



**SYLLABUS**

**Class – B.Com I Years**

**Subject – Business Law**

UNIT No.	TOPICS
1	Historical background of business laws in India, Indian contract act 1872- GENERAL LAWS
2	Contract relating to Indemnity and Guarantee
3	Negotiable instrument Act 1881- General Introduction Negotiable instrument (amendment) Act 2002, Indian partnership act -1932
4	General introduction of Consumer Protection act 1986 and 2018, FEMA
5	Competition Act 2002- Introduction, concept ,objectives, major provisions, 5 competition commission of India - composition power and functions



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.

**The contract consists of two elements**

**An agreement**

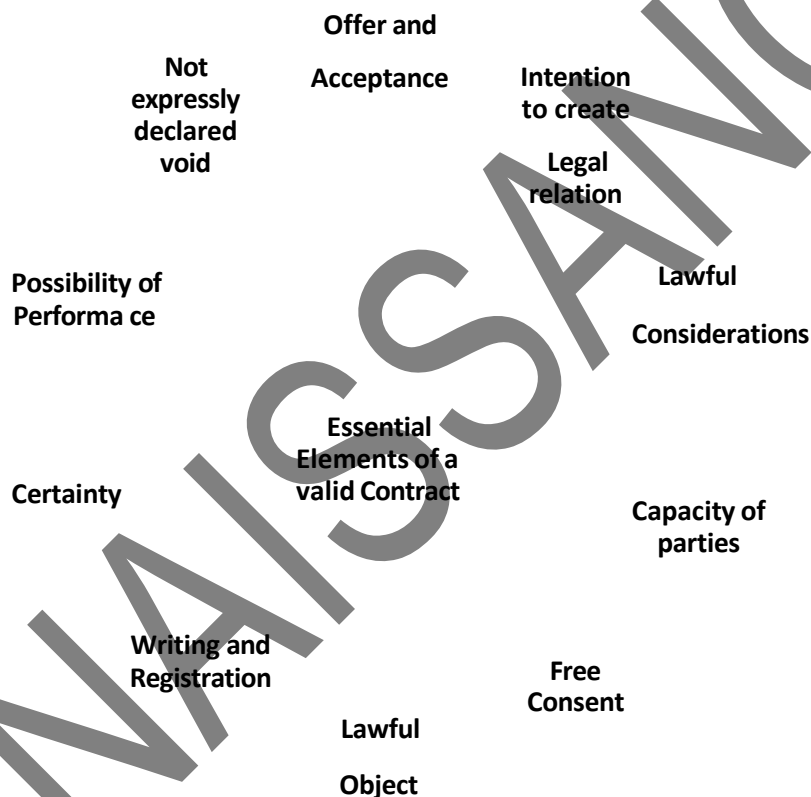
**Legal Obligation  
i.e. enforceability  
by law**



**Contract = an Agreement + enforceability by law.**

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

Essential Elements of a valid Contract:



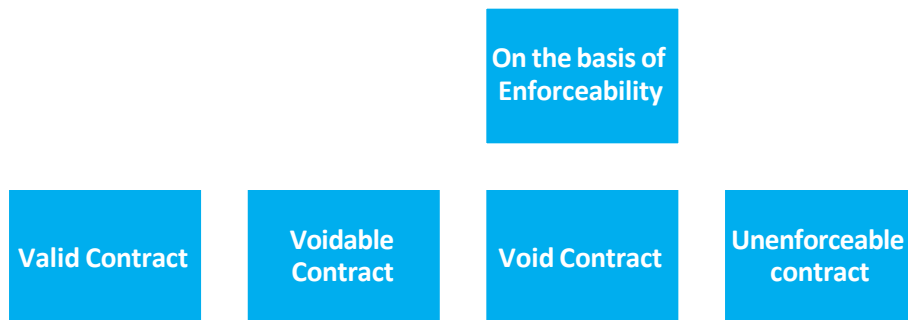
- 1. Offer and Acceptance:** There must be a "lawful offer" and a "lawful acceptance" of the offer, thus resulting in an agreement.
- 2. Intention to create legal relation:** There must be an intention among the parties that the agreement should be attached by legal consequences and create legal obligations. Social agreements do not contemplate legal relations, and so they do not give rise to a contract.



3. **Lawful Considerations:** An agreement is legally enforceable only when each of the parties to it, give something and get something. This something is the price for the promise and is called “Consideration”. Only those considerations are valid which ‘Lawful’
4. **Capacity of parties:** The parties to an agreement must be competent to contract, otherwise it cannot be enforced by a court. To be competent, the parties must be on majority age and of sound mind and must not be disqualified from contracting by any law to which they are subject.
5. **Free Consent:** “Consent “means that the parties must have agreed upon the same thing in the same sense. Consent is not enough for making a contract. That to must be free. It is said to be free when it is not caused by-
  1. Coercion, or (i) undue influence, or (iii) fraud, or (IV) misrepresentation, or (v) mistake.
6. **Lawful object:** For the formation of a valid contract, it is also necessary that the parties to an agreement must agree for a lawful object. The object must not be fraud or illegal or immoral or must not imply injury to the person or property of other.
7. **Writing and Registration:** Generally the contracts may be oral or written. But in special cases, it lays down that the agreement must be in writing or registered to be valid.
8. **Certainty:** Any agreement can be enforced if its meaning is certain or capable of being made certain agreements the meaning of which is not certain, are void.
9. **Possibility of performance:** The terms of the agreement must also be capable of performance physically as well as legally.
10. **Not expressly declared void:** The agreement must not have been expressly declared void under the act. There are some types of agreements which have been expressly declared to be void.

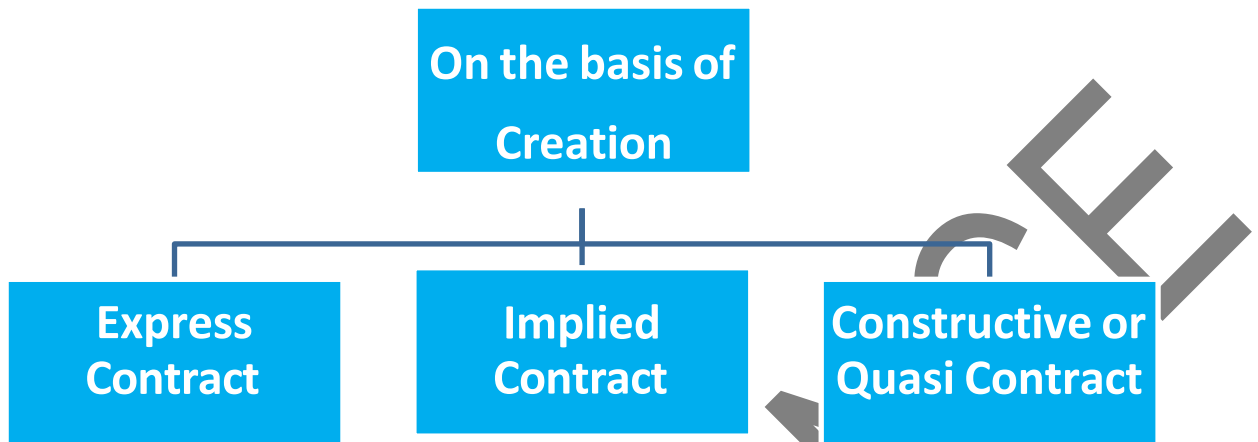


Kinds or classification of Contracts:



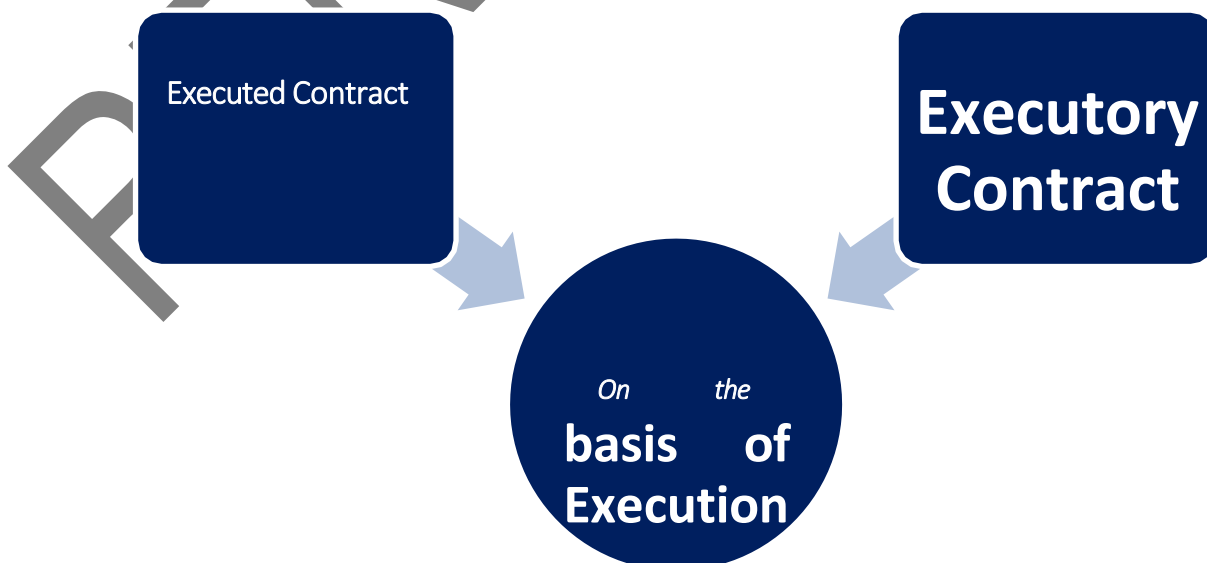
1. **Valid Contract:** A valid contract is an agreement enforceable by law. An agreement becomes enforceable by law when all the essential elements of a valid contract (as per section 10 of the act) are present.
2. **Voidable Contract:** “An agreement which is enforceable by law at the option of one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

A. **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.

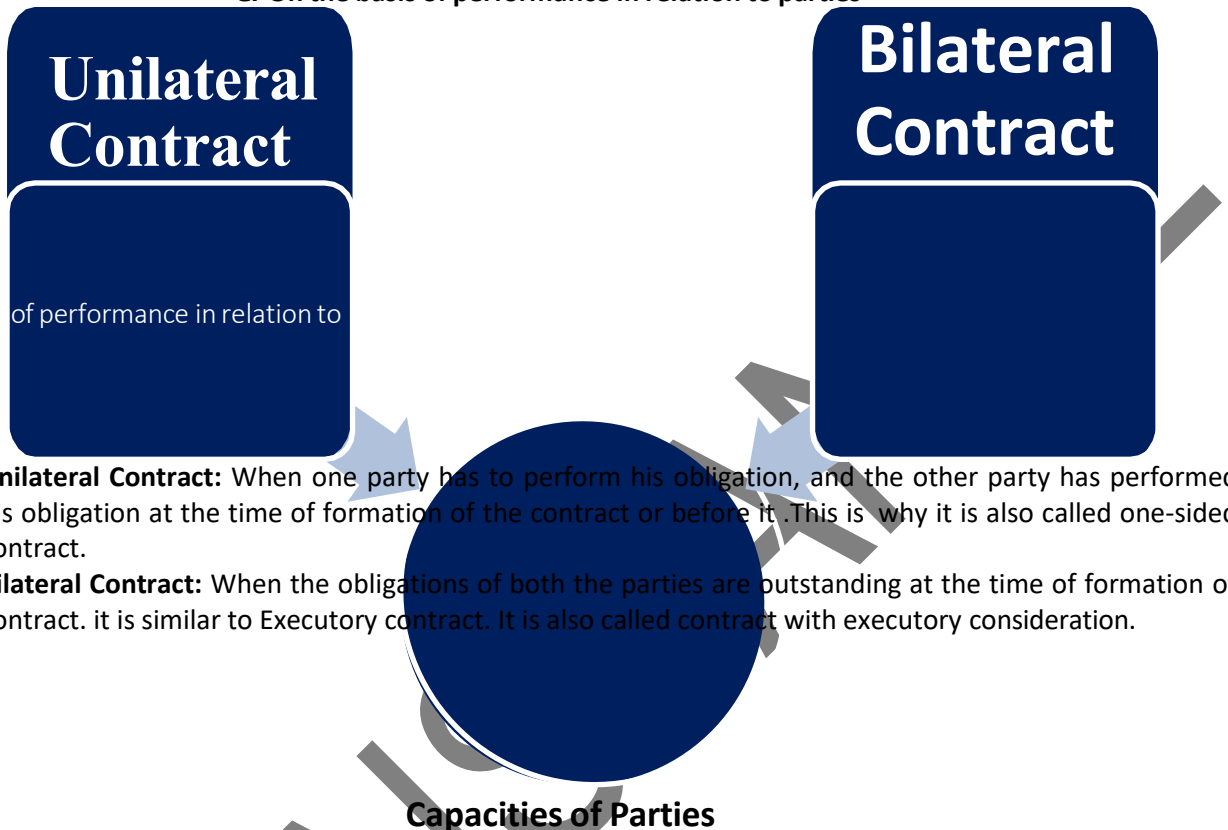
**B. On the basis of Execution**





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.

**C. 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.

**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?

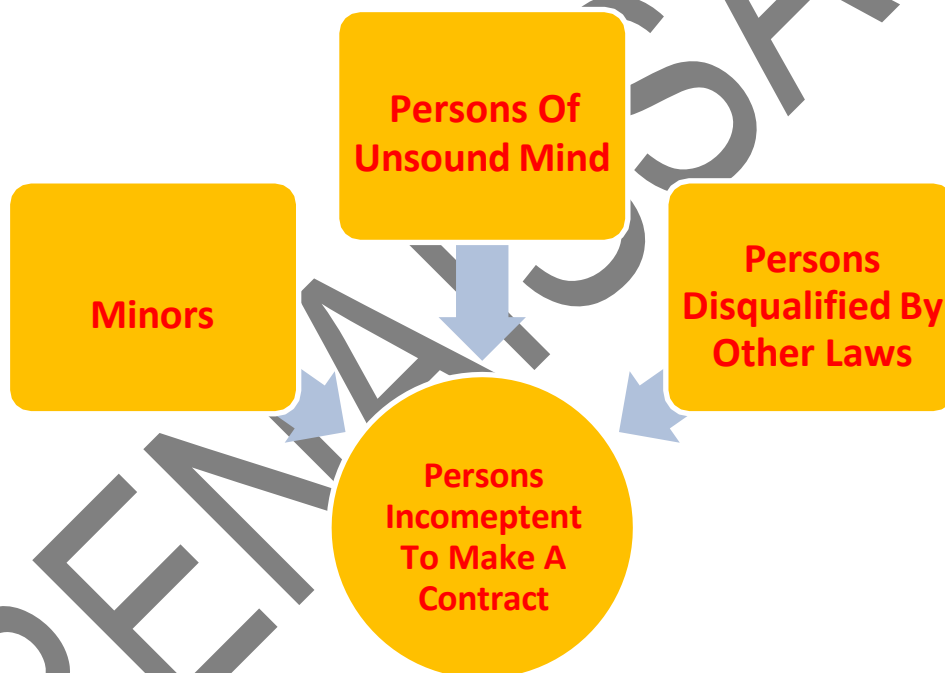
Every person is legally competent to contract if he fulfills the following three condition

:

- i.
- ii. He has attained the age of majority;
- iii. He is of sound mind; and.

