BUSINESS LAW

Unit-1

The Indian Contract Act 1872

Definition of contract, essentials elements and types of a contract, Formation of a contract, performance of contracts, breach of contract and its remedies, quasi contracts

What is law?

According to Salmond, ”Law is those principle applied by the state in the administration of justice”

What is business law?

Business law refers to those rules and regulation which govern the formation and execution of business deals made by various people in the society. It is intended to infuse the much needed ‘certainty’ in business dealings.

What is a Contract?

A Contract is an agreement enforceable by law (sec 2 (b))

1. Explain in detail the various essential elements of a valid contract with suitable illustrations.

Describe the essential elements of a valid contract.

1. Agreement
2. Intention to create legal relationship
3. Free and Genuine consent
4. Parties competent to contract
5. Lawful consideration
6. Lawful Object
7. Agreements not declared void or illegal
8. Certainty of meaning
9. Possibility of performance
10. Necessary legal formalities

1. Agreement-[Offer and Acceptance]

- Party making the offer - Offeror

- Party to whom the offer is made – Offeree
- There are two parties to an agreement
- They both must be thinking of the same thing in the same sense
- There must be ***Consensus – ad – idem***

Example: Where 'A' owns two cars X and Y and wish to sell his car "X' for Rs. 30,000.B an acquaintance of 'A' does not know that 'A' owns car 'Y' also. He thinks that 'A' owns only car 'X' and is offering to sell the same for the stated price. He gives him acceptance to buy the same. There is no contract because the contracting parties have not agreed on the same thing at the same time. There is no consensus – ad - idem.

2. Intention to create Legal Relationship:

An agreement of a purely social or domestic nature is not a contract.

A husband agreed to pay Dollar 30 to his wife every month while he was abroad. As he failed to pay the promised amount his wife sued him for the recovery of the amount.

3. Free and genuine consent: The consent of the parties to the agreement must be free and genuine. The consent of the parties should not be obtained by misrepresentation, fraud, undue influence, Coercion or mistake. If the consent is obtained by any of these flaws, then contract is not valid.

4. Parties competent to contract:- Every person is competent to contract if he is (i) of the age of majority (ii) is of sound mind and (iii) is not disqualified from contracting by any law to which he is subject.

5. Lawful consideration: - Each party of an agreement must give or promise something and receive something or a promise in return. Consideration is the price for which the promise of the other is sought. However the price need not be in terms of money. In case the promise is not supported by consideration the promise will be ***nudum pactum*** (a bare promise) and not enforceable by law. The consideration must be real and lawful.

6. Lawful object: The object of the agreement must be lawful and not one which the law disapproves.

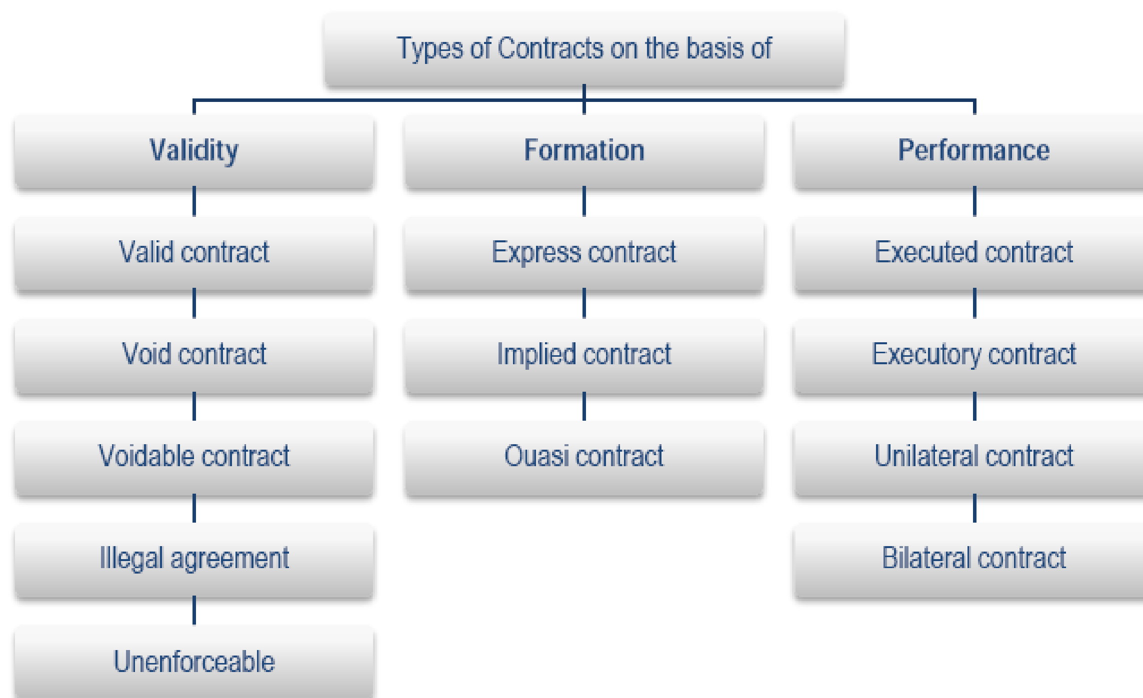
7. Agreement not declared illegal or void: There are certain agreements which have been expressly declared illegal or void by the law. In such cases, even if the agreement possesses all the elements of a valid agreement, the agreement will not be enforceable by law.

8. Certainity of meaning: - The meaning of the agreement must be certain or must be capable of being made certain. Otherwise the agreement will not be enforceable by law. For e.g. 'A' agreed to sell 10 meters of cloth. There is nothing to show, what type of cloth was intended. The agreement is not enforceable for want of certainty of meaning.

9. Possibility of performance: - The terms of the agreement should be capable of performance. An agreement to do an act impossible in itself cannot be enforced. For instance A agrees with B to discover treasure by magic. The agreement cannot be enforced.

10. Necessary Legal formalities: - A contract may be in oral or in writing. If however, a particular type of contract is required by law to be in writing, it must comply with necessary formalities as to writing, registration and attestation if necessary. If these legal formalities are not carried out, then the contract is not enforceable by law.

Explain the various Classification or types of contracts.(Jan 2014)



Contracts are classified on the basis of,

I-Terms of validity or enforceability

II-Mode of formation

III-Performance

I. Classification According to Validity or Enforceability:

a. **Valid Contract:** A Contract which satisfies all the legal requirements is known as a Valid Contract. A Valid Contract is an agreement which is enforceable by Law.

b. **Void Agreement:** An Agreement not enforceable by law is said to be Void. A Void agreement has no legal effect. Ex: An agreement with the Minor is void from the beginning.

c. **Void Contract:** A contract which is enforceable by the law at the time it was made, but later on it becomes legally enforceable due to some reasons.

   Ex: A promised to marry B. Later on B died.

d. **Voidable Contract:** An Agreement which is enforceable by law at the option of one or more of the parties thereon. Such a contract is voidable at the option of aggrieved party.

   Ex: A agreed to sell his car to B for Rs. 50,000. The consent was obtained by the force. The contract is voidable at the option of A. A can put an end to this contract, if he so decides.

e. **Illegal Agreement:** An Agreement is illegal and void if
   - Is forbidden by law
   - A fraudulent
   - Involves any injuries to the person or property of another
   - A court regards it as immoral or opposed to public policy

f. **Unenforceable Contract:** Unenforceable Contract are those which cannot be enforced inj the Court of Law because of some formalities to be fulfilled.

   Ex: A contract must be in writing, it must be registered, it must be stamped, it must be attested etc. If such formalities are not properly followed such contract cannot be enforced by the Law.

II. Classification According to Mode of Formation

Express-The terms of a contract may be stated in words (written or spoken)

Ex: A writes a letter to B that he offers to sell his car for Rs.60000 to B, in reply B informs that he accepts the offer.

Implied-Terms of a contract may be inferred from the conduct of parties or from the circumstances of the case.

Ex: Taking a seat in a Public Transport Bus.

Quasi Contract- Sometimes obligations are created by law whereby an obligation is imposed on a party and an action is allowed to be brought by another party. These obligations are known as Quasi-contracts.

Ex: A supplied B, a minor and / or the wife and children of B with necessaries suitable to his / their condition of life. A is entitled to be reimbursed from B's property.

III. Performance of Contracts

Classification According to Performance

Executed – Wholly performed.

A creates a contract to buy a bicycle from B for cash. A pays cash and B deliver the bicycle.

Executory – Wholly unperformed or partly performed.

1) On June 1, A agrees to buy a bicycle from B. The contract i.e., to be performed on June 15th – and A has to pay the price on July 1.A agrees to buy the bicycle from B. The contract is to be performed on June 15th. On 15th June, if both perform their obligations then we can say that contract becomes executed.

(2) On June 1, A agrees to buy a bicycle from B. B has to deliver the bicycle on June 15th and A has to pay the price on July 1. B delivers the bicycle on June 15. The contract is still executory as something remains to be done in terms of the contract.

Unilateral: - At the time when the contract is concluded, if there is an obligation to be performed only by one party then it is called as unilateral.

Ex:"A" makes payment, for bus journey from Mumbai to Pune. He has performed his promise. It is now for the transport company to perform the promise.

Bilateral: - There is an obligation on the part of both to do or to refrain from doing a particular thing. Similar to executory contracts.

Contract is a contract from the time it is made and not from the time its performance is due.

Offer and Acceptance (sections 3-9)

Offer / proposal

An Offer is the proposal by one party to another to enter into a legally binding with them.

When one person signifies to another about his willingness to do or to abstain from doing anything with a view to obtaining the consent of other to such act or abstinence, he is said to make a proposal

‘A’ offers to sell his book to ‘B’. A is making an offer to do something i.e. to sell his book. It is a positive consent on the part of the proposer.

A **specific offer** is one which is made to a definite person or particular group of person’s .A specific offer can be accepted only by that definite person or that particular group of persons to whom it has been made.

A **general offer** is one which is not made to a definite person, but to the world at large or public in general. A general offer can be accepted by any person by fulfilling the terms of the offer.

Legal rules regarding a Valid Offer

1. An offer must be “expressed or implied”
2. Intention to create legal relations
3. Legal Consequences
4. Assent of other party
5. Offer must be addressed
6. Terms
7. Communication

Invitation of offerer is different from legal offer

Acceptance

Acc. to sec 2(b), :A proposal when accepted becomes a promise” and defines “acceptance as “when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted”

Legal rules regarding Acceptance:

1. Acceptance must be absolute and unqualified
2. It must be communicated
3. It must be according to the mode prescribed
4. It must be given within the time specified or within reasonable time
5. It must be in response to an offer

6. It must be made before the offer lapses
7. It must be given by the person to whom the offer is made

Termination or lapse of an offer:-

1. The offer lapses after stipulated or reasonable time
2. An offer lapses by the insanity of the offeror or the offeree before acceptance.
3. An offer terminates when rejected by the offeree
4. An offer terminates when revoked by the offerer before acceptance
5. An offer terminates by not being accepted in the mode prescribed or if no mode is prescribed in some usual and reasonable manner.
6. A conditional offer terminates when the condition is not accepted by the offeree.
7. An offer terminates by counter offer by the offeree.

Consideration

Meaning:

Consideration implies "something in return for the promise or the price of promise"

Definition:

According to Section 2(d) of the Indian Contract Act, 1872, consideration is defined as "When at the desire of the promisor, 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 is called a consideration for the promisee."

Essential for a valid consideration:

(i) Consideration must move at the desire of the promisor

Consideration can be offered by the promisee or a third-party only at the request or desire of the promisor. If an action is initiated at the desire of the third-party, it is not a consideration.

Ex: Peter is going back home from work. On his way, he sees that his neighbor John's house is on fire. He immediately arranges for a water hose and manages to douse the fire. Peter cannot claim any reward for his effort because it was a voluntary act and was not done at the desire of John (promisor).

(ii) Consideration may move from the promisee to any other person

Consideration may move from the promise to any other person.

Ex: Peter gifted his son, Oliver an apartment in the city with a condition that he pays a fixed amount of money to his uncle, John, every year. On the same day, Oliver executed a deed to pay a fixed amount of money to John every year. However, Oliver failed to pay and John filed a suit for recovery. Oliver pleaded that he was not liable since no consideration had moved from John. However, the court held the words 'promisee or any other person…' and allowed John to maintain his suit for recovery.

(iii) It can be in the past, present or future

a. Past

Peter employs John to work on his field during the months of agricultural harvesting. He promises to pay John an amount of Rs 5,000 for his services when he sows the new crop in the fields. The services of John in the past constitute a valid consideration.

b. Present

If the promise and consideration take place simultaneously then it is present or executed consideration. **Example** is Peter goes to a shop, buys a bag of chips and pays for the same on-spot.

c. Future

When the consideration for a promise moves after the contract is formed, it is a future or executor. It is also valid if it depends on the condition.

Ex: Peter promises to create architectural plans for John's new house. John promises to pay Peter an amount of Rs 50,000 provided the plans are approved by his wife.

Exceptions for "No Consideration and No Contract"

1. Agreement made on account of Natural Love and affection
2. Agreement to compensate for past voluntary services
3. Contribution to Charities

Legality of Object and Consideration

The word object here means 'purpose or design'.

The Consideration or the object of agreement is unlawful in the following cases:

1. If it is forbidden by law
2. If it is a Fraudulent
3. If it involves injury to a person or property of another.
4. If the court regards it as immoral or illegal
5. If the court regards it has as ‘opposed to public policy’
   a. trading with Alien enemy
   b. agreements interfering with the course of Justice
   c. agreements of stifling criminal prosecution
   d. agreements creating an interest opposed to duty
   e. agreements unduly restrining personal liberty
   f. marriage brokerage agreement

Capacity of Persons to consent

Free Consent

“Two or more persons are said to be in consent when they agree upon the same thing in the same sense”

Flaw in Free Consent

1**.** Coercion
2. Undue Influence
3. Misrepresentation
   *****With intention
   *****Without Intention or Innocent
4. Fraud
5. Mistake
6. Mistake of Law of the Country
7. Mistake of Fact
   *****Bilateral Mistake
   *****Unilateral Mistake

Capacity of Persons to Contract

“Every person is competent to enter into a Contract” except:

1. Minor

2. Persons of Unsound Mind
3. Idiocy
4. Lunacy or Insanity
5. Drunkenness
6. Hypnotism
7. Mental decay
8. Disqualified Persons
9. Alien enemies
10. Foreign Sovereigns and Ambassadors
11. Convict
12. Insolvent

3. Discuss in detail the different modes by which a contract may be discharged.

What is meant by discharge of contract? Discuss the various modes of discharging contract

Discharge of contract means termination of the contractual relationship between the parties. A contract is said to be discharged when it ceases to operate, i.e., when the rights and obligations created by it comes to an end.

A contract may be discharged:

1. by performance
2. by mutual agreement or consent.
3. by impossibility.
4. by lapse of time.
5. by operation of law.
6. by breach of contract.

The above said methods of discharge of contract have been explained below:

1. Performance

Performance means, the doing of that which is required by a contract. Discharge by performance takes place, when the parties fulfill their obligations arising under the contract within the time and in the manner prescribed. In such a case, the parties are discharged and the

contract comes to an end. If only one party performs the promise then it is considered that only one is discharged. He gets a right against the other party who is guilty of breach.

The Performance of a contract is usually operated in two modes.1. Actual performance- when both the parties performed their promises, the contract is discharged. Performance should be complete, precise according to the terms of the agreement. 2. Attempted performances (or) tender are not actual performance but it's only an offer to perform the obligation under the contract.

2. Mutual Agreement or Consent.

The contract makes a contractual obligation which is discharged by agreement which may be expressed or implied. The various cases of discharge of a contract by mutual agreement are dealt within sections 62 and 63 as discussed below:

a. Novation – it takes place when (i) a new contract is substituted for an existing one between the same parties, or (ii) a contract between two parties is rescinded in consideration of a new contract being entered into on the same terms between one of the parties and a third party.

