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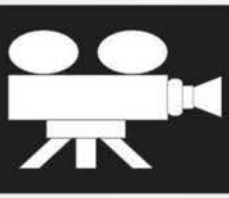

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BUSINESS ENVIRONMENT AND LAW

{Strictly as per new syllabus prescribed by The Institute of Company Secretaries of India (ICSI)}

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CHAPTER 1 BUSINESS ENVIRONMENT

➢ **KEY POINTS**

- **INTRODUCTION AND FEATURES**
- **CONCEPTS OF VISION & MISSION STATEMENTS**
- **TYPES OF ENVIRONMENT**
  1. **INTERNAL TO ENVIRONMENT:-**
     - **Value system, management structure and nature**
     - **Human resource, company image and brand value, physical assets, facilities research and development intangibles competitive Advantage**
  2. **EXTERNAL TO THE ENTERPRISE**
     - **Micro Suppliers, customers, Market intermediaries**
     - **Macro Demography, natural, Legal &Political Technological, Economy, Competition, Sociocu.**
     - **ltural and International .**
  3. **BUSINESS ENVIRONMENT WITH REFERENCE TO GLOBAL INTEGRATION**

INTRODUCTION AND FEATURES

Business means all activities which generates wealth. In these activities, goods are produced or purchased and then are sold on profits. Human beings are continuously engaged in some activity or other in order to satisfy their unlimited wants. Business is an economic activity, which is related with continuous and regular production and distribution of goods and services for satisfying human wants.

MEANING OF BUSINESS ENVIRONMENT: Each business organization operates in its unique environment. Environment influence businesses and also gets influenced by it. Business environment may be defined as the set of external and internal factors which affects the decisions of business. No business can function free of interacting and influencing forces. The success of every business depends on adapting itself to the environment within which it functions.

FUTURES OF BUSINESS ENVIRONMENT

Some of the features of business environment are-

- Totality of external forces
- Specific and general forces
- Dynamic nature
- Uncertainty
- Relativity
- Multi- faceted

IMPORTANCE OF BUSINESS ENVIRONMENT:

- First mover advantage
- Identification of threats
- Coping with rapid changes

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- Improving performance
- Giving direction for growth
- Meeting competition
- Image building
- Continuous learning

CONCEPTS OF VISION AND MISSION STATEMENTS

Vision- A vision statement describes the desired future position of the company. Your Vision statement is where you want your business to reach at. It is a future dream for your business.
A Vision Statement defines what your business will do and why it will exist tomorrow. Your Vision Statement must inspire and motivate staff, instill confidence, and represent your business by articulating a common vision of the future.

Mission Statement

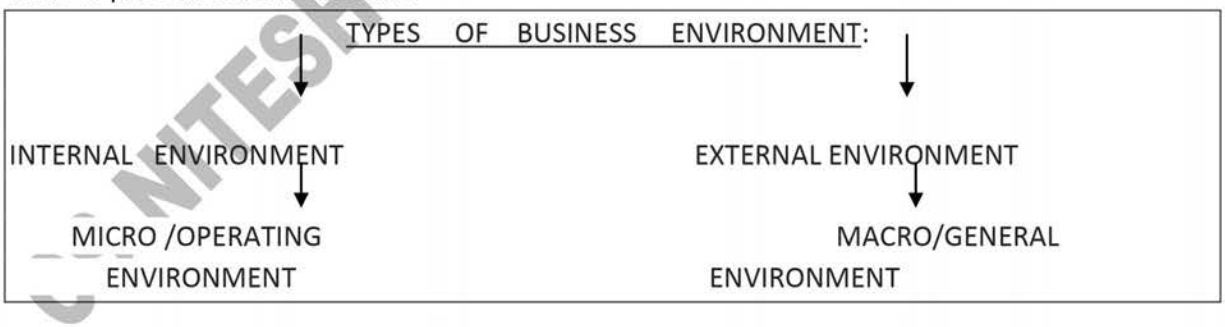
Where your vision is your ultimate goal, your mission is how you will get there. Your mission explains why your business exists.
It can be crafted in the following steps:

— What does your company do?
— Who do you do it for?
— Where do you exist?
— How does it do it?
— Why does your company do it?

It may help to start with "our mission is to...." And then fill the rest.

TYPES OF BUSINESS ENVIRONMENT

There are mainly two types of business environment, internal and external. A business has absolute control in the internal environment, whereas it has no control on the external environment. It is therefore, required by businesses, to modify their internal environment on the basis of pressures from external.



INTERNAL EVIORONMENT

Business means all activities which generates wealth. In these activities, goods are produced or purchased and then are sold on profits. Human beings are continuously engaged in some activity or other in order to satisfy their unlimited wants. Business is an economic activity, which is related with continuous and regular production and distribution of goods and services for satisfying human wants.

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*According to **Margaret j wheatley** – The nature of the global business environment guarantees that no matter how hard we work to create a stable and healthy organization, our organization will continue to experience dramatic changes far beyond our control.*

*According to **Barnard** " Environment consists of atoms and molecules, agglomeration of things in motion, alive, of men and emotions, of physical and social law, social ideas, norms of actions, of forces and resistance.*

Components of internal environment

It includes 6 Ms i.e.

- Man (Human Resource).
- Money (Financial Factors).
- Marketing Resources.
- Machinery (Physical Assets).
- Management Structure and Nature.
- Miscellaneous Factors (Research and Development, Company Image and Brand Equity, Value System, Competitive Advantage).

