by LLP Agreement.
37	Audit of accounts	Partnership firms are only required to have tax audit of their accounts as per the provisions of the Income Tax Act	Companies are required to get their accounts audited annually as per the provisions of the Companies Act, 2013	All LLP except for those having turnover less than Rs.40 Lacs or Rs.25 Lacs contribution in any financial year are required to get their accounts audited annually as per the provisions of LLP Act 2008.
38	Applicability of Accounting Standards.	No Accounting Standards are applicable	Companies have to mandatorily comply with accounting standards	The necessary rules in regard to the application of accounting standards are not yet issued.
39	Compromise / arrangements / merger / amalgamation	Partnership / cannot merge / with other firm or enter into compromise or arrangement with creditors or partners	Companies can enter into compromise / arrangements / merger / amalgamation	LLP's can enter into Compromise / arrangements / merger / amalgamation
40	Oppression and mismanagement	No remedy exist , in case of oppression of any partner or mismanagement of Partnership	Provisions providing for remedy against Oppression and mismanagement exists	No provision relating to redressal in case of oppression and mismanagement
41	Credit Worthiness of organization	Creditworthiness of firm depends upon goodwill and creditworthiness of its partners	Due to Stringent Compliances & disclosures under various laws, Companies	Will enjoy Comparatively higher creditworthiness from Partnership due to Stringent regulatory framework but lesser

			enjoys	high	
--	--	--	--------	------	--

			degree of creditworthiness.	
--	--	--	-----------------------------	--

### c) **Nature of LLP**

1. Short title, extent and commencement.—(1) This Act may be called the Limited Liability Partnership Act, 2008. (2) It extends to the whole of India. (3) It shall come into force on such date<sup>1</sup> as the Central Government may, by notification in the Official Gazette, appoint: Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.
2. Definitions.—(1) In this Act, unless the context otherwise requires,— (a) "address", in relation to a partner of a limited liability partnership, means— (i) if an individual, his usual residential address; and (ii) if a body corporate, the address of its registered office; (b) "advocate" means an advocate as defined in clause (a) of sub-section (1) of section 2 of the Advocates Act, 1961 (25 of 1961); (c) "Appellate Tribunal" means the National Company Law Appellate Tribunal constituted under sub-section (1) of section 10FR of the Companies Act, 1956 (1 of 1956); (d) "body corporate" means a company as defined in section 3 of the Companies Act, 1956 (1 of 1956) and includes— (i) a limited liability partnership registered under this Act; (ii) a limited liability partnership incorporated outside India; and (iii) a company incorporated outside India, but does not include— (i) a corporation sole; (ii) a co- operative society registered under any law for the time being in force; and (iii) any other body corporate (not being a company as defined in section 3 of the Companies Act, 1956 (1 of 1956) or a limited liability partnership as defined in this Act), which the Central Government may, by notification in the Official Gazette, specify in this behalf; (e) "business" includes every trade, profession, service and occupation; (f) "chartered accountant" means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 (38 of 1949) and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;
3. Limited liability partnership to be body corporate.—
  - (1) A limited liability partnership is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners.
  - (2) A limited liability partnership shall have perpetual succession.
  - (3) Any change in the partners of a limited liability partnership shall not affect the existence, rights or liabilities of the limited liability partnership.
4. Non-applicability of the Indian Partnership Act, 1932.—Save as otherwise provided, the provisions of the Indian Partnership Act, 1932 (9 of 1932) shall not apply to a limited liability partnership.
5. Partners.—Any individual or body corporate may be a partner in a limited liability partnership: Provided that an individual shall not be capable of becoming a partner of a limited liability partnership, if— (a) he has been found to be of unsound mind

by a Court of competent jurisdiction and the finding is in force; (b) he is an undischarged insolvent; or (c) he has applied to be adjudicated as an insolvent and his application is pending.