Example: A owes B Rs 10,000/. A enters into an agreement with B and gives B a mortgage of his (A's) estate for Rs 5,000/ in place of the debt of Rs.10, 000/. This is a new contract which extinguishes the old one.

Novation should take place before expiry of the time of the performance of the original contract.

b. Rescission- Rescission of a contract takes place when all or some of the terms of the contract are cancelled. It may occur: (i) by mutual consent of the parties, or (ii) where one party fails in the performance of his obligation. In such a case, the other party may rescind the contract without prejudice to his right to claim compensation for the breach of contract.

Example: A promises to supply certain goods to B six months after date. By that time, the goods go out of fashion. A and B may rescind the contract.

C. Alteration- Alteration of a contract may take place when one or more of the terms of the contract is / or altered by the mutual consent of the parties to the contract. In such a case, the old contract is discharged.

Example: A enters into a contract with B for the supply of 100 bales of cotton at his godown by the first of the next month. A and B may alter the terms of the contract by mutual consent.

D. Remission- Remission means acceptance of a lesser fulfillment of the promise made i.e., acceptance of a lesser sum than, what was contracted for, in discharge of the whole of the

debt. It is not necessary that there must be some consideration for the remission of the part of the debt [Harichand Madangopal Vs State of Punjab, A.I.R. (1973 S.C.381].

Example: A owes B Rs.5000/. A pays to B and B accepts, in satisfaction of the whole debt, Rs.2000/ paid at the time and place at which Rs. 5000/ were payable. The whole debt is discharged.

E. Waiver - waiver takes place, when the parties to the contract agree that they shall no longer be bound by the contract. This amounts to a mutual abandonment of rights by the parties to the contract. Consideration is not necessary for waiver.

f. Merger - Merger takes place if an inferior right accruing to a party under a contract merges into a superior right accruing to the same party under the same or some other contract.

Example: P holds a property under a lease. He later buys the property. His rights as a lessee is merged into his rights as an owner.

3. Impossibility

If an agreement contains an undertaking to perform impossibility, it is void ***ab initio***. It falls into two categories they are:

a. **Impossibility existing at the time of agreement**. The facts of impossibility may be (i) known to the parties, also called as absolute impossibility. (ii) Unknown to the parties by the ignorance or any other reason.

b. **Impossibility arising subsequent to the formation of contract.** It is also called as post contractual or supervening impossibility like destruction of subject matter, non-existence or non-occurrence of a particular state of things, death or incapacity for personal service, change of law or stepping in of a person with statutory authority or outbreak of war.

c. **Impossibility of performance-** not an excuse- a contract is not discharged on the ground of supervening impossibility like difficulty of performance, commercial impossibility, impossibility due to failure of a third person, strikes, lock-out and civil disturbances and failure of one of the objects.

4. Lapse of time

If the contract is not performed in time, then the contract will be considered as discharged.

5. Operation of law This includes discharge – by death, by merger, by insolvency, by unauthorized alteration of the agreement and rights and liabilities become vested in the same person.

6. Breach of contract

Breach of contract means a breaking of the obligation which a contract imposes. It confers a right of action for damages on the injured party. Breach of contract may take place by (i) actual breach of contract which takes place when the performance is due, during the performance of the contract. (ii) Anticipatory breach of contract.

4. Define the term Breach of Contract". Discuss the remedies available to an aggrieved party for a breach of contract.

How is contract as breach of contract and state its remedies?

What are the remedies available to an aggrieved person in case of breach of a contract?-Explain

Breach of contract means a breaking of the obligation which a contract imposes. It confers a right of action for damages on the injured party. Breach of contract may take place by (i) actual breach of contract which takes place when the performance is due, during the performance of the contract. (ii) Anticipatory breach of contract.

A remedy is the means given by law for the enforcement of a right. When a contract is broken the injured party is entitled to the following remedies according to the law:

1. Rescission of the contract
2. Suit for damages
3. Suit upon ***quantum meruit***
4. Suit for specific performance of the contract
5. Suit for injunction

The above said remedies are explained as follows:

1. Rescission

When a contract is not performed by one party, the other party may sue to treat the contract as rescinded and refuse further performance. In such a case, he is absolved of all his obligations under the contract.

Example: A promises B to supply ten bags of cement on a certain day, B agrees to pay the price after the receipt of the goods. A does not supply the goods. B is discharged from liability to pay the price.

2. Suit for Damages or Compensation

Damages are a monetary compensation allowed to the injured party by the court for the loss or injury suffered by him by the breach of the contract. The object of awarding damages for the breach of a contract is to put the injured party to the same (original) position. This is called the doctrine of restitution.

The rules relating to damages may now be considered as follows:

a. Damages arising naturally-**ordinary damages**

When the damages are proximate consequence occurred by natural and direct by the usual course of things then it is called as ordinary damages.

b. **Damages in contemplation of the parties- special damages**

Any damages arising as other than the reason of normal damage then it will be considered as special damages but special damages cannot be claimed as a matter of right.

c. **Punitive or Vindictive** or **exemplary damages**

This damage can be given away as compensation for the loss suffered, and not by way of punishment for wrong inflicted, but in case of breach of a promise to dishonor of a cheque by a banker wrongfully when he possesses sufficient funds to the credit of the customer, the court may award exemplary damages.

d. **Nominal damages** Even though the injured party has not in fact suffered any loss by reason of the breach of a contract, the damages recoverable by him are nominal.

- Damages for loss of reputation
- Damages for inconvenience and discomfort
- Mitigation of damages
- Difficulty of assessment

Although damages, which are incapable of assessment, cannot be recovered, the fact that they are difficult to assess with certainty or precision does not prevent the aggrieved party from recovering them.

3. Suit upon Quantum meruit

It means “as much as earned”. This claim arises when one party partly performs, has become discharged by the breach of the contract by the other party.

4. Suit for Specific Performance

In certain cases of breach of a contract, damages are not adequate remedy. In such cases the court may direct the party in breach to carry out his promise according to the terms of the contract. In some cases specific performance will not be granted where (i) damages are an adequate remedy (ii) the contract is not certain (iii) the contract in its nature revocable (iv) the contract is made by the trustees in breach of their trust (v) the contract is of a personal nature (vi) the contract is made up by a company in excess of its power as laid down in its memorandum of association (vii) the court cannot supervise the carrying out procedure.

5. Suit for an Injunction

Where a party is in breach of a negative term of a contract, the court may issue an order, restraining him from doing what he promised not to do. Such an order of the court is known as injunction.

5. Define a Quasi Contract. Explain the kinds or circumstances in which quasi-contract arises.

What is quasi-contract?-Explain its types?

In contracts, there is always an agreement between parties. In a Contract, the consent of the parties is essential, whereas in Quasi-Contract the parties do not necessarily give Consent.

Ex: A supplied B, a minor and / or the wife and children of B with necessaries suitable to his / their condition of life. A is entitled to be reimbursed from B’s property

Kinds of Quasi Contract

The Quasi-contract is discussed below:

1. Supply of necessaries-if a person, incapable of entering into a contract, or anyone whom he is legally bound to support, is supplied by another with necessaries suited to his condition of life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

Example; A supplies B, a lunatic, with necessaries suitable to his condition of life. A is entitled to be reimbursed from B’s property.

2. Reimbursement of person paying money due to another- A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it is entitled to be reimbursed by the other.

Example; P left his carriage on D's premises. D's landlord seized the carriage as distress for rent. P paid the rent to obtain the release of his carriage. P could recover the amount from D

3. Obligation to pay for non-gratuitous acts-When a person lawfully does anything to another person or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or restore, the thing so done or delivered.

Example: A, a tradesman, leaves goods at B's house by mistake. B treats the goods as his own. Then B is bound to pay for them to A.

4. Responsibility of Finder of Lost goods

A person, who finds goods belonging to another and takes them into his custody, is subject to the same responsibility as a bailee. He is bound to take as much care of the goods as a man of ordinary prudence would, under similar circumstances, should take care as of his own goods of the same bulk, quality and value.

Examples: F picks up a diamond on the floor of S's shop. He hands it over to S to keep it till true owner is found. No one appears to claims it for quite some weeks in spite of the wide advertisements in the newspapers. F claims the diamond from S who refuses to return. S is bound to return the diamond to F, who is entitled to retain the diamond against the whole world except the true owner.

5. Mistake or coercion

A person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it to the person who paid it by mistake or under coercion.

Examples: A and B jointly owe Rs.100 to C. A alone pays the amount to C, and B, not knowing this fact, pays Rs.100 over again to C, C is bound to pay the amount to B.

UNIT 2:

The Indian Partnership Act, 1932

When two or more people come together as partners, they can form a partnership firm. This partnership firm is governed by the rules and regulations of the Indian Partnership Act, 1932.

Definition of Partnership

Section 4 of the Indian Partnership Act defines a partnership as "Partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any one of them acting for all".

Meaning of Partnership

In a partnership firm, two or more people come together to carry out a business for the purpose of earning profits and sharing those profits. The partners combine their capital resources and work jointly to carry on the business. According to Section 12 of the Indian Partnership Act, a partnership must be formed for the purpose of carrying a business that is legal in nature.

Essentials of a Partnership

- There must be an agreement between the partners to carry on the business of the partnership firm.
- The aim of the formation of the partnership should be to earn profits and share them among partners. The sharing of profit and losses can either be according to the ratio of the capital contributed by each partner or be equally among all the partners unless otherwise specified.
- The partnership agreement must state that the business will be jointly carried on by all of them or some of them acting on the behalf of all. According to Section 13 of the Partnership Act, 1932, the mutual agency exists between the partners. Every partner in a partnership acts as a principal as well as an agent for other partners. The actions of a partner are binding on the actions of all the other partners.
- Unlimited Liability- The partners can be held liable jointly for any debts of the firm. They have an unlimited liability that extends to their private assets for the disposal of the firm's debts.

Number of Partners in a Partnership

According to the Indian Partnership Act, there is no limit on the maximum number of partners that can be there in partnership but there must be a minimum of two partners. However, according to Companies Act 2013, the maximum number of partners must not exceed 100 in case of a partnership. If the number of members in a partnership exceeds 100 then it is termed as an illegal association as per Section 464 of the Companies Act, 2013.

Partnership Deed

The partnership agreement forms the basis of a partnership. It is the foundation that creates a legal relationship between the partners to carry out the business of the partnership firm. A partnership agreement can either be written or oral but in the written format it is known as the partnership deed. Some of the details mentioned in a partnership deed are as follows.

- Name and address of the partnership firm as well as that of the business

- Name and address of all the partners
- Rights, duties, and obligation of partners
- Profit and loss sharing ratio
- Capital contribution by each partner
- Rate of interest on capital, loan, drawings
- Settlement of accounts in the event of the dissolution of the firm
- Mode of settlement in the event of disputes among partners
- Salaries and commission payable to partners
- Rules to be followed in the event of the admission of a new partner, retirement and death of an existing partner
- Any other provisions affecting the rights of the partners

Essential Features of a Partnership

Two or More than Two Persons – in order for a firm to come into existence, it should involve two or more than two partners, who have a vested interest in a common goal. However, according to section 464 of the companies act of 2013, the central government has prescribed a limit on the maximum number of partners a firm can hold. Therefore, According to the central government, the maximum number of partners a firm can hold is 50.

Legal Agreement- Partners who come together to form a firm, already have a mindset that they will be sharing both profits and losses of the firm equally. These agreements, if made orally are valid however it is advised to get these agreements written in a legal form to avoid disputes in the future.

Partners in Business- In order to be partners in business, there should be some business going on in the firm that only then can they be called Business partners and only then can the Indian partnership act of 1932 be applicable to them.

Mutual Agreements - In order for a partnership to take place, a Mutual agreement on the mutual agency is extremely important. Partners of a firm can make rules and bind other partners to it and also bound to the rules that are made by other partners of the firm. Every partner is allowed to make decisions and conduct the affairs of the business according to him/her.

Elements of a Partnership

The Indian Partnership Act 1932 defines a partnership as a relation between two or more persons who agree to share the profits of a business run by them all or by one or more persons acting for them all.

1] Contract for Partnership

A partnership is contractual in nature. As the definition states a partnership is an association of two or more persons. So a partnership results from a contract or an agreement between two or more persons. A partnership does not arise from the operation of law. Neither can it be inherited. It has to be a voluntary agreement between partners.

A partnership agreement can be written or oral. Sometimes such an agreement is even implied by the continued actions and mutual understanding of the partners.

2] Association of Two or More Persons

A partnership is an association between two or more persons. And persons only include individuals, not other firms. The law also prohibits minors from being partners. But minors can be admitted to the benefits of a partnership.

3] Carrying on of Business

There are two aspects of this element. Firstly the firm must be carrying on some business. Here the business will include any trade, profession or occupation. Only that some business must exist and the partners must participate in the running of such business.

Also, the business must be run on a profit motive. The ultimate aim of the business should be to make gains, which are then distributed among the partners. So a firm carrying on charitable work will not be a partnership. If there is no intention to earn profits, there is no partnership.

4] Profit Sharing

The profit sharing ratio or the manner of sharing profits is not important. But one partner cannot be entitled to the entire profits of the firm.

However, the sharing of losses is not of any essence. It is up to the partners whether the losses will be shared by all the partners. If nothing is said then the losses are also split in the profit sharing ratio.

5] Mutual Agency

This means that every partner is both a principle as well as an agent for all the other partners of the firm. An act done by any of the partners is binding on all the other partners and the firm as well. And so every partner is bound by the acts of all the other partners. It is, in fact, the truest test of a partnership.

Kinds of Partnership

The distinction between partnerships can be done on the basis of two criteria. They are as follows

1. With Regard to the Duration of the partnership – either Partnership at Will or Partnership for Fixed Duration

2. With regards to the extent of the business carried by the partnership – either General Partnership or Particular Partnership

1] Partnership at Will

When forming a partnership if there is no clause about the expiration of such a partnership, we call it a partnership at will. According to Section 7 of the Indian Partnership Act 1932, there are two conditions to be fulfilled for a partnership to be a partnership at will. These are

- There is no agreement about a fixed period for the existence of a partnership.
- No provision with regards to the determination of a partnership

So if there is an agreement between the partners about the duration, this will not be a partnership at will. But if a partnership was entered into a fixed term and continues to operate beyond this term it will become a partnership at will from the expiration of this term.

2] Partnership for a Fixed Term

Now during the creation of a partnership, the partners may agree on the duration of this arrangement. This would mean the partnership was created for a fixed duration of time.

3] Particular Partnership

A partnership can be formed for carrying on continuous business, or it can be formed for one particular venture or undertaking. If the partnership is formed only to carry out one business venture or to complete one undertaking such a partnership is known as a particular partnership. After the completion of the said venture or activity, the partnership will be dissolved.

4] General Partnership

When the purpose for the formation of the partnership is to carry out the business, in general, it is said to be a general partnership. In a general partnership the scope of the business to be carried out is not defined. So all the partners will be liable for all the actions of the partnership.

Types of Partners

1] Active Partner/Managing Partner

An active partner is also known as Ostensible Partner. As the name suggests he takes active participation in the firm and the running of the business. He carries on the daily business on behalf of all the partners. This means he acts as an agent of all the other partners on a day to day basis and with regards to all ordinary business of the firm.

Hence when an active partner wishes to retire from the firm he must give a public notice about the same. This will absolve him of the acts done by other partners after his retirement. Unless he gives a public notice he will be liable for all acts even after his retirement.

2] Dormant/Sleeping Partner

This is a partner that does not participate in the daily functioning of the partnership firm, i.e. he does not take an active part in the daily activities of the firm. He is however bound by the action of all the other partners.

He will continue to share the profits and losses of the firm and even bring in his share of capital like any other partner. If such a dormant partner retires he need not give a public notice of the same.