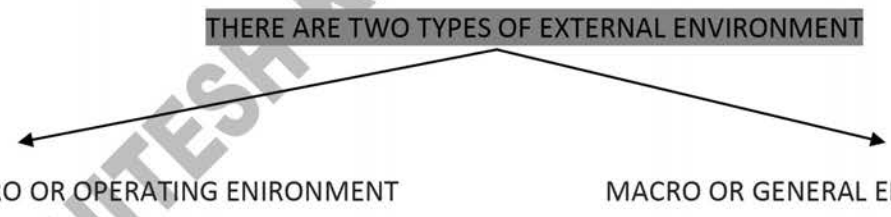
External environment

The external environment of an organisation comprises of all entities that exists outside its boundaries, but have significant influence over its growth and survival. An organisation has little or no control over its external environment but needs to constantly monitor and adapt to these external changes. A proactive or reactive response leads to significantly different outcomes.

Types of external environment

There are two types of external environment

- Micro/Operating Environment.
- Macro/General Environment.



MICRO ENVIRONMENT

Micro environment is related to small area of an organization. It influences an organization regularly and directly. It consist of suppliers, consumers, competitors, market etc. Micro environment of business becomes from internal part of company. This environment includes different factors which can be controlled by company.

Micro environmental factors include-

- **Customers**-Customers also affect on company's business. If we do not care our customers, our customers will buy from other company. Due to this, our sale will decrease. We should make good relation with our customers.

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- **Employees-**Employing staff with relevant skills and experience is essential. This process begins at recruitment stage and continues throughout an employee's employment via ongoing training and promotion opportunities. Training and development play a critical role in achieving a competitive edge; especially in Service Sector Marketing. If a business employs staff without motivation, skills or experience it will affect customer service and ultimately sales.
- **Suppliers-**Suppliers provide businesses with the materials they need to carry out their business activities. A supplier's behavior will directly impact the business it supplies. For example if a supplier provides a poor service this could increase timescales or product quality. An increase in raw material prices will affect an organization's Marketing Mix strategy and may even force price increases. Close supplier relationships are an effective way to remain competitive and secure quality products.
- **Media-**Positive media attention can "make" an organization (or its products) and negative media attention can "break" an organization. Organizations need to manage the media so that the media help promote the positive things about the organization and reduce the impact of a negative event on their reputation.
- **Competitors-**Competitor analysis and monitoring is crucial if an organization is to maintain or improve its position within the market. If a business is unaware of its competitor's activities they will find it very difficult to "beat" their competitors.

MACRO ENVIRONMENT

Macro environment is also known as general environment and remote environment. Macro environment of business means that environment which cannot be controlled by company. In this environment economic, social, political and technical environments are included. These environment powers affect not only our company or firm but these may affect whole industry. So, we cannot stop of its affect. It means changing in this environment may be risky for our business.

The acronym for macro analysis is "STEEP"

STEEP stands for- S Socio-cultural and demographics
T Technology
E Economic conditions
E Ecology and physical environment
P Political and legal

1. **Socio cultural and demographics-** Socio cultural environment consist of factors related to human relationships and the impact of social attitudes and cultural values which has bearing on the business of the organization. The beliefs, values and norms of a society determine how business and organizations should be inter related. The social environment of business includes social factors like customs, values, poverty, literacy etc. Demographics refer to the size, density, distribution and growth rate of population. All these demographic factors have a bearing on the demand for various goods and services.
2. **Technology-** Technology can act as both opportunity and threat to a business .It can act as opportunity as business can take advantage of adopting technological innovation to their

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strategic advantage. However, at the same time technology can act as a threat to the business if firms are not able to take their advantage.

3. **Economic conditions-** We can introduce economic environment as all the factors which affect business due to changing the economic policies, economic system and economic conditions. In big companies, there may be large number of economist whose work is to make economic policies and economic planning.
4. **Ecology and physical environment-** The ecology and physical environment plays a large part in many businesses especially for those which carry out production and manufacturing activities. These factors include the availability of natural resources, weather and climatic conditions, location aspect etc.
5. **Political and legal-** The political-legal dimension of the general environment also affects business activity. The philosophy of the political parties in power influences business practices. The legal environment serves to define what organizations can and cannot do at a particular point in time.

BUSINESS ENVIRONMENT WITH REFERENCE TO GLOBAL INTEGRATION

The economic environment of business in India has been changing at a fast rate mainly due to the changes in the economic policies of the government and also due to global integration. At the time of independence, the Indian economy was basically agrarian with a weak industrial base. As a result, the government of India introduced radical changes in economic policies 1991
The following developments are-

- LIBERALISATION
- PRIVATISATION
- GLOBALISATION

Liberalisation refers to the process of eliminating unnecessary controls and restrictions on the smooth functioning of business enterprises.

Objectives of Liberalisation:

(i) Abolishing industrial licensing requirement in most of the industries,
(ii) Freedom in deciding the scale of business activities,
(iii) Freedom in fixing prices of goods and services,
(iv) Simplifying the procedure for imports and exports,
(v) Reduction in tax rates,
(vi) Simplified policies to attract foreign capital and technology to India.

Privatisation and its objectives

Privatization, which has become a universal trend, means transfer of ownership and/or management of an enterprise from the public sector to the private sector.
It also means the withdrawal of the state from an industry or sector, partially or fully. Another dimension of privatization is opening up of an industry that has been reserved for the public sector to the private sector.

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'Privatization is an inevitable historical reaction to the indiscriminate expansion of the state sector and the associated problems. Even in the 'communist' countries it became a vital measure of economic rejuvenation.

The objects are:

(i) To improve the performance of PSUs so as to lessen the financial burden on taxpayers.
(ii) To increase the size and dynamism of the private sector, distributing ownership more widely in the population at large.
(iii) To encourage and to facilitate private sector investments, from both domestic and foreign sources.
(iv) To generate revenues for the state,
(v) To reduce the administrative burden on the state.
(vi) Launching and sustaining the transformation of the economy from a command to a market model.

Globalisation

Globalization may be defined as "the growing economic interdependence of countries worldwide through increasing volume and variety of cross border transactions in goods and services and of international capital flows, and also through the more rapid and widespread diffusion of technology".