6. Minimum number of partners.—(1) Every limited liability partnership shall have at least two partners. (2) If at any time the number of partners of a limited liability partnership is reduced below two and the limited liability partnership carries on business for more than six months while the number is so reduced, the person, who is the only partner of the limited liability partnership during the time that it so carries on business after those six months and has the knowledge of the fact that it is carrying on business with him alone, shall be liable personally for the obligations of the limited liability partnership incurred during that period.
7. Designated partners.—(1) Every limited liability partnership shall have at least two designated partners who are individuals and at least one of them shall be a resident in India: Provided that in case of a limited liability partnership in which all the partners are bodies corporate or in which one or more partners are individuals and bodies corporate, at least two individuals who are partners of such limited liability partnership or nominees of such bodies corporate shall act as designated partners. Explanation.—For the purposes of this section, the term "resident in India" means a person who has stayed in India for a period of not less than one hundred and eighty-two days during the immediately preceding one year. (2)

Subject to the provisions of sub-section

- (1),— (i) if the incorporation document— (a) specifies who are to be designated partners, such persons shall be designated partners on incorporation; or (b) states that each of the partners from time to time of limited liability partnership is to be designated partner, every such partner shall be a designated partner;
- (2) any partner may become a designated partner by and in accordance with the limited liability partnership agreement and a partner may cease to be a designated partner in accordance with limited liability partnership agreement.
- (3) An individual shall not become a designated partner in any limited liability partnership unless he has given his prior consent to act as such to the limited liability partnership in such form and manner as may be prescribed.
- (4) Every limited liability partnership shall file with the registrar the particulars of every individual who has given his consent to act as designated partner in such form and manner as may be prescribed within thirty days of his appointment.
- (5) An individual eligible to be a designated partner shall satisfy such conditions and requirements as may be prescribed.
- (6) Every designated partner of a limited liability partnership shall obtain a Designated Partner Identification Number (DPIN) from the Central Government and the provisions of sections 266A to 266G 8 (both inclusive) of the Companies Act, 1956 (1 of 1956) shall apply mutatis mutandis for the said purpose.

8. Liabilities of designated partners.—Unless expressly provided otherwise in this Act, a designated partner shall be— (a) responsible for the doing of all acts, matters and things as are required to be done by the limited liability partnership in respect



of compliance of the provisions of this Act including filing of any document, return, statement and the like report pursuant to the provisions of this Act and as may be specified in the limited liability partnership agreement; and (b) liable to all penalties imposed on the limited liability partnership for any contravention of those provisions.

9. Changes in designated partners.—A limited liability partnership may appoint a designated partner within thirty days of a vacancy arising for any reason and provisions of sub-section (4) and sub-section (5) of section 7 shall apply in respect of such new designated partner: Provided that if no designated partner is appointed, or if at any time there is only one designated partner, each partner shall be deemed to be a designated partner.
10. Punishment for contravention of sections 7, 8 and 9.—(1) If the limited liability partnership contravenes the provisions of sub-section (1) of section 7, the limited liability partnership and its every partner shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to five lakh rupees. (2) If the limited liability partnership contravenes the provisions of sub-section (4) and sub-section (5) of section 7, section 8 or section 9, the limited liability partnership and its every partner shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees.

## **INCORPORATION OF LIMITED LIABILITY PARTNERSHIP AND MATTERS INCIDENTAL THERETO**

Incorporation document-

- (1) For a limited liability partnership to be incorporated,—
- (a) two or more persons associated for carrying on a lawful business with a view to profit shall subscribe their names to an incorporation document;
  - (b) the incorporation document shall be filed in such manner and with such fees, as may be prescribed with the Registrar of the State in which the registered office of the limited liability partnership is to be situated; and
  - (c) there shall be filed along with the incorporation document, a statement in the prescribed form, made by either an advocate, or a Company Secretary or a Chartered Accountant or a Cost Accountant, who is engaged in the formation of the limited liability partnership and by any one who subscribed his name to the incorporation document, that all the requirements of this Act and the rules made thereunder have been complied with, in respect of incorporation and matters precedent and incidental thereto.
- (2) The incorporation document shall— (a) be in a form as may be prescribed; (b) state the name of the limited liability partnership; (c) state the proposed business of the limited liability partnership; (d) state the address of the registered office of the limited liability partnership; (e) state the name and address of each of the persons who are to be partners of the limited liability partnership on incorporation; (f) state the name and address of the persons who are to be designated partners of the

limited liability partnership on incorporation; (g) contain such other information concerning the proposed limited liability partnership as may be prescribed.

- (3) If a person makes a statement under clause (c) of sub-section (1) which he— (a) knows to be false; or (b) does not believe to be true, shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than ten thousand rupees but which may extend to five lakh rupees.