3] Nominal Partner

This is a partner that does not have any real or significant interest in the partnership. So, in essence, he is only lending his name to the partnership. He will not make any capital contributions to the firm, and so he will not have a share in the profits either. But the nominal partner will be liable to outsiders and third parties for acts done by any other partners.

4] Partner by Estoppel

If a person holds out to another that he is a partner of the firm, either by his words, actions or conduct then such a partner cannot deny that he is not a partner. This basically means that even though such a person is not a partner he has represented himself as such, and so he becomes partner by estoppel or partner by holding out.

5] Partner in Profits Only

This partner will only share the profits of the firm, he will not be liable for any liabilities. Even when dealing with third parties he will be liable for all acts of profit only, he will share none of the liabilities.

6] Minor Partner

A minor cannot be a partner of a firm according to the Contract Act. However, a partner can be admitted to the benefits of a partnership if all partner gives their consent for the same. He will share profits of the firm but his liability for the losses will be limited to his share in the firm.

Such a minor partner on attaining majority (becoming 18 years of age) has six months to decide if he wishes to become a partner of the firm. He must then declare his decision via a public notice. So whether he continues as a partner or decides to retire, in both cases he will have to issue a public notice.

Relation of Partners with One Another

All partners are free to form their own terms and conditions with respect to functioning in their partnership deed. The Indian Partnership Act, 1932 has also prescribed provisions to govern their relationship *inter se* (amongst them), and these provisions are applicable if no such deed exists. Let us take a look at the duties and the rights of partners.

Rights of Partners *Inter Se*

Partners can exercise the following rights under the Act unless the partnership deed states otherwise:

1. **Right to participate in business:** Each partner has an equal right to take part in the conduct of their business. Partners can curtail this right to allow only some of them to contribute to the functioning of the business if the partnership deed states so.
2. **Right to express opinions:** Another one of the rights of partners is their right to freely express their opinion. Partners, by a majority, can determine differences with respect to ordinary matters connected with the business. Each partner can express his opinion to decide such matters.
3. **Right to access books and accounts:** Each partner can inspect and copy books of accounts of the business. This right is applicable equally to active and dormant partners.
4. **Right to share profits:** Partners generally describe in their deed the proportion in which they will share profits of the firm. However, they have to share all the profits of the firm equally if they have not agreed on a fixed profit sharing ratio.
5. **Right to be indemnified:** Partners can make some payments and incur liabilities through their decisions in the course of their business. They can claim indemnity from each other for these decisions. Such decisions must be taken in situations of emergency and should be of such nature that an ordinarily prudent person would resort to under similar conditions.
6. **Right to interest on capital and advances:** Partners generally do not get an interest on the capital they contribute. In case they decide to take an interest, such payment must be made only out of profits. They can, however, receive interest of 6% p.a. for other advances made subsequently towards the business.

Duties of Partners *inter se*

Now that we have seen the rights of partners let us see the duties the Act has prescribed,

1. **General duties:** Every partner has the following general duties like carrying on the business to the greatest common good, duty to be just and faithful towards each other, rendering true accounts, and providing full information of all things affecting the firm. etc

2. **Duty to indemnify for fraud:** Every partner has to indemnify the firm for losses caused to it by his fraud in the conduct of business. The Act has adopted this principle because the firm is liable for wrongful acts of partners. Any partner who commits fraud must indemnify other partners for his actions.
3. **Duty to act diligently:** Every partner must attend to his duties towards the firm as diligently as possible because his not functioning diligently affects other partners as well. He is liable to indemnify others if his willful neglect causes losses to the firm.
4. **Duty to use the firm's property properly:** Partners can use the firm's property exclusively for its business, and not for any personal purpose, because they all own it collectively. Hence, they must be careful while using these properties.
5. **Duty to not earn personal profits or to compete:** Each partner must function according to commonly shared goals. They should not make any personal profit and must not engage in any competing business venture. They should hand over personal profits made to their firm.

Effect on Rights and Duties after a change in Firm

The nature of the existing relationship between partners will be affected whenever there is a change in the firm's constitution. Such changes occur in the following situations:

1. Change in constitution of the firm due to incoming or outgoing or partner(s);
2. Expiry of the pre-determined term of the firm; and
3. Carrying out of additional business undertakings than originally agreed upon.

Relation of Partners to Third Parties

A Partner is an Agent of the Firm (Section 18)

A partnership is a relationship between partners who agree to share the profits of the business. The business can be carried on by all of them or any of them acting for all. This definition suggests that a partner can be an agent of the others.

Hence, a partner embraces the character of both, the principal and the agent. Therefore, if he acts for himself and in his own interest in the common concern of the partnership, then he is acting as a principal. On the other hand, if he acts for and in the interest of his partners, then he is acting as an agent.

It is important to note that a partner is an agent only or the purpose of business of the firm. He is not an agent for all transactions and dealings between the partners themselves.

Implied Authority of a Partner (Section 19)

If a partner does an act in the usual course of business of the firm, then his act binds the firm. This authority of a partner to bind the firm is Implied Authority. Unless a contrary agreement exists, implied authority does not empower a partner to (Section 19 – subsection 2 of the Indian Partnership Act, 1932):

- Submit a dispute, relating to the business of the firm, to arbitration
- Open a bank account in his name, on behalf of the firm
- Compromise full or part of a claim by the firm
- Withdraw a suit or proceedings filed on behalf of the firm
- Admit any liability in a suit or proceedings against the firm
- Acquire an immovable property on behalf of the firm
- Transfer an immovable property belonging to the firm
- Enter into a partnership on behalf of the firm

Section 22 of the Indian Partnership Act, 1932, adds that the act which was done by the partner to bind the firm must be done in the name of the firm or in any other manner which implies an intention to bind the firm.

While the implied authority depends on the nature of the business of the firm, a partnership of a general commercial nature may allow the partner to:

- Pledge or sell the partnership property
- Purchase goods on behalf of the partnership
- Borrow money, contract and pay debts on account of the partnership
- Draw, make, sign, endorse, transfer, negotiate and procure negotiable papers in the name and on account of the partnership.

According to Section 20 of the Indian Partnership Act, 1932, the partners of a firm can make a contract to extend or restrict the implied authority of a partner.

These restrictions or extensions apply to a third party only when the third party is aware of the restrictions or does not know that he is dealing with a partner of the firm.

Partner's Authority in an Emergency (Section 21)

As per Section 21 of the Indian Partnership Act, 1932, if there is an emergency, then every partner has the authority to do all such acts that a person of ordinary prudence would do to protect the firm from a loss. Such acts bind the firm.

Minors Admitted to Benefits of Partnership

Section 30 of the Indian Partnership Act 1932 contains legal provisions about a minor in a partnership. Now we know the Indian Contract Act 1857 clearly states that no person less than the age of 18, i.e. a minor can be a party to a contract. And a partnership is a contract between the partners. Hence a minor cannot be a partner in a partnership firm.

However, according to the Partnership Act, a minor may be admitted to the benefits of a partnership. So while the minor will not be a partner he will enjoy all the benefits of a partnership. To admit the entire minor to the benefits of the partnership all of the partners of the firm must be in agreement.

Rights of a Minor Partner

Once the minor is given the benefits in a partnership there are certain rights that he enjoys. Let us take a look at the rights of a minor partner.

i. A minor partner will obviously have the right to his share of the profits of the firm. But the minor partner is not liable for any losses beyond his interests in the firm. So a minor partner's personal assets cannot be liquidated to pay the firms liabilities.

ii. He can also like any other partner inspect the books of accounts of the firm. He can demand a copy of the books as well.

iii. If necessary he can sue any or all of the other partners for his share of the profits or benefits.

iv. A minor partner on attaining majority has the right to become a partner of the firm. He has six months from attaining majority to decide if he will execute this right. Whether he decides to become a partner or not he must give public notice about the same.

Liabilities of a Minor Partner

i. A minor cannot be held personally liable for the losses of the firm. And if the firm declares insolvency the minor's share is kept with the Official Receiver

ii. After turning 18 the minor partner can choose to become a partner of the firm. But he may choose to not become a partner. In this case, the minor partner has to give a public notice about this decision. And the notice has to be given within 6 months of gaining a majority. If

such a notice is not given even after 6 months then the minor partner will become liable for all acts done by the other partners till the date of such notice.

iii. Should the minor partner choose to become a partner he will be liable to all the third parties for the acts done by any and all partners since he was admitted to the benefits of the partnership.

iv. If he becomes a full-time partner he will be treated as a normal partner and have all the liabilities of one. His share in the profits and property of the firm will remain the same as it was when he was a minor partner.

Right of an Outgoing Partner to Carry on a Competing Business

Section 36 (1) of the Indian Partnership Act, 1932 (Partnership law), imposes certain restrictions but allows an outgoing partner to carry on a business and advertise it, which competes with the partnership firm. However, it restricts him from:

- Using the name of the partnership firm
- Representing himself as a partner of the firm
- Soliciting the custom of persons who were dealing with the firm before he ceased to be a partner.

An outgoing partner may make an agreement with his partners that when he ceases to be a partner of the firm, he will not carry on any business similar to that of the firm within a specified period or local limits.

Right of an Outgoing Partner to Share Subsequent Profits

According to Section 37, of the Partnership Law, if a member of the firm dies or otherwise ceases to be a partner of the firm, and the remaining partners carry on the business without any final settlement of accounts between them and the outgoing partner, then the outgoing partner or his estate is entitled to share of the profits made by the firm since he ceased to be a partner.

The share may be attributable to the use of his share of the property of the firm or the interest at six percent per annum on the amount of his share in the property.The surviving partners also have an option of purchasing the interest of the deceased or outgoing partner. If the surviving partners choose to purchase the interest, then the outgoing partner is not entitled to any further share in profits of the firm.

Legal Consequences of Admission or Retirement of a Partner

Whenever there is an admission of a new partner or retirement of a partner, or expulsion or insolvency of a partner, etc., the partnership firm undergoes reconstitution. Sections 31 to 35 of the

Indian Partnership Act, 1932 help us understand the legal consequences of a partner coming in or going out.

Admission or Introduction of a Partner (Section 31)

According to this section, the consent of all the existing partners is necessary before introducing a new partner into a partnership firm. This is subject to the provisions of Section 30 regarding minors in the firm. Further, the new partner has no liability for any actions of the firm done before his admission.

Rights and Liabilities of a New Partner

All liabilities of a new partner commence from the date of his admission as a partner in the firm. This is unless he accepts liability for the obligations incurred by the firm before his admission.

So, after the admission of a new partner, the new firm may agree to assume liability for the debts of the old firm and the creditors may accept the new firm as their debtor, discharging the old firm. It is important to note that the creditor's consent is important to make the transaction operative.

In a contract, the technical term for substituted liability is Novation (replacement). Hence, a mere agreement amongst the partners cannot operate as Novation unless the creditors provide their consent.

The retirement of a Partner (Section 32)

A partner retires when he ceases to be a member of the firm without ending the subsisting relations between the other members of the firm or between the firm and other parties. If a partner withdraws from a firm by dissolving it, then it is a dissolution and not retirement of a partner. The retirement of a partner from a firm does not dissolve it.

In a partnership, a partner may retire:

- With the consent of all the partners,
- In accordance with an express agreement by the partners, or
- The partnership is at will, by giving notice in writing to all the other partners of his intention to retire

Liabilities of an Outgoing Partner

A retired partner continues to be liable to the third party for acts of the firm till such time that he or other members of the firm give a public notice of his retirement. However, if the third party deals

with the firm without knowing that he was a partner in the firm, then he will not be liable to the third party.

The retired partner, however, continues to be liable for acts of the firm done before such retirement of a partner. This liability holds good unless there is an agreement between him, the concerned third party, and partners of the reconstituted firm. Such an agreement can also be implied by the course of dealings between the third party and the reconstituted firm post announcement of the retirement of a partner.

If the partnership is at will, then it can relieve a partner without giving a public notice. To do so, the partnership needs to give a written notice to all the partners of his intention to retire.

Expulsion of a Partner (Section 33)

A partnership firm can expel a partner provided:

- The power of expulsion exists in the contract between the partners
- Majority of the partners exercise the power
- The power is used in good faith

If these conditions are not met, then the expulsion is not bona fide in the interest of the business. The test of good faith includes three aspects:

1. The expulsion should be in the interest of the partnership.
2. Before expelling a partner the firm serves a notice to him.
3. The partner being expelled is given an opportunity to state his version of events leading up to the expulsion.

If these aspects are not met, then the expulsion is not considered to be made in good faith and is null and void. It is important to note that the expulsion of partners does not necessarily result in the dissolution of the firm.

Insolvency of a Partner (Section 34)

When a partner of a firm is adjudicated as insolvent –

- He ceases to be a partner of the firm from the date of the adjudication
- Whether or not the firm subsequently dissolves

- His estate, which vests in the official assignee, ceases to be liable for any act of the firm from the said date
- The firm ceases to be liable for any act of such a partner.

Liability of Estate of a Deceased Partner (Section 35)

Usually, the death of a partner results in the dissolution of the partnership. However, if the partner's contract to not dissolve the partnership posts the death of any partner, then the surviving partner continue the business of the firm after absolving the deceased partner's estate from any liability of the future obligations of the firm.

Further, it is not necessary for the firm to give a public notice or inform the persons dealing with the firm about the death of the partner.

An exception is a partnership consisting of only two partners. In such cases, the death of a partner results in the dissolution of the partnership.

Consequences of Non Registration of Firm

1] No suit in a civil court by the firm or other co-partners against any third party

If the firm registration is not done, then the firm or any other person on its behalf cannot file a suit against a third party for breach of contract which the firm has entered into. Further, the person filing the suit on behalf of the firm should be in the register of the firm as a partner.

2] No relief to partners for set-off of claim

Without firm registration, any action brought against the firm by a third party having a value of more than Rs. 100 cannot be set-off by the firm or any of its partners. Pursuance of other proceedings to enforce rights arising from the contract cannot be done either.

3] An aggrieved partner cannot bring legal action against other partner or the firm

A partner of the firm or any person on his behalf cannot bring legal action against the firm or against any partner (or alleged to be a partner) if firm registration is not done. However, if the firm is dissolved, then such a person can sue the firm for dissolution it accounts and realization of his share in the firm's property.

4] A third party can sue the firm

Even if the firm registration is not done a third party can bring legal action against the firm.

It is also, important to note that despite these disabilities, the non-registration of a firm does not affect the following rights:

1. The right of a third party to sue the firm or any partner
2. Partners' right to sue the firm for dissolution or settlement of accounts (in case of dissolution)
3. The power of the Official Assignees, Receiver of Court to release the property of the insolvent partner and bring an action
4. The right of the firm and partners to sue or claim set-off of the value of the suit does not exceed Rs. 100.

Dissolution of a Firm

When the partnership between all the partners of a firm is dissolved, then it is called dissolution of a firm. It is important to note that the relationship between all partners should be dissolved for the firm to be dissolved. Let us look at the legal provisions for the dissolution of a firm.

Modes of Dissolution of a Firm

- Voluntary Dissolution of a Firm
- Dissolution By an order of the Court.

Voluntary dissolution can be of four types.

1] By Agreement (Section 40): According to Section 40 of the Indian Partnership Act, 1932, partners can dissolve the partnership by agreement and with the consent of all partners. Partners can also dissolve the partnership based on a contract that has already been made.

2] Compulsory Dissolution (Section 41): An event can make it unlawful for the firm to carry on its business. In such cases, it is compulsory for the firm to dissolve. However, if a firm carries on more than one undertakings and one of them becomes illegal, then it is not compulsory for the firm to dissolve. It can continue carrying out the legal undertakings. Section 41 of the Indian Partnership Act, 1932, specifies this type of voluntary dissolution.

3] On the happening of certain contingencies (Section 42)

- Some firms are constituted for a fixed term. Such firms will dissolve on the expiry of that term.