Globalization may be considered at two levels viz. at the macro level (i.e., globalization of the world economy) and at the micro level (i.e., globalization, of the business and the firm")

Globalization of the world economy is achieved, quite obviously, by globalizing the national economies. Globalization of the economies and globalization of business are very much interdependent.

Reasons for Globalisation

1. The rapid shrinking of time and distance across the globe thanks to faster communication, speedier transportation, growing financial flows and rapid technological changes.
2. The domestic markets are no longer adequate rich. It is necessary to search of international markets and to set up overseas production facilities.
3. Companies may choose for going international to find political stability, which is relatively good in other countries.
4. To get technology and managerial know-how.
5. Companies often set up overseas plants to reduce high transportation costs.
6. Some companies set up plants overseas so as to be close to their raw materials supply and to the markets for their finished products.
7. Other developments also contribute to the increasing international of business.
8. The US, Canada and Mexico have signed the North American Free Trade agreement (NAFTA), which will remove all barriers to trade among these countries.
9. The creation of the World Trade Organization (WTO) is stimulating increased cross-border trade.

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NEW MARKETS

- Growing global markets in services - banking, insurance, transport.
- New financial markets - deregulated, globally linked, working around the clock, with action at a distance in real time, with new instruments such as derivatives.
- Deregulation of anti - trust laws and proliferation of mergers and acquisitions.
- Global consumer markets with global brands.

NEW RULS AND NORMS

- Market economic policies spreading around the world with greater privatization and liberalization than in either decides
- Widespread adoption of democracy as the choice of political regime
- Human rights convention and instruments building up in the both coverage and number of signatories and growing awareness among people around the world
- Consensus goals and action agenda for the development.
- Multilateral agreements in trade, taking on such new agendas as environmental and social conditions.
- New multiple agreements –for services ,intellectual property ,communication

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MCQ

1: Business may be understood as the of an enterprise to supply consumers with goods and services for a profit.

(a) Organized efforts
(b) Unorganised efforts
(c) Normal efforts
(d) Commercial efforts

2: All businesses share one common purpose that is _____.

(a) To produce and sell
(b) To earn goodwill
(c) To earn profits
(d) To serve the society

3: It is understood that the role of business iscrucial from the point of view of _____.

(a) Individual levels
(b) National levels
(c) Individuals and national society as well
(d) Social levels

4: Modern business is dynamic. If there is any single word that can best describe today's business, it is _____.

(a) Dynamism
(b) Change
(c) Status
(d) None of the above

5: It is _____ that makes the companies spend substantially on Research and development (R&D) to survive in the market.

(a) Change
(b) Status
(c) Image
(d) All of the above

6: _____ refers to all forces, which have a bearing on the functioning of business.

(a) Growth
(b) Reputation
(c) Goodwill and image building
(d) Environment

7: The success of every business depends on adapting itself to the _____ within which it functions.

(a) Society
(b) Norms
(c) Environment
(d) Circumstances

8: It is very necessary to have a clear understanding of the concept of _____ and the nature of its various components.

(a) Business environment
(b) National environment
(c) Geographical environment
(d) Circumstantial environment

9: Business environment includes _____.

(a) Both specific and general forces
(b) General forces
(c) Specific forces
(d) None of the above

10: Business environment is a relative concept since it differs from country to _____.

(a) Region to region
(b) Country to country and even region to region
(c) Country to country
(d) Society to society

11: There is a close and continuous interaction between the business and its _____.

(a) Employees
(b) Competitors
(c) Government
(d) Environment

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12: _____ helps an enterprise to be the first to exploit them instead of losing them to competitors.

(a) Opportunities
(b) Business environment
(c) Early identification of opportunities
(d) All of the above

13: Identification of _____ helps in taking corrective and improving measures to survive the competition.

(a) Possible threats
(b) Opportunities
(c) Weakened areas
(d) Common problems

14: All types of enterprises are facing increasingly _____.

(a) High competition
(b) Dynamic environment
(c) General threats
(d) External pressures

15: The enterprises that continuously monitor their environment and adopt suitable business practices are the ones which not only improve their present performance but also continue to succeed in the market for a _____.

(a) Longer period
(b) Shorter period
(c) Normal period
(d) Uncertain period

16: The vision and mission not only guides the course of the business and its employees, it also is paramount in marketing your _____.

(a) Goodwill
(b) Brand to your customers
(c) Image
(d) Products

17. _____ describes the desired future position of the company.

(a) A Vision Statement
(b) A mission statement
(c) Both (a) and (b)
(d) Goals

18. _____ defines the company's business, its objectives and its approach to reach those objectives.

(a) A vision statement
(b) A Mission Statement
(c) Both (a) and (b)
(d) Goals

19. Elements of _____ are often combined to provide a statement of the purposes, goals and values of the company.

(a) Mission statement
(b) Vision statement
(c) Mission and Vision Statements
(d) Goals

20: Your _____ is where you want your business to reach at.

(a) Vision statement
(b) Mission statement
(c) Both (a) and (b)
(d) Goals

21: The human resource is the important factor for any organization as it contributes to the _____ of any organization.

(a) Strengths
(b) Weaknesses
(c) Strength and weakness
(d) Goodwill and image

22: The availability of plant and machinery is dependent on technological development of the country and the government's approach towards _____.

(a) Foreign technical collaboration
(b) Foreign collaboration
(c) Technical collaboration
(d) National collaboration

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23: A firm working in _____, needs to have a fast reaction time because its competitors are introducing new products all the time.

(a) technical environment
(b) High technological environment
(c) Foreign environment
(d) Uncertain environment

24: Organizations in _____ tend to have rigid, hierarchical structures, while those in changing markets are more adaptive.

(a) Fast markets
(b) Slow markets
(c) Normal markets
(d) International markets

25: _____ of an organisation comprises of all entities that exists outside its boundaries, but have significant influence over its growth and survival.

(a) The external environment
(b) The internal environment
(c) Business environment
(d) Social environment

26: _____ is also known as the task environment and operating environment because the micro environmental forces, though are external factors, still have a direct bearing on the operations of the firm.