### **Incorporation by registration**

- (1) When the requirements imposed by clauses (b) and (c) of sub-section (1) of section 11 have been complied with, the Registrar shall retain the incorporation document and, unless the requirement imposed by clause (a) of that sub-section has not been complied with, he shall, within a period of fourteen days— (a) register the incorporation document; and (b) give a certificate that the limited liability partnership is incorporated by the name specified therein.
- (2) The Registrar may accept the statement delivered under clause (c) of sub-section (1) of section 11 as sufficient evidence that the requirement imposed by clause (a) of that sub-section has been complied with.
- (3) The certificate issued under clause (b) of sub-section (1) shall be signed by the Registrar and authenticated by his official seal. (4) The certificate shall be conclusive evidence that the limited liability partnership is incorporated by the name specified therein.

### **Registered office of limited liability partnership and change therein.**

- (1) Every limited liability partnership shall have a registered office to which all communications and notices may be addressed and where they shall be received.
- (2) A document may be served on a limited liability partnership or a partner or designated partner thereof by sending it by post under a certificate of posting or by registered post or by any other manner, as may be prescribed, at the registered office and any other address specifically declared by the limited liability partnership for the purpose in such form and manner as may be prescribed.
- (3) A limited liability partnership may change the place of its registered office and file the notice of such change with the Registrar in such form and manner and subject to such conditions as may be prescribed and any such change shall take effect only upon such filing.
- (4) If the limited liability partnership contravenes any provisions of this section, the limited liability partnership and its every partner shall be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty-five thousand rupees.

### **Effect of registration.**

On registration, a limited liability partnership shall, by its name, be capable of—

- (a) suing and being sued;
- (b) acquiring, owning, holding and developing or disposing of property, whether movable or

immovable, tangible or intangible;

- (c) having a common seal, if it decides to have one; and
- (d) doing and suffering such other acts and things as bodies corporate may lawfully do and suffer.

### **Name.**

- (1) Every limited liability partnership shall have either the words "limited liability partnership" or the acronym "LLP" as the last words of its name.
- (2) No limited liability partnership shall be registered by a name which, in the opinion of the Central Government is—
  - (a) undesirable; or
  - (b) identical or too nearly resembles to that of any other partnership firm or limited liability partnership or body corporate or a registered trade mark, or a trade mark which is the subject matter of an application for registration of any other person under the Trade Marks Act, 1999 (47 of 1999).

### **Reservation of name.**

- (1) A person may apply in such form and manner and accompanied by such fee as may be prescribed to the Registrar for the reservation of a name set out in the application as— (a) the name of a proposed limited liability partnership; or (b) the name to which a limited liability partnership proposes to change its name.
- (2) Upon receipt of an application under sub-section (1) and on payment of the prescribed fee, the Registrar may, if he is satisfied, subject to the rules prescribed by the Central Government in the matter, that the name to be reserved is not one which may be rejected on any ground referred to in sub-section (2) of section 15, reserve the name for a period of three months from the date of intimation by the Registrar.

### **Change of name of limited liability partnership**

- (1) Notwithstanding anything contained in sections 15 and 16, where the Central Government is satisfied that a limited liability partnership has been registered (whether through inadvertence or otherwise and whether originally or by a change of name) under a name which— (a) is a name referred to in sub-section (2) of section 15; or (b) is identical with or too nearly resembles the name of any other limited liability partnership or body corporate or other name as to be likely to be mistaken for it, the Central Government may direct such limited liability partnership to change its name, and the limited liability partnership shall

comply with the said direction within three months after the date of the direction or such longer period as the Central Government may allow.

- (2) Any limited liability partnership which fails to comply with a direction given under subsection (1) shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to five lakh rupees and the designated

partner of such limited liability partnership shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees.

### **Application for direction to change name in certain circumstances.**

- (1) Any entity which already has a name similar to the name of a limited liability partnership which has been incorporated subsequently, may apply, in such manner as may be prescribed, to the Registrar to give a direction to any limited liability partnership, on a ground referred to in section 17 to change its name.
- (2) The Registrar shall not consider any application under sub-section (1) to give a direction to a limited liability partnership on the ground referred to in clause (b) of sub-section (1) of section 17 unless the Registrar receives the application within twenty-four months from the date of registration of the limited liability partnership under that name.