He is not disqualified from contracting by any

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*

**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

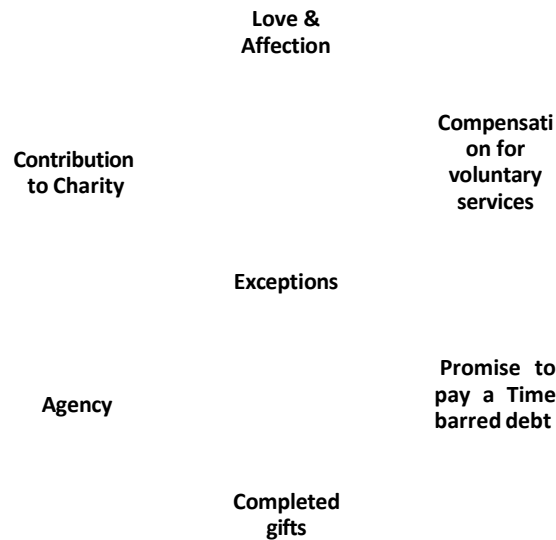
- **It must move at the desire of the promisor:** Consideration must have been done at the desire or request of the promisor & not at the desire of a third party or without the desire of the promisor.
- **It may move from the promisee or any other person:** An act constituting consideration may be done 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 move before the formation of agreement.
  - Present consideration: The consideration which moves simultaneously with the promise.
  - Future Consideration: The consideration which is to be moved after the formation of agreement.
- **It must be of some value:** The consideration need not be adequate to the promise but it must be of some value in the eye of the law.
- **It must be real & not illusory:** Ex. A promise to put life into the B's dead wife & B promises to pay Rs 10,000. This agreement is void because consideration is physically impossible to perform.
- **Must be Something other than the promisor's Existing obligation:** Consideration must be something which the promisor is not already bound to do because a promise to do what a promisor is already bound to do adds nothing to the existing obligation.
- **It must not be illegal, immoral or opposed to public policy.**

**A CONTRACT WITHOUT CONSIDERATION IS VOID**

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



These cases are:



- 1) **Love & Affection:** A written & registered agreement based on natural love & affection between near relatives is enforceable even if it is without consideration.  
Ex: X, for natural love & affection, promises to give his son, Y, Rs 1000. X puts his promise to Y in writing & registers it. This is a contract.
- 2) **Compensation for voluntary services:** A promise to compensate wholly or partly, a person who has already voluntarily done something for the promisor, is enforceable even without consideration.  
Ex: A finds B's purse & gives it to him. B promises to give Rs 50 to A. This is a contract.
- 3) **Promise to pay a Time barred debt:** A promise by a Debtor to pay a time-barred debt if it is made in writing & is signed by the debtor or by his agent is enforceable.
- 4) **Completed gifts:** There need not be consideration in case of completed gifts.
- 5) **Agency:** No consideration is necessary to create an Agency.
- 6) **Contribution to Charity**

#### STRANGER TO A CONTRACT

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

**Free Consent**



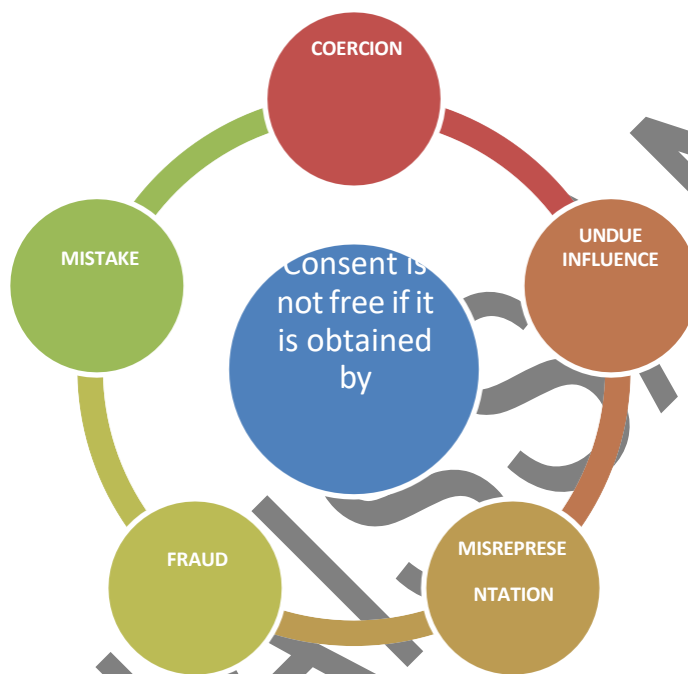
## MEANING OF CONSENT

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

### MEANING OF FREE CONSENT

Sec. 14 describes the cases when the consent is not free. It lays down that consent is not free if it is

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 be true.
- (2) The active concealment of the fact by a person having knowledge or belief of the fact.
- (3) A promise made with out 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 mater :
    - (a) Mistake regarding existence
    - (b) Mistake regarding identity
    - (c) Mistake regarding title.
    - (d) Mistake regarding price
    - (e) Mistake regarding quality
    - (f) Mistake regarding quantity
  - (2) Mistake as to the possibility of performance
    - (a) Physical impossibility
    - (b) Legal impossibility
- (B) **Unilateral Mistake :**
  - (1) Mistake as to identify of the person contracted with.
  - (2) Mistake as to the nature of contract.

*Distinction between an Agreement and a Contract*

Basis of distinction	Agreement	Contract
<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 parities.
<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 contact.	A contract is a concluding or legally binding on the parties.
<b>6. Concept</b>	Agreement is a wider concept and includes contacts.	Contract is a narrow concept and it is only a specific of agreement.

**DISTINCTION BETWEEN VOID AGREEMENT AND VOID CONTRACT**

Basis of distinction	Void Agreement	Void Contract
<b>1. Definition</b>	An agreement not enforceable by law is said to be void. [Sec. 2(g)]	A contract which cases to be enforceable by law becomes void when it ceases to be enforceable [Sec. 2(j)]
<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	Restitution may be granted when the contract is discovered to be void or becomes void.



	grant restitution in case of fraud or misrepresentation by minors.	
<b>4. Description in the Act</b>	Such agreement have been mentioned as void in the Act. Agreements without consideration, agreements with lawful object or consideration and some other agreements have expressly been declared to be void.	There is no mention of cases of void contracts in the Act. They are created by circumstances and law Courts decide whether they have become 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	Void Contract	Voidable Contract
<b>distinction</b>		
<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 party</b>	Its validity is not affected by the will of any party. It is decided by the Law Court.	Its validity is affected by the will of the aggrieved party. Aggrieved party has option to treat it either binding or repudiate it.
<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**

Basis of distinction	Void Agreement	Illegal Agreement
<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**

Basis of distinction	Coercion	Undue influence
<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 parities is immaterial.	In case of undue influence, in the relation between the parties the parties must be such that one of them is in a position to dominate the will of other.
<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</b>	It involves physical force.	It involves moral force.



<b>force</b>		
<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 avoided by the aggrieved party's contract. [Sec. 19]	In case of undue influence, the aggrieved party may avoid 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
<b>1. Meaning</b>	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.
<b>2. Intention</b>	Fraud is committed with an intention to deceive	There is no such intention.
<b>3. Belief in the facts</b>	The person committing of a fraudulent act does not believe it to be true.	The person making misrepresentation believes in its facts to be true.
<b>4. Suit for damage</b>	The aggrieved party has right to sue the other party for damages.	The aggrieved party cannot sue for damages.
<b>5. Defence</b>	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
<b>1. Meaning</b>	A contingent contract is contract in which the promisor undertakes to perform the contract upon the happening or non-happening of an event, which is collateral to the contract.	A wagering agreement is one in which one person agrees to pay certain amount of money to the other on happening or non-happening of a specific event.
<b>2. Nature of event</b>	The event is collateral to the contract, i.e. not a part of promise or consideration of the contract.	Event is the sole determining factor.
<b>3. Reciprocal promise</b>	There is no reciprocal promise in a contingent contract.	The wagering agreement consists of reciprocal promise.



<b>4. Interest in the subject matter</b>	The parties are interested in the subject-matter of such contracts. Therefore, the happening or non-happening of the event is material for them.	The parties to wagering agreement have no other interest in the subject matter of the agreement except the winning or losing the money at stake.
<b>5. Validity</b>	A contingent contract is valid contract.	A wagering agreement void agreement. In the State of Maharashtra and Gujarat it is illegal.
<b>6. Nature of contract</b>	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.

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## **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

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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 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 lapse of time may also discharge a contract, e.g. the period of limitation for simple contracts is three years 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 time 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 personal nature and involves personal skills, of promisor, of promisee, 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 same 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



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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.

RENAISSANCE



UNIT-II

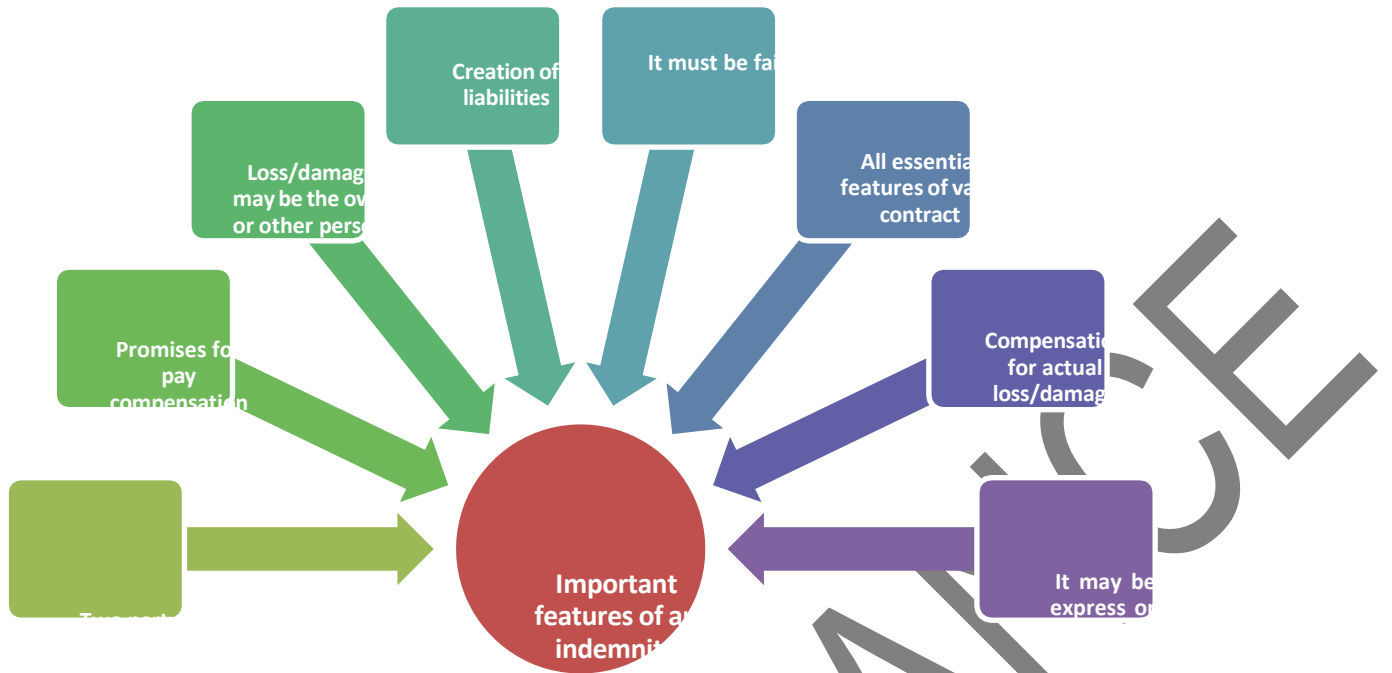
INDEMNITY AND GUARANTEE CONTROL

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'.*

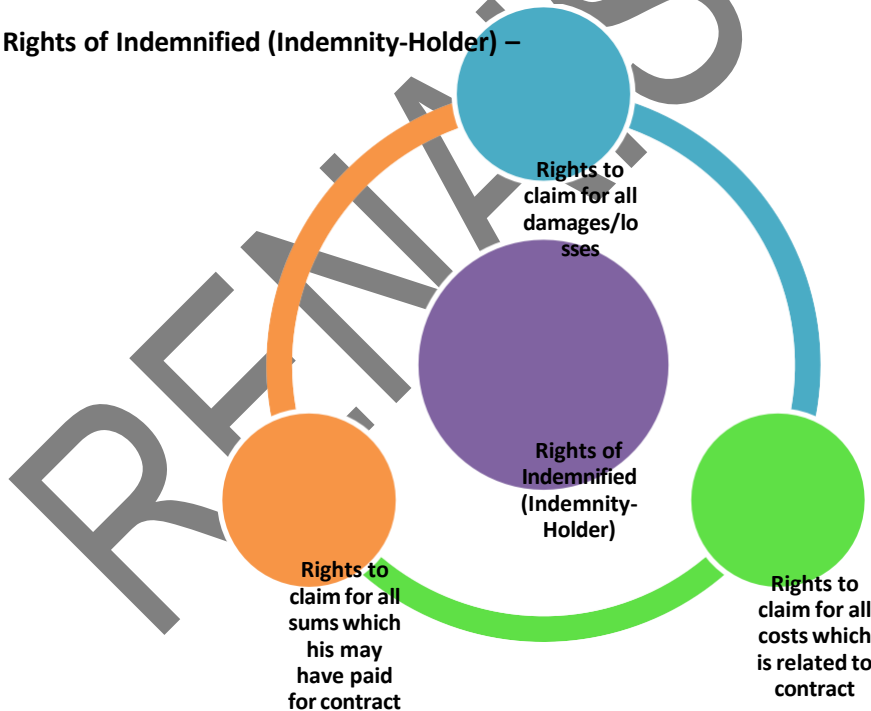
**Section 124** of contract Act defines that "A contract by which one party. Promises to save the other from loss caused to him by the conduct of the promise himself by the conduct of any other person, is called a contract of indemnity".

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'.

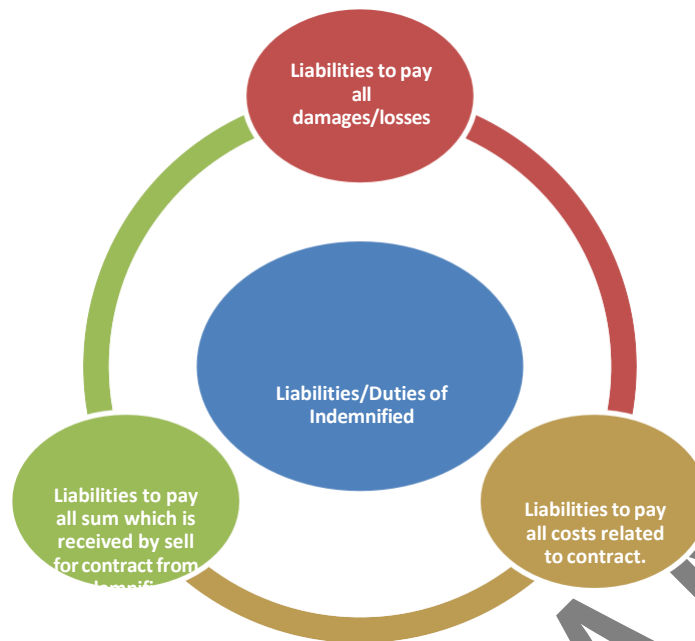


Loss/damage may be caused by some event, or accident, or some natural phenomenon or disaster.