(a) The macro environment
(b) The global environment
(c) The micro environment
(d) The international environment

27: _____ is also known as general environment and remote environment.

(a) Micro environment
(b) Macro environment
(c) Social environment
(d) International environment

28: _____ is primarily concerned with major issues and upcoming changes in the environment.

(a) The macro environment
(b) The micro environment
(c) The international environment
(d) The social environment

29: The economic environment of business in India has been changing at a fast rate mainly due to the changes in the economic policies of the government and also due to _____.

(a) Social integration
(b) National integration
(c) Global integration
(d) Geographical integration

30: The Government adopted several control measures on the functioning of enterprises.

(a) Private sector
(b) Public sector
(c) Tiny sector
(d) Small and medium sector

31: _____ refers to the process of eliminating unnecessary controls and restrictions on the smooth functioning of business enterprises.

(a) Globalisation
(b) Liberalisation
(c) Nationalisation
(d) General legalisation

32: Through _____ Indian Economy has opened up and started interacting with the world in a big way.

(a) Liberalisation process
(b) Globalisation
(c) Nationalisation
(d) General legalisation

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33: _____ which has become a universal trend, means transfer of ownership and/or management of an enterprise from the public sector to the private sector.

(a) Globalisation
(b) Privatization
(c) Socialisation
(d) Nationalisation

34: _____ is an inevitable historical reaction to the indiscriminate expansion of the state sector and the associated problems. Even in the 'communist' countries it became a vital measure of economic rejuvenation.

(a) Privatization
(b) Globalisation
(c) Socialisation
(d) Nationalisation

35: _____ has in fact become a buzzword with Indian firms now and many are expanding their overseas business by different strategies.

(a) Globalisation
(b) Socialisation
(c) Globalization
(d) Privatization

36: _____ may be defined as "the growing economic interdependence of countries worldwide through increasing volume and variety of cross border transactions in goods and services and of international capital flows, and also through the more rapid and widespread diffusion of technology".

(a) Globalization
(b) Socialisation
(c) Privatization
(d) Nationalisation

37: Globalisation of the world economy is achieved, quite obviously, by _____.

(a) Legalisation the national economies
(b) Globalizing the national economies
(c) Privatising the national economies
(d) Nationalising the national economies

38: The creation of the _____ is stimulating increased cross-border trade.

(a) International Trade Organisation
(b) Cross Border Organisation
(c) World Trade Organization (WTO)
(d) World Health Organisation (WHO)

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ANSWERS

1	(a)	**2**	(c)	**3**	(c)	**4**	(b)	**5**	(a)	**6**	(d)	**7**	(c)
8	(a)	**9**	(a)	**10**	(b)	**11**	(d)	**12**	(c)	**13**	(a)	**14**	(b)
15	(a)	**16**	(b)	**17**	(a)	**18**	(b)	**19**	(c)	**20**	(a)	**21**	(c)
22	(a)	**23**	(b)	**24**	(b)	**25**	(a)	**26**	(c)	**27**	(b)	**28**	(a)
29	(c)	**30**	(a)	**31**	(b)	**32**	(a)	**33**	(b)	**34**	(a)	**35**	(c)
36	(a)	**37**	(b)	**38**	(c)								

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CHAPTER 2 FORMS OF BUSINESS ORGANISATION

KEY POINTS

1. **Concepts and features in relation to following business models.**
   - **Sole Proprietorship**
   - **Partnership**
   - **Company**
   - **Statutory Bodies and Corporations**
   - **Hindu Undivided Family Business**
   - **Co-Operative, Societies and Trusts**
   - **Limited Liability Partnership.**
   - **Others forms of organization**

MEANING AND CHARACTERISTICS OF BUSINESS ORGANISATION

A business organization is an individual or group of people that collaborate to achieve certain commercial goals. Some business organizations are formed to earn income for owners. Other business organizations, called nonprofits, are formed for public purposes.

Business activities consist of industrial and commercial activities. Business organizations are units that undertake these activities.

CHARACTERISTICS OF BUSINESS ORGANIZATIONS:

(i) ***Distinct Ownership:*** The term ownership refers to the right of an individual or a group of individuals to acquire legal title to assets or properties for the purpose of running the business. A business firm may be owned by one individual or a group of individuals jointly.

(ii) ***Lawful Business:*** Every business enterprise must undertake such business which is lawful, that is the business must not involve activities which are illegal.

(iii) ***Separate Status and Management:*** Every business undertaking is an independent entity. It has its own assets and liabilities. It has its own way of functioning. The profits earned or losses incurred by one firm cannot be accounted for by any other firm.

(iv) ***Dealing in Goods and Services:*** Every business undertaking is engaged in the production and/or distribution of goods or services in exchange of money.

(v) ***Continuity of Business Operations:*** All business enterprise engage in operation on a continuous basis. Any unit having just one single operation or transaction is not a business unit.

(vi) ***Risk Involvement:*** Business undertakings are always exposed to risk and uncertainty. Business is influenced by future conditions which are unpredictable and uncertain. This makes business decisions risky, thereby increasing the chances of loss arising out of business.

FORMS OF BUSINESS ORGANISATION

Important forms of business organisation

(i) Sole Proprietorship

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(ii) Hindu Undivided Family Business.
(iii) Partnership.
(iv) Company.
(v) Statutory Bodies and Corporations.
(vi) Co-Operatives, Societies and Trusts.
(vii) Limited Liability Partnership.

SOLE PROPRIETORSHIP

The sole proprietorship is the simplest business form under which one can operate a business. The sole proprietorship is not a legal entity. It simply refers to a person who owns the business and is personally responsible for its debts. A sole proprietorship can operate under the name of its owner or it can do business under a fictitious name, such as Nancy's Nail Salon. The fictitious name is simply a trade name--it does not create a legal entity separate from the sole proprietor owner.