### **Change of registered name.**

Any limited liability partnership may change its name registered with the Registrar by filing with him a notice of such change in such form and manner and on payment of such fees as may be prescribed.

### **Penalty for improper use of words "limited liability partnership" or "LLP".**

If any person or persons carry on business under any name or title of which the words "Limited Liability Partnership" or "LLP" or any contraction or imitation thereof is or are the last word or words, that person or each of those persons shall, unless duly incorporated as limited liability partnership, be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.

### **Publication of name and limited liability.**

- (1) Every limited liability partnership shall ensure that its invoices, official correspondence and publications bear the following, namely:— (a) the name, address of its registered office and registration number of the limited liability partnership; and (b) a statement that it is registered with limited liability.
- (2) Any limited liability partnership which contravenes the provisions of sub-section (1) shall be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty-five thousand rupees

## **PARTNERS AND THEIR RELATIONS**

### **Eligibility to be partners**

On the incorporation of a limited liability partnership, the persons who subscribed their names to the incorporation document shall be its partners and any other person may

become a partner of the limited liability partnership by and in accordance with the limited liability partnership agreement.

### **Relationship of partners**

- (1) Save as otherwise provided by this Act, the mutual rights and duties of the partners of a limited liability partnership, and the mutual rights and duties of a limited liability partnership and its partners, shall be governed by the limited liability partnership agreement between the partners, or between the limited liability partnership and its partners.
- (2) The limited liability partnership agreement and any changes, if any, made therein shall be filed with the Registrar in such form, manner and accompanied by such fees as may be prescribed.
- (3) An agreement in writing made before the incorporation of a limited liability partnership between the persons who subscribe their names to the incorporation document may impose obligations on the limited liability partnership, provided such agreement is ratified by all the partners after the incorporation of the limited liability partnership.
- (4) In the absence of agreement as to any matter, the mutual rights and duties of the partners and the mutual rights and duties of the limited liability partnership and the partners shall be determined by the provisions relating to that matter as are set-out in the First Schedule.

### **Cessation of partnership interest**

- (1) A person may cease to be a partner of a limited liability partnership in accordance with an agreement with the other partners or, in the absence of agreement with the other partners as to cessation of being a partner, by giving a notice in writing of not less than thirty days to the other partners of his intention to resign as partner.
- (2) A person shall cease to be a partner of a limited liability partnership— (a) on his death or dissolution of the limited liability partnership; or (b) if he is declared to be of unsound mind by a competent court; or (c) if he has applied to be adjudged as an insolvent or declared as an insolvent.
- (3) Where a person has ceased to be a partner of a limited liability partnership (hereinafter referred to as "former partner"), the former partner is to be regarded (in relation to any person dealing with the limited liability partnership) as still being a partner of the limited liability partnership unless— (a) the person has notice that the former partner has ceased to be a partner of the limited liability partnership; or (b) notice that the former partner has ceased to be a partner of the limited liability partnership has been delivered to the Registrar. 12
- (4) The cessation of a partner from the limited liability partnership does not by itself discharge the partner from any obligation to the limited liability partnership or to the other partners or to any other person which he incurred while being a partner.



- (5) Where a partner of a limited liability partnership ceases to be a partner, unless otherwise provided in the limited liability partnership agreement, the former partner

or a person entitled to his share in consequence of the death or insolvency of the former partner, shall be entitled to receive from the limited liability partnership—

- (a) an amount equal to the capital contribution of the former partner actually made to the limited liability partnership; and
  - (b) his right to share in the accumulated profits of the limited liability partnership, after the deduction of accumulated losses of the limited liability partnership, determined as at the date the former partner ceased to be a partner.
- (6) A former partner or a person entitled to his share in consequence of the death or insolvency of the former partner shall not have any right to interfere in the management of the limited liability partnership.