- Some firms are constituted to carry out one or more undertaking. Such firms are dissolved when the undertaking is completed.
- Death of a partner.
- Insolvent partner.

4] By notice of partnership at will (Section 43)

According to Section 43 of the Indian Partnership Act, 1932, if the partnership is at will, then any partner can give notice in writing to all other partners informing them about his intention to dissolve the firm.

In such cases, the firm is dissolved on the date mentioned in the notice. If no date is mentioned, then the date of dissolution of the firm is the date of communication of the notice.

Dissolution of a Firm by the Court

According to Section 44 of the Indian Partnership Act, 1932, the Court may dissolve a firm on the suit of a partner on any of the following grounds:

1] Insanity/Unsound mind

If an active partner becomes insane or of an unsound mind, and other partners or the next friend files a suit in the court, then the court may dissolve the firm. Two things to remember here:

- The partner is not a sleeping partner
- The sickness is not temporary

2] Permanent Incapacity

If a partner becomes permanently incapable of performing his duties as a partner, and other partners file a suit in the court, then the court may dissolve the firm. Also, the incapacity may arise from a physical disability, illness, etc.

3] Misconduct

When a partner is guilty of conduct which is likely to affect prejudicially the carrying on of the business and the other partners file a suit in the court, then the court may dissolve the firm.

Further, it is not important that the misconduct is related to the conduct of the business. The court looks at the effect of the misconduct on the business along with the nature of the business.

4] Persistent Breach of the Agreement

A partner may willfully or persistently commit a breach of the agreement relating to

- the management of the affairs of the firm, or
- a reasonable conduct of its business, or
- Conduct himself in matters relating to business that is not reasonably practicable for other partners to carry on the business in partnership with him.

In such cases, the other partners may file a suit against him in the court and the court may order to dissolve the firm. The following acts fall in the category of breach of agreement:

1. Embezzlement*(stealing or secretly taking money)*
2. Keeping erroneous*(incorrect)* accounts
3. Holding more cash than allowed
4. Refusal to show accounts despite repeated requests, etc.

5] Transfer of Interest

A partner may transfer all his interest in the firm to a third party or allow the court to charge or sell his share in the recovery of arrears of land revenue. Now, if the other partners file a suit against him in the court, then the court may dissolve the firm.

6] Continuous/Perpetual losses

If a firm is running under losses and the court believes that the business of the firm cannot be carried on without a loss in the future too, then it may dissolve the firm.

7] Just and equitable grounds

The court may find other just and equitable grounds for the dissolution of the firm. Some such grounds are:

- Deadlock in management
- Partners not being in talking terms with each other
- Loss of substratum (the foundation of the business)
- Gambling by a partner on the stock exchange.

Difference between Dissolution of a firm and Dissolution of a Partnership

Parameters	Dissolution of a Firm	Dissolution of a Partnership
Continuation of business	The business discontinues.	The business continues. However, the partnership is reconstituted.
Winding up	The firm is wound up. Assets are realized and liabilities are settled.	Assets and liabilities of the firm are only revalued.
Court order	A Court Order can dissolve a firm.	A Court Order cannot dissolve a partnership.
Scope	It involves the dissolution of partnership between all partners.	It does not involve the dissolution of the firm.
Final closure of books	Yes	No

Consequences of Dissolution of a Firm

After the dissolution of firm, the partners have certain rights and liabilities. Sections 45 to 55 of the Indian Partnership Act, 1932, provides details on the consequences of the dissolution of a firm.

Liability for Acts done by Partners after the Dissolution of Firm (Section 45)

According to this section, the partners of a firm are liable to a third party for any act done by any of them unless they give a public notice of the dissolution. This notice can be given by any partner. It also specifies that the estate of a partner who dies, retires from the firm, becomes insolvent, or that of a person who the third party is not aware of being a partner of the firm, is not liable under this section (from the date he ceases to be a partner).

In simple words, Section 45 endeavors to protect third parties who have no clue about the dissolution of firm and also the partners of a dissolved firm from liabilities towards third parties post-dissolution.

Wind up the Business Post-Dissolution (Section 46)

Once a firm is dissolved, every partner or his representative has a right to apply the property of the firm in payments of debts and liabilities of the firm. The surplus, if any, can be distributed among the partners according to their rights.

Also according to section 47 post-dissolution, the authority of each partner to bind the firm, along with other mutual rights and obligations, continue till such time that they can wind up the affairs of the firm.

This gives them a chance to complete the unfinished transactions at the time of dissolution. This does not include the acts of a partner who has been adjudicated insolvent.

Settlement of Partnership Accounts (Section 48)

Section 48 lays down certain rules for settlement of partnership accounts after the dissolution of firm under the usual course of business. However, the partners can mutually agree for a different settlement mode. The rules are as follows:

1. Any losses or deficiencies of capital will be paid out of profits. If the profits are not sufficient, then they are paid out of the capital and finally, if necessary, by the partners. The partners contribute in the proportion in which they receive their share in profits.
2. The assets of the firm, which includes the sums contributed by the partners to make up for the deficiency in the capital, is applied in the following order:
   1. Repaying the debts of the firm to third parties
   2. Paying each partner rateably what is due to him from the capital
   3. Paying each partner rateably what is due to him on account of capital

4. If any amount is left, then dividing it among the partners in proportions in which they receive their share in profits.

Paying Firm Debts and Separate Debts (Section 49)

If there are joint debts due from the firm and separate debts due from any partner, then:

- The payment of firm debts is given priority. If there is any surplus, then the share of each partner is applied to his separate debts. It can also be paid to him.
- The separate property of the partner is applied first in the payment of his separate debts. IF there is any surplus, then it is applied to the payment of firm debts.

Personal Profits Earned after Dissolution of Firm (Section 50 and 53)

A firm is dissolved by the death of a partner. If the surviving partners, either themselves or with the representative of the deceased partner carry on the business of the firm, then they have to account for any personal profits by them, before winding up the firm.

So, if a lease expires on the death of a partner and the surviving partners renew it before the firm winds up, then the profits belong to the firm.

Section 53 clearly states that in the absence of an agreement to the contrary, a partner can restrain other partners from carrying on a similar business in the name of the firm or from using the property of the firm for their own benefit, unless the winding up process is complete.

Return of Premium on the Premature Dissolution of Firm (Section 51)

If a firm dissolves earlier than the time fixed for it, then the partner paying the premium can receive a return of a reasonable part of the premium. This holds true except when the partnership is dissolved:

- Due to the death of a partner
- Due to the misconduct of the partner paying the premium
- Post an agreement which has no provisions for the return of premium

Also, the partner paying the premium gets a return of a proportionate part of the premium. This holds true when the partnership is dissolved:

- Without either partner being at fault
- Owing to the fault of both the partners

- Due to the fault of the partner receiving the premium
- Due to unawareness about the insolvency of the partner receiving the premium

Contract Rescinded for Fraud or Misrepresentation (Section 52)

If the contract creating a partnership is rescinded due to fraud or misrepresentation, then the party who can rescind the contract is entitled to:

- Lien on the assets of the firm remaining after the debts of the firm is paid. This lien is for any sum paid by him for the purchase of a share in the firm and capital contributed by him.
- Rank as a creditor of the firm for any payment made by him towards the debts of the firm
- An indemnity from the partners guilty of the fraud or misrepresentation against all debts of the firm.

Sale of Goodwill after the Dissolution of Firm (Section 55)

The goodwill is included in the assets during the settling of the accounts of a firm after dissolution. The goodwill can be sold separately or along with the other assets of the firm. This is subject to the contract between the partners.

Once the goodwill of the firm is sold after dissolution, a partner can carry on and advertise a business competing with that of the buyer of goodwill. However, subject to the agreement between him and the buyer, he may not:

- Use the name of the firm
- Represent himself as carrying on the business of the firm
- Solicit the customs of persons dealing with the firm before the dissolution

It is also important to note that a partner can make an agreement with the buyer of goodwill that he will not carry on any business similar to that of the firm or with certain local limits. Such an agreement, notwithstanding Section 27 of the Indian Contract Act is valid if the restrictions are reasonable.

UNIT-3

THE SALE OF GOODS ACT,1930

Definition of a contract of sale:

Section 4(1): the sale of goods act defines the contract of sale of goods as, "A contract whereby the seller transfer or agrees to transfer the property in goods to the buyer for a price".

Simply speaking, a contract of sale of goods is a contract whereby a seller transfers the ownership of goods to the buyer or agrees to transfer it for a price.

Conditions and Warranties:

In a contract of sale of goods, various terms or stipulations regarding quality of the goods, price, mode of payment, delivery of goods etc. are very important. These stipulations are known as conditions and warranties.

In law of sales of goods the major terms are called **"Conditions"** and minor terms are called **"Warranties"**

Condition Sec. 12 (2) defines as 'A condition' is a stipulation essential to the main purpose of the contract, the breach of which gives the aggrieved party a right to repudiate the contract itself. In addition he can claim damages from the guilty party.

Warranty Sec. 12(3) defines 'A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives the aggrieved party a right to sue for damages .only, and not to avoid the contract itself'.

Distinction between condition and warranty

Sl.NO	Condition	Warranty
1	It is a stipulation which is essential to the main purpose of a contract.	It is a stipulation which is only subsidiary or collateral to main purpose of a contract.
2	A contract of sale cannot be fulfilled unless the conditions to it are fulfilled	It is not if vital importance. The main contract can be fulfilled even if the warranty not fulfilled.
3	The breach of condition gives the aggrieved party the right to repudiate the contract and also claim damages.	The breach of warranty gives the aggrieved party a right to claim damages only
4	A breach of condition may be treated as a breach of warranty.	A breach of warranty cannot be treated as a breach of condition.

Implied conditions

1. Condition as to title: Sec.-14(a) In every contract of sale, the seller has right to sell the goods if either he is the owner or the owners agent. This implies that if sellers title is defective, the buyer is entitled to reject the goods and to recover his price.

2. **Condition in a sale by description:** Where there is a contract of sale of goods by description, there is an implied condition that the goods shall correspond with the description.

3. Condition in a sale by sample: If the bulk of goods correspond with sample quality, buyer shall have a reasonable opportunity to compare the sample.

4. **Condition in a sale by sample as well as by description:** The implied condition is that the bulk of goods shall correspond both with the sample and description. If it corresponds with only sample and not with description, or vice versa, the buyer is entitled to reject the goods. It must correspond with both .

5. Condition as to fitness or quality: Usually in a contract of sale of goods, there is no implied condition or warranty as to quality or fitness for any particular purpose of goods supplied, the rule being 'Caveat Emptor, that is, let the buyer beware. But an implied condition is deemed to exist on the part of the seller that the goods supplied shall be reasonably fit for the purpose for which the buyer wants them.

6. **Condition as to merchantability:** This condition is applicable only when the sale is by description.

Implied warranties:

Warranty of quiet possession: Sec 14 (b), The first implied warranty on the part of the seller is that "the buyer shall have and enjoy quiet possession of goods." If the buyer is in anyway disturbed by a person having a superior right than that of the seller, the buyer can claim damages from the seller.

2. **Warranty of freedom from encumbrance:** Sec. 14 says that the goods shall be free from any charge or in favor of any third party not declared or known to the buyer before or at the time when the contract is made. If the goods are afterwards found to be subject to a charge and the buyer has to discharge the same, there is a breach of warranty and the buyer is entitled to damages.

3. **Warranty of disclosing the dangerous nature of goods to the ignorant buyer**: The third implied warranty on the part of seller is that in case the goods sold are of dangerous nature, he will warn the ignorant buyer of the probable danger. If there a breach of warranty, the buyer is entitled to claim damages tor injury. The seller is bound to give some warning of the danger in the goods to the buyer.

Passing of Property

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

- Specific or Ascertained Goods
- Passing of Unascertained Goods

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

Passing of Ascertained Goods

Section 19

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

Sub-section (1): Imagine a contract for the sale of specific or ascertained goods with a clear mention of the time when the parties to the contract intend to transfer the property. In such cases, the property is transferred at the time mentioned in the contract.

Sub-section (2): To understand the intention of the parties, the terms of the contract, the conduct of the parties, and the circumstances of the case are considered.

Sub-section (3): Sections 20 to 24 of The Sale of Goods Act, 1930, contain rules to ascertain the intention of the parties. This intention is about the time at which the property in the goods will pass to the buyer. Let’s look at these sections

Passing of Unascertained Goods

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

- Sale of unascertained goods by description
- Delivery to the carrier

Rights of an unpaid seller:

An unpaid seller has a two-fold right, viz.,

I. Rights of unpaid seller against the goods, and
II. Rights of unpaid seller against the buyer personally.

I. **Rights of unpaid seller against the goods**

- Right of lien;
- Right of stoppage of goods in transit;
- Right of resale.

Right of lien

The term lien’ means the right to retain possession of goods and refuse to deliver them to the buyer until the price due in respect of them is paid or tendered. An unpaid seller in possession of goods sold is entitled to exercise his lien on the goods in the following

Cases:

a) Where the goods have been sold without any stipulation as toCredit;
b) Where the goods have been sold on credit, and the term ofCredit has expired:
c) where the buyer becomes insolvent, even though the period of credit may not have yet expired

Right of stoppage of goods in transit

The right of stoppage In transit means the right of stopping the goods while they are in transit to regain the possession and to0 retain them till the full price is paid.

The essential feature of stoppage in transit is that the g0ods should be in the possession of a middleman or some other person intervening between the vendor parted with and the purchaser who has not received them

The unpaid seller may exercise his right of stoppage in anyone of the following two ways:

- By taking actual possession of the goods, or
- by giving notice of his claim to the carrier or other Bailee who possesses the goods,

Right of Resale

The right of resale is a very valuable right given to an unpaid seller. In the absence ot this right, the unpaid sellers other rights against the goods, namely, lien' and 'stoppage in transit,' would not be of much use because these rights only entitle the unpaid seller to retain the goods until paid by the buyer. If the buyer continues to remain in default, then the seller should be expected to retain the goods indefinitely. The law gives to the unpaid seller a limited right to resell the goods in the following cases:

(a) Where the goods are of a perishable nature; or

(b) Where such a right is expressly reserved in the contract in case the buyer should make a default; or

C) Where the seller has given a notice to the buyer of his intention to resell and the buyer does not pay or tender the price within a reasonable time.

Remedies for breach:

Recession of Contract:

When one of the parties to a contract does not fulfil his obligations, then the other party can rescind the contract and refuse the performance of his obligations

Sue for Damages

Section 73 clearly states that the party who has suffered, since the other party has broken promises, can claim compensation for loss or damages caused to them in the normal course of business.

Sue for Specific Performance

This means the party in breach will actually have to carry out his duties according to the contract. In certain cases, the courts may insist that the party carry out the agreement.

Injunction

An injunction is basically like a decree for specific performance but for a negative contract. An injunction is a court order restraining a person from doing a particular act.

Quantum Meruit

Quantum meruit literally translates to "as much is earned". At times when one party of the contract is prevented from finishing his performance of the contract by the other party, he can claim quantum meruit.

The Negotiable Instruments Act, 1881

The Negotiable Instrument Act 1881 came into force on 1st March 1881. It extends to the whole of India except the State of Jammu & Kashmir.

The term Negotiable Instrument consists of two parts viz; Negotiable and Instrument.

The word '**negotiable'** means transferable by delivery and the word '**instrument'** means written documents by which a right is created in favor of some person it means that an instrument possessing the quality of negotiability is entitled to be called as 'Negotiable instrument'.

Definition of negotiable instrument

According to Will "A negotiable instrument is the property which is acquired by anyone who takes it bona-fide for value notwithstanding any defect on title in the person from whom he took it".