CHARACTERISTICS:

- Single ownership – A single individual always owns sole proprietorship form of business organization. That individual owns all assets and liabilities.
- No sharing of profit and loss – The entire profit arising out of sole proprietorship business goes to the sole proprietor.
- One man's capital – The capital required by a sole proprietorship form of business organization is arranged by the sole proprietor.
- One man's control – The controlling power in a sole proprietorship business always remains with the owner.
- Unlimited liability – The liability of the sole proprietor is unlimited.
- Less legal formalities – The formation and operation of a sole proprietorship form of business organization requires almost no legal formalities.

ADVANTAGES:

- Easy to form and wind up - The formation of sole proprietorship business is very easy and simple. No legal formalities are involved for setting up the business excepting a license or permission in certain cases.
- Direct motivation - The entrepreneur owns all and risks all. The entire profit goes to his pocket. This motivates the proprietor to put his heart and soul in the business to earn more profit.
- Quick decision and prompt action - When the decision is to be taken by one person, it is sure to be quick.
- Better control - The entrepreneur takes all decisions affecting the business. He formulates out the plan and executes the same. His eyes are on everything and everyone.
- Maintenance of business secrets - Each and every aspect of the business is looked after by the proprietor and the business secrets are known to him only. He has no legal obligation to publish his accounts.
- Close personal relation - There is scope for personal relationship with the entrepreneur and customers in sole proprietorship business.

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- Flexibility in operation - The sole proprietorship business is undertaken on a small scale. If any change is required in business operations, it is easy and quick to bring the changes.
- Encourages self employment – Sole proprietorship form of business organization leads to creation of employment

DISADVANTAGES:

- Limited capital - The financial resources of any small entrepreneur as an individual is limited. He mainly finances from his own savings or borrows from financial institutions, friends and relatives as per his capacity. Thus, limited resource is the major drawback of this form of business.
- Unlimited liability - Since the liability of the sole proprietor is unlimited, the private properties of the proprietor is also at risk.
- Lack of continuity - The continuity of the business is uncertain because the business may come to an end due to the incapacity or death of the proprietor.
- Limited size - The limited financial resources, limited managerial capability of the proprietor, risk to the private property etc. makes the so proprietorship business unsuitable for large-scale business.
- Lack of managerial expertise - Modern business requires updated managerial skills in each and every sphere of activity. We cannot hope a single individual to possess all the managerial talents necessary to carry on a business efficiently.

SOLE PROPRIETORSHIP FORM OF BUSINESS ORGANIZATION IS SUITABLE:

- Where the market for a product is small and local
- Where the customers are given personal attention.
- Where the nature of business is simple.
- Where the capital requirement is small and risk is not heavy.
- Where manual skill is required.

HINDU UNDIVIDED FAMILY

HUF – All persons lineally descended from a common ancestor and joint in property, food and worship. The HUF business is a form of organization which is found only in India. The affairs of business are managed by the head of the family, who is known as the 'KARTA'. A HUF comes into existence as per the Hindu inheritance laws of India. In a HUF business only the male members get a share in the business. Thus an individual, his sons, and his grandson become the members of a HUF by birth. They are called co-parceners. A daughter has no right to ask for a partition and therefore, she is not co-parceners.

Karta is the eldest member of the family. He is Hindu patriarch. Only a co-parceners can become a karta.

The position of karta is sui generis i.e. of his own kind or peculiar to himself. It basically means that something has very special characteristics. They are so special, that the thing cannot really be compared to anything else.

An adopted son who is eldest in the family can be qualified to become karta.

CS NITESH KR. JAISWAL CS CLASSES

CHARACTERISTICS-

- Legal status – It is governed by Hindu Law. It cannot enter into partnership agreement with others.
- Membership – There is no membership other than the members of the joint family.
- Profit sharing – All co-parceners have equal share in the profits of the business.
- Management – The management of a HUF is in the hands of the senior most family member who is known as the karta.
- Liability – The liability of each member of the HUF is limited to the extent of his share in the business.
- Fluctuating share – The individual share of each co-parcener keeps on fluctuating.
- Continuity – A HUF business continues to exist on the death of any co-parcener.

ADVANTAGES

- Assured share in profit- Every co-parcener is assured a share of the profit irrespective of his contribution to the success of the business.
- Freedom in managing – The karta enjoys full freedom in conducting the family business.
- Sharing of knowledge and experience – A HUF business provides opportunity for the young members of the family to get the benefit of knowledge and experience of the elder member and also helps in inculcating virtues like discipline, self sacrifice, tolerance etc.
- Unlimited liability of the karta – The liability of the co-parceners is limited, except for that of the karta.
- Continued existence – A HUF business is not affected by the insolvency or death of any member including karta.

DISADVANTAGES

- Limited resources – HUF business has generally limited financial and managerial resources.
- Lack of motivation – There is always a lack of motivation among the members to work hard.
- Scope of misuse of powers by karta – Since the karta has absolute freedom to manage the business, there is scope for him to misuse it for his personal gains.
- Scope for conflicts – In a HUF business the main members of three successor generation are involved. It always lead to conflict between generations.
- Instability – The continuity of business is always under threat. If a co-parcener ask for a partition, the business is closed.

PARTNERSHIP

Partnership is an association of two or more individuals who agree to share the profits of a business which is managed and carried on either by all or by any, some of them acting for all. Each member of group is individually known as 'partner' and collectively the members are known as a 'partnership firm'.