### **Registration of changes in partners**

- (1) Every partner shall inform the limited liability partnership of any change in his name or address within a period of fifteen days of such change.
- (2) A limited liability partnership shall— (a) where a person becomes or ceases to be a partner, file a notice with the Registrar within thirty days from the date he becomes or ceases to be a partner; and (b) where there is any change in the name or address of a partner, file a notice with the Registrar within thirty days of such change.
- (3) A notice filed with the Registrar under sub-section (2)— (a) shall be in such form and accompanied by such fees as may be prescribed; (b) shall be signed by the designated partner of the limited liability partnership and authenticated in a manner as may be prescribed; and (c) if it relates to an incoming partner, shall contain a statement by such partner that he consents to becoming a partner, signed by him and authenticated in the manner as may be prescribed.
- (4) If the limited liability partnership contravenes the provisions of sub-section (2), the limited liability partnership and every designated partner of the limited liability partnership shall be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty-five thousand rupees.
- (5) If any partner contravenes the provisions of sub-section (1), such partner shall be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty-five thousand rupees.
- (6) Any person who ceases to be a partner of a limited liability partnership may himself file with the Registrar the notice referred to in sub-section (3) if he has reasonable cause to believe that the limited liability partnership may not file the notice with the Registrar and in case of any such notice filed by a partner, the Registrar shall obtain a confirmation to this effect from the limited liability partnership unless the limited liability partnership has also filed such notice: Provided that where no confirmation is given by the limited liability partnership within fifteen days, the registrar shall register the notice made by a person ceasing to be a partner under this section.

## **EXTENT AND LIMITATION OF LIABILITY OF LIMITED LIABILITY PARTNERSHIP AND PARTNERS**

**Partner as agent.**—Every partner of a limited liability partnership is, for the purpose of the business of the limited liability partnership, the agent of the limited liability partnership, but not of other partners.

**Extent of liability of limited liability partnership.**—

- (1) A limited liability partnership is not bound by anything done by a partner in dealing with a person if— (a) the partner in fact has no authority to act for the limited liability partnership in doing a particular act; and (b) the person knows that he has no authority or does not know or believe him to be a partner of the limited liability partnership.
- (2) The limited liability partnership is liable if a partner of a limited liability partnership is liable to any person as a result of a wrongful act or omission on his part in the course of the business of the limited liability partnership or with its authority.
- (3) An obligation of the limited liability partnership whether arising in contract or otherwise, shall be solely the obligation of the limited liability partnership. (4) The liabilities of the limited liability partnership shall be met out of the property of the limited liability partnership. 28. Extent of liability of partner.—
  - (1) A partner is not personally liable, directly or indirectly for an obligation referred to in sub-section (3) of section 27 solely by reason of being a partner of the limited liability partnership.
  - (2) The provisions of sub-section (3) of section 27 and sub-section (1) of this section shall not affect the personal liability of a partner for his own wrongful act or omission, but a partner shall not be personally liable for the wrongful act or omission of any other partner of the limited liability partnership.

### **Holding out.**

- (1) Any person, who by words spoken or written or by conduct, represents himself, or knowingly permits himself to be represented to be a partner in a limited liability partnership is liable to any person who has on the faith of any such representation given credit to the limited liability partnership, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit: Provided that where any credit is received by the limited liability partnership as a result of such representation, the limited liability partnership shall, without prejudice to the liability of the person so representing himself or represented to be a partner, be liable to the extent of credit received by it or any financial benefit derived thereon
- (2) Where after a partner's death the business is continued in the same limited liability partnership name, the continued use of that name or of the deceased partner's name as a part thereof shall not of itself make his legal representative or his estate liable for any act of the limited liability partnership done after his death.

### **Unlimited liability in case of fraud**

- (1) In the event of an act carried out by a limited liability partnership, or any of its partners, with intent to defraud creditors of the limited liability partnership or any other person, or for any fraudulent purpose, the liability of the limited liability partnership and partners who acted with intent to defraud creditors or for any fraudulent purpose shall be unlimited for all or any of the debts or other liabilities of the limited liability partnership: Provided that in case any such act is carried out by a partner, the limited liability partnership is liable to the same extent as the partner unless it is established by the limited liability partnership that such act was without the knowledge or the authority of the limited liability partnership.
- (2) Where any business is carried on with such intent or for such purpose as mentioned in sub-section (1), every person who was knowingly a party to the carrying on of the business in the manner aforesaid shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.
- (3) Where a limited liability partnership or any partner or designated partner or employee of such limited liability partnership has conducted the affairs of the limited liability partnership in a fraudulent manner, then without prejudice to any criminal proceedings which may arise under any law for the time being in force, the limited liability partnership and any such partner or designated partner or employee shall be liable to pay compensation to any person who has suffered any loss or damage by reason of such conduct: Provided that such limited liability partnership shall not be liable if any such partner or designated partner or employee has acted fraudulently without knowledge of the limited liability partnership.