Essential characteristics

The essential characteristics of a negotiable instrument have been shown as under:

- **Payable to order or bearer:** It must be payable either to order or Bearer.
- **Freely transferable:** An instrument payable to order is negotiable by endorsement and delivery and aninstrument payable to beareris negotiable by mere delivery.
- **Presumption as to holder:** Every holder of a negotiable instrument is presumed to be the holder in duecourse.
- **Title of holder in due course:** A holder in due course i.e. the person who becomes the possessor of anegotiable instrument before maturity for valuable consideration and in good faith gets the instrumentfree from all defects in the title of transferor
- **Presumption as to considerations:** Every negotiable instrument is presumed to have been made, drawn,accepted, endorsed, negotiated or transferred for consideration. The Negotiable Instruments Act dealswith only three Negotiable Instruments Promissory Note, Bill of Exchange and Cheque.

Kinds of Negotiable Instruments

Instruments Act defines that “A Negotiable instrument means apromissory note, bill of exchange, or Cheque payable either to order or to bearer”

The Negotiable Instrument Act recognizes only the following three kinds of Negotiable Instruments, namely

1. Promissory Note
2. Bill of exchange
3. Cheque.

Promissory Note

A promissory note is an instrument (not being a bank note or a currency note) 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. In other words, the requirements of a promissory note are as follows:

i) **It must be in writing:**

This means that the endorsement cannot be oral. There is no prescribed form of language for this; even the word ‘promise’ need not be used. What is necessary is that whatever language is used, it must clearly show that the maker unconditionally bound to pay the sum.

ii) **The promise to pay must be unconditional:**

If a condition is attached to the ‘promise to pay’, then theinstrument will not be Construed as a promissory note. The instrument should be made out as follows: “I promise to pay B the sum”. In other words, the Promise to pay should not depend upon a condition or upon the happening of uncertain events.

(ii) It **must contain a promise to pay in terms of money only:** The third requirement of a valid promissory note is that it must be payable in terms of money and money only.

(iv) **The instrument must be signed by the maker:** It is incomplete till it is signed. Since the signature is intended to authenticate the instrument, it can be signed on any part of the instrument.

(v) ***The payee must be certain:***The promissory note must point out with certainty the party who is to receive the money.

(vi) **It must contain a promise to pay:** It must contain an undertaking or promise to pay. A mere acknowledgement of debt note not accompanied by promise to psy is not sufficient.

(vii)**Other Formalities:** The promissory note must be properly stamped as required by the Indian Stamp Act, 1899 and the stamp should be properly cancelled with the maker ‘s signature on it.

Bill of Exchange

A bill of exchange ordinarily comes into existence when a trader decides to sell goods on credit.

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 certain person to the bearer of the instrument.

Parties to a Bill of Exchange

The original parties to a Bill of Exchange are:

1. The drawer

2. The drawee or Acceptor

3. The payee

Drawer: The maker of a bill of exchange or cheque is called the Drawer.

Drawer or Acceptor and "Acceptor for Honour": The drawee of the bill, after signing his assent upon the bill or if more than one party, and given the bill to the holder or some person on his behalf, he is called the "acceptor".

when a bill has been noted as protested for non acceptance and if any person accepts it for the honour of the drawer as to any one of the endorsers, such a person is called the 'acceptor for honour

Payee: The person named in the instrument to whom or to whose order the money is directed to be paid is called the payee.

Cheque

A Cheque is a bill of exchange drawn on a specified banker.

Definition of Cheque

A "Cheque" is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand and it includes the electronic image of a truncated Cheque and a Cheque in the electronic form.

A Cheque, however, Is a peculiar type of negotiable instrument, in the sense that it does not require acceptance.

A Cheque is a bill of exchange with two additional features

1. It is always drawn on a specified banker
2. It is always payable on demand.

A Cheque may be drawn up in three forms,

(i) bearer Cheque is one which is either expressed to be so payable or only endorsement in blank

(ii) order cheque is one which is expressed to be so payableagainst its transfer or indicating an intention that it Shall not be transferable, and

(iii) Crossed cheque is a cheque which can be only collected through a banker.

Difference between a promissory note and a bill of exchange

Sl.No	Promissory note	Bill of exchange
1	**Parties**: There are two parties There are three parties Maker and Payee.	There are three parties Drawer, Drawee and Payee.
2	**Nature of Payment:** Itcontains An unconditional promise to to pay.	It contains unconditional order to pay
3	**Payee**: It cannot be made payable to the maker, who is a debtor. The maker and the payee cannot be same person	The drawer and the payee may be the same person. Drawer can order the drawee to pay the money to drawer himself
4	**Acceptance:** It requires no acceptance as it is signed by the person who is liable to pay.	The drawer of a bill of exchange is generally creditor of the drawee and therefore it must be accepted by the drawee before it can be presented for payment
5	**Liability:** The Liability of drawer the maker of a note is primary and absolute	The liability of the drawer(maker) of bill is secondary and conditional. When The acceptor fails to pay the money he becomes liable
6	**Notice:** When a pro-note is dishonoured, it is not necessary to give notice of prior parties on demand	Notice of dishonour must be given by the holder to all the prior parties on demand
7	**Payable to bearer**: A pro-note protest is not necessary.	It can be so drawn provided it is not drawn 'payable to bearer On demand'.
8	**Protest**: Dishonour of pro-note protest is not necessary.	A foreign bill must be protested if such a protest is necessary according to law of the place where it is drawn**.**
9	**Sets**: Pro-note cannot be -drawn in sets.	Bills can be drawn in sets.

10	**Exemption**: Provis1ons relating to presentment for acceptance, for supra protest do not apply	These provisions apply.

Difference between bill of exchange and cheque

Sl. No	Bill of exchange	Cheque
1	**Drawee**: Anyone can be a Drawee.	Only a banker can be a drawee
2	**Acceptance**: It needs Acceptance.	Acceptance is not required.
3	**Payment**: The amount may be payable on demand or after a specified time.	The amount is always payable On demand.
4	**Crossing**: It can never be be crossed.	A cheque may be crossed.
5	**Stamp**: It must be properly Stamped.	It requires no stamp.
6	**Noting and protesting:** A bill is noted for protesting to establish Dishonour.	A cheque is not to be noted and protested in case of dishonour.
7	**Countermanding payment:** The payment of bill cannot beCountermanded.	The payment of a cheque may be countermanded by the drawer.
8	**Notice**: Notice of dishonour is necessary to hold the parties Liable thereon.	Notice of dishonour is not necessary. The parties thereon remain liable even if no notice of dishonour is given.
9	**Grace period:** A grace period of three days is allowed in case of time bill.	No grace period is given.
10	**Presentment**: If not presented to the banker for payment, it does not discharge the drawer	Drawer is discharged, if a ill is not presented for payment t to the acceptor, unless he suffers injury or damages.

Holder and holder in due course

- **Holder:**
  A holder is a person who is entitled to a promissory note, bill of exchange or cheque in his name. He is entitled to its possession and to receive the amount due from the parties.

When the instrument is lost or destroyed, its holder is the person so entitled to the instrument. The holder must be named in the instrument as by order or at the time of such loss or destruction, it doesn't make a person its holder. So, the finder of lost instrument, a thief, a payee prohibited by court from receiving the amount and any person claiming under forged instrument are not holders, because they have mere possession over the instrument but they do not have any right to recover the money due.

- **Holder in due course**
  Any person who for consideration becomes the possessor of the instrument payable to the bearer for valuable consideration before maturity of instrument in good faith without knowledge about its bad title, is a "Holder in due course".

Negotiation

One of the important features of a negotiable instrument is that it is freely transferable from one person to another and may take place Either.

1. by negotiation, or

2. By assignment.

1. **Transfer by Negotiation:** When an instrument is transferred by one party to another, so as to constitute the transfer to the holder thereof, the instrument is said to be negotiated. Thus, if 'A hands over a cheque to 'B', asking B to keep it in safe custody, the cheque is not negotiated to "B', because the delivery to 'B as a Bailee does not make him its holder. There are two methods of transfer by negotiation.

Negotiation by delivery: An instrument payable to bearer is negotiable by delivery thereof.

Negotiation by endorsement and delivery: An instrument payable by the holderby endorsement and delivery thereof. Delivery is important in both the cases.

2.Transfer by assignment: When a person transfers his right to receive the payment of a debt, 'assignment of the debt' takes place. Thus, where the holder of an instrument transfers it to another so as to confer a right on the transferee to receive the payment of the instrument, transfer by assignment takes place.

Endorsement: Endorsement means writing the name of a person on the face or back of the negotiable instrument or on a slip of paper annexed with the instruments for the purpose of negotiation. The person who signs the instrument is called the endorser. The person to whom the instrument is endorsed is called the endorsee.

The first endorsement can be done by the payee. The subsequent endorsements may be made by the holder of the instrument. For e.g. A bill is drawn payable to the bearer's order. The first signature of the drawee is not an endorsement. But if he signs the bill for the second time, the second signature is an endorsement.

Presentation of a Negotiable Instrument

Presentment means showing an instrument to the drawee, acceptor r maker for acceptance, sign or payment.

1. Presentment of bills of exchange for acceptance.
2. Presentment of promissory note for sight.
3. Presentment of negotiable instrument for payment.

Presentment for acceptance: It is only bills of exchange of a certain type that require acceptance. The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer that he will pay the bill at the time when it is due. It is a Written and binding undertaking to meet the bill on the due date when duly presented the liability of the drawee does not arise until he has accepted the bill. The acceptance is given by the drawee by signing his name on the bill.

The word “Accepted” is also sometimes added, but this is not necessary. After the drawee has accepted the bill, he is known as the acceptor.

Discharge from Liability:

A negotiable instrument is said to be discharged when the rights and obligations created by it are extinguished and the instrument does not give rise to any cause of action. After a negotiable instrument is discharged, the rights against all the parties thereto comes to an end and no party, even a holder in due course, can claim the amount of the instruments from any party thereto.

The term ‘discharge’ in relation to negotiable instruments has two meanings, namely,

- the discharge of the instrument, and
- Discharge of one or more parties from liability on the instrument.

Discharge of a negotiable instrument should be distinguished from the discharge of one or more parties liable on it. This is because the discharge of one or more parties thereto does not discharge the other parties liable on it. Thus, the two terms (i) discharge of the instrument and (ii) discharge of one or more parties from liability on the instrument are discussed below:

I. Discharge of the Instrument:

A negotiable instrument is said to be discharged, when it becomes completely useless, that is, no action on it will lie, and it cannot be negotiated further. An instrument is said to be discharged when all rights under it are extinguished. It ceases to be negotiable and even a holder in due course does not acquire any rights under it.

Such a discharge of the negotiable instrument would take place when the party who is primarily and ultimately liable on the instruments discharged from liability. A negotiable instrument may be discharged:

1. **By payment:** When the maker, acceptor or endorser make payment on an instrument in due course to the person entitled to receive payment, he discharges the parties to the instrument

2. **By acceptor becoming the holder:** According to Sec. 90, "If a bill of exchange which has been negotiated is, at or after maturity held by the acceptor in his own right, rights of action thereon are extinguished.

3. **By renunciation:** A negotiable instrument is discharged when the holder renounces or gives up his right against all the parties to the instrument. The renunciation must be in writing unless the instrument is also surrendered to the party primarily liable.

4. **By cancellation:** According to Sec. 82 (a), "The maker, acceptor or endorser respectively of a negotiable instrument is discharged from liability thereon to a holder thereof who cancels such acceptor's or endorser's name with intent to discharge him, and all parties claiming under such holder". This operates as a discharge of the instrument and is known as cancellation.

5. **By discharge as a simple contract:** A negotiable instrument may be discharged in the same way as any other contract for the payment of money. Thus, a negotiable instrument may be discharged by an agreement of the parties in the form of novation, or by rescission or by substitution of another negotiable instrument for the original instrument.

II **Discharge of one or more parties for their liability**

A party is said to be discharged from his liability when his labia on the instrument comes to an end. When only some of the parte to a negotiable instrument are discharged, the instrument continue to be negotiable and the undischarged parties remain liable on Thus the discharge of one or more parties to an instrument does n discharge the instrument and the rights under it can still be enforce against those parties who continue to be liable thereon.

A party may be discharged in any one of the following ways:

1. **By cancellation:** When the holder of a negotiable instrument or his agent cancels the name of a party on the instrument with intent to discharge him, such party and all subsequent parties, who have a right of recourse against the party, whose name is cancellation are discharged from the liability to the holder. If the cancellation is done under a mistake, or without the authority of the holder, it would be inoperative and will not discharge any party.

2. By release: If the holder of a negotiable instrument releases any party to the instrument by any method other than cancelled of names, that is, by a separate agreement of waiver, release or remission, the party so released and all party subsequent to him, who have a right of action against the party so released, are discharged from liability.

3**. By allowing drawee more than 48 hours:** According to Sec. 83, "If the holder of a bill of exchange allows the drawee more than 48 hours, exclusive of public holidays, to consider whether he will accept the same or not and all previous parties not consenting to such allowance are thereby discharged from liability to such holder"

4. **By taking qualified acceptance:** If the holder of a bill takes a qualified acceptance, all the previous parties whose consent is not obtained to such acceptance are discharged from liability.

5. **By not giving Notice of Dishonour:** Any party to a negotiable instrument, other than the party primarily liable, to whom notice of dishonor is not sent by the holder is discharged from liability as against the holder, unless the circumstances are such that no notice of dishonour is required to be sent.

6. **By non-presentment for acceptance of a bill:** If the holder of a bill, payable after sight, does not present it to the drawee for acceptance within a reasonable time, the drawer and all endorsers are discharged from their liability to him.

7. **By non-presentment of cheque:** Where a cheque is not presented for payment within a reasonable time of its issue, and the bank fails and the drawer suffers actual damage through the delay, he is discharged from liability to the holder to the extent to which such drawer is a creditor of the banker, but no more.

8. **By operation of law:** A negotiable instrument may be discharged by the operation of law as in the case of insolvency of the debtor, or lapse of time, making the debt time-barred under the Limitation Act.

9. **By material alteration:** A material alteration of a negotiable instrument leads to a void contract against persons who were parties thereto before such alteration, unless they have consented to the alteration.

Noting and Protesting

Noting

Noting is a convenient mode of authenticating the fact that a bill or note has been dishonored. When a note or a bill has been dishonored by non-acceptance or nonpayment, the holder causes such dishonour to be noted by a Notary public. Noting is a minute recorded by a notary public on the dishonored instrument. When an instrument, say a bill of exchange, is to be noted for dishonour, it is taken to a Notary public who presents it once again for acceptance or payment, as the case may be; and if the drawee or acceptor still refuses to accept or pay the bill, it is noted, i.e., a minute is prepared containing the date of dishonour, reason for such dishonour, etc.; which is attached to the instrument; and the facts are noted on the instrument.

Noting must contain the following details:

(a) The fact of dishonor

b) Date of dishonor

(c) Reason assigned for dishonor

(d) The charges of Notary.

Noting is not compulsory in the case of an inland bill or note. This depends upon the option to the holder and the omission to do so does not in any way affect his. Rights.

Protest

When an instrument is dishonored, the holder may cause the fact not only to be noted, but also to be certified by a Notary Public that the bill has been dishonored. Such a certificate is referred to as a protest. If an acceptor of a bill is stricken by insolvency or otherwise before the date of maturity of the bill, the holder may cause such a fact also to be noted and certified, Such a certificate is called a protest for better security. The contents of a protest are given in Section, 101 of the Act. Neither noting nor protesting is compulsory in the case of inland bills.

A valid protest must contain the following

1. Either the instrument itself, or a literal transcript of the instrument and everything written or printed thereon

2. The name of the person for whom and against whom the instrument has been protested.

3. A statement that the payment has been demanded of such person by the Notary Public, the terms of his answer if any or a statement that he gave no answer or that he could not be found.

4. When the note or bill has been dishonoured, the place and time of dishonour, and when better security has been refused, the place and time of such refusal.