CS NITESH KR. JAISWAL CS CLASSES

CHARACTERISTICS-

- Number of persons – A minimum of two persons is required to start a partnership business. The maximum membership limit is 10 in case of banking business and 20 in case of any other type of business.
- Contractual relationship – The relation between the partners are created by contract.
- Competence of partners – Since individuals have to enter into contract to become partners, they must be competent to do so.
- Sharing of profit and loss – The partners can share profit in any ratio agreed by them.
- Unlimited liability – The partners have unlimited liability.
- Principal-agent relationship – The business in a partnership firm may be carried on by all or any one of them acting for all. This means that every partner is an agent when he is acting on behalf of others and he is principal when others act on his behalf.
- Transfer of interest – No partner can sell or transfer his interest in the firm to anyone without the consent of other partners.
- Legal status – Law does not recognize the firm as a separate entity distinct from the partners.
- Voluntary registration – Registration of partnership is not compulsory.
- Dissolution of partnership – Dissolution does not mean complete closure of firm but it also means any change in existing agreement.

ADVANTAGES

1. Easy Formation: Registration is not compulsory in the case of Partnership firm. It can be formed without any legal formality and expenses. Thus they are simple and economical to form and operate.
2. Favorable credit standing: As the liability of each partner is unlimited the financial institution can easily advance loans.
3. Large capital: Due the more number of members the partnership firm has larger resources for the business operations as compared to sole proprietorship.
4. Greater management ability: Business of a partnership firm is very well managed by all the partners as they take interest in the daily affairs of business because of the ownership, profit and control.
5. Union of business ability: Is a old saying that two heads are better than one. In case of partnership firm, the partners consult each other for taking decisions.
6. Profit incentive: Partners are encouraged to work harder because higher the profits, higher will be the partners share.
7. Advantages of secrecy: The partners can keep the business secrets to themselves.
8. Retention of skilled worker: If an employee in a firm is found to be highly skilled, he can be the partner of the firm with the consent of all the existing partners.
9. Brake on hasty decisions: Partners are conscious of taking decision as there liability is unlimited. Special protection to minor: A minor of dead partner can be admitted only to benefits of partners with the consent of other partners.
10. Increase in the spirit of co-operation: The partners are fully aware that a small fight can lead to end of partnership. This motivates them to work with full co-operation.
11. Tax advantage: The partners pay tax on their share of profit.
12. Ease of dissolution: There is no complex procedure in case of partnership firm to dissolve.

CS NITESH KR. JAISWAL CS CLASSES

DISADVANTAGES

1. Unlimited liability: The major disadvantage of firm is unlimited liability.
2. Limited life of firm: The duration of the firm is always uncertain.
3. Frozen investment: It is very easy for a partner to invest money in the firm but it is very difficult to withdraw it.
4. Disputes among the partners: In a partnership firm, there is lot of chances of conflict among partners. It is always advices to enter into contract by partners to avoid conflicts.
5. Possibility of misuse of resources: Resources of the firm are jointly owned, therefore there is a great possibility of misuse of resources.
6. Loss of business opportunities: In case of differences and conflict among partners, a delay may take place in decision making.
7. Divided control: In a partnership firm control is divided among partners.
8. Lack of public confidence: Partnership firms may not enjoy public confidence due to lack of publicity.
9. Implied authority: There is implied authority in a partnership firm which means that if loss occurs due to negligence of one partner that may lead to loss of other partners.

COMPANY

A company is meant an association of many persons who contribute
Money or money's worth to a common stock and employ it in some trade or business, and who share the profit and loss (as the case may be) arising there from. The common stock contributed is denoted in money and is the capital of the company. The persons who contribute it, or to whom it belongs, are members. The proportion of capital to which each member is entitled is his share. Shares are always transferable.

CHARACTERISTICS

- Artificial legal person - A company is an artificial person. But for many purposes, a company is a legal person like a natural person. It has the right to acquire and dispose of the property, to enter into contract with third parties in its own name, and can sue and be sued in its own name.
- Incorporated body - A company is created when it is registered under the Companies Act. It comes into being from the date mentioned in the certificate of incorporation.
- Capital division into shares – The capital of the company is divided into shares.
- Transferability of shares – The shares of the company are easily transferable.
- Perpetual existence – Changes in company's membership due to death, insolvency etc. does not affect its existence and its continuity.
- Limited liability – The liability of shareholders is limited to the extent of shares held by them.
- Representative management: A company is an autonomous, self-governing and self-controlling organization. Since it has a large number of members, all of them cannot take part in the management of the affairs of the company. Actual control and management is, therefore, delegated by the shareholders to their elected representatives, know as directors. They look after the day-to-day working of the company. Moreover, since shareholders, by majority of votes, decide the general policy of the company, the management of the company is carried on democratic lines. Majority decision and centralized management compulsorily bring about unity of action.
- Common seal: A common seal is the official signature of the company.

CS NITESH KR. JAISWAL CS CLASSES

ADVANTAGES

- Greater permanency – The life of company compared to the partnership is very stable.
- Limited liability – All the shareholders have limited liability.
- Easy to transfer ownership – Shareholders can transfer their shares through share brokers.
- Attraction to huge capital
- Management functions
- Recognized legal entity
- Higher profits
- Benefits of large scale productions
- Bold management
- Spread of risk
- Democratic organization
- Full legal cover
- Social benefits

DISADVANTAGES

- Formation of company is complicated
- Double taxation
- Exploitation of shareholders
- Separation of ownership and control
- Promotion of frauds
- Stock exchange speculation
- Lack of secrecy
- Impersonal relationship
- Favoritism and nepotism
- Grouping for power
- Evils from the social point of view

STATUTORY BODIES AND CORPORATIONS

Statutory body is a body that is created under an Act of parliament or an Act of state legislature. A statutory body or a public body is an autonomous corporate body created and set up under statute.

The Act or statute defines its objectives, powers and functions.

Examples

- Reserve bank of India under the Reserve bank of India Act
- State bank of India under State bank of India Act,1955

A public corporation seeks to combine the flexibility of private enterprise with public ownership and accountability. A public corporation thus combination of public ownership, public accountability and business management for public end. Examples- Life Insurance Corporation of India, Employee State Insurance Corporation etc.