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



**Liabilities/Duties of Indemnified –**



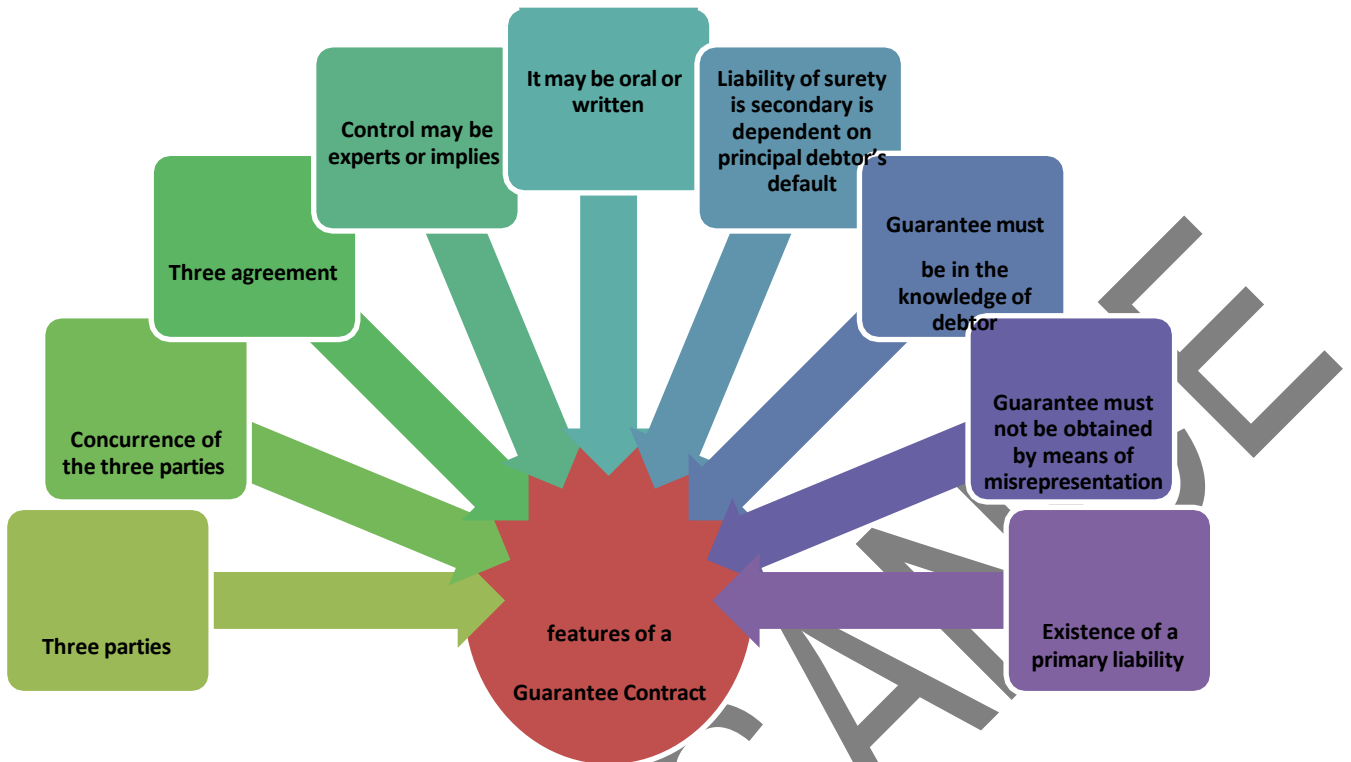
## Guarantee Contract

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 –**

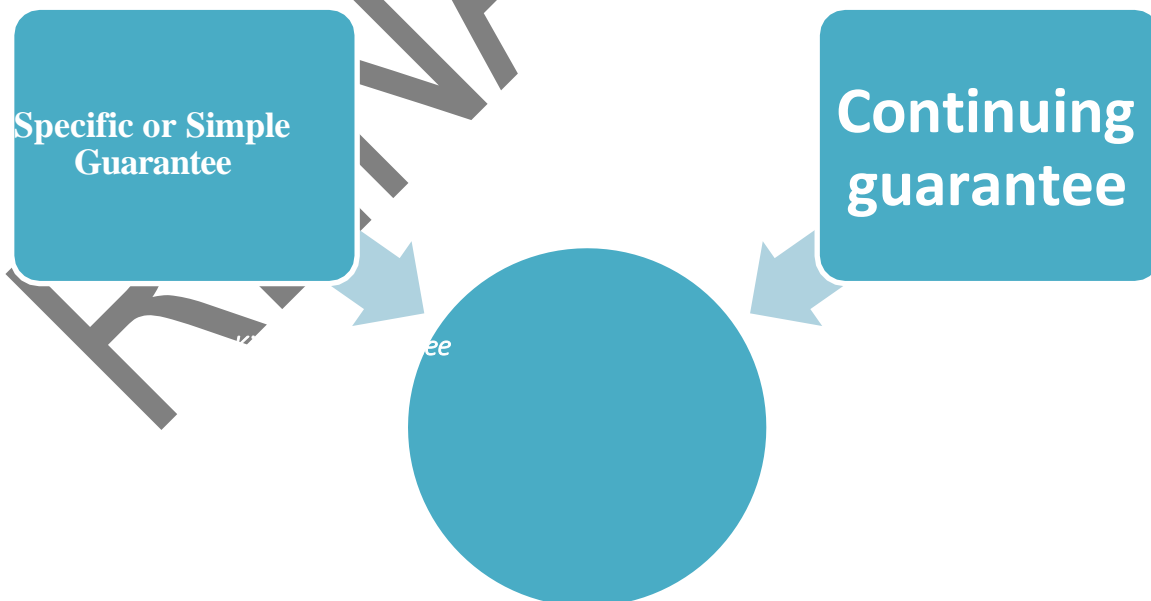




## DISTINCTION BETWEEN A CONTRACT OF INDEMNITY AND GUARANTEE

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 –





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-

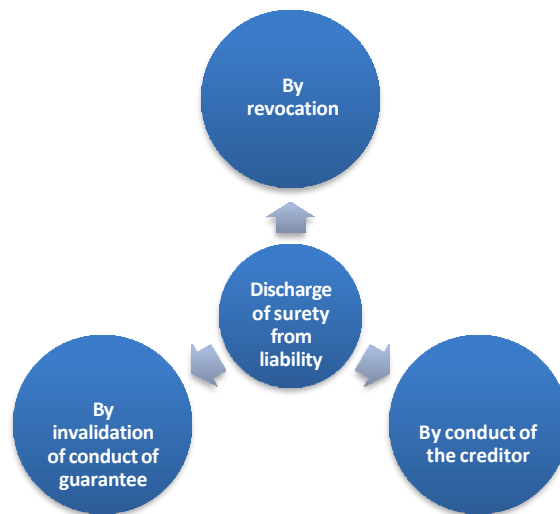
**A Guarantee may be revoked in any of the following ways-**

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**



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I. Right against the Principal debtor

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1. Right of subrogation
2. Right of indemnity

**II. Right against the Creditor**

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

**III. Right against the Co-Sureties**

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

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## UNIT 3

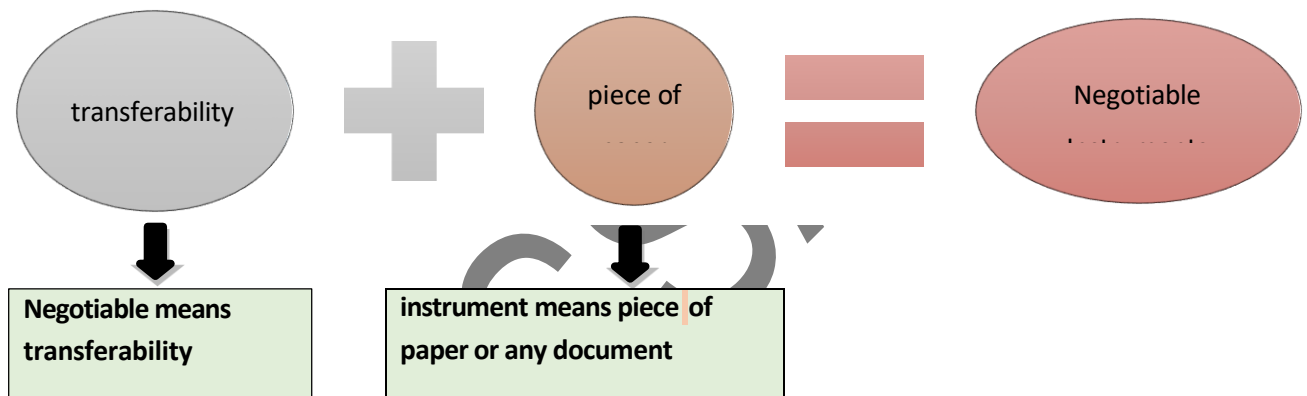
Negotiable instrument Act 1881- General Introduction Negotiable instrument (amendment) Act 2002, Indian partnership act -1932

# NEGOTIABLE INSTRUMENT ACT, 1881

### ➤ Introduction –

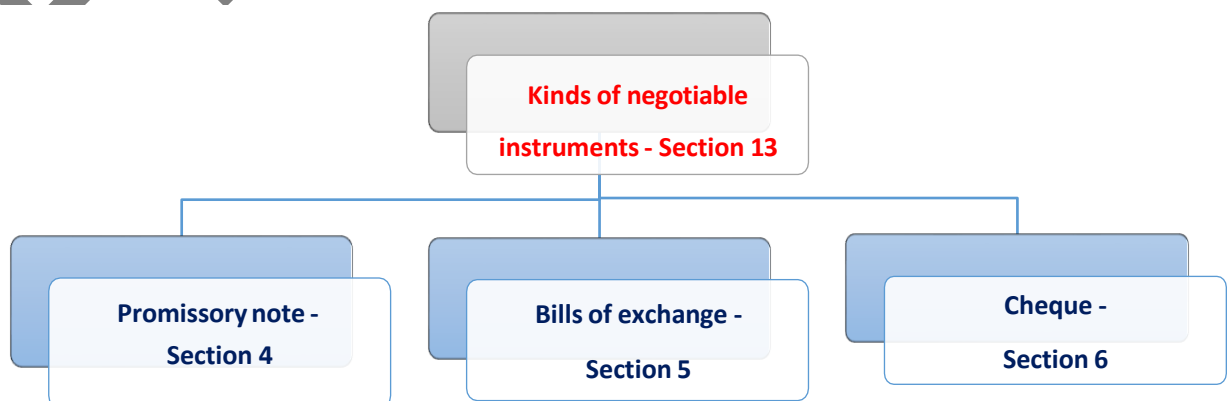
- This Act is enacted to define and amend laws relating to promissory note, bills of exchange and cheque.
- This Act is **applicable to whole of India** including Jammu and Kashmir.
- This act came into force on **1<sup>st</sup> March 1882**.

### ➤ Meaning of Negotiable instrument –



• A negotiable instrument is actually a **written document and is transferrable**.

- This document specifies **payment to a specific person or the bearer of the instrument** at a specific date.
- Act does not define 'Negotiable instruments' however section 13 provides for 3 kind of negotiable instrument viz. promissory note, bills of exchange and cheque.



### Features of Negotiable Instruments –

- 1) It should be **in writing**

2) Freely transferable.

RENAISSANCE

- 3) It should create a **right of a person to receive money and a corresponding liability of a person to pay money.**
- 4) **Holder's title free from defects –**
- a) A holder in due course acquires a good title irrespective of any defect in a previous holder's title.
  - b) **A holder in due course is one who receives the instrument:**
    - **for consideration;**
    - **without notice as to the defect in the title of the transferor; i.e. in good faith and**
    - **before maturity**
- 5) **Transferability –**  
A negotiable instrument can be **transferred infinitum**, i.e., can be transferred any number of times, till its payment.

#### Presumptions – Section 118

A negotiable instrument is subject to certain **presumptions** (Section 118).

- a) **Consideration –**  
It shall be presumed that every negotiable instrument was made or drawn for consideration, and that every such instrument when it was accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration.
- b) **Date –**  
It shall be presumed that every negotiable instrument bearing a date was made or drawn on such date.
- c) **Time of acceptance –**  
It shall be presumed that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity.
- d) **Transfer –**  
It shall be presumed that every transfer of the negotiable instrument was made before its maturity.
- e) **Order of Indorsement –**  
It shall be presumed that the indorsements were made in the order in which they appear thereon.
- f) **Stamp –**  
It shall be presumed that an instrument is duly signed and stamped.

The above presumptions are rebuttable by evidence to the contrary.

#### ➤ **Promissory Note – Section 4**

#### ✚ Meaning –

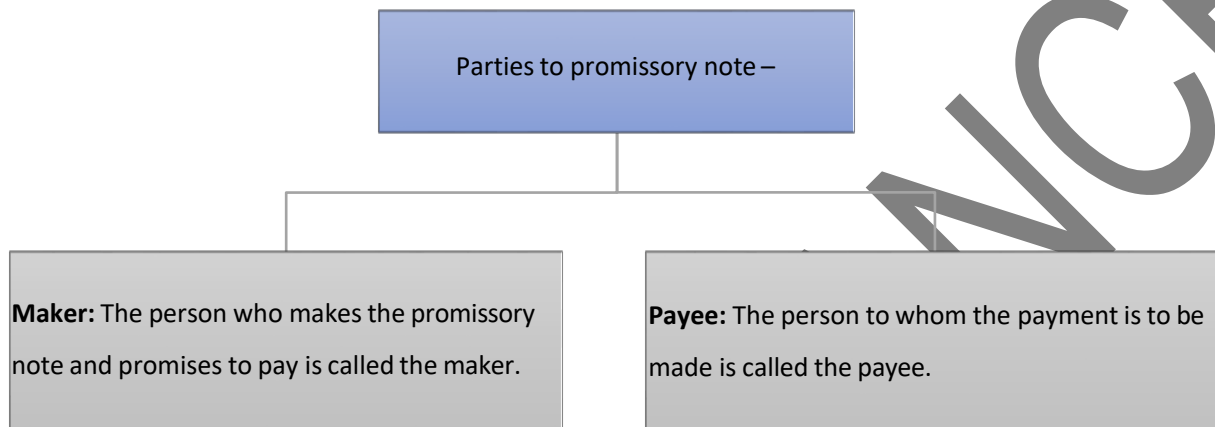
A Promissory Note is a **legal financial instrument** issued by one party, promising to pay the debt owed to another party



#### ✚ Definition –

“A Promissory note is an instrument in writing 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”.

**Note – Bank note or currency note is not a promissory note.**



#### ✚ Requisites (Essentials) of a Promissory Note –

- The promissory note must be in writing.
- It **must** contain an undertaking to pay There must be an express promise to pay.
- The promise to pay should be unconditional
- The promissory note must be signed by the maker.
- The sum payable must be certain
- The instrument must contain a promise to pay money and money only

#### Other important points –

- a) The maker and payee must be certain.
- b) Stamping of Promissory Note is essential under The Indian Stamp Act, 1899.
- c) An unstamped promissory note is not admissible in evidence and no suit can be maintained.
- d) It must contain date
- e) The **limitation period** for a promissory note to file a suit is **3 years** from the date of execution or from the date of acknowledgement

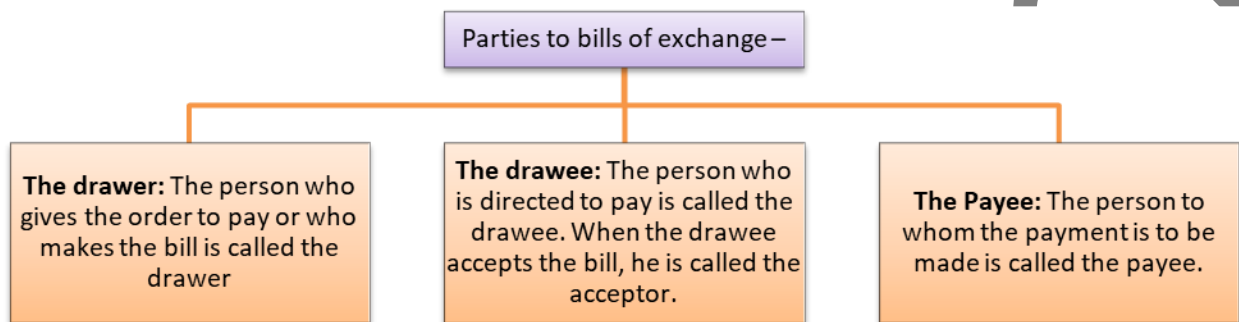
## ➤ Bills of Exchange – Section 5

### ✚ Meaning –

Bill of Exchange can be understood as a written negotiable instrument, that carries an unconditional order to pay a specified sum of money to a person or the holder of the instrument, as directed in the instrument by the maker. The bill of exchange is either payable on demand, or after a specified term.

### ✚ Definition –

“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”.



### ✚ Requisites (Essentials) of a Bill of Exchange –

- 1) Parties should be certain
- 2) Every Bill of Exchange must be stamped according to the provisions of The Indian Stamp Act, 1899.
- 3) It should specifically mention the date and place the payment or the place where it is drawn.
- 4) Order to pay. Order in this section does not mean a command, but a request or a direction.
- 5) The time of payment must be indicated in the bill with certainty.
- 6) The amount payable must be certain
- 7) The consideration of a bill of exchange should be paid only by way of money only.

### Other important points –

- 1) A bill of Exchange must be drawn unconditionally, though the acceptor, or the indorser may make his liability conditional, direction of payment by the drawer must not be made to depend upon a contingency. Therefore, it is the essence of a bill of exchange that it should be payable at all events and it must appear so on its face
- 2) It is essential that a bill of exchange should point out with certainty the party who enters into the contract imported by its terms. Thus, the signature of the drawee is necessary and there cannot be a bill, even if the instrument is accepted without the signature of the drawee
- 3) It must indicate a drawee who should be called on to accept or pay it. The drawee must be named or otherwise indicated in the bill with reasonable certainty.

## ✚ Types of Bills –

### 1) Inland Bills –

- a) Two essential conditions to make an inland instrument are:
- (1) the instrument must have been drawn or made in India; and
  - (2) the instrument must be payable in India or the drawee must be in India.

### 2) Foreign Bills –

All bills which are not inland are deemed to be foreign bills. Normally foreign bills are drawn in sets of three copies.

### 3) Trade Bills –

A bill drawn and accepted for a genuine trade transaction is termed as a trade bill. When a trader sells goods on credit, he may make use of a bill of exchange.

### 4) Accommodation Bill –

- a) An accommodation bill is a bill in which a person lends or gives his name to oblige a friend or some person whom he knows.
- b) In other words, a bill which is drawn, accepted or endorsed without consideration is called an accommodation bill.
- c) The party lending his name to oblige the other party is known as the accommodating or accommodation party, and the party so obliged is called the party accommodated.
- d) An accommodation party is not liable on the instrument to the party accommodated because as between them there was no consideration and the instrument was only for help.
- e) But the accommodation party is liable to a holder for value, who takes the accommodation bill for value, though such holder may not be a holder in due course.