### Whistle blowing.

- (1) The Court or Tribunal may reduce or waive any penalty leviable against any partner or employee of a limited liability partnership, if it is satisfied that—
  - (a) such partner or employee of a limited liability partnership has provided useful information during investigation of such limited liability partnership; or
  - (b) when any information given by any partner or employee (whether or not during investigation) leads to limited liability partnership or any partner or employee of such limited liability partnership being convicted under this Act or any other Act.
- (2) No partner or employee of any limited liability partnership may be discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against the terms and conditions of his limited liability partnership or employment merely because of his providing information or causing information to be provided pursuant to sub-section (1)

### **Taxation of LLP**

**Treatment of Firm and LLP is equal under Income Tax**

Section 2 (23) (i) of the **Income Tax Act, 1961** defines the term ‘firm’. As per the said definition, the firm shall have the same meaning as assigned in the Indian Partnership Act, 1932 and the term firm shall include the Limited Liability Partnership as defined in the Limited Liability Partnership Act, 2008.

Similarly, the definition of term ‘partner’ as contained in section 2 (23) (ii) and the definition of term ‘partnership’ as provided in section 2 (23) (iii) also includes LLP within its ambit.

Following the above definitions, it is easy to conclude that under Income Tax, the LLP taxation treatment remains the same as a Firm.

### **Income Tax Rate of LLP as applicable for the Assessment Year 2020-2021**

The **LLP is liable to pay income tax @30%** on its income. In case the total income exceeds INR 1 Crore, LLP is also liable to pay surcharge @12% on the income tax.

Additionally, health and education cess of 4% is payable on the income tax plus surcharge.

### **Alternate Minimum Taxation (AMT)**

Initially, the concept of MAT, i.e. Minimum Alternative Tax, was introduced only for the companies. However, gradually it was made applicable to all the other taxpayers in the form of AMT, i.e. Alternate Minimum Taxation. Hence it forms a part of the LLP taxation.

Before understanding AMT provisions, it is important to understand the difference between MAT and AMT which are –

<b>Particulars</b>	<b>MAT</b>	<b>AMT</b>
Relevant Section	Section 115JB	Section 115JC to Section 115JF
Applicability	Company	Taxable Person, other than the company, claiming deduction under section 80H to 80RRB (except section 80P), or section 10AA or section 35AD.

Taxability	MAT is payable on book profit	AMT is payable on adjusted total income
Reporting requirement	Form 29B	Form 29C

## **Applicability of the provisions of AMT to LLPs**

Vide Finance Act, 2011, the provisions of AMT were made applicable to the LLP. Provisions of AMT are applicable only in the following cases –

1. When an LLP has claimed deduction under section 80H to 80RRB (except section 80P).
2. If an LLP has claimed deduction under section 35AD.
3. When an LLP has claimed deduction under section 10AA.

## **Threshold exemption under AMT**

The provisions of Section 115JEE of the Income Tax Act states that the AMT applies to an Individual, Hindu Undivided Family, Association of Person, Body of Individuals and the artificial juridical person only in case the 'adjusted total income' exceed INR 20 Lakhs.

It is important to mention here that the benefit of the threshold exemption is available only to the categories of persons mentioned above. The benefit of threshold exemption is not available to the partnership firm, LLP and other non-corporate assessee.

## **Rate of AMT**

AMT @ 18.50% (plus surcharge and cess as applicable) of the adjusted total income is leviable.

AMT is levied @ 9% (plus surcharge and cess as applicable) in case of a non-corporate assessee being the unit located in IFSC [International Financial Services Centre] and such unit is deriving its income only in convertible foreign exchange. The same is effective from the Assessment Year 2019-2020.