FEATURES

- Corporate body - It is a corporate body established under special Act of parliament.
- Legal entity – It enjoys separate legal entity with perpetual succession and common seal.

CS NITESH KR. JAISWAL CS CLASSES

- Government ownership – The public corporation is wholly owned by the Central and/or State Government.
- Financial independence – It enjoys financial autonomy.
- Accounting system – It is generally exempt from rigid rules applicable to the expenditure of public funds.
- Management and personnel – Its employees need not necessarily be civil servants.
- Service motive – The primary motive of the corporation is public service rather than the private profits.

ADVANTAGES

- Operational autonomy - Statutory corporations can have its own working pattern. There is no political interference in day to day working of corporation.
- Flexibility - Statutory corporations enjoy full flexibility in its operations. It is free to take any decision relating to capital collection. Investment, market, production, recruitment, planning, accounting & the decision once taken can be easily changed.
- Continuity – Being a distinct legal entity, it is not affected much by political changes.
- Special privilege – A public corporation is often granted special privileges.
- Availability of managerial talent – A public corporation can employ professional managers by offering them better terms and conditions or service than those available to Government servant.

DISADVANTAGES

- Difficult formation - It is very difficult to form statutory corporations because it requires lengthy documentation, complicated formalities & passing of statue.
- Inflexibility - The policies once approved, the statue once passed cannot be changed easily. It can be done by the parliament only & this is very time consuming.
- Excessive accountability – There are frequent debates and discussions on the reports and working of public corporations.
- Clash of divergent interests – When the Board of directors is constituted to give representation to divergent or different interests, a conflict may arise.

CO-OPERATIVES, SOCIETIES AND TRUSTS

Meaning

There are certain organizations which undertake business activities with the prime objective of providing service to the members. They take available resources from the members, utilize the same in the best possible manner and the benefits are shared by the members.

The term co-operation is derived from the Latin word co-operatic, where the word 'co' means 'with' and 'operatic' means 'to work'. Thus, co-operation means working together.

It works on the principle of self help as well as mutual help.

Any 10 persons can form co-operative society.

The main objectives of co-operative society-

1. Rendering services rather than earning profit.
2. Mutual help instead of competition.
3. Self help in place of dependence.

CS NITESH KR. JAISWAL CS CLASSES

CO - OPERATIVE SOCIETIES

Consumers' co-operative society	Producers' co-operative society	Co-operative marketing society	Co-operative credit society	Co-operative farming society	Housing co-operative society
These societies are formed to protect the interests of consumers by providing goods at reasonable prices.	These societies are formed to protect the interests of producers by making available items of their need.	These societies collect the products from small producers and take the responsibility of selling them.	These societies are formed to give financial support to members.	These societies are formed by small farmers to work jointly and thereby enjoy the benefits of large scale farming.	These societies are formed to provide residential houses to members.

CHARACTERISTICS

- Voluntary association – Everybody having a common interest is free to join cooperative society. There should be minimum of 10 members to form cooperative society but there is no maximum limit to it.
- Separate legal entity – A cooperative society is considered as separate legal entity as per law.
- Democratic management – Every member of the society got the equal right. Here, 'one man one vote' is the thumb rule.
- Service motive – The main objective being formation of any co operative society is for mutual benefit through self help and collective effort.
- Utilization of surplus – According to Indian cooperative Act, 1912, each society must transfer at least ¼ of its profits to general reserve.
- **Cash trading -** One exception in the cooperative society is that like other business if never go for credit sales. It sells the goods on the basis of cash only.
- **Fixed rate of return -** All members are supposed to contribute capital for the formation of a cooperative society or at the time of joining as a member of the cooperative ^society. In return to the capital invested, the members are assured of a fixed rate of return maximum to the extent of 9 per cent per annum on the sum deployed by them.
- **Government control** - All the cooperative societies of the country are regulated by the Government through its different rules and regulations framed from time to time. Cooperative societies of the country are required to register themselves as per the Indian Cooperative Societies Act, 1912.
- **Capital** - The capital of the society is raised from its members by way of share capital. However, the major part of finance is raised by the society through taking loan from the Government.

CS NITESH KR. JAISWAL CS CLASSES

ADVANTAGES

- Easy formation
- Open membership – The co-operative society work on the principle of open membership.
- Democratic management – All the members of the society are jointly known as general body , whereas the members who manage the co-operative society are jointly known as managing committee.
- Limited liability – The liability of members remain limited.
- Stability and continuity p
- Low prices
- Mutual help – The basic aim of the society is mutual help.
- Social advantage
- Mobilization of savings
- Remove defects of capitalism
- Cash trading
- Government support

DISADVANTAGES

- Lack of capital
- Lack of efficient management
- Lack of unity among members
- Lack of motivation
- Cash trading
- Political interference
- Difficult to maintain business secrecy
- Unwanted interference by the departmental personnel

LIMITED LIABILITY PARTNERSHIPS

In India, The Limited Liability Partnership Act, 2008 was published in the official Gazette of India on January 9, 2009 and has been notified with effect from 31 March 2009. The first LLP was incorporated in the first week of April 2009. Some sections relating to conversion of existing partnership firms and private as well as public unlisted companies into LLP have been brought into force on 31-5-2009 At present, there are about 10,000 LLPs formed and registered under the Limited Liability Partnership Act.