Trade Bill	Accommodation Bill
1. Trade bills are drawn and accepted for same consideration.	1. These bills are drawn and accepted without any consideration.
2. These bills are legally enforceable.	2. These bills are not legally enforceable.
3. Trade bills are the acknowledgment of the debt.	3. Accommodation bills are not the acknowledgment of debt.
4. The drawer can sue if bill is dishonored.	4. Drawer cannot sue if bill is dishonored.
5. Loss by way of discounting the bill is borne by drawer only.	5. Loss by way of discounting the bill is shared by drawer and drawee in the ratio of their sharing in the proceeds of the bill.

### 5) Bills in Sets –

- a) Foreign bills are usually drawn in sets to avoid the danger of loss.
- b) They are drawn in sets of three, each of which is called “Via” and as soon as any one of them is paid, the others become inoperative.

- c) All these parts form one bill and the drawer must sign and deliver all of them to the payee.
- d) The stamp is affixed only on one part and one part is required to be accepted.
- e) But if the drawer mistakenly accepts all the parts of the same bill, he will be liable on each part accepted as if it were a separate bill.

### Bank Draft –

When a bill of exchange drawn by one bank on another bank, or by itself on its own branch, and is a negotiable instrument then it is called as bank draft.

Bank Draft	Cheque
A bank draft can be drawn only by a bank on another bank	Cheque can be drawn by any person
It cannot so easily be counter-manded (Cancelled)	It can be counter-manded (Cancelled)
It cannot be made payable to bearer.	It can be made payable to bearer

### ➤ Cheque – Section 6

Meaning –

Cheque refers to a negotiable instrument that contains an unconditional order to the bank to pay a certain sum mentioned in the instrument, from the drawer's account, to the person to whom it is issued, or to the order of the specified person or the bearer. It also includes truncated cheque and cheque in electronic form.

Definition –

“A cheque is a bill of exchange drawn upon a specified banker and payable on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form”.

**Note –**

**A cheque is a species of a bill of exchange; but it has the following two additional qualifications:**

- 1. It is always drawn on a specified banker, and**
- 2. It is always payable on demand.**

**Requisites (Essentials) of a Cheque –**

- A cheque must be an order in writing.
- It must contain an unconditional order
- A cheque must be signed by the maker
- The amount must be specifically mentioned in figures and word
- A cheque may be drawn payable to order or bearer. There are two kinds of cheques prevailing now a days. They are: a) it may be a bearer or order cheque; and b) it may be a self cheque
- The cheque must contain the date.
- Payee to be certain

## Acceptance – Section 7

### A) Meaning:

The acceptance of a bill is the indication by the drawee of his assent to the order of the drawer. Section 7 states that an acceptance is the signature of the drawee of a bill who has signed his assent upon the bill and delivered it. Thus, an acceptor is the drawee who has signed his assent upon the bill and delivered it to the holder

### B) Essentials of Valid Acceptance –

- ✓ In writing,
- ✓ Signed by the drawee or his agent,
- ✓ On bill of exchange,
- ✓ Completed by delivery to the holder.
- ✓ Writing the word 'Accepted' is immaterial.
- ✓ An oral acceptance or writing of the word 'Accepted' without the drawee's signature is not an acceptance.

### C) Acceptor for

#### Holder – **Meaning –**

Undertaking by a third party to accept and pay (in part or in full) a bill of exchange that was dishonored, either by non-acceptance or by non-payment by the party on whom it was drawn. **Also called acceptance supra protest.**

#### 2) **How acceptance for honor should be made –**

A person desiring to accept the bill for honor must declare in writing that he accepts under protest the protested bill for the honor of the drawer or a particular endorser whom he names.

#### 3) Rights and liabilities of acceptor for honor –

- a) He binds himself to pay the amount mentioned in the bill if drawee fails to pay.
- b) Liability of acceptor for honor is conditional and it arise only when the drawee makes the default to pay.
- c) He may recover all the losses and damages from the drawee.

## Holder – Section 8

- 1) The "holder" of a promissory note, bill of exchange or cheque means any person entitled in his own name –
  - a) to the possession thereof; and
  - b) to receive or recover the amount due thereon from the parties thereto.
- 2) His rights and title are dependent on the transferor. He has a right to demand and receive but does not have a right to sue.

**Note –**

- ✚ It is not every person in possession of the instrument who is called a holder.
- ✚ To be a holder, the person must be named in the instrument as the payee, or the endorsee, or he must be the bearer thereof.
- ✚ A person who has obtained possession of an instrument by theft, or under a forged endorsement, is not a holder, as he is not entitled to recover the instrument

**Holder in Due Course – Section 9**

A holder in due course is one who receives the instrument:

- a) for consideration;
- b) without notice as to the defect in the title of the transferor; i.e. in good faith; and
- c) before maturity.

**Note –**

- a) **His rights and title are independent on the transferor.**
- b) **He has a right to demand and receive and also have a right to sue.**

**Payment in Due Course – Section 10**

- a) Payment in due course refers to a payment in keeping with the evident tenor of the instrument, in good faith & without negligence to any person in possession thereof.
- b) A payment will be regarded as a payment in due course if:
  - Payment is done as per **apparent tenor** of instrument
  - It is **made in good faith** & without negligence
  - It is **made to the person who possesses the instrument** who is entitled as holder to obtain payment;
  - Payment is made in money & money only.

**Classification of Negotiable Instruments –**

**A) Bearer Instruments –**

- a) There are two important conditions for negotiable instruments to become payable to bearers.
  - 1) parties to the transactions must express it to be so payable; or
  - 2) The only endorsement for it should be an endorsement in blank.

**b) A person who is a holder of a bearer instrument can obtain the payment of the instrument.**

**B) Order Instruments –**

- a) They are payable when the instruments expressly state them to be so.
- b) They may be payable to order only to a specific person.
- c) There should be no prohibition on their transferability.

**C) Inland Instruments –**

- a) An inland instrument is one which is either:
  - 1) drawn and made payable in India, or
  - 2) drawn in India upon some persons resident, even though it is made payable in a foreign country

**D) Foreign Instruments –**

- a) Every instrument that is not inland automatically becomes a foreign instrument.
  - b) These instruments are drawn in a foreign country but may be payable within or outside India.
  - c) it must be drawn in India and made payable outside India and drawn on a person resident outside India.**
- E) Demand Instruments –**
- a) Negotiable instruments in which no time is mentioned is called as demand instruments.
- F) Time Instruments –**
- a) Time instruments carry a fixed future date for payment.
  - b) Time instruments are payable at a fixed date in the future.
- G) Ambiguous Instruments –**
- a) An ambiguous instrument is basically one that may be either a bill or a note for its holder.
  - b) Under such circumstances, the holder of such instruments may treat them either as bills of exchange or as promissory notes.
  - c) For example, sometimes the drawee may be a fictitious person or he may be incompetent to contract.
- H) Incomplete instruments –**
- a) Incomplete instruments lack certain essential requirements of typical negotiable instruments.
  - b) In such cases, the holder of the instrument has the authority to complete it up to the amount mentioned therein.
  - c) This, in turn, results in the creation of legally binding negotiable instrument payable by law.
  - d) Not only the first holder but also any subsequent holder who procures such instruments can complete them.

#### When the amount stated in words and figures are different – Section 18

If the amount undertaken or ordered to be paid is stated differently in figures and in words, the amount stated in words shall be the amount undertaken or ordered to be paid.

#### Maturity – Section 22 23 and 24

- A) Meaning of Maturity –**  
The maturity of a promissory note or bill of exchange is the date at which it falls due.
- B) Days of grace –**
- a) Every promissory note or bill of exchange which is not expressed to be payable on demand, at sight or on presentment is at maturity on the third day after the day on which it is expressed to be payable.
  - b) All instruments except for the instrument payable on demand are entitled for **3 days grace** period.

#### Note –

- 1) No grace period is allowed in the following cases –
  - A cheque
  - A bill or note payable 'at sight' or 'on presentment' or 'on demand', in which no time is mentioned
- 2) Where the instrument is payable on installment then each installment is entitled for 3 days grace period.

- C) Calculation of days of maturity –**
- Where a negotiable instrument is payable on specified date then it shall become payable on that specified date + 3 days of grace.

- Where a negotiable instrument is payable on a stated number of days after date or after sight or after happening of certain event then it shall become payable on –
  - ✓ The date on which the negotiable instrument is drawn + 3 days of grace.
  - ✓ The date on which negotiable instrument is presented for sight + 3 days of grace.
  - ✓ The date on which the event happens + 3 days of grace.
- Where a negotiable instrument is payable on a stated number of months after date or after sight or after happening of certain event then it shall become payable on –
  - ✓ The corresponding day of relevant month (The date on which the negotiable instrument is drawn) + 3 days of grace.
  - ✓ The corresponding day of relevant month (The date on which negotiable instrument is presented for sight) + 3 days of grace.
  - ✓ The corresponding day of relevant month (The date on which the event happens) + 3 days of grace.

#### Examples –

1. A negotiable instrument dated 31st January, 2020, is made payable at one months after date. The instrument is at maturity on the third day after the 28th February, 2020, i.e. on 3rd March, 2020.
2. A negotiable instrument dated 30th August, 2020, is made payable three months after date. The instrument is at maturity on 3rd December, 2020.
3. A negotiable instrument dated the 31st August, 2020, is made payable three months after date. The instrument is at maturity on 3rd December, 2020.

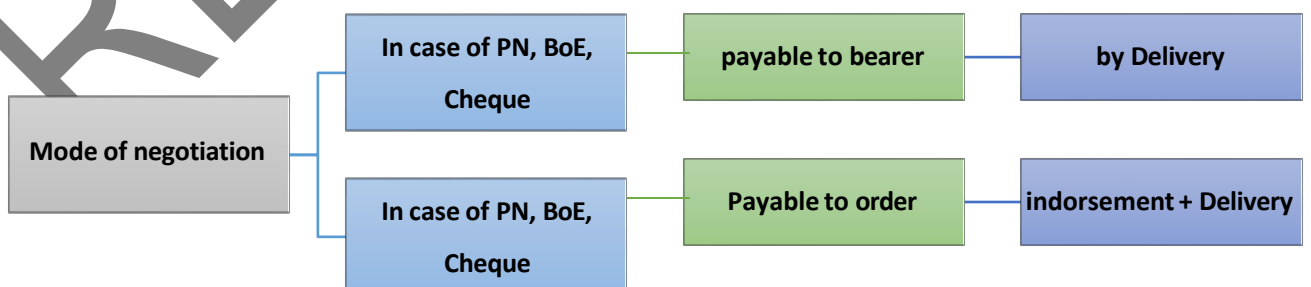
- If the last day of grace is a public holiday, then the instrument will be due on preceding business day – **Section 25**
- If the day of maturity is an emergency or unforeseen holiday, then the maturity day will be the following business day.

### Negotiation (Transfer) of negotiable instruments –

#### A) Meaning of Negotiation –

When the instrument is transferred from one person to another with a view to make the other person as holder then the instrument is deemed to have been negotiated.

#### B) Modes of Negotiation –



#### C) Negotiation Back –

- 1) Where an endorser negotiates an instrument and again becomes its holder, the instrument is said to be negotiated back to that endorser and none of the intermediary endorsees are then liable to him.

Example –

**Raju, the holder of a bill endorses it to Shyam, Shyam endorses to Babu Bhai, and Babu Bhai to Anuradha, and endorses it again to Raju. Raju, being a holder in due course of the bill by second endorsement by Anuradha, can recover the amount thereof from Shyam, Babu Bhai, or Anuradha and himself being a prior party is liable to all of them. Therefore, Raju having been relegated by the second endorsement to his original position, cannot sue Shyam, Babu Bhai and Anuradha.**

- 2) Where an endorser so excludes his liability and afterwards becomes the holder of the instrument, all the intermediate endorsers are liable to him.

Example –

**An illustration will make the point clear. Raju is the payee of a negotiable instrument. He endorses the instrument 'sans recourse' to Shyam, Shyam endorses to Babu Bhai, Babu Bhai to Anuradha, and Anuradha again endorses it to Raju. In this case, Raju is not only reinstated in his former rights but has the right of an endorsee against Shyam, Babu Bhai and Anuradha.**

### Delivery – Section 46

The making, acceptance or indorsement of a promissory note, bill of exchange or cheque is completed by delivery which may be actual or constructive.

### What is Endorsement –

**A) Meaning of Endorsement –**

- a) Endorsement means signing at the back of the instrument for the purpose of negotiation.
- b) The act of the signing a cheque, for the purpose of transferring to the someone else, is called the endorsement of Cheque.
- c) If no space is left on the instrument then the Endorsement may be made on a separate slip to be attached to the instrument.

**B) Definition of Endorsement –**

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

**C) Kinds of Endorsement –**

**(a) Endorsement in Blank / General –**

An endorsement is said to be blank or general when the endorser puts his signature only on the instrument and does not write the name of anyone to whom or to whose order the payment is to be made.

**(b) Endorsement in Full / Special –**

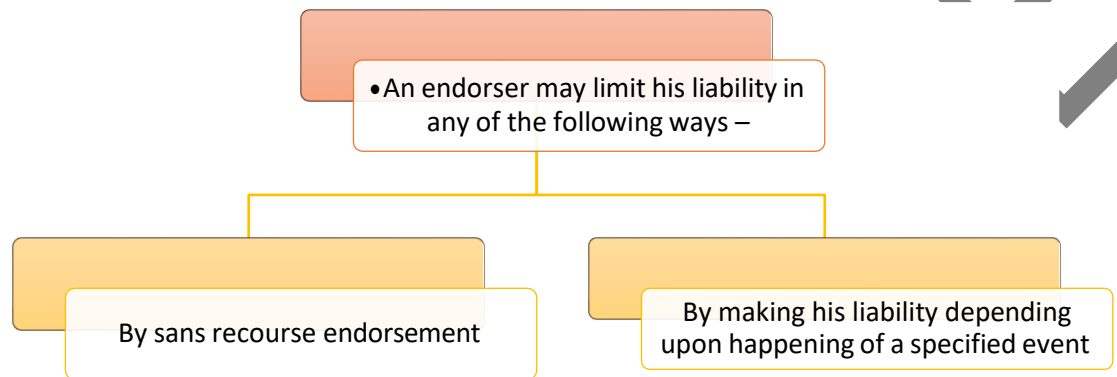
- An endorsement is 'special' or in 'full' if the endorser, in addition to his signature also mention the name of the person to whom or to whose order the payment is to be made.

- There is direction added by endorser to the person specified called the endorsee, of the instrument who now becomes its payee entitled to sue for the money due on the instrument.

- **Partial Endorsement** – Instrument which transfers the amount mentioned in the instrument partially and not fully is called as partial endorsement.
- As per **section 56 is invalid under law.**

**(c) Conditional Endorsement –**

- An endorsement is conditional or qualified which limits or negatives the liability of the endorser.



**(d) Restrictive Endorsement –**

- Restrictive endorsement seeks to put an end the principal characteristics of a Negotiable Instrument and seals its further negotiability.
- This may sound a little unusual, but the endorsee is very much within his rights if he so signs that its subsequent transfer is restricted.
- This prevents the risk of unauthorized person obtaining payment through fraud or **forgery** and the drawer losing his money.

**(e) Endorsement Sans Recourse –**

- Sans Recourse which means without recourse or reference.
- As such a when the property in a negotiable instrument is transferred sans recourse, the endorser, negatives his liability and excludes himself from responsibility to all subsequent endorsees.
- It is one of the commonest forms of qualified endorsement and virtually prohibits negotiation since the endorser says in effect.

**Who may negotiate instrument – Section 51**

Every sole maker, drawer, payee or endorsee, or all of several joint makers, drawers, payees or endorsees, of a negotiable instrument may, indorse and negotiate the same.

**Instrument obtained by unlawful means or unlawful consideration – Section 58**

- When a negotiable instrument has been lost or
- has been obtained from any maker, acceptor or holder thereof by means of an offence or fraud, or for an unlawful consideration,

- no possessor or endorsee who claims through the person who found or so obtained the instrument is entitled to receive the amount due thereon from such maker, acceptor or holder, or from any party prior to such holder,
- unless such possessor or endorsee is, or some person through whom he claims was, a holder in due course.