## **Calculation of Adjusted Total Income**



AMT rates are applicable on 'adjusted total income' and therefore it is vital to understand the calculation of 'adjusted total income'. Here's how –

Particulars	Amount
Total taxable income of the LLP	XXX
Add – Amount of deduction claimed under section 80H to section 80RRB (except section 80P)	XXX

Add – Amount of deduction claimed under section 35AD (reduced by the depreciation allowable as per section 32)	XXX
Add – Amount of deduction claimed under section 10AA	XXX
Adjusted total income	XXX

### Computation of tax liability

If AMT provisions apply to the LLP, in that case, the LLP tax liability would be calculated as –

Particulars	Amount
Tax liability computed as per the normal provisions of the Income Tax Act (A)	XXX
Tax liability computed as per AMT provisions(B)	XXX
Tax payable by the LLP would be higher of (A) or (B)	XXX

It is essential to note here that the LLP is required to pay tax as per AMT only in the Financial Year, wherein, the tax on normal income is lower than AMT on Adjusted total income.

### AMT credit

If in any year, the LLP pays tax liability as per AMT, then it is entitled to claim AMT credit. The amount of AMT credit would be excess of tax paid as per AMT over the tax payable as per normal provisions i.e.,  $\text{AMT Credit} = \text{Tax paid as per AMT provisions} - \text{Tax computed as per normal provisions}$ .

The AMT credit can be utilized in the subsequent years. The AMT credit can be adjusted in the year in which the tax payable as per normal provisions is more than the tax payable as per AMT. The utilization of AMT is allowed as follows –

*Amount of utilization of AMT credit = Tax payable as per normal provisions (-) Tax as per AMT.*

The AMT credit can be carried forward for a period of 15 years immediately following the assessment year in which such credit is generated. If the AMT credit remains unutilized, within a period of 15 years, the pending AMT credit will lapse.

### **Reporting requirements**

If AMT provisions apply to LLP, then, the LLP is required to obtain a report in FORM 29C from the Chartered Accountant. The said report certifies that the calculation of adjusted total income and the AMT is as per the applicable provisions

### **Conversion of LLP**

Conversion from firm into limited liability partnership.—A firm may convert into a limited liability partnership in accordance with the provisions of this Chapter and the Second Schedule.

### **Conversion from private company into limited liability partnership.**

A private company may convert into a limited liability partnership in accordance with the provisions of this Chapter and the Third Schedule. 57. Conversion from unlisted public company into limited liability partnership.—An unlisted public company may convert into a limited liability partnership in accordance with the provisions of this Chapter and the Fourth Schedule.

### **Registration and effect of conversion**

- (1) The Registrar, on satisfying that a firm, private company or an unlisted public company, as the case may be, has complied with the provisions of the Second Schedule, the Third Schedule or the Fourth Schedule, as the case may be, shall, subject to the provisions of this Act and the rules made thereunder, register the documents submitted under such Schedule and issue a certificate of registration in such form as the Registrar may determine stating that the limited liability partnership is, on and from the date specified in the certificate, registered under this Act: Provided that the limited liability partnership shall, within fifteen

days of the date of registration, inform the concerned Registrar of Firms or Registrar of Companies, as the case may be, with which it was registered under the provisions of the Indian Partnership Act, 1932 (9 of 1932) or the Companies Act, 1956 (1 of 1956) as the case may be, about the conversion and of the particulars of the limited liability partnership in such form and manner as may be prescribed.

- (2)** Upon such conversion, the partners of the firm, the shareholders of private company or unlisted public company, as the case may be, the limited liability partnership to which such firm or such company has converted, and the partners of the limited



liability partnership shall be bound by the provisions of the Second Schedule, the Third Schedule or the Fourth Schedule, as the case may be, applicable to them.

- (3)** Upon such conversion, on and from the date of certificate of registration, the effects of the conversion shall be such as specified in the Second Schedule, the Third Schedule or the Fourth Schedule, as the case may be.
- (4)** Notwithstanding anything contained in any other law for the time being in force, on and from the date of registration specified in the certificate of registration issued under the Second Schedule, the Third Schedule or the Fourth Schedule, as the case may be,— (a) there shall be a limited liability partnership by the name specified in the certificate of registration registered under this Act; (b) all tangible (movable or immovable) and intangible property vested in the firm or the company, as the case may be, all assets, interests, rights, privileges, liabilities, obligations relating to the firm or the company, as the case may be, and the whole of the undertaking of the firm or the company, as the case may be, shall be transferred to and shall vest in the limited liability partnership without further assurance, act or deed; and (c) the firm or the company, as the case may be, shall be deemed to be dissolved and removed from the records of the Registrar of Firms or Registrar of Companies, as the case may be.