5. The Notary Public making the protest

6. In the event of an acceptance of a payment for honour the name of the person for whom and the manner in which such acceptance or payment was offered and effected.

Protest for better security

If the acceptor of a bill of exchange bearing instrument on his credit is publicly impeached before the maturity of the bill, the holder may demand only better security from the acceptor through a Notary Public. Such a certificate is called Protest for better security'.

Advantage of Protest

1. It is an authentic evidence of dishonour to the drawer with Endorsers.
2. In the court of law, the fact of dishonour is presumed till such fact is disproved.

Crossing of cheque

Cheques are usually crossed as a measure of safety. Crossing is made by drawing two parallel transverse lines across the face of a cheque with or without the addition of certain words. The usage of crossing distinguishes cheque from other bills of exchange. The object of crossing is to direct the drawee banker to pay the amount of the cheque only to a banker and to prevent the payment of the cheque being made to a wrong person.

a) **General crossing**: Merely drawing two parallel transverse lines in the left top corner of the cheque is called general crossing.
b) **Special crossing:** Where a cheque bears across its face an entry of the name of a banker either with or without the words "not negotiable", the cheque is considered to have been crossed specially to that banker. In the case of special crossing, the addition of two parallel transverse lines is not essential though generally the name of the bank to which

the cheque is crossed specially is written between two parallel transverse lines such as Canara Bank (Not negotiable Canara Bank).

c) **Restrictive crossing:** Cheque marked "Account Payee": It is a form of restrictive crossing, represented by the words Account Payee entered on the face of the cheque. Such a crossing acts as a warning to the collecting bankers that the proceeds are to be credited only to the account of the payee. If the collecting banker allows the proceeds of the cheque so crossed to be credited to pay any other account, he may be held guilty of a negligence in the event of an action for wrongful conversion of funds being brought against him. These words are not an addition to the crossing, but are mere direction to the receiving or collecting bankers. These do not affect the paying banker who is under no duty to ascertain that the cheque in fact has been collected for the account of the person named as the payee.

Special Provisions in respect of Cheques: A "cheque" is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand. 'Cheque' includes electronic mage of a truncated cheque and a cheque in electronic form. [Section The definition is amended by Amendment Act, 2002, making provision for electronic submission and clearance of cheque. The cheque is one form of Bill of Exchange. It is addressed to Banker. t cannot be made payable after some days. It must be made payable on demand'.

Electronic Cheque: Provisions of electronic cheque has been made by Amendment Act, 2002. As per explanation I(a) to section6, 'A cheque in the electronic form' means a cheque which contains the exact mirror image of a paper cheque, and is generated, written and signed by a secure system ensuring the minimum safety standards with the use of digital signature (with or without biometrics signature) and asymmetric crypto system.

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

Dishonour of a negotiable instrument

Generally, the party who is bound to pay the amount in an instrument in any honour the same by accepting it for payment or by payment straight away.

Dishonour by Non-Acceptance

Generally, a promissory note, a cheque, or a bill of exchange is dishonoured by non acceptance in any of the following ways:

1. If the drawee does not accept within 48 hours from the time of presentment though the bill is duly presented for acceptance.

2. If there are several draweesand if all of them do not accept it.

3. When presentment for acceptance is excused, and the bill is not accepted.

4. When the drawee is incompetent' to contract.

5. When the drawee gives a qualified acceptance or conditional Acceptance.

6. When the drawee is a fictitious person or after reasonable search he cannot be found.

Dishonour by non-payment

A note, bill 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 upon being duly required to pay the same. An instrument is also dishonoured by non-payment when presentment for payment is excused and the instrument whenever due remains unpaid.

Notice of Dishonour

When an instrument is dishonoured, the holder informs the parties to the instrument if he wants to make them liable on it. On receipt of such notice, the party must give notice, of the same to all other prior parties whom he wants to hold liable. Notice of dishonour need not be given to the acceptor or the maker of a note on the drawee of a cheque, as they are the persons who dishonour the instrument.

The notice of dishonour may be oral or written, and may be sent through post. Notice must be given within a reasonable time from the date of dishonour and delivered at the place of business or residence

THE COMPANIES ACT, 1956

DEFINITION:

Derivation:

*The word “Company” is a derivative of the Latin Word “Companis”.

* Companis made up of two Words “Com” and “Panis”.

* Originally the Word “ Company” implied, a group of persons who at together.

MEANING:

- A company is the voluntary association of persons formed for the purpose of earning a profit with the investment of capital which is transferable in shares of limited liability.
- It is incorporated and registered as an artificial person under the Companies Act.

DEFINITION:

- According to section 3(1)(i) and 3(1)(ii) of the Indian Companies Act, 1956.
- Company means a company formed and registered under this Act or an existing company.
- “Existing company means a company formed and registered under any of the previous companies laws”.

NATURE/CHARACTERISTICS/FEATURES OF COMPANY:

1. Incorporated Association of persons:
    - A company is an incorporated or registered associated of persons. Under the Companies Act, no single individual can form a company.
    - A minimum number of 7 person can form a public company. While a minimum number of 2 person can form private company.
    - It registration is essential.
2. Artificial person by law:
    - Another important characteristic of a company is that it is an “Artificial Person” because its birth is not natural birth.
    - It is considered as a legal person which can enter into contracts, possess properties in its own name, sue and can be sued by others.
3. Separate legal entity:
    - The company acquires a separate legal entity after it is incorporated which is distinct from its members.

- As a result, A company can enter into a contract, buy property in its name, borrow or lend money, open a bank account or file a suit in a court of law against a third party.
- Likewise, others can also file a suit against the company.

4. Perpetual succession:
   - It is another important characteristic of a company.
   - Its existence is not dependent on that of its shareholders or directors. The shareholders or the directors are might change, but the company goes on.
   - Death insolvency or lunacy of its members has no effect on the existence of a company. Member may go, but the company goes on.
5. Common seal:
   - A company is an artificial person so it cannot put its signature on documents.
   - That is why it is mandatory under law that every company must have a common seal with its name engraved upon it.
   - The common seal is the symbol of the company's identity and is a good as a signature.
   - When it puts its seal on a document, the company becomes bound by the contents of the document.
   - As per the companies (Amendment) Act, 2015, now for a company to have a common seal is not mandatory.
6. Limited liability:
   - The liability of the shareholder of the company is limited. In case of financial loss to the company, the liability of the shareholders is limited to the amount unpaid on their shares, and their personal property cannot be used to pay the company debts.
7. Separate management:
   - A company is administered and managed by its managerial personnel i.e The Board of Directors.
   - The shareholders are simply holders of shares in the company and need not be necessarily the managers of the company.
8. Transferability of shares:
   - According to sec 44 of the Company Act, 2013 the shares or debentures or other interest of any member in a company shall be movable property transferable in the manner provides by the articles of the company.
   - So each shareholder can freely transfer his or her shares. But in some specific situations, the company may impose restrictions on the transfer of shares.
9. Termination of existence:
   - Like it is born by an act of law a company may also be termination by law.

MEMORANDUM OF ASSOCIATION:

* "The MOA of a company is the charter and defines the limitation of the power of the company established under the Act".

* No company can be registered under the Company Act, 1956 without the memorandum of association.

* It determines the relationship between the company and the outsides.

CONTENTS OF MEMORANDUM: (6)

a. Name clause
b. Domicile clause
c. Object clause
d. Liability clause
e. Capital clause
f. Association clause

NAME CLAUSE:

- ✓ The Name of the company is mentioned in the name clause.
- ✓ A Public Limited Company end with the word "Limited" and A Private Limited Company end with word "Private Limited".
- ✓ The Name should not be identical or similar to that of a company already registered.
- ✓ A company is free to select any name it likes.

DOMICILE CLAUSE:

- The second clause of the MOA.
- It specifies the location of the company's registered office.
- It will not exactly contain the address of the registered office, but the state or union territory in which the registered office of the company is located.

OBJECT CLAUSE:

- This clause specifies the objects for which the company is formed. It is difficult to alter the objects clause later on.
- It mentions all possible types of business in which a company may engage in future.
- It must contain the important objectives of the company and the other objectives not included above.

LIABILITY CLAUSE:

- This clause state the liability of the members of the company.
- The liability may be limited by shares or by guarantee.
- This clause may be omitted in case of unlimited liability.

CAPTIAL CLAUSE:

- It mentions the maximum amount of capital that can be raised by the company.
- The division of capital into shares is also mentioned in this clause.
- The company cannot secure more capital than mentioned in this clause.

ASSOCIATION CLAUSE:

- A declaration by the person for subscribing to the memorandum that they desire to form into a company and agree to take the shares placed against their respective name must be given by the promoters.

ARTICLES OF ASSOCIATION:

- It contains rules and regulations of the internal management of the company.
- Contract between the company and its members and also between the members themselves that they shall abide by the rules and regulations of internal management of the company.
- Subordinate to MOA of the company.
- MOA lays down what is to be done and AOA lays down how it is to be done.

Definition of Article of Association

Articles" means the articles of association of a company as originally framed or as altered from time to time (section 2(5)). "

Contents of Articles of Association

1) Share capital including sub division thereof, rights of various shareholders, the relationship of these rights, payment of commission, share certificates.
2) Lien of shares
3) Calls of shares
4) Transfer of shares
5) Transmission of shares
6) Forfeiture of shares
7) Surrender of shares
8) Conversion of shares into stock
9) Share warrant
10) Alteration of capital
11) General meetings and proceedings thereat
12) Voting rights of members, voting by poll, proxies
13) Directors, Including first directors or directors for life, their appointment, remuneration, qualifications, powers and proceedings of Board of director's meeting
14) Dividends and reserves
15) Accounts and audits
16) Borrowing powers
17) Winding up

Types of Companies

- Companies Limited by Shares
- Companies Limited by Guarantee
- Unlimited Companies
- One Person Companies (OPC)
- Private Companies
- Public Companies
- Holding and Subsidiary Companies
- Associate Companies
- Companies in terms of Access to Capital
- Government Companies
- Foreign Companies

Classification of Different Types of Companies

Classification of Companies

Companies on the Basis of Liabilities

- Companies Limited by Shares
- Companies Limited by Guarantee
- Unlimited Companies

Companies on the Basis of Members

- One Person Companies
- Private Companies
- Public Companies

Companies on the Basis of Control

- Holding and Subsidiary Companies
- Associate Companies

Companies on the Basis of Liabilities

When we look at the liabilities of members, companies can be limited by shares, limited by guarantee or simply unlimited.

a) Companies Limited by Shares

Sometimes, shareholders of some companies might not pay the entire value of their shares in one go. In these companies, the liabilities of members is limited to the extent of the amount not paid by them on their shares.

This means that in case of winding up, members will be liable only until they pay the remaining amount of their shares.

b) Companies Limited by Guarantee

In some companies, the memorandum of association mentions amounts of money that some members guarantee to pay.

In case of winding up, they will be liable only to pay only the amount so guaranteed. The company or its creditors cannot compel them to pay any more money.

c) Unlimited Companies

Unlimited companies have no limits on their members' liabilities. Hence, the company can use all personal assets of shareholders to meet its debts while winding up. Their liabilities will extend to the company's entire debt.

Companies on the basis of members

a) One Person Companies (OPC)

These kinds of companies have only one member as their sole shareholder. They are separate from sole proprietorships because OPCs are legal entities distinct from their sole members. Unlike other companies, OPCs don't need to have any minimum share capital.

b) Private Companies

Private companies are those whose articles of association restrict free transferability of shares. In terms of members, private companies need to have a minimum of 2 and a maximum of 200. These members include present and former employees who also hold shares.

c) Public Companies

In contrast to private companies, public companies allow their members to freely transfer their shares to others. Secondly, they need to have a minimum of 7 members, but the maximum number of members they can have is unlimited.

Companies on the basis of Control or Holding

In terms of control, there are two types of companies.

a) Holding and Subsidiary Companies

In some cases, a company's shares might be held fully or partly by another company. Here, the company owning these shares becomes the holding or parent company. Likewise, the company whose shares the parent company owns becomes its subsidiary company.

Holding companies exercise control over their subsidiaries by dictating the composition of their board of directors. Furthermore, parent companies also exercise control by owning more than 50% of their subsidiary companies' shares.

b) Associate Companies

Associate companies are those in which other companies have significant influence. This "significant influence" amounts to ownership of at least 20% shares of the associate company.

The other company's control can exist in terms of the associate company's business decisions under an agreement. Associate companies can also exist under joint venture agreements.

Other Types of Companies

a) Government Companies

Government companies are those in which more than 50% of share capital is held by either the central government, or by one or more state government, or jointly by the central government and one or more state government.

b) Foreign Companies

Foreign companies are incorporated outside India. They also conduct business in India using a place of business either by themselves or with some other company.

Director Power

The directors powers are normally set out in the articles. The shareholders cannot control the way in which the Board of Directors act provided its actions are within the powers given to the Board.
Section 291 of Companies Act, 1956 provides for general powers of the Board of directors. It mandates that the Board is entitled to exercise all such powers and do all such acts and things, subject to the provisions of the Companies Act, as the company is authorized to exercise and do. However, the Board shall not exercise any power and do any act or things which is required whether by the Act or by the memorandum or articles of the company or otherwise to be exercised or done by the company in general meeting.
Power of the individual directors ñ Unless the Act or the articles otherwise provide, the decisions of the Board are required to be the majority decisions only. Individual directors do not have any general powers. They shall have only such powers as are vested in them by the Memorandum and Articles.
Section 292(1) of the Companies Act, 1956 provides that the Board of directors of a company shall exercise the following powers on behalf of the company and it shall do so only by means of resolution passed at meeting of the Board:
(a) the power to make calls on shareholders in respect of money unpaid on their shares;

(aa)the power to authorize the buy-back referred to in the first proviso to clause (b) of sub-section (2) of section 77A;
(b) the power to issue debentures;
(c) the power to borrow moneys otherwise than on debentures;
(d) the power to invest funds of the company; and
(e) the power to make loan.

Company Meeting

The word "meeting" is not defined anywhere in the Company Act. Ordinarily, a company may be defined as gathering, assembling or coming together of two or more persons (by previous notice or by mutual arrangement) for discussion and transaction of some lawful business. In the case of sharp vs. Dawes (1971), the meeting is defined as "An assembly of people for a lawful purpose" or "the coming together of at least two persons for any lawful purpose".

4 Types of Company Meetings

1. Statutory meeting,
2. Annual general meeting,
3. Extraordinary general meeting,
4. Class meetings.

Statutory Meeting

Every company limited by shares and every company limited by guarantee and having a share capital shall, within not less than one month and not more than six months from the date at which the company is entitled to commence a business, hold a general meeting of the members of the company.

This meeting is called the 'statutory meeting.' This is the first meeting of the shareholders of a public company and is held only once in the lifetime of a company.

Statutory report: The Board of directors shall, at least 21 days (based on Companies Act) before the day on which the meeting is to be held, forward a report, called the 'statutory report,' to every member of the company.

Procedure at the meeting:

a. List of members,
b. Discussion of matters relating to a formational aspect,
c. Adjournment.

Objects of the meeting and report:

1. To put the members of the company in possession of all the important facts relating to the company.
2. To provide the members an opportunity of meeting and discussing the management, methods, and prospects of the company.
3. To approve the modification of the terms of any contract named in the prospectus.

Annual General Meeting

Company to hold an annual general meeting every year. Every company shall in each year hold, in addition to any other meetings, a general meeting as its annual general meeting and shall specify the meeting as such in the notice calling it.

There shall not be more than 15 months between one annual general meeting and the other. But the first annual general meeting should be held within 18 months from the date of its incorporation.

The Registrar may, for any special reason, extend the time for holding an annual general meeting by a period not exceeding 3 months. But no extension of time is granted for holding the first annual general meeting.

Every annual general meeting shall be called during business hours on a day that is not a public holiday.