### Liabilities of Parties –

#### A) Liability of a minor –

It may be noted that a minor, being incompetent to contract, cannot bind himself by becoming a party to a negotiable instrument. Whether he is the drawer, maker, acceptor or endorser, he is not liable on the instrument. Section 26 categorically excludes minor's liability by stating that a minor binds all parties except himself.

#### B) Liability of an agent –

- Every person capable of legally entering into a contract, may make, draw, accept indorse, deliver and negotiate a promissory note, bill of exchange or cheque, himself or through a duly authorized agent.
- A general authority to transact business and to discharge debt does not confer upon an agent the power to indorse bills of exchange so as to bind his principal.
- An agent cannot escape personal liability unless he indicates that he signs as an agent and does not intend to incur personal liability

#### C) Liability of Legal Representative –

A legal representative' of a deceased person, who signs his own name on an instrument, is personally liable for the entire amount; but he may expressly limit his liability to the extent of the assets received by him as legal representative.

#### D) Liability of Drawer:

- Usually, the liability of the drawer of a bill or cheque is secondary and conditional.
- The liability of the acceptor and maker of the bill and drawee of the cheque is primary and unconditional.
- The drawer's liability is conditional, i.e., it arises only in the event of a dishonor by the drawee or acceptor.
- Once there has been dishonor and the notice of dishonor has been given to the drawer, he is liable to compensate the holder whatever be the state of the account between himself and the drawee or acceptor.

#### E) Liability of drawee Bank of cheque –

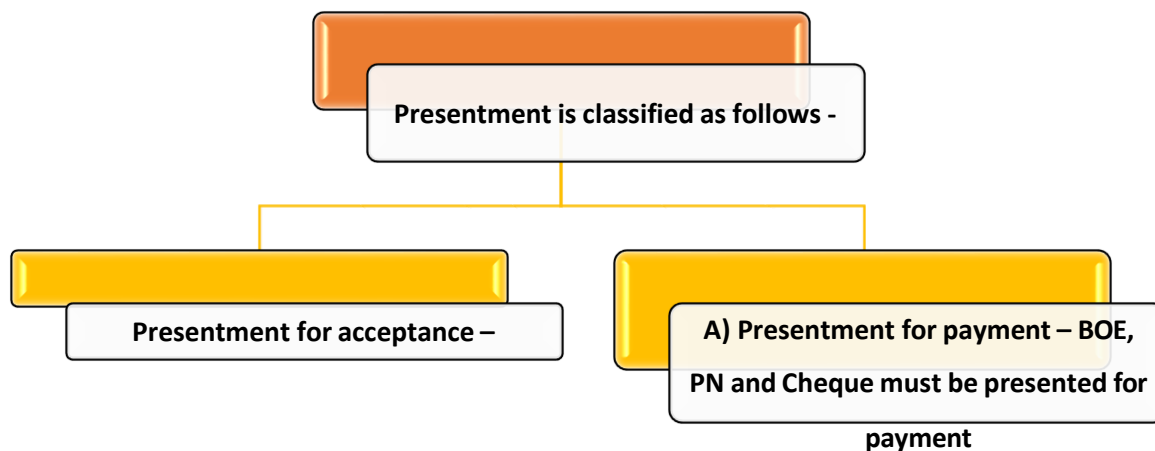
Wrongful dishonor of customer's cheque entails exemplary damages against banker and the amount of damages is inversely related to the amount of the cheque dishonored.

#### F) Liability of drawee of Bill of Exchange/ Maker of Promissory Note –

- The maker of a promissory note is bound to pay the amount at maturity.
- The liability of the drawee only arises when he accepts the bills.
- Drawee's liability is primary and unconditional.
- He is liable for Principal amount along with interest and noting/ protesting charges if any.

- G)** Liability of maker, drawer and acceptor as principals –
  - a) The maker of a promissory note is liable as the principal debtor.
  - b) In a bill of exchange, the acceptor acts as a principal debtor and the drawer acts a surety as drawer is liable to pay only if acceptor defaults.
  
- H)** Effect of forged indorsement on acceptor's liability –
  - a) A bill may be accepted before or after indorsement by the payee.
  - b) An acceptor of a bill of exchange already indorsed is not relieved from liability by reason that such indorsement is forged.
  
- I)** Liability of acceptor of a bill drawn in a fictitious name –  
The acceptor is not relieved from liability by proving that the drawer is fictitious.
  
- J)** Liability on an instrument made drawn etc. without consideration –  
An instrument made, drawn, accepted, indorsed, or transferred without consideration creates no obligation of payment between the parties to the instrument.

**Presentment – Section 61 to section 67**



- A)** Presentment for acceptance –
  - a) Only Bills of exchange requires presentment for acceptance.
  - b) Bill of exchange should be presented within a reasonable time, on business day and during business hours to the drawee for acceptance.
  - c) Following bills must be presented for acceptance –
    - 1) A bill payable after sight – Presentment is necessary in order to fix maturity of the bills
    - 2) Express condition – A bill in which there is an express condition shall be presented for acceptance before it is presented for payment.
  - d) In case it is not presented for acceptance the bill is dishonored due to non-acceptance and no party is liable.
  
- B)** Bills of exchange should be presented to whom for acceptance?  
The following are the persons to whom a bill of exchange should be presented –
  - a) The drawee or his agent

- b) If there are many drawees, bill must be presented to all of them.
  - c) The legal representatives of the drawee if drawee is dead.
  - d) The official receiver or assignee of insolvent drawee.
  - e) To a drawee in case of need, if there is any
  - f) The acceptor for honour.
- C)** Drawee's time for deliberation –  
Holder of the bills of exchange should allow **48 hours** to the drawee for accepting the bill of exchange.
- D)** Presentment for payment –
- a) Promissory notes, bill of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided.
  - b) In default of such presentment, the other parties thereto are not liable thereon to such holder.
- E)** Hours for presentment –  
Presentment for payment must be made during the usual hours of business and, if at a banker's, within banking hours.

### When presentment unnecessary –

**Presentment for payment is unnecessary**, and the instrument is dishonored at the due date for presentment, in any of the following cases:

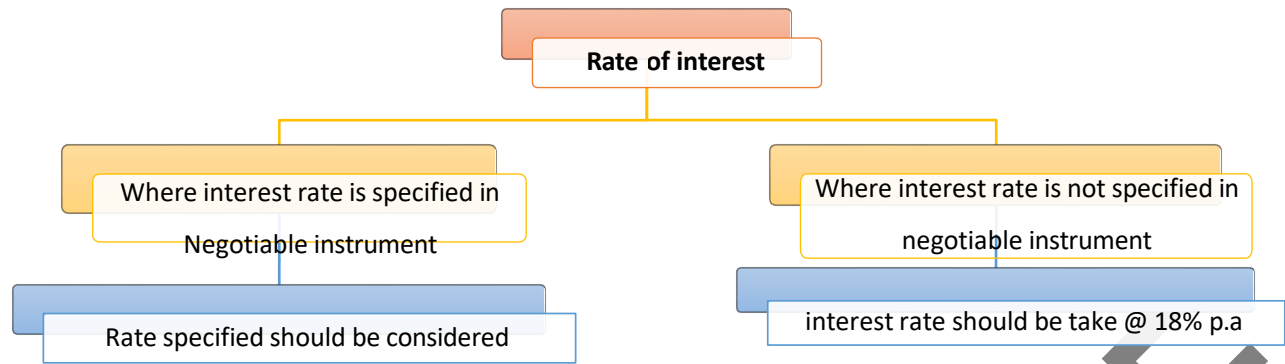
- if the maker, drawee or acceptor intentionally prevents the presentment of the instrument, or
- If the instrument being payable at his place of business, he closes such place on a business day during the usual business hours, or
- If the instrument being payable at some other specified place, neither he nor any person authorized to pay it attends at such place during the usual business hours, or
- If the instrument not being payable at any specified place, he cannot after due search be found;
- if the maker has agreed to pay even without presentment.
- if the maker has done the part-payment even without presentment.

**Presentment for acceptance is unnecessary in the following cases –**

- Where the drawee cannot be found after reasonable search.
- Where drawee is a fictitious person.
- Where although the presentment is irregular, acceptance has been refused on some other ground.

### **Payment and interest –**

- A) To whom payment should be made?  
Payment of the amount due on a promissory note, bill of exchange or cheque must, in order to discharge the maker or acceptor, be made to the holder of the instrument.



## Discharge from Liability

Meaning –

Discharge from liability implies when the liability of the parties ceases to exist. Following are the different modes of discharge of instrument.

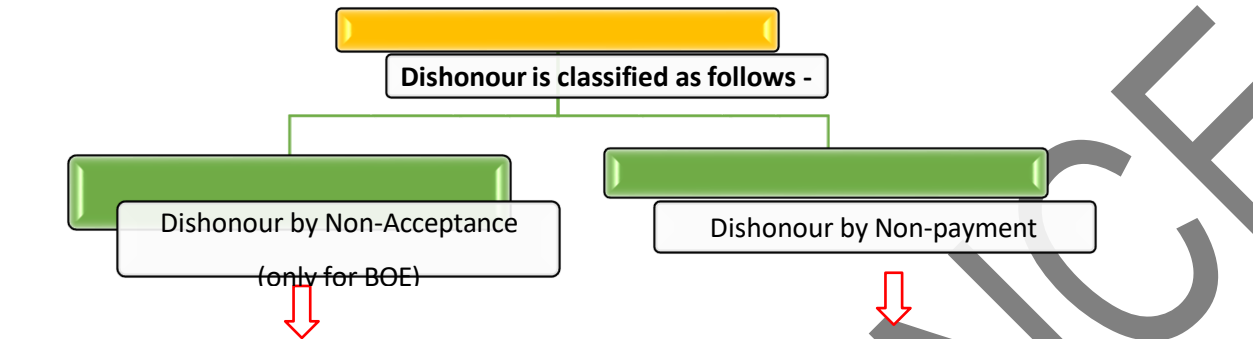
### Modes of discharge:

One or more parties to a negotiable instrument may be discharged from liability in either of the following ways:

- 1) By cancellation, Release or Payment:
  - a) **By cancellation:** Cancellation of acceptor's name will discharge the instrument and cancellation of any other party will discharge the party.
  - b) **By release:** Release of acceptor will discharge the instrument and release of any other party will discharge the party.
  - c) **By payment:** When the amount due on the instrument is paid by the party primarily liable on the instrument, the instrument is discharged.
- 2) **By allowing drawee more than 48 hours:** If the holder of a bill of exchange allows the drawee more than 48 hours, exclusive of public holiday(s) to consider whether he will accept the same, all previous parties not consenting to such allowance are discharged from liability to such holder.
- 3) **By delay in presenting cheques:** If a cheque is not presented within a reasonable time of its issue, and the bank fails and drawer suffers actual damages through such delay, he is discharged from the liability to the holder to the extent of such damage.
- 4) **Forgery of Endorser's signature in case of Cheque:** The Bank is discharged by PIDC even if the signature of endorser is forged.
- 5) **By qualified acceptance:** If the holder of a bill of exchange agrees to accept qualified acceptance, all the previous parties whose consent is not obtained to such acceptance are discharged from liability, unless the holder gives notice thereof and the parties give their assent to such qualified acceptance.
- 6) **By material alteration.:** Any material alteration of a negotiable instrument renders the same void as against anyone who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties. Again, it may be noted that alteration should be material and immaterial alterations will not affect the instrument and will not discharge any liability.

- 7) **Discharge of Bank:** As per Section 89, bank is discharged by payment in due course in case of alteration not apparent from records.
- 8) As per **Section 90**, when the acceptor of bill of exchange or maker of promissory note becomes holder on or after maturity, the instrument is discharged.

### DISHONOUR OF BILL OF EXCHANGE/ PROMISSORY NOTE –



A bill is said to be dishonoured by non-acceptance in the following cases –

- a) When the drawee does not accept it within 48 hours,
- b) When presentment for acceptance is excused and the bill remains unaccepted
- c) When the drawee is incompetent to contract.
- d) When the drawee is a fictitious person or after reasonable search can not be found
- e) Where the acceptance is a qualified one.

A promissory note, bill of exchange or cheque is said to be dishonoured by non-payment when the maker of the note, acceptor of the bill or drawee of the cheque makes default in payment

### Dishonor of bill of exchange/ promissory note by non-payment – Section 92

An instrument is dishonored by non-payment when the party primarily liable, makes default in payment.

Notice of dishonor (Section 93 & 94):

- ❖ **By whom notice to be given:** When an instrument is dishonored either by non-acceptance or by non-payment, the holder thereof or some party thereto who remains liable thereon must give notice of dishonor.
- ❖ **To whom notice is to be given:** Notice must be given to such parties whom the holder proposes to charge with liability severally or jointly, e.g., the drawer and the endorsers. Notice may be given either to the party himself or to his agent, or to his legal representative on his death, or to the official assignee on his insolvency. It is not necessary to give notice to the maker of a note or the drawee or acceptor of a bill or cheque.
- ❖ **Effect of non-service of notice:** If a notice of dishonor is not sent to any prior party who is entitled to such notice within a reasonable time, he is discharged from liability.

- ❖ **Mode of service of notice** : The notice, if written, may be given by post at the place of business or at the residence of party for whom it is intended.

### **Notice of dishonor is not required in the following cases:**

- When there is no intention to make prior party liable.
- When prior party is discharged.
- When drawer and drawee are same
- When drawer is fictitious.
- When the prior party has signed the indorsement 'without recourse'.
- When the party entitled to notice cannot, after reasonable search, be found.
- Where the party liable to give notice is unable, without any fault of its own to give it, e.g., death or serious illness of the holder or his agent or any other accident.
- When the prior party is incompetent.

### **Noting – Section 99**

- When a promissory note or bill of exchange has been dishonored by non-acceptance or non-payment, the holder may cause such dishonor to be noted by a notary public upon the instrument, or upon a paper attached thereto, or partly upon each.
- Such note must be made within a reasonable time after dishonor, and must specify the date of dishonor, the reason, if any, assigned for such dishonor, or, if the instrument has not been expressly dishonored, the reason why the holder treats it as dishonored, and the notary's charges.

### **Protest – Section 100**

When a promissory note or bill of exchange has been dishonored by non-acceptance or non-payment, the holder may, within a reasonable time, cause such dishonor to be noted and certified by a notary public. Such certificate is called a protest.

Protest for better security. When the acceptor of a bill of exchange has become insolvent, or his credit has been publicly impeached, before the maturity of the bill, the holder may, within a reasonable time, cause a notary public to demand better security of the acceptor, and on its being refused may, within a reasonable time, cause such facts to be noted and certified as aforesaid. Such certificate is called a protest for better security.

### **Protest of foreign bills – Section 104**

Foreign bills of exchange must be protested for dishonor when such protest is required by the law of the place where they are drawn.

### **➤ Crossing a cheque –**

**A)** Meaning of crossing a cheque –

- ✚ **Crossing a cheque** refers to drawing **two parallel transverse lines** on the cheque on the corner of the cheque.
- ✚ by crossing the cheque the drawer instruct the banker to not to pay it over the counter but only credit to the account of the person named therein.
- ✚ It means the banker should pay the money only through banker.
- ✚ It adds to the security and thus ensures payment to the payee or to his order

- ✚ The crossing of cheque had developed gradually as a means of protection against misusing of cheques.
- ✚ **Payment is made to payee's banker** only, and not directly to the person presenting it at the counter. This ensures that payment is made to the actual payee.

### General Crossing



### B) Who can cross a cheque?

- ✚ The drawer of a cheque
- ✚ The holder of a cheque –  
Where a cheque is issued uncrossed it may be crossed by the holder generally or specially
- ✚ The banker in whose favour the cheque has been crossed specially may again cross it specially in favour of another banker. The later bank in such a case acts as the agent of the former.

### c) Object of Crossing –

- to give protection and safeguard to the owner of the cheque
- to prevent fraud
- to prevent misutiisation of cheque and detect the fraud

### D) Kinds of crossing –

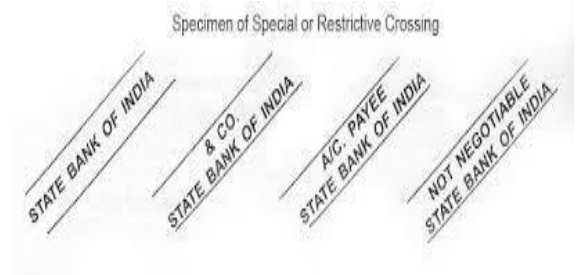
#### 1) General crossing – Section 123

- **Meaning –**
  - ✚ Two parallel transverse lines are drawn on the face of the cheque, generally, on the top left corner of the cheque
  - ✚ Holder or payee cannot get the payment at the counter but through the bank only
  - ✚ Including the name of the banker is not essential, hence, the amount can be **encashed by any banker**
  - ✚ The words, “& Company”, “Not Negotiable”, “A/C. Payee” may or may not be written
  - ✚ It can be converted into Special Crossing.
- **Effect of General Crossing –**
  - ✚ the banker on whom it is drawn shall only pay to a banker.
  - ✚ this type of cheque cannot be paid at counter.
  - ✚ The payment should be made through an account only
  - ✚ General crossing gives protection and avoids fraudulent withdrawals.
  - ✚ It is the liability of the paying banker to verify proper payment in proper account.
  - ✚ The banker is answerable to his customer, if he pays the money to a third person without the direction of his customer

#### 2) Special Crossing – Section 124

- **Meaning –**
  - ✚ It is also known as Restricted Crossing
  - ✚ Two transverse lines are not necessary to be drawn
  - ✚ Name of the banker is added across the face of the cheque

- ✚ The Name of the Banker may or may not carry the abbreviated word, ‘& Co.’, ‘Account payee’ or ‘Not Negotiable’
- ✚ Payment can be made **only through the bank mentioned** in the Crossing.
- ✚ Specially Crossed Cheques can never be converted to General Crossing.



- Effect of Special Crossing –
  - ✚ It prevents the fraudulent transactions
  - ✚ It is direction to the paying banker to pay the amount to the account holder of that bank, but not to others.
  - ✚ If a cheque specially crossed on a particular bank, and if such cheque is presented in another bank, the paying bank should refuse the payment.
  - ✚ Special crossing gives more protection than general crossing.

### 3) Account Payee Crossing –

- **Meaning –**
  - ✚ It has developed in the trade and in common to use these terms on the left side of the cheque between the two transverse lines.
  - ✚ However, there is no law mentioned about this type of crossing
  - ✚ The terms mean that the amount should not be paid at counter but should be credited into the account of the payee only.
  - ✚ However, the meaning of other crossings is also the same.
  - ✚ This type of crossing only gives additional protection to the cheque.
- Effect of Account Payee Crossing –
  - ✚ It is only in the form of direction to the receiving bank that the drawer desires to pay the particular cheque into bank which keeps the account of the payee.
  - ✚ The collecting banker should credit the cheque only to the mentioned account of the payee.
  - ✚ If the banker credits the cheque to another’s account and not to the account of the payee, the banker shall be held responsible for his negligence, and shall be held liable to pay the compensation.

### 4) Not Negotiable Crossing – Section 130

- **Meaning –**
  - ✚ A person taking a cheque crossed generally or specially, bearing in either case the words not negotiable shall not have, and shall not be capable of giving, a better title to the cheque than that which the person from whom he took it had.
  - ✚ It gives more protection than General Crossing and Special Crossing
  - ✚ It is a warning upon the paying and collecting bankers. Both of them should be very careful in the transaction of this type of cheques.

**Note –**

**The words “Not Negotiable” do not mean “not transferable”.**

▪ **Objective –**

- ✚ The true owner is protected by this type of crossing more perfectly.
- ✚ If it is stolen, the finder cannot cash it so easily. The good title cannot be passed to him.
- ✚ He will be compelled to return it to the true owner.
- ✚ The owner's right is preserved safely against any subsequent holder.

▪ **Effects –**

- ✚ It gives more protection and safe to the holder of the cheque.
- ✚ A third person cannot cash it so easily.
- ✚ It can be transferred like any other cheque.
- ✚ If the banker is negligent and transfers the amount of that cheque to another account, he will be held responsible and he will be liable to make the compensation to the sufferer.

**Crossing after issue.**

- ✓ Where a cheque is uncrossed, the holder may cross it generally or specially.
- ✓ Where a cheque is crossed generally, the holder may cross it specially.
- ✓ Where a cheque is crossed generally, or specially, the holder may add the words "not negotiable".  
Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to

**When Banker may Refuse Payment –**

In the following cases the banker may refuse to pay a customer's cheque:

- a) When the cheque is post-dated.
- b) When the banker has no sufficient funds of the drawer with him and there is no communication between the bank and the customer to honour the cheque.
- c) When the cheque is of doubtful legality.
- d) When the cheque is not duly presented, e.g., it is presented after banking hours
- e) When the cheque on the face of it is irregular, ambiguous or otherwise materially altered.
- f) When the cheque is presented at a branch where the customer has no account.
- g) When some persons have joint account and the cheque is not signed jointly by all or by the survivors of them.
- h) When the cheque has been allowed to become stale, i.e., it has not been presented within 3 months of the date mentioned on it.

**When Banker must Refuse Payment –**

In the following cases the banker must refuse to honour cheques issued by the customer –

- a) When a customer countermands payment i.e., where or when a customer, after issuing a cheque issues instructions not to honour it, the banker must not pay it.
- b) When the banker receives notice of customer's death.
- c) When customer has been adjudged an insolvent.
- d) When the banker receives notice of customer's insanity.

- e) When an order of the Court, prohibits payment.
- f) When the customer has given notice of assignment of the credit balance of his account.
- g) When the holder's title is defective and the banker comes to know of it.
- h) When the customer has given notice for closing his account.

#### Protection of liability of the paying banker –

- **Where a cheque payable to order** purports to be endorsed by or on behalf of the payee, the drawee is discharged by payment in due course.
- **Where a cheque is originally expressed to be payable to bearer**, the drawee is discharged by payment in due course to the bearer thereof, notwithstanding any endorsement whether in full or in blank appearing, thereon, and notwithstanding that any such endorsement purports to restrict or exclude further negotiation.
- **Payment of cheque crossed generally** – Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker.
- **Payment of cheque crossed specially** - Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed, or his agent for collection.
- **Payment in due course of crossed cheque. –**  
Where the banker on whom a crossed cheque is drawn has paid the same in due course, the banker paying the cheque, and (in case such cheque has come to the hands of the payee) the drawer thereof, shall respectively be entitled to the same rights, and be placed in the same position in all respects, as they would respectively be entitled to and placed in if the amount of the cheque had been paid to and received by the true owner thereof.
- **Payment of crossed cheque out of due course. –**  
Any banker paying a cheque crossed generally otherwise than to a banker, or a cheque crossed specially otherwise than to the banker to whom the same is crossed, or his agent for collection, being a banker, shall be liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.
- **Non-liability of banker receiving payment of cheque.– Section 131**  
A banker who has in good faith and without negligence received payment for a customer of a cheque crossed generally or specially to himself shall not, in case the title to the cheque proves defective, incur any liability to the true owner of the cheque by reason only of having received such payment  
In order to avail such protection, the banker needs to prove the following –
  - The banker has received the payment of crossed cheque.
  - That the collection was made by the bank on behalf of the customer.
  - That the collecting bank must have acted in in good faith.

#### Dishonour of Cheque –

- 1) Sections **138 to 142 deals with dishonor of cheques and** provides for criminal penalties in the event of dishonor of cheques for insufficiency of funds.
- 2) Penalty for dishonour of cheque –

The drawer, under Section 138, may be punished with **imprisonment up to 2 years or with a fine up to twice the amount of the cheque or with both.**

However, in order to attract the aforesaid penalties, following conditions must be satisfied:

- ✓ The **cheque should have been dishonored due to insufficiency of funds** in the account maintained by him with a banker for payment of any amount of money to another person from out of that account.
- ✓ The payment for which the cheque was issued should have been in discharge of a **legally enforceable debt or liability** in whole or part of it.
- ✓ The cheque should have been **presented within 3 months** from the date on which it is drawn.

#### **Presumption in favor of holder - Section 139**

It shall be presumed that the holder of a cheque received the cheque for the discharge of any debt or other liability.

#### **Defense which may not be allowed in any prosecution under section 138 - Section 140**

It shall not be a defense in a prosecution of an offence under section 138 that the drawer had no reason to believe when he issued the cheque that the cheque may be dishonored on presentment because of insufficiency of funds

#### **Offences by Companies - Section 141**

If the person committing an offence is a company, every person, who at the time the offence was committed and the company shall be jointly liable for the offence.

#### **Procedure to be followed before charging penalty –**

- Cheque is issued by drawer
- The payee/holder presents it for payment.
- The collecting bank informs payee/holder about dishonor of cheque.
- The payee or the holder in due course of the cheque should have given notice demanding payment within 30 days from the drawer in receipt of information of dishonor of cheque from the bank.
- Notice can be served by ordinary post or even telegram.
- The drawer is liable only if he fails to make the payment within 15 days of such notice period.
- The payee or holder in due course of the cheque dishonored should have made a complaint within one month of cause of action arising out of Sec. 138.

### Cognizance of offences – Section 142

#### A) Filing case –

- 1) Court shall take cognizance of any offence punishable under section 138 only if it is in writing.
- 2) Time limit for filing the complaint is **1 month**.
- 3) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.

#### B) Place of Jurisdiction of court for the trial of offence:

The offence under section 138, which deals with the dishonor of cheque, shall be inquired into and tried only by a court within whose local jurisdiction -

- a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or
- b) if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

### Power of Court to try cases summarily – Section 143

Provided that in the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year and an amount of fine exceeding five thousand rupees.

### Power to direct interim compensation – Section 143A

1. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Court trying an offence under section 138 may order the drawer of the cheque to pay interim compensation to the complainant—
  - a) in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and
  - b) in any other case, upon framing of charge.
2. The interim compensation under sub-section (1) **shall not exceed 20%** of the amount of the cheque.
3. The interim compensation **shall be paid within 60 days** from the date of the order or within such further period not exceeding **30 days** as may be directed by the Court on sufficient cause being shown by the drawer of the cheque.
4. If the drawer of the cheque is acquitted, the Court shall direct the complainant to repay to the drawer the amount of interim compensation, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, **within 60 days** from the date of the order, or within such further period not exceeding **30 days** as may be directed by the Court on sufficient cause being shown by the complainant.

### Offences to be compoundable – Section 147

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 every offence punishable under this Act shall be compoundable.

### Power of Appellate Court to order payment pending appeal against conviction – Section 148

- 1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, in an appeal by the drawer against conviction under section 138, the Appellate Court may order the appellant to deposit such sum which shall be a minimum of 20% of the fine or compensation awarded by the trial Court:

Provided that the amount payable under this sub-section shall be in addition to any interim compensation paid by the appellant under section 143A.

- 2) The amount mentioned above shall be deposited **within 60 days** from the date of the order, or within such further period not exceeding **30 days** as may be directed by the Court on sufficient cause being shown by the appellant.
- 3) The Appellate Court may direct the release of the amount deposited by the appellant to the complainant at any time during the pendency of the appeal:

Provided that if the appellant is acquitted, the Court shall direct the complainant to repay to the appellant the amount so released, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within 60 days from the date of the order, or within such further period not exceeding 30 days as may be directed by the Court on sufficient cause being shown by the complainant

## Hundis –

### A) Meaning –

- 1) Hundis are negotiable instruments written in an oriental language.
- 2) They are sometimes bills of exchange and sometimes promissory notes, and are not covered under the Negotiable Instruments Act, 1881.
- 3) They are governed by the customs and usages in the locality but if custom is silent on the point in dispute before the Court, this Act applies to the hundis.

### B) Types of Hundis –

Types	Description
<b>Shah Jog Hundi</b>	“Shah” means a respectable and responsible person or a man of worth in the bazar. Shah Jog Hundi means a hundi which is payable only to a respectable holder, as opposed to a hundi payable to bearer. In other words the drawee before paying the same has to satisfy himself that the payee is a ‘SHAH’.
<b>Jokhmi Hundi</b>	A “jokhmi” hundi is always drawn on or against goods shipped on the vessel mentioned in the hundi. It implies a condition that money will be paid only in the event of arrival of the goods against which the hundi is drawn. It is in the nature of policy of insurance. The difference, however, is that the money is paid before hand and is to be recovered if the ship arrives safely
<b>Jawabee Hundi</b>	According to Macpherson, “A person desirous of making a remittance writes to the payee and delivers the letter to a banker, who either endorses it on to any of his correspondents near the payee’s place of residence, or negotiates its transfer. On the arrival, the letter is forwarded to the payee, who attends and gives his receipt in the form of an answer to the letter which is forwarded by the same channel of the drawer or the order.” Therefore, this is a form of hundi which is used for remitting money from one place to another.

<b>Nam jog Hundi</b>	It is a hundi payable to the party named in the bill or his order. The name of the payee is specifically inserted in the hundi. It can also be negotiated like a bill of exchange. Its alteration into a Shah Jog hundi is a material alteration and renders it void.
<b>Darshani Hundi</b>	This is a hundi payable at sight. It is freely negotiable and the price is regulated by demand and supply. They are payable on demand and must be presented for payment within a reasonable time after they are received by the holder.
<b>Miadi Hundi</b>	This is otherwise called muddati hundi, that is, a hundi payable after a specified period of time. Usually money is advanced against these hundis by shroffs after deducting the advance for the period in advance. There are other forms of hundis also like.
<b>Dhani Jog Hundi</b>	A hundi which is payable to "dhani" i.e., the owner.
<b>Firman Jog Hundi</b>	which is payable to order if can be negotiated by endorsement and delivery

### National Electronic Funds Transfer (NEFT)

- 1) National Electronic Fund Transfer (**NEFT**) is a nation-wide payments system that allows the transfer of funds from one bank's account to another.
- 2) Under this Scheme, individuals, firms and corporates can electronically transfer funds from any bank branch to any individual, firm or corporate having an account with any other bank branch in the country participating in the Scheme
- 3) NEFT is generally for transactions with smaller amount.
- 4) NEFT is an electronic fund transfer system that operates on a Deferred Net Settlement (DNS) basis which settles transactions in batches.
- 5) In DNS, the settlement takes place with all transactions received till the particular cutoff time.

### Real Time Gross Settlement (RTGS) –

- Real Time Gross Settlement, abbreviated as RTGS systems are specialist funds transfer systems where the transfer of money or securities takes place from one bank to any other bank on a "real-time" and on a "gross" basis
- It is a safe and secure system for funds transfer.
- Real-time gross settlement is generally employed for large-value interbank funds transfers

## UNIT 4

### General introduction of Consumer Protection act 1986 and 2018,

The Consumer Protection Act 1986 was the first comprehensive consumer law enacted in India, focusing on protecting buyers from exploitation and fraud. The Consumer Protection Act India came into existence in 1986 and was modified in 2002 and again in 2019. It assists in constituting consumer courts which can solve all the problems conveniently and speedily. It elucidates what constitutes an unfair trade practice and provides some guidelines to establish quality and safety for consumers. The Act will be applicable for all goods and services unless especially excluded. It allows consumers to file complaints against companies, manufacturers, or service providers in consumer courts. They can punish the businesses and even give compensation to the consumers if they prove guilty of carrying out unfair practices or selling poor-quality goods and services.

### Consumer-Meaning

A consumer is a person or group that uses a product or service. Consumers buy things for personal use, like groceries for their home or software for their business. Usually, when we talk about consumers, we mean people who buy things for themselves, not for business use. The choices and preferences of consumers determine how businesses sell their products. Businesses look at what consumers like, how much they are willing to pay, and how to promote their products. The way people spend their money also shows how well the economy is doing. When people spend more, it usually means the economy is growing. If people spend less, it can mean the economy is slowing down.

### What is Consumer Protection Act?

Consumer Protection Act definition: It is a legislative tool enacted to protect the interests and rights of consumers against unfair trade and exploitation. The Consumer Protection Act applies to all goods and services, unless stated otherwise. Consumer Protection Act definition can be understood as an act which allows consumers to file complaints about bad products, poor services, false ads, and unfair business practices. Consumers can ask for compensation, replacement, repair, or a refund from businesses. Consumer courts can fine and punish businesses that break the law. The Act provides a system to solve consumer problems and protect their rights in India. Its goal is to encourage fair business practices and help consumers make smart choices when buying things.

### Definition of Consumer in the Consumer Protection Act

A consumer, as defined under the Consumer Protection Act 2019, is a person who buys goods or avails services for personal use and pays or promises to pay for them.

This includes online buyers, users of services like banking or insurance, and anyone benefiting from a purchased service (like a family member using a health plan).

However, those buying goods for resale or commercial gain are not considered consumers. For instance, purchasing a washing machine for household use qualifies you as a consumer, but buying 10 machines to resell does not.

This definition is crucial because it determines who is legally protected under the Act.