It shall be held either at the registered office of the company or at some other place within the city, town, or village in which the registered office of the company is situated.

A general meeting of a company may be called by giving not less than 21 days' notice in writing.

Annual general meeting a statutory requirement: The annual general meeting of a company is a statutory requirement. It has to be called even where the company did not function during the year.

Cancelling or postponing of convened meeting: Where an annual general meeting is convened for a particular date, and notice is issued to the members, the Board of directors can cancel or postpone the holding of the meeting on that date provided power is exercised for bona fide and proper reasons.

Extraordinary General Meeting

A statutory meeting and an annual general meeting of a company are called ordinary meetings.

Any meeting other than these meetings is called an extraordinary general meeting. It is called for transacting some urgent or special business which cannot be postponed till the next annual general meeting.

It may be convened. (1) By the Board of directors On its own or on the requisition of the members; or (2) by the requisitionists themselves on the failure of the Board of directors to call the meeting.

a. The extraordinary meeting convened by the Board of directors. The Board of directors may call an extraordinary general meeting:
    i. On its own.
    ii. On the requisition of the members.
b. **An extraordinary meeting convened by the requisitionists Power of Company Law Board to order meeting:** If for any reason it is impracticable for a company to call, hold or conduct an extraordinary general meeting, the Company Law Board may call an extraordinary meeting.

Class Meetings

Under the Companies Act, class meetings of various kinds of shareholders and creditors are required to be held under different circumstances.

Class meetings of the holders of different classes of shares are to be held if the rights attaching to these shares are to be varied.

Requisites of a Valid Meeting

1. The meeting must be duly convened by proper authority.
2. Proper notice must be served in the prescribed manner.
3. A quorum must be present.
4. A chairperson must preside.
5. Minutes of the proceedings must be kept.

Duties of the Directors of a Company (Companies Act 1956)

(1) Duty of good faith:

It is expected from them to behave as honest men of business may be expected to act. They may be held liable for breach of duty if they have acted in their own interests or that of some third party without considering whether it was also in the interest of the company though they might not have acted with any conscious dishonesty.

The directors have to look after the interest of the company. Interest of the company implies the interests of present and future members of the company. On the footing that the company would be continued as a going concern, they have to balance a long-term view against the short-term interests of present members.

Good faith also requires that directors should not make any secret profit from their dealings with the company nor they should make any profit by corporate opportunities.

(2) Duty of reasonable care:

A director is bound to observe reasonable care in the performance of his duties. He is expected to act with that much of skill and diligence which an ordinary man would take in his own case. A director need not exhibit in the performance of his duties a greater degree of skill than may reasonably be expected from a person of his knowledge and experience.

He cannot be held liable for mere errors of judgment. "If directors act within their powers, if they act with such care as is to be reasonably expected of them having regard to their knowledge and experience and if they act honestly for the benefit of the company they represent, they discharge both their equitable as well as legal duty to the company."

(i) A director need not exhibit in the performance of his duties a greater degree of skill than may be reasonably expected from a person of his knowledge and experience.

(ii) In respect of all duties that, having regard to the exigencies of business and the Articles of Association, may properly be left to some other official, a director is in the absence of grounds of suspicion, justified in trusting that official to perform such duties honestly.

(3) Duty to attend board meetings:

Meetings of the board of directors are held from time to time to exercise the company's powers. Each director should attend such meetings. Of course, a director is not bound to give continuous attention to the affairs of the company nor he is bound to attend all the meetings of the Board, but, in case he fails to attend three consecutive meetings of the Board or if he absents himself from all the meetings of the Board for a consecutive period of three months (whichever is longer) without obtaining the leave of absence from the Board, he will be deemed to have vacated his office.

(4) Personal attendance:

Directors should perform the entire duties place upon them by the Act and Articles, personally. They can, however, delegate their certain functions to the extent to which the Articles of the company permit or according to the demand of exigencies of business. Directors shall be justified in the absence of grounds of suspicion, in trusting the old and trusted servants of the company.

(5) Duty to disclose interest:

According to Section 299, a director interested in a contract with the company must disclose the nature of his interest at the Board's meeting. A director stands in a fiduciary capacity with the company and he must not place himself in a position in which his

personal interest conflicts with his duty. He must not vote as a director on any contract or arrangement in which he is directly or indirectly interested, unless authorised by the company's articles. If he votes in such a case, his vote would not be counted and his presence would not be counted towards the quorum. There is no ban on company entering into a contract in which a director is interested. The only requirement is that such interest must be disclosed, bona fide and fair.

Winding Up

Winding up of a Company

Winding up of a company refers to the process whereby all the affairs of the company are wound up, all its assets are realized, its liabilities paid off and the balance if any is distributed to its shareholders in proportion to their holding in the company. When a company has been wound up, it is dissolved by an order of the court i.e. its existence ceases. In the words of prof. L.C.B. Cower, "Winding up of a company is the process whereby its life is ended and its property administered for the benefits of its creditors and members. An administrator called a liquidator, is appointed and he takes control of the company, collects its debts and finally distributes any surplus among the members in accordance with their rights".

Winding up and Dissolution

The term "Winding Up" and "Dissolution" are sometimes erroneously used to mean the same thing. However, they are quite different in their meanings. Winding up is a process whereby all assets of the company are realized and used to pay off the liabilities and members. Dissolution of the company takes place after the entire process of winding up is over. Dissolution puts an end to the life of the company. A dissolution order passed by the court a like Death Certificate of the company.

Winding Up of a Company: 3 Modes

1. Compulsory Winding Up by the Court:

Winding up of a Company by an order of the court is called the compulsory winding up. Section 433 of the Companies Act lays down the circumstances under which a Company may be compulsorily wound up.

They are:

(a) If the Company has by special resolution, resolved that the Company may be wound up by the court.

(b) If default is made in delivering the statutory report to the Registrar or in holding the statutory meeting.

(c) If the Company does not commence its business within a year from its incorporation or suspends it for a whole year.

(d) If the number of members is reduced, in the case of a public Company below seven, and in the case of a private company below two.

Persons Entitled to Apply for Liquidation:

The Petition for winding up of a Company may be presented by any of the following persons (Sec. 439):

(1) The Company.

(2) The creditors which include contingent creditors, prospective creditors, secured creditors, debenture holders, or a trustee for debenture holders.

(3) The contributories – comprise present and past shareholders of a Company (Secs. 426 and 428).

(4) The Registrar.

2. Voluntary Winding Up:

A voluntary winding up occurs without the intervention of the court. Here the Company and its creditors mutually settle their affairs without going to the court.

Section 488 provides for two types of voluntary winding up;

(a) Member's voluntary winding up and

(b) Creditor's voluntary winding up.

(a) Member's Voluntary Winding Up:

This type of winding up occurs only when the Company is solvent. It requires a declaration of the Company's solvency at the meeting of Board of Directors. The declaration must specify the director's opinion that the Company has no debt or it will be able to pay its debts in full within three years of the commencement of the winding up. The company in general meeting must then appoint a liquidator and fix his remuneration. With his appointment, all the powers of the Board and the managing director or manager cease unless the company in general meeting sanctions otherwise. The liquidator must

annually call a general meeting to lay before it an account of his dealings and the conduct of the winding up.

When the company's affairs are fully wound up, he must:

(a) Prepare an Account – Liquidator's Final Statement of Account – to show the disposition and disbursement of the company's property;

(b) Call a final meeting of the company of laying the final account before it, and

(c) Send a copy of the account and a return of the meeting to the Registrar of Companies. The company thereafter dissolves.

(b) Creditor's Voluntary Winding Up:

It occurs in the absence of declaration of solvency i.e., when the company is insolvent. Hence, the Act empowers the creditors of dominate over the members in this mode of winding up so as to effectively protect their interest. It requires the company to hold the creditors' meeting wherein the Board must make a full statement of the company's affairs together with a detailed list of creditors including their estimated claims.

3. Winding Up Subject to Supervision of the Court:

Windings up with the intervention of the court are ordered where the voluntary winding up has already commenced. As a matter of fact, it is the voluntary winding up but under the supervision of the court. A court may approve a resolution passed by the Company for voluntary winding up but the winding up should continue under the supervision of the court.

The court will issue such an order only under the following circumstances:

(a) If the resolution for winding up was obtained by fraud by the company; or

(b) If the rules pertaining to winding up are not being properly adhered to; or

(c) If the liquidator is found to be prejudicial or is negligent in releasing the assets of the company.

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UNIT 5- THE CONSUMER PROTECTION ACT, 1986

Consumer: Consumer refers to persons or households that use goods and services generated within the economy. The consumer is defined as someone who obtains goods or services for direct use or possession rather than for exchange, resale or use in production and manufacturing.

For example: When your mother buys apples for you and consumes them, your mother and you are treated as consumers.

Consumer Protection: Consumer protection means protecting the rights and interests of consumers. In other words, it refers to the measures taken to protect consumers from unprincipled and unethical misconduct by the business and provide them quick redressal of their grievances.

Features of Consumer Protection Act, 1986

- It applies to all goods, services and inequitable trade practices unless specified and exempted by the Central Government
- It covers all sectors, private, public or co-operative
- It provides the establishment or setting up of consumer protection councils at the district, state and central levels to encourage and protect the rights of consumers and three-tier quasi-judicial machinery to deal with consumer grievances and disputes

Objectives of Consumer Protection

- To protect the consumer from abuse
- To provide a venue for grievances/compensation
- To ensure a superior quality of living by upgrading consumer products and services
- Protecting the consumer against immoral and unfair activities of the traders

Need for Consumer Protection Act

The necessity of acquiring measures to protect the interest of consumers comes to light mainly due to the vulnerable position of the consumers.

Social Responsibility: It is the moral responsibility of the business to serve the interest of consumers. In line with this principle, producers and traders have to provide the right quality and quantity of goods at fair prices.

Increasing Awareness: Consumers are becoming more mature and conscious of their rights against the malpractices of the business. Many consumer organisations and associations are making efforts to build consumer awareness.

Consumer Satisfaction: The Father of the Nation, Mahatma Gandhi, had once called manufacturers and traders to" treat your consumers as god". Consumer satisfaction is the only key to the success of the business. Hence, people in business should take every step to serve the interests of consumers by providing them quality goods and services at a reasonable price.

Survival and Growth of Business: Businesses have to be in the service of consumer interests for their survival and growth. On account of globalisation and the rise in competition, any business organisation which indulges in malpractices or fails to provide improved services to its ultimate consumer shall find it difficult to continue.

Principle of Trusteeship: Resources/Assets were contributed by society. They are merely the trustees of the wealth and, therefore, they should use such resources effectively for the sake of the community, which includes the consumer.

Rights of the Consumer

- **Right to Safety** – To be secured against the marketing of goods on delivering dangerous services to health and life
- **Right to Information** – To be protected against dishonest or misleading advertising or labeling and the right to be given the facts and figures needed to make an informed choice
- **Right to Choice** –To choose products at competitive prices with an assurance of satisfactory quality
- **Right to Representation** – To express consumer interests in the making and execution of government policies
- **Right to Seek Redress** – To be compensated for misrepresentation, shoddy goods or unsatisfactory services
- **Right to Consumer Education** –To Acquire the Knowledge and skills necessary to be an informed customer
- **Right to Basic Needs** – This Guarantees adequate food, shelter, health care, clothing, education and sanitation

Redressal Agencies Machinery under the Consumer Protection Act

District Forum

- Each District Forum shall consist of a person who is or has been qualified as a District judge, as the President.

- There must be two other persons who are not less than thirty-five years of age and also possesses a degree from a recognized university.

- The persons must have adequate knowledge in the field of economics, commerce, industry, public affairs, and administration.

- The district forum must have the jurisdiction to entertain such complaints where the value of goods or services and the compensation, does not exceed Rs. 20 lakhs.

- District forums are also enabled with a faster way of dispensing consumer redressal as the amount of claim is pretty less than that of State/National redressal forums which enables normal people to seek a solution for their problems.

State Commission

- Each State Commission shall consist of a person who is or has been a judge of High Court as its president.
- The Commission also consists of not less than two members, who are above thirty-five years of age and also possesses a degree from a recognized university.
- The persons must have adequate knowledge in the field of economics, commerce, industry, public affairs, and administration.
- The State Commission has a jurisdiction to entertain cases where the value of goods or services or the compensation claimed, if any, exceeds the number of Rs. 20 lakhs but does not exceed Rs.1 crore.
- It also entertains appeals against any District Forum within the state and also looks after any pending disputes or cases

National Commission

- The National Commission shall consist of a person, who is or has been a judge of the Supreme Court, to be appointed by the Central Government, shall be the President, provided that no appointment shall be made except after the consultation with the Chief Justice of India.
- They must also be specialized in the areas of commerce, economics, and administration.
- The jurisdiction of the commission shall extend to any case where the compensation amount might exceed Rs.1 crore and the Commission shall also entertain appeals against State Commissions.
- The Commission also has the power to check any pending disputes or cases decided by any of the State Commissions where the State Commission has exercised a jurisdiction not vested in it by law or it has been exercised illegally or with any material irregularity.

Procedure to file a complaint in the Consumer Court

STEP 1: Intimation via Notice: A notice to be sent by the aggrieved party to the service provider who provided the goods or the services. The Notice communicates the intention of the complainer to resort to litigation and informs him about the defects in the goods or the deficiency in the service or any unfair practice. The notice is also an attempt to settle the Complaint without approaching the Forum i.e. if the service provider is willing to offer compensation or any other remedy.

STEP 2: Get the Consumer Complaint Drafted:

If the service provider is not willing to offer compensation or any other remedy, the next step is to file a Formal complaint under the Consumer Protection Act, 1986. The filing of the Complaint does not necessarily require a lawyer. The complaint can be filed by the aggrieved person. The

following details must be specified in the complaint:

- Name, description and the address of the complainant(s) and the Opposite Party or parties.
- Cause of Action, the approximate date, time and venue.
- Relevant facts relating to the cause of action.
- The Relief or Remedy claimed by the complainant in accordance with the facts of the case.
- Signature and Verification by the complainant or his authorized agent.

STEP 3: Attach Relevant Documents:

Copies of material evidence and relevant documents that support your case in Consumer Court are important. These documents include:

A copy of the bill, receipt of delivery, packaging of a product, a record of online booking of the goods bought

Warranty/Guarantee certificates

A copy of the written complaint and notice sent to the manufacturer/seller

STEP 4: Appropriate Forum:

Choose the appropriate forum for filing the complaint in accordance with the pecuniary jurisdiction which forum Estimated in reference to the total value of goods and services bought or availed and the amount of Compensation sought.

STEP 5: Pay Requisite Court Fees:

A prescribed fee is required to be paid along with the complaint filed depending on the forum. The court fee depends upon the value of goods bought and the amount of compensation sought.

STEP 6: Submit an Affidavit:

The person who wants to file a case in the Consumer Court is also required to submit an affidavit in the Court. The affidavit must state that the facts presented and statements made by the consumer are true to their knowledge.

Remedies :

(a) Removal of Defects:

If after proper testing the product proves to be defective, then the 'remove its defects' order can be passed by the authority concerned

(b) Replacement of Goods:

Orders can be passed to replace the defective product by a new non-defective product of the same type of restrictive trade practice can be checked with immediate effect.

C) Refund of Price:

Orders can be passed to refund the price paid by the complainant for the product.

(d) Award of Compensation:

If because of the negligence of the seller a consumer suffers physical or any other loss, then compensation for that loss can be demanded for.

e) Removal of Deficiency in Service:

If there is any deficiency in delivery of service, then orders can be passed to remove that deficiency. For Instance, if an insurance company makes unnecessary delay in giving final touch to the claim, then under this Act orders can be passed to immediately finalize the claim.

(f) Discontinuance of Unfair/Restrictive Trade Practice:

If a complaint is filed against unfair/restrictive trade practice, then under the Act that practice can be banned with immediate effect. For instance, if a gas company makes it compulsory for a consumer to buy gas stove with the gas connection, then this type of restrictive trade practice can be checked with immediate effect.