## Consumer Protection ACT 1986

The Consumer Protection Act 2019 replaced the 1986 law and introduced modern provisions to address e-commerce and digital consumer grievances. The Consumer Protection Act of 1986 was made to safeguard consumers' rights in India. It ensures fair treatment for consumers while purchasing goods or services. If the consumer is being treated unfairly, the law allows them a solution to solve problems. Notes on Consumer Protection Act 1986 pdf can be downloaded once you have signed up on Testbook.

### **Objectives of the Consumer Protection Act:**

The objectives of the Consumer Protection Act include protecting consumers from exploitation, promoting awareness, and ensuring speedy redressal of grievances. The objective of the Consumer Protection Act is mainly to avoid misleading or cheating the consumers. It protects consumers against unfair practices like fake products or false advertisements. The law entitles consumers to a refund or replacement in case they receive faulty products. Also, it makes sure that services are offered on a fair scale. The law enables consumers to fight for their rights in the simplest way. It helps create a safer and more just marketplace for all.

### **Consumers have Rights Under the Act**

The Consumer Protection Act provides consumers with certain rights. For example, the right of information about the commodities or services is one of them. Further, they are entitled to freedom of choice, which must be free from pressure. They should be heard so that their problem is addressed with a fair solution. The right to redressal is about the consumers' ability to demand compensation for injustices meted out to them. Harmful and unsafe products are also safeguarded against by this Act.

### **Consumer Disputes Redressal Agencies**

The Consumer Protection Act has made the establishment of Consumer Disputes Redressal Agencies. They assist the consumer in finding an appropriate solution in case of any dissatisfaction over the product or service. These agencies help the consumer in submitting a complaint against an individual for seeking compensation. It makes sure that complaints are brought to a proper end by listening to the concerned parties fairly. They enable the consumer to seek redress through better compensation.

## **Consumer Protection in the Marketplace**

The Act also helps keep the marketplace fair and safe for all consumers. It stops businesses from using unfair or dishonest practices to sell products. It ensures that businesses give clear information about their products and services. The law makes sure that consumers are not forced to buy bad products or pay unfair prices. The government can punish businesses that break the rules. This helps consumers feel confident when they buy goods or services.

### **Consumer Protection Act 2019**

Consumer Protection Act 2019 is a law that has been provided in India. It protects a person who is buying goods or service and updates the law from 1986. Thus, this updated law makes sure that consumers get fair treatment when they are deceived or mistreated. This helps consumers to overcome problems when being cheated or ill-treated. Notes on Consumer Protection Act 2019 pdf can be downloaded after signing up on Testbook.

### **Main Features of Consumer Protection Act 2019**

The Consumer Protection Act 2019 is rich in important features. The law establishes a specific body known as the Central Consumer Protection Authority (CCPA) for the protection of consumers. It prohibits fake advertisements and the sale of hazardous substances. Moreover, it also allows easy online filing of complaints. The law makes sure that the e-commerce website does not misbehave with its customers. All these developments safeguard the interests of the consumers in the present e-commerce world.

### **Consumer Rights Under the 2019 Act**

The 2019 Act provides important rights to consumers. Consumers have a right to protection from hazardous products. They have a right to proper information on what they buy. Consumers have the freedom of choice and freedom to raise their grievances. If anything wrong happens, they can seek their money back or a replacement. These rights allow people to make better choices about what they are buying.

### **Consumer Dispute Redressal Commission**

The Act has also established special commissions that will help in solving problems between consumers and businesses. These commissions are at the district, state, and national levels. In case a consumer has a complaint, they can take it to these commissions. The process is quicker and easier for consumers to get help. The law also allows consumers to file complaints from anywhere in India. This helps make sure everyone has access to justice.

### **Protection in E-Commerce and Online Shopping**

The 2019 Act also protects consumers when shopping online. It makes sure online businesses follow fair rules, like giving correct information. Consumers can return products that are broken or unsafe. The law also protects consumers from fake reviews or ads on websites. It ensures that online companies don't misuse personal information. These protections make online shopping safer for consumers.

## What are the Various Consumer Rights?

Consumer rights refer to the fundamental rights that all individuals possess whenever they purchase products or services. The rights aim to safeguard consumers against unfairness and guarantee they receive what they have paid for.

### **Right to Safety**

The right to safety indicates that products do not hurt customers when used correctly. These products are like toys, food, and electronics that must be safe for customers to use. In case a product is unsafe or defective, consumers can exchange it or request a refund. The right keeps people safe from harm due to harmful products.

### **Right to Information**

Right to information means that the customer should be told what he is buying. This includes information on the price, ingredients, or warnings for the product. Labels, advertisements, and manuals need to provide extensive and truthful facts. Consumers are able to make smart choices on what they buy through the right to information.

### **Right to Choose**

The right to choose ensures that consumers can purchase goods from various sellers. Nobody should make you purchase something you don't need or desire. This right guarantees there is competition in the market, thus you have plenty of choices to select from. It ensures that products and services are offered at reasonable prices.

### **Right to be Heard**

Right to be heard implies that customers have the right to complain if something is amiss with a product or service. If you have a problem with a faulty product or complain about something, companies must hear you out and attempt to solve the issue. Customers can even approach government authorities or consumer associations for assistance. This right ensures that customers' grievances are considered seriously.

### **Right to Redress**

The right to redress is that consumers are able to receive compensation if they are not happy with a product or service. If a product is faulty, does not do what it says it will, or is harmful, consumers can

request a refund or replacement. Companies have to sort out any issues promptly and reasonably. This right guarantees that consumers are treated reasonably when things go wrong.

## Objectives of Consumer Protection Act

The main goal of the Consumer Protection Act is to protect consumer rights. It ensures that businesses treat consumers fairly and provide good products. The law also helps consumers solve problems when they are treated unfairly.

### Protecting Consumer Rights

The primary protection accorded to consumers by the Act is for their rights. Consumers have the right to safety when buying a product or service. Again, they have the right to receiving full information on what they are purchasing. There is a variety of choice between different products and services. Businesses are supposed to provide clear information on products offered, with accuracy being guaranteed. They cannot sell dangerous goods or services that might harm consumers. This avoids making consumers make poor choices in the market.

### Providing a Simple Way to Resolve Complaints

This law gives the consumers an easy method of redressing complaints. The commissions will sort out such complaints as expeditiously and as amicably as possible. The consumer does not need to go to the court for dispute settlement. This helps all to obtain justice easily. The Act assists consumers in obtaining refunds, replacements, or compensation.

### Preventing Unfair Trade Practices

The Act also aims to stop unfair trade practices in the market. This includes stopping businesses from giving false information about products. The law makes sure that products are labeled properly so consumers know what they are buying. It also stops businesses from cheating consumers by selling fake or substandard goods. The Act protects consumers from being tricked or misled. This helps create a fairer market for everyone.

### Protecting Consumers in E-Commerce

The Consumer Protection Act also safeguards online shoppers. It ensures that an e-commerce website gives honest and accurate information about the products being sold. It ensures that in case the product is broken or not as described, a consumer can return it. The law also guards consumers against fake reviews or misleading advertisements. The Act makes online shopping safer and more reliable. This is very crucial because online shopping is increasingly on the rise.

### Promoting Consumer Awareness

Another objective of the Consumer Protection Act is to promote awareness about consumer rights. It helps people learn about their rights and how to protect themselves. The law encourages consumers

to speak up when they face problems. Consumer awareness helps create a fairer market. The more consumers know about their rights, the less likely they are to be cheated.

## Features of Consumer Protection Act

The Consumer Protection Act has numerous protective features for consumers' rights. It ensures that businesses treat consumers fairly and provide good products. The Act also gives consumers a way to solve problems and get justice if they are mistreated.

### Consumer Rights

One of the features of the Consumer Protection Act is the protection of consumer rights. Consumers have the right to safety; that is, they should not be harmed by the product. They also have the right to know what they are buying. Consumers, therefore, can make choices without pressure.

### Consumer Dispute Redressal Commission

The act allows for the easy redressal of grievances through Consumer Dispute Redressal Commissions. These commissions have been established at the district, state, and national levels. A consumer can lodge complaints if he or she feels that the product or service is defective or generally unsatisfactory. It provides the problem-solving mechanism that moves quickly and admirably, making it easier than going to court.

### Prevention of Unfair Trade Practices

The Act helps stop unfair trade practices by businesses. It prevents businesses from giving false information about products. The law ensures that products are safe and properly labeled. It also prevents companies from selling counterfeit products or charging exorbitant prices. This prevents consumers from being misled. It establishes an honest and equitable marketplace for all.

### E-Commerce Protection

The Act also protects consumers in e-commerce with the advent of online shopping. It ensures that online stores clearly and honestly disclose information about their products. Faulty products may be returned to the online stores, and consumers can get back their money. The law safeguards consumers from false reviews and false advertisements. This makes online shopping safer. More people shop online, so this feature is significant.

### Consumer Awareness

Another important feature of the Consumer Protection Act is the promotion of consumer awareness. For this, law educates people about their rights and privileges in being consumers. It promotes reporting problems and questing for their causes. The better people know, the less chance they have of getting cheated. Consumer awareness makes the market fairer for everyone. It helps make better choices when shopping.

## Consumer Protection Act 1986 and 2019 PDF Summary

The Consumer Protection Act 1986 laid the foundation for consumer justice in India by introducing consumer rights and redressal forums at district, state, and national levels. It was a revolutionary step that made dispute resolution faster and more affordable than traditional court procedures.

However, with the rise of digital commerce and e-services, new challenges emerged. Hence, the Consumer Protection Act 2019 was enacted to modernize the law. This version introduced key features such as:

- Establishment of the Central Consumer Protection Authority (CCPA).
- Product liability for defective goods and services.
- E-filing of complaints and video hearings for faster resolution.
- Inclusion of e-commerce transactions and penalties for false or misleading advertisements.
- Introduction of Mediation Cells to encourage amicable settlements.

### Difference Between Consumer Protection Act 1986 and 2019

The Consumer Protection Act 1986 vs 2019 comparison highlights how Indian consumer law evolved to meet the needs of a digital economy.

While the 1986 Act created the foundation for consumer rights, the 2019 Act modernized the system by introducing e-commerce protection, CCPA, and product liability.

The table below clearly shows the key differences in objectives, structure, and coverage between the two Acts.

#### Consumer Protection Act 1986 vs 2019 — Detailed Comparison

Aspect	Consumer Protection Act 1986	Consumer Protection Act 2019
Year of Enactment	Came into force in 1986 to safeguard consumer interests in traditional markets.	Enacted in 2019 to strengthen and digitalize consumer protection in India.
Objective	Focused on protecting buyers from unfair trade practices in physical markets.	Broadened scope to include e-commerce, online sales, and digital transactions.
Regulatory Authority	No central authority; only three-tier redressal forums.	Introduced the Central Consumer Protection Authority (CCPA) for nationwide enforcement.
Consumer Rights	Recognized six basic rights (safety, information, choice, etc.).	Retained the six rights and added focus on product liability and misleading ads.
Redressal Mechanism	Manual filing through District, State, and National Commissions.	Enabled online filing (E-Daakhil portal) and video hearings for faster resolution.
Product Liability	No explicit product liability clause.	Introduced product liability holding manufacturers, sellers, and service providers accountable.

Coverage of E-Commerce	Not included; focused only on physical goods and services.	Explicitly includes online shopping, digital payments, and electronic services.
Advertisement Regulation	No strict action against false ads.	Imposes penalties for false or misleading advertisements; celebrities can be held liable.
Mediation	Absent in the 1986 Act.	Introduced Mediation Cells for quicker, amicable settlements.
Penalties & Enforcement	Limited enforcement power; penalties were minimal.	Stronger penalties, fines, and imprisonment for violations of consumer rights.
Scope of Jurisdiction	Restricted to lower monetary value cases per level.	Monetary limits increased to handle high-value consumer disputes.
Relevance Today	Foundation of consumer protection in India.	Modern, tech-driven law addressing 21st-century consumer challenges.

## FEMA

FEMA (Foreign exchange management act) is integral to any country's economy as it is an act to consolidate and amend the law relating to foreign exchange with objective of helping external trade and payments and promoting foreign exchange market in India. International trade and transactions cannot happen without foreign exchange instruments and markets. In other words, foreign exchange is the process of exchanging a country's currency with that of another.

For example, consider that India imports products from the United States. In this scenario, payment for the goods must be made in U.S. dollars. The foreign exchange market, which determines the prevailing exchange rate between the Indian currency and the U.S. dollar, enables the transaction to occur and supports international trade. This creates the demand for foreign exchange markets which allow the exchange of different currencies. However, as important as foreign exchange is, its regulation and management are crucial. That's where the FEMA act, or the Foreign exchange management act, comes into play.

### What is FEMA Act?

Foreign Exchange Management Act is a parliamentary act that empowers the Reserve Bank (RBI) and the Government of India to manage and regulate foreign exchange. The FEMA definition not only regulates but also facilitates the exchange in India. It ensures that the foreign exchange market is maintained correctly and allows for easy foreign exchange transactions.

- This act, enacted on June 1, 2000, replaced the previous FERA act.
- It aimed to revise and unite the foreign exchange rules to facilitate the development of the Forex market.
- The new FEMA Act is more liberal and less restrictive than the FERA Act.

- The Reserve Bank of India (RBI) is crucial in FEMA's management and administration. It devises many rules and regulations of the FEMA Act and the Government of India.
- FEMA has 49 sections and subsections divided into seven chapters.

## Highlights of FEMA Act 1999

The FEMA act paved the way for a more free and liberal foreign exchange market and transactions in India. While there were strict restrictions in the FERA Act, FEMA is more transparent in applicability. The salient features of FEMA have been explained in detail.

- The FEMA Act does not apply to Indian citizens outside India. It follows the same guidelines as the Income Tax Act to recognize a person as an Indian Resident.
- The FEMA Act gave the power to the central government to supervise these three areas: Forex, payments, receipts to any person outside India, and Foreign Security deals.
- FEMA described the areas in Foreign Exchange holding or acquisition requiring RBI or Central government permissions.
- It empowers the government to control and oversee the payment flow to and from the country.
- It allows the government to restrict any authorized person or a capital account in the interest of the country from carrying out forex transactions.
- It allows Indian citizens to hold immovable property in a different country or carry out forex transactions in case the citizen acquires or inherits foreign property.
- Under the FEMA act, RBI controls capital account transactions.
- Current account transactions under the FEMA act are freely permissible, with specific exceptions.

## Objectives of FEMA

FEMA aims at an overall and holistic growth of the country's forex market. The main objectives of FEMA in points are detailed below.

- Facilitation of external trade and payments in the country
- Support, grow, and maintain the foreign exchange market in India
- Regulate and outline the rules and procedures for all foreign exchange transactions ((current and capital)
- Define the balance of payments in the country as a record of transactions of goods and services among citizens of various nations

## Features of FEMA Act 1999

FEMA Act replaced the previous act to adapt to the increasingly liberal trade market. Refer to the discussion below to understand the features of Foreign exchange management act 1999.

- The FEMA Act has only 49 sections and is much simpler than the previous Foreign Exchange Regulation Act.

- There was a presumption of Mens Rea (Negative intention) and abatement (joining hands in crime or offense) in the FERA Act. The FEMA Act 1999 excluded these presumptions.
- FEMA explicitly defines and identifies terms like Current Account transaction person, Capital Account transaction, service, etc.
- An 'authorized person' now include offshore banking units, banks, money changes, etc. The previous definition was a narrow one.
- The objective of FEMA Act 1999 defines a resident as per the rules of the Income Tax Act 1961. A person "in India for 182 days" is considered a resident under the Income Tax Act. The FEMA Act now follows the same rules. A person identified as a "resident" under the Income Tax Act would also be the same in the FEMA Act.
- The FERA Act identified any offense as a criminal offense, following provisions of the Criminal Procedure, 1973. The FEMA Act identified offenses as civil offenses, payable with a monetary penalty.
- Furthermore, the penalty was previously five times the amount involved. It has been reduced to three times as per the FEMA Act 1999.
- Any appeals against Adjudicating Authority and Special Director are passed to Appellate Tribunal and High Court.
- FEMA Act explicitly identifies the right of any appellant to seek legal help. This provision was not present in the FERA Act.
- The search or seizure power under the FEMA Act is confined to the Enforcement Officers only.
- FEMA also allows compounding of the offenses under the act.
- Current Account transactions are free from permissions, whereas only specific Capital Account Transactions need RBI permissions.

### Section 3 of FEMA

According to the functions of FEMA, dealing in foreign exchange is subject to these conditions, where people are not allowed to do certain things, some of which are listed below.

- Deal or transfer forex or foreign securities to a person who is not an Authorized person
- Make any payments to a person or for a person's credit residing outside of India.
- Receive any payments (apart from an authorized person) from any person outside India.
- Enter into any transaction in India to consider or to associate with an acquisition, creation, or transfer of the rights to acquire an asset outside India by any person.

### FEMA Guidelines For Outward Remittances

The FEMA rules and regulations aim for easy and smooth Forex transactions for Indian residents. Outward Remittances for Indian citizens are under the FEMA guidelines which has been stated below.

- FEMA allows Indian citizens to send money to foreign bank accounts for specific purposes without obtaining a permit. The purposes may be education, medical treatment, travel, etc.

- The person has to submit their PAN card details to complete the remittance. Also, the annual limit for outward remittance is USD 250,000.
- A citizen cannot send money to countries or organizations prohibited by the RBI. They can be non-cooperative countries or organizations that may have terrorism ties.

## Capital Account Transactions under the FEMA Act

The FEMA Act has classified Forex transactions into two categories: Current Account transactions and Capital Account transactions. Capital Account transactions include any transactions which alter the assets or liabilities held outside India of an Indian Resident. It also consists of the alteration of assets and liabilities in India held by a person residing outside India. The remaining transactions were a part of the Current Account transactions.

Capital Account Transactions dealing in Forex must follow FEMA regulations. As per the FEMA regulations for Capital Transactions, below mentioned are the guidelines to be followed.

- No person can draw, undertake, or sell foreign exchange from any authorized person (recognized by the FEMA Act) for capital account transactions.
- The FEMA regulations restricted any person who is not a resident of India from investing in Indian organizations and firms dealing in the chit fund business, real estate (except development of townships, residential/commercial areas, roads or bridges, etc.), farmhouse constructions, or trading in TDRs.
- The FEMA Act allows transactions by Indian Residents, including investments in foreign securities. It also allows the raising of foreign currency loans inside or outside India, transactions related to immovable property outside India, the issue of guarantees for anyone residing outside India, and transactions involving holding or importing/exporting currency notes.

## FEMA Law

The FEMA full form Foreign Exchange Management Act is an Indian law that was enacted in 1999 to consolidate and amend the law relating to foreign exchange with the objective of facilitating external trade and payments and promoting the orderly development and maintenance of the foreign exchange market in India. FEMA replaced the Foreign Exchange Regulation Act (FERA) of 1973 and brought about significant changes in India's foreign exchange regulations.

## Current Account Transactions Under the FEMA Act

A Current Account transaction under FEMA is any transaction that doesn't fall under the Capital Account rules of altering assets and liabilities. Below are some examples of it.

- Payments for current businesses and services, foreign trade, or short-term bank facilities
- Interest on loans or tax on investment earnings
- Payments for travel, education, or healthcare of children, parents, or spouse

Current Account Transactions dealing in Forex must follow FEMA FDI regulations. As per the FEMA regulations for Current Transactions the following facts are to be kept in mind.

- Current account transactions under the FEMA act are freely permissible, with specific exceptions.
- The exceptions includes the following-
  - Remittance of lottery winning.
  - Remittance of money through races, riding, or any other hobbies.
  - Remittance for buying lottery tickets, football pools, banned magazines, etc.
  - Paying commission on exports made in equity investment in Indian Companies in their joint ventures or wholly owned subsidiaries abroad.
  - Remittance of dividends with the requirement of dividend balancing by a company.
  - Payments for 'call back services' in mobiles.
  - Remittance of receivable interest income on money held in a non-resident account.
- The FEMA law restricts foreign exchange deals made by authorized people under their current accounts.
- Nepal and Bhutan allow the use of Indian currency for transactions. Due to the same currency market, Forex transactions with the residents of Nepal and Bhutan were also prohibited.
- Furthermore, due to the international presence of Indian citizens, under the LSR Scheme of the FEMA Act, a person can send up to a limit of \$250,000 in a financial year.

## FEMA FDI Regulations

FDI is an essential financial resource for a country without debt. It promotes business, economic activity, and investors in the country, contributing to its growth. The FEMA policy focuses on making investments transparent and seamless for investors to project it as a growing and profitable investment avenue.

In the FEMA Act pdf, FDI is an equity investment by a person residing outside India in any unlisted Indian company. In the case of a listed Indian company, it must be ten per cent or more of the paid-up post-issue equity capital.

There are two methods or routes for an FDI: the automatic route and the government-approval route. These routes are categorized based on the sector type for foreign direct investment.

### **Automatic Route**

Under the FEMA FDI regulations, the automatic route allows FDI without approval from the Central government or the RBI. The limit can be 100% or the amount specified by the sector. Some sectors in this category are Telecom, Manufacturing, and other Financial Services.

### **Government-Approval Route**

This FDI route requires approval from the Central government and the RBI. The investment is subject to the conditions set by both bodies and is to be adhered to by the investor. Some sectors in this category are Satellites, Financial Services, Mining, etc.

### Importance of FEMA Act 1999

Due to the increasing international trade and increasingly freeing government trade policies, FEMA in business environment became necessary. Its importance can be better understood by referring to the points below.

- The FEMA Act became a gateway for better international trade and India's recognition as a trade-friendly country.
- The FEMA Act was a more liberal provision and facilitated global trade for Indian Residents. To eliminate the hindrances in the FERA Act, the government came forward with this relaxing yet efficient FEMA Act to allow Indian residents to deal in the global market.
- There are reduced penalties and fewer restrictions in FEMA for offenses.
- It increased the trader's confidence to indulge in the global forex market and allowed for its healthy maintenance and development.

### Difference Between FERA and FEMA

Here is a tabular representation of difference between FERA and FEMA has been stated below:

Feature	FERA (Foreign Exchange Regulation Act)	FEMA (Foreign Exchange Management Act)
Enactment Year	1973	1999
Objective	Regulate and control foreign exchange to conserve foreign currency and prevent its misuse.	Facilitate external trade and payments, and promote orderly development and maintenance of the foreign exchange market in India.
Nature	Regulatory and restrictive	Management and facilitative
Approach	Criminal Law	Civil Law
Scope of Law	Stringent control over all forex transactions	Moderated control with a focus on facilitating exchange and trade.
Penalties	Severe penalties, including imprisonment. Focused on non-compliance punishment.	Penalties are more civil in nature. Focused on managing and facilitating compliance.
Flexibility	Rigid and not business-friendly	Flexible and business-friendly
Authority	Enforcement Directorate under Ministry of Finance.	Reserve Bank of India (RBI) primarily, with enforcement by the Directorate of Enforcement.
Approval Requirements	Required for nearly all aspects of foreign exchange transactions	Approval requirements are more relaxed and transaction-specific.
Capital Transactions	Significant restrictions on capital account transactions.	More liberalized approach to capital account transactions.

Penalty for Violations	Considered a criminal offense, dealt with through criminal procedures.	Violations treated as civil offenses with appropriate financial penalties.
Resident and Non-Resident Definitions	Strict definitions and interpretations.	Simplified and updated for contemporary global business practices.
Transactions Covered	Broadly covered all transactions involving foreign exchange.	Clear distinction between current account and capital account transactions.
Amendability	Less adaptable to changing economic conditions.	More easily amended to adapt to economic changes.

## Conclusion

The FEMA Act opened gateways for a smoother and more flexible foreign exchange market for Indian citizens. It allows for easy transactions without approvals from the government, facilitating trade and businesses. Furthermore, the act empowers the government to oversee, control, and manage foreign currency transactions in the country.

# UNIT 5

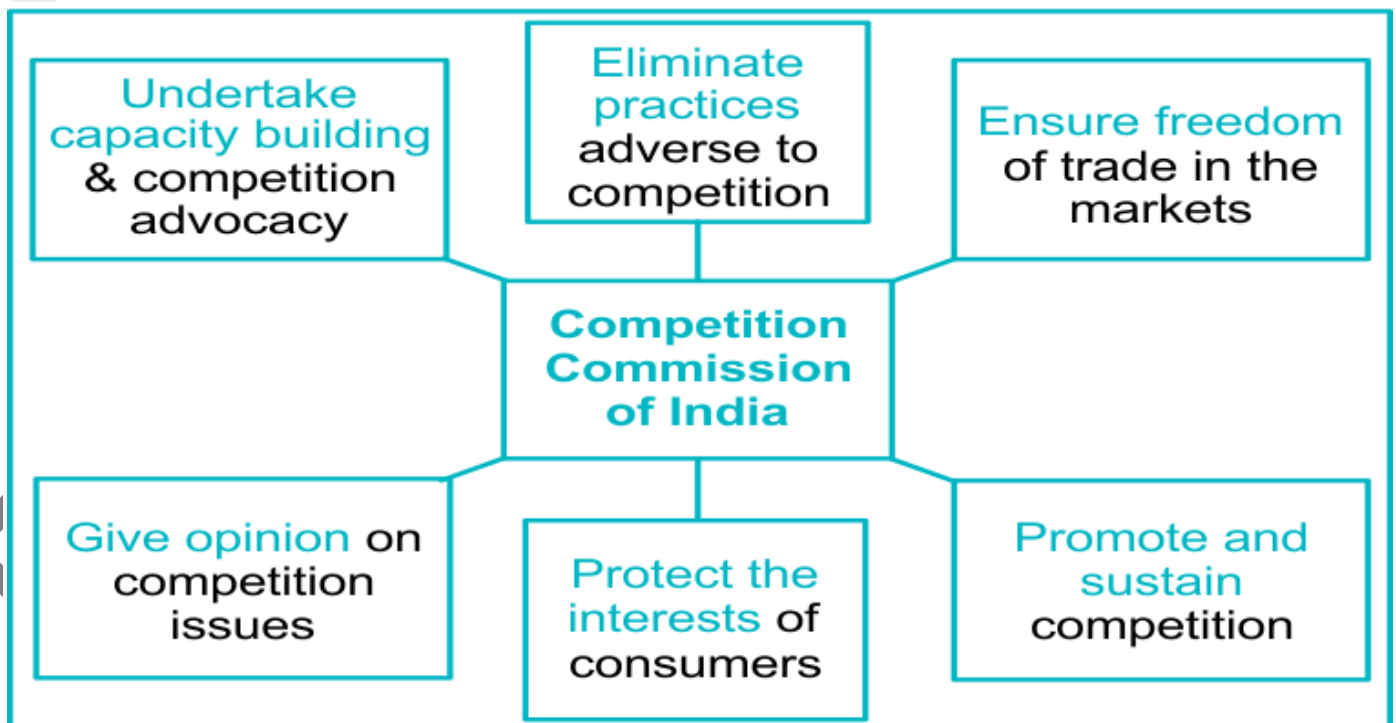
## The Competition Act 2002

The Competition Act 2002 is India's legislation aimed at promoting fair competition in the economy. It guards against practices causing an adverse impact on competition. This act tries to protect consumers' interests by allowing them to trade freely. The Competition Commission of India, a statutory body handles the act's implementation and administrative function. In this, no business enterprise can acquire an unfair or excessive upper hand over another business enterprise.

What is Competition Act 2002?

The Competition Act 2002 is such a law in India that ensures businesses play fair. It bars large firms from using their dominant position for the purpose of eliminating smaller competitors, thereby ensuring that the customer is not exploited while buying the product. This also checks the combination of companies to prevent it from causing an appreciable adverse effect on competition. There is a specific authority named Competition Commission of India (CCI) which enforces this act.

### Background of Formation of the Competition Act 2002



The first effort at competition regulation made by India was through the Monopolies and Restrictive Trade Practices Act of 1969, which aimed at prohibiting monopolistic practices and concentration of economic power. The MRTP Act could not function in the new market dynamics brought about by

liberalization and globalization, which started to come into existence in the 1990s. More modern and comprehensive legislation was needed to promote competition in the new market dynamics.

The Raghavan Committee Report in 2000 was in favor of a new competition law and suggested a complete overhaul of the competition policy. Therefore, the Competition Act 2002 was enacted, and the MRTP Act was repealed. This new law was a landmark shift in India's approach to competition policy, meeting the needs of a liberalized economy.

## Objectives of Competition Act 2002

The Competition Act 2002 has been designed for several specific objectives:

- **Promotion of Fair Competition:** Make sure all companies have a fair chance and no one cheats.
- **Protection of Consumers:** That buyers of any goods or services get fair prices and good quality.
- **Prevention of Bad Practices:** Companies cannot engage in activities that hurt competition, like price-fixing.
- **Regulation of Mergers:** Prevent companies from coming together in a way that hurts competition.
- **Educate them:** Educate businesses and people of those rules so that people will strictly follow them.

## Salient Features of Competition Act 2002

The Act has drawn several features which ensures achieving the objectives:

- **Forbidden Agreements Directed Against Competition:** Section 3 of the Act forbids any agreement which causes or is likely to cause an appreciable adverse effect on competition within India.
- **Prohibition of Abuse of Dominant Position:** Section 4 prevents enterprises from abusing their dominant position in the market to manipulate prices, restrict production or market developments, or establish unfair conditions.
- **Regulation of Combinations:** Sections 5 and 6 provide for the regulation of mergers, amalgamations, and acquisitions. Such combinations are assessed so that the combinations do not affect market competition.
- **Establishment of the Competition Commission of India (CCI):** In terms of the setting up of the CCI, this is a quasi-judicial authority responsible for implementing the provisions under the Act. It is an authority which undertakes investigation and issues orders along with directions that impose penalties against anti-competitive practices.
- **Advisory Function:** The CCI may furnish opinions to the statutory authorities as well as to the Government in respect of the competition issue.
- **Predatory Pricing:** The Act defines and prohibits predatory pricing, which is selling products by a dominant company at a price below cost to drive competitors out of the market.

## Benefits of the Competition Act 2002

Competition Act 2002 provides multiple benefits for Indian economy and its stakeholders:

- By eliminating anti-competitive practices, the Act allows consumers to get a proper price, superior quality, and alternatives.
- The Act brings equal opportunities to all businesses and ensures healthier competition and innovation.
- It enhances efficiency, productivity and growth due to the competitive market environment, hence contributes to the overall economic development.
- The Act is likely to make business operations transparent, which might attract foreign investment and also strengthen the confidence among market participants.
- It will develop a sound structure for resolving any issues concerning competition, which further helps in the maintenance of healthy markets.

## Limitations of Competition Act 2002

Despite its benefits, the Competition Act 2002 has some limitations:

- **Hard to Enforce:** It may not be an easy task to keep everyone in the line.
- **Costly Compliance:** Following all the rules can become very expensive for businesses, particularly smaller ones.
- **Slow Legal Processes:** Solving issues related to competition can take a very long time thereby delaying the benefits.
- **Global Challenges:** The law may not fully address issues from international businesses.
- **Awareness:** Everyone is not aware of the Act or not in a position to understand the Act properly.

## Important Amendments to the Competition Act 2002

Competition Act 2002 has undergone various amendments in the past to enhance its provisions and respond to the new challenges arising from time to time.

### Competition (Amendment) Act, 2007

- **Formation of CCI:** This amendment was on the formation and functioning of the Competition Commission of India. The amendment specified the structure, powers, and functions of the CCI.
- **Role Clarification:** The amendment described the roles and responsibilities of the CCI in regulating competition and enforcing the Act.
- **Administrative Functions:** It appointed the Director General as the investigating wing of the CCI, which further structured the administrative process.

### Competition (Amendment) Act, 2009

- **Additional Powers:** The CCI was further empowered to effectively enforce the Act. This is enhanced by giving powers to impose larger penalties and issue cease and desist orders.
- **Dispute Resolution:** Improved dispute resolution mechanisms arising from anti-competitive practices make it a streamlined and efficient process.
- **Functional Autonomy:** The amendment was a move to ensure the CCI obtained more functional autonomy in its approach towards decision making so that its process is unscathed with external interference making the system fairly and logically impartial.

## The Competition (Amendment) Bill, 2020

This proposed bill brought into play some of the many changes which will modernise and strengthen existing legislation.

- **Definition of Dominant Position:** Refine what constitutes an abuse of dominant position, thereby creating greater clarity and scope for CCI.
- **Green Channel for Combinations:** Offer a 'green channel' with automatic approval to certain combinations for reducing waiting time for business transactions that are less problematic.
- **Compounding of Offences:** Provided for compounding offences whereby minor infractions could be resolved expeditiously by way of payment of fines instead of through the cumbersome judicial process.
- **Settlement and Commitments:** Propounded the procedure for settlement and commitments against firms alleged to be involved in anti-competitive practices without being investigated fully, almost like plea bargaining.

RENEWAL