APPEALS:

(1) Notwithstanding anything contained in the Code of Criminal Procedure 1973 (2 of 1974), an appeal under section 27, both on facts and on law, shall lie from—

(a) the order made by the District Forum to the State Commission;

(b) the order made by the State Commission to the National Commission; and

(c) the order made by the National Commission to the Supreme Court.

(2) Except as aforesaid, no appeal shall lie to any court from any order of a District Forum or a State Commission or the National Commission.

(3) Every appeal under this section shall be preferred within a period of thirty days from the date of an order of a District Forum or a State Commission or, as the case may be, the National Commission: Provided that the State Commission or the National Commission or the Supreme Court, as the case may be, may entertain an appeal after the expiry of the said period of thirty days, if, it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days.

OFFENCES AND PENALTIES

- A person (by himself or through someone on his behalf) who manufactures/sells / stores/imports / distributes any product containing an adulterant will be punished with
- Imprisonment up to 6 months and a fine of up to 1 lakh rupees – in case of no injury to the consumer;
- Imprisonment up to 1 year and a fine of up to 3 lakh rupees – injury not amounting to grievous hurt;
- Imprisonment up to 7 years and a fine of up to 5 lakh rupees – in case of grievous hurt;

- Imprisonment of not less than 7 years, which may extend to life, and a fine of not less than 10 lakhs – in case of death of the consumer.

- A person (by himself or through someone on his behalf) who manufactures / sells / stores / imports / distributes spurious goods will be punished with:

- Imprisonment up to 1 year and a fine of up to 3 lakh rupees – injury not amounting to grievous hurt;

- Imprisonment up to 7 years and a fine of up to 5 lakh rupees – in case of grievous hurt;

- Imprisonment of not less than 7 years, which may extend to life, and a fine of not less than 10 lakhs – in case of death of a consumer.

Competition Act, 2002: Competition Act, 2002 is an act that is provisioned keeping in view the economic development of the country establishes a commission to prevent the practices which have adverse effect on the competition to promote and sustain competition in the Indian market. Also, it is established to protect the interests of consumers and to ensure the freedom of trade that is carried on by the various participants in the Indian market. It successfully replaced the Monopolies and Restrictive Trade Tactics Act, 196 and came into effect on 1st Sept 2009.

In cases where the compliance of the Competition Act is breached, the Commission has various reforms to Levy a penalty of such an entity. Let's see various scenarios under Competition Act, 2002 where the Commission can levy a penalty of a business entity or person.

Main features of Competition Act 2002

- Prohibition of anti competitive agreements.
- Prohibition of abuse of dominance.
- Regulation of combination (acquisition, mergers, and amalgamation of certain size)
- Establishment of the competition commission of India.
- Power and functions of the competition commission of India.

Competitive Agreement:

Competitive Agreement means any agreement, understanding or relationship similar in nature, purpose or effect to this Agreement for the marketing or distribution of any Competitive Product/s in any portion of the Competitive Territory

Anti-Competitive Agreements: (1) No enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India.

(2) Any agreement entered into in contravention of the provisions contained in subsection (1) shall be void.

(3) Any agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise or practice carried on, or decision taken by, any association of enterprises or association of persons.

DOMINANT POSITION & ABUSE OF DOMINANT POSITION

In simple terms 'dominant position' means something in a superior position as compared to others based on some factors. However, staying in a better-off position doesn't harm anyone, unless an individual is exploiting such power. Therefore having a dominant position cannot be considered bad per se. However, abusing such a position based on its superiority is considered inadequate.

The abuse of dominant position impedes fair competition between the firms, exploits consumers, and makes it difficult for other players to compete with the dominant enterprise on merit. The Act does not consider Dominance as anti-competitive but its abuse. Abuse of dominance rather than dominance should be the key for competition policy. Abuse of dominance which prevents, restricts or distorts competition needs to be frowned by Competition Law. But the dominance has the tendency to be abused.

Abuse of dominant position includes:

- Imposing unfair condition or price
- Predatory pricing
- Limiting production/market or technical development
- Certain barrier to entry
- Applying dissimilar conditions to similar transactions
- Denying market access
- Using dominant position in one market to gain advantages in another market

FACTORS TO DETERMINE THE COMPETITION COMMISSION

- market share of the enterprise
- size and resources of the enterprise
- size and importance of the competitors
- economic power of the enterprise including commercial advantages over competitors
- market structure and size of market
- social obligations and social costs

Competition Commission of India – Objectives

The CCI acts as the competition regulator in India. The Commission was established in 2003, although it became fully functional only by 2009. It aims at establishing a competitive environment in the Indian economy through proactive engagement with all the stakeholders, the government, and international jurisdiction. The objectives of the Commission are:

1. To prevent practices that harms the competition.
2. To promote and sustain competition in markets.

3. To protect the interests of consumers.
4. To ensure freedom of trade.

What is the Competition Act, 2002?

The Competition Act, 2002 was enacted by the Parliament of India and governs the Indian competition law. The Act received the presidential assent in 2003.

1. The **Monopolies and Restrictive Trade Practices Act, 1969 (MRTP Act)** was repealed and replaced by the Competition Act, 2002.
   - This was done based on the recommendations of the Raghavan Committee.

The Act:

- Prohibits anti-competitive agreements
- Prohibits abuse of dominant position by enterprises and
- Regulates combinations (acquisition, acquiring of control, and M&A), which can cause or is likely to cause an appreciable adverse effect on the competition within India.

The Act follows the philosophy of modern competition laws.

Need of Competition Laws

1. **To uphold free-enterprise:** the competition laws have been called the Magna Carta of free enterprise.
2. **Security against market distortions:** there is a constant risk of various people resorting to market distortions and abusing their dominant positions to resort to anti-competitive activities, thus competition laws are required to ensure that the market is safe from the various distortions.
3. **They also aid in the promotion of domestic industries:** Competition laws are required to ensure that the domestic industries do not get suppressed with an increase in globalization. They play a quintessential role in determining the viability of the domestic industries. However, to keep the Indian competition laws updated with the businesses of the digital world which include not many assets, the Indian government has established a Competition Law Review Committee.

Functions of Competition Commission of India

1. Ensuring that the benefit and welfare of the customers are maintained in the Indian Market.
2. An accelerated and inclusive economic growth through ensuring fair and healthy competition in the economic activities of the nation.
3. Ensuring the efficient utilization of the nation's resources through the execution of competition policies.
4. The Commission also undertakes competition advocacy.
5. It is also the antitrust ombudsman for small organizations.
6. The CCI will also scrutinize any foreign company that enters the Indian market through a merger or acquisition to ensure that it abides by India's competition laws – the Competition Act, 2002.
7. CCI also ensures interaction and cooperation with the other regulating authorities in the economy. This will ensure that the sectoral regulatory laws are agreeable with the competition laws.

8. It also acts as a business facilitator, by ensuring that a few firms do not establish dominance in the market and that there is a peaceful co-existence between the small and the large enterprises.

GST introduction:

Goods and services are the output of an economic system. Goods are tangible items sold to customers, while services are tasks performed for the benefit of the recipients. Examples of goods are automobiles, appliances, and clothing. Examples of services are legal advice, house cleaning, and consulting services. The output of a Business can lie somewhere between these two concepts.

Overview and evolution of GST :

Initially, it was proposed that GST would be introduced from 1st April 2010.The Empowered Committee of State Finance Ministers (EC) which had formulated the design of State VAT was requested to come up with a roadmap and structure for GST

The **salient features** of GST are as under:

(i) GST is applicable on 'supply' of goods or services as against the present concept on the manufacture of Goods or on sale of goods or on provision of services

(ii) GST is based on the principle of destination-based Consumption taxation as against the present principle of origin-based taxation

(iii) It is a dual GST with the Centre and the States simultaneously levying tax on a common base. GST to be levied by the Centre would be called Central GST (CGST) and that to be levied by the States would be called State GST (SGST).

(iv) An Integrated GST (IGST) would be levied an inter-state supply (including stock transfers) of goods or Services. This shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by Law on the recommendation of the GST Council.

Registration under GST:

Registration of an assesee or a 'taxable person' is the starting point in any tax law. It is the most Fundamental requirement of identification of the business for tax purposes and monitoring compliance Requirements

CGST Act provides for registration of every supplier affecting the taxable supplies. Every supplier having Aggregate turnover exceeding ₹ 20 lakh in the financial year is required to be registered. This threshold limit Of ₹ 20 lakh is reduced to ₹ 10 lakh in cases of supplies effected in the States of Himachal Pradesh, Uttarakhand, Manipur, Arunachal Pradesh, Assam, Jammu & Kashmir, Meghalaya, Mizoram, Nagaland, Sikkim, and Tripura. For calculating the threshold limit, supply of goods by a registered Job-worker after completing Job-work, shall be treated as the supply of goods by the "principal" and shall not be included in the aggregate Turnover of the registered job-worker.

Supply and valuation of supply under GST:

- The value of supply for a transaction is the price or consideration paid by the customer to the supplier. It includes extra charges like shipping and handling, but it does not include GST.
- Some actions that aren't sales, such as stock transfers between two states, are still considered taxable transactions. In these cases, the value of supply is the open market value, or the amount the goods are expected to sell for.
- The GST to be applied on a transaction will depend on the value of these goods and services sold or transferred.
- Buyers can pay for transactions with a monetary consideration by giving the seller cash or electronically transferring money. They can also pay for transactions with non-monetary considerations by giving the seller other goods or services in exchange.

GST Input Tax Credit Rules:

1.The buyer must possess a valid tax invoice, debit note, or other prescribed document issued by a registered dealer.

2.The buyer must have received the good or service. If the product is being received in installments, then the credit can be claimed against the tax invoice for the last installment.

3.The supplier must have paid the tax due on the buyer's purchases to the government either in cash or credit by claiming input tax credit.

4.Finally, the supplier must have filed GST returns. The most unique and unprecedented change GST brings to this entire tax setup is that you are allowed to claim input tax credit on your purchases only if your supplier is GST compliant and has paid the tax they had collected from you

5.To claim ITC, the buyer should pay the supplier for the supplies received (inclusive of tax) within 180 days from the date of issuing the invoice. If the buyer fails to do so, the amount of credit they would have availed, will be added to their output tax liability.

Types of Customs Duty

Basic Customs Duty

Basic custom duty is the duty imposed on the value of the goods at a specific rate. The duty is fixed at a specified rate of ad-valorem basis. This duty has been imposed from 1962 and was amended from time to time and today is regulated by the Customs Tariff Act of 1975. The Central Government has the right to exempt any goods from the tax.

Countervailing Duty (CVD)

This duty is imposed by the Central Government when a country is paying the subsidy to the exporters who are exporting goods to India. This amount of duty is equivalent to the subsidy paid by them. This duty is applicable under Sec 9 of the Customs Tariff Act.

Additional Customs Duty or Special CVD

In order to equalize imports with locals taxes like service tax, VAT and other domestic taxes which are imposed from time to time, a special countervailing duty is imposed on imported goods. Hence, is imposed to bring imports on an equal track with the goods produced or manufactured in India. This is to promote fair trade & competition practices in our country.

Safeguard Duty

In order to make sure that no harm is caused to the domestic industries of India, a safeguard duty is imposed to safeguard the interest of our local domestic industries. It is calculated on the basis of loss suffered by our local industries.

Anti Dumping Duty

Often, large manufacturer from abroad may export goods at very low prices compared to prices in the domestic market. Such dumping may be with intention to cripple domestic industry or to dispose of their excess stock. This is called 'dumping'. In order to avoid such dumping, Central Government can impose, under section 9A of Customs Tariff Act, anti-dumping duty up to margin of dumping on such articles, if the goods are being sold at less than its normal value. Levy of such anti dumping duty is permissible as per WTO agreement. Anti dumping action can be taken only when there is an Indian industry producing 'like articles'.

National Calamity Contingent Duty

This duty is imposed by Sec 129 of the Finance Act. The duty is levied on goods like tobacco, pan masala or any items that are harmful for health. The rate of the tax varies from 10% to 45% and different rates are applied for different reasons.

Education Cess on Customs Duty

At the prescribed rate is levied as a percentage of aggregate duties of customs. If goods are fully exempted from duty or are chargeable to nil duty or are cleared without payment of duty under prescribed procedure such as clearance under bond, no cess would be levied.

Protective Duties

Tariff Commission has been established under Tariff Commission Act, 1951. If the Tariff Commission recommends and Central Government is satisfied that immediate action is necessary to protect interests of Indian industry, protective customs duty at the rate recommended may be imposed under section 6 of Customs Tariff Act. The protective duty will be valid till the date prescribed in the notification.

INDIRECT TAXES:

1. Service Tax in India

Service Tax is a tax which is levied on the Services provided by an entity. If an entity is providing any service, they are required to levy Service Tax on the same. This service tax is collected from the recipient of service and deposited with the Central Govt.

2. Excise Duty in India

Excise Duty is an indirect tax levied on those goods which are manufactured in India. The taxable event in this case is manufacture and the liability of central excise duty arises as soon as the goods are manufactured. It is a tax on manufacturing which is paid by the manufacturer, who passes its incidence on to other customers and recovers the same from them.

3. VAT in India

VAT stands for Value Added Tax and is levied on the sale of movable goods in India. VAT is a multi-point destination based system of taxation, with tax being levied on value addition at each stage of transaction in the production/ distribution chain. The term 'value addition' implies the increase in value of goods and services at each stage of production or transfer of goods. VAT is a tax on the final consumption of goods or services and is ultimately borne by the consumer

4. Customs Duty in India

Customs Duty is a type of Indirect Tax which is levied on goods which are imported into India. In some cases, it is also levied when the goods are exported from India.

In India, the basic law for levy and collection of customs duty is Customs Act, 1962 . It provides for levy and collection of duty on imports and exports, import/export procedures, prohibitions on importation and exportation of goods, penalties, offences, etc.

5. Securities Transaction Tax (STT)

Securities Transaction Tax or STT is a type of Indirect Tax which is levied at the time of sale/purchase of securities through the Indian Stock Exchanges. These securities include Shares, Mutual Funds, F&O Transactions etc.

6. Stamp Duty

Stamp Duty is an indirect tax levied by the State Govt's on the transfer of immovable property located in their state. It is also levied by the Govt on all Legal Documents. The Stamp Duty Rates vary from State to State.

7. Entertainment Tax

In India, Entertainment Tax is levied on every financial transaction that is related to entertainment and is reserved primarily for the state governments. Some forms of entertainment on which entertainment tax is levied include Amusement Parks, Video Games, Arcades, Exhibitions, Celebrity Stage Shows, and Sports Activities etc.

Apart from the above mentioned Indirect Taxes, there are several other Indirect Taxes in India as well like Luxury Tax, Sales Tax, Octroi etc.

Difference between holder and holder in due course

BASIS OF COMPARISON	HOLDER	HOLDER IN DUE COURSE
Meaning	A holder is a party who is entitled in his own name and has legally received the negotiable instrument, i.e., bill, note or cheque from a party who is liable to transfer it to recover the amount by delivery or endorsement.	A holder in due is a person who get the possession of the negotiable instrument in a good faith before it becomes due for the payment and he has no idea of the defective title of the person who transfers the instrument to him.
Section	Section 8 of negotiable instrument act,1881	Section 9 of negotiable instrument act,1881
Consideration	In this consideration is not necessary.	In this consideration us necessary.
Right to sue	Holder does not have the right to sue all prior parties.	Holder-in-due course can sue all the prior parties.
Good faith	In this instrument may or may not be in good faith.	In this the instrument must be in good faith.
Maturity	A person can become a holder before or after the maturity of the negotiable instrument.	A person can become a holder in due course only before the maturity of the negotiable instrument