SILENT FEATURES ON AN LLP

- An LLP is a body corporate and legal entity separate from its partners. It has perpetual succession
- Being the separate legislation (i.e. LLP Act, 2008), the provisions of Indian Partnership Act, 1932 are not applicable to an LLP and it is regulated by the contractual agreement between the partners
- Every Limited Liability Partnership shall use the words "Limited Liability Partnership" or its acronym "LLP" as the last words of its name

NITESH KR. JAISWAL CS CLASSES

- Every LLP shall have at least two designated partners being individuals, at least one of them being resident in India and all the partners shall be the agent of the Limited Liability Partnership but not of other partners.
- LLP agreement is not mandatory but in the absence of LLP agreement, mutual rights and liabilities of partners shall be determined as provided under Schedule I to the LLP Act.
- The winding up of the LLP may be either voluntary or by the Tribunal to be established under the Companies Act, 1956. Till the Tribunal is established, the power in this regard has been given to the High Court.
- The LLP Act 2008 confers powers on the Central Government to apply provisions of the Companies Act, 1956 as appropriate, by notification with such changes or modifications as deemed necessary. However, such notifications shall be laid in draft before each House of Parliament for a total period of 30 days and shall be subject to any modification as may be approved by both Houses.
- The Indian Partnership Act, 1932 shall not be applicable to Limited Liability Partnerships.
- The Central Government has powers to investigate the affairs of an LLP, if required, by appointment of competent Inspector for the purpose.
- The compromise or arrangement including merger and amalgamation of LLPs shall be in accordance with the provisions of the LLP Act 2008.

PROCESS TO START LLP

1. Acquire DPIN(Directors pin) , Acquire DSC(Directors security code)
2. Register DPIN,DSC with LLP
3. Check name availability
4. Download LLP forms
5. File electronically
6. Track status
7. Receive certificate after
8. LLP ready to function

ADVANTAGES

- LLP form is a form of business model which is organized and operates on the basis of an agreement.
- Liability of partners is limited to their agreed contribution in the LLP and no partner is liable on account of the independent or un-authorized actions of other partners, thus individual partners are protected from joint liability created by another partner's wrongful business decisions or misconduct.
- Simple registration procedure, no requirement of minimum capital, no restrictions on maximum limit of partners.
- As a juristic legal person, an LLP can sue in its name and be sued by others. The partners are not liable to be sued for dues against the LL
- No restriction on limit of the remuneration to be paid to the partners like companies, but the remuneration must be authorized by the LLP agreement and it cannot exceed the limit prescribed under the agreement
- No Exposure to personal assets of the partners except in case of fraud.

CS NITESH KR. JAISWAL CS CLASSES

DISADVANTAGES

- Any act of the partner without the consent of other partners, can bind the LLP
- Under some cases, liability may extend to personal assets of the partners
- Because of the hybrid form of the business, it is required to comply with various rules & regulations and legal formalities.
- It is very difficult to wind up the business in case of exigency as there are a lot of legal compliances under Limited Liability Partnership Rules and it is very lengthy and expensive procedure.

FOREIGN DIRECT INVESTMENT IN LLP

- Foreign Direct Investment in Limited Liability Partnership is allowed, with the specific approval of the government, in those sectors/activities where 100% FDI is otherwise allowed under the automatic route and there are no FDI-linked performance related conditions.

ASSOCIATION OF PERSONS

Association of persons is not a formal business organisation but informal form of business. According to CIT v Indira Balkrishna (39 ITR 546), where two or more persons join in a common purpose or common action, with object to produce income, profits or gains, it is called an 'association of persons', It create scheme for common management.

A person may be natural, legal or informal person including partnership firm and Hindu Undivided Family.

Association of Persons need not be basis of a contract. Income producing activity is essence of Association of Persons.

BODY OF INDIVIDUALS

Body of Individuals means a formation of individuals who carry some activity with object to earn income. A Body of Individuals may or may not have common design. It may be possible that all individual have different design in mind but common object to earn income. Thus a Body of Individuals is a sub – domain of Association of Persons.

An association of persons (AOP) or a body of individuals (BOI), whether incorporated or not, is treated as a 'person' under section 2(31) of the Income-tax Act, 1961. Hence, AOP or BOI is treated as a separate entity for the purpose of assessment under the Income-tax Act.

Here it is important to note that an AOP or BOI shall be deemed to be a person, whether or not, they were formed or established or incorporated with the object of deriving income, profits or gains.

CS NITESH KR. JAISWAL CS CLASSES

DIFFERENCES BETWEEN SOLE PROPRIETORSHIP AND PARTNERSHIP

S. No.	*Basis*	*Sole Proprietorship*	*Partnership*
1.	**Membership**	Only one member.	Minimum membership is two, maximum membership is ten in case of banking business and twenty in other business.
2.	**Functioning**	A sole trader manages his business at his free will.	May be managed by all partners or any one on behalf of all others.
3.	**Formation**	Easy and can be formed any time as the owner decides.	An agreement is required between the partners to start a business.
4.	**Secrecy**	Business secrets are not open to anyone other than the proprietor.	Business secrets are open to every partner.
5.	**Finance**	Scope for raising capital is limited.	Scope for raising capital is relatively more.
6.	**Continuity**	Comes to an end with the death of the sole trader.	The business of a firm does of business not come to an end if a partner leaves the firm.
7.	**Decision**	Owner alone takes important decisions and so it is quick.	All partners must agree to decision and so decision making may take time.
8.	**Liability**	Unlimited and the burden is heavy.	Unlimited but less burdensome as it is shared by partners.

Differences between joint Hindu family and partnership

S. No.	*Basis*	*Joint Hindu Family*	*Partnership*
1.	**Membership**	– Members are called co-partners. – No maximum limit. – Individuals become co-partners by virtue of their birth. – Women cannot become co-partners.	– Members are called partners, – No minor can be a full-fledged partner. – Maximum membership must not exceed 10 in case of banking business and 20 in case of other business. – Individuals become partners by virtue of an agreement, – Women can be admitted as members.
2.	**Operation**	Governed by Hindu Law.	Governed by Indian Partnership Act.
3.	**Registration**	Registration not required.	There is a provision for registration.
4.	**Management**	Only Karta is entitled to manage.	Each partner has a right to take part in the management of the firm.

CS NITESH KR. JAISWAL CS CLASSES

5.	**Profit Sharing**	Every co-partner enjoys equal share.	Profit sharing ratio is decided by mutual agreement among partners.
6.	**Liability**	Only the liability of the karta is unlimited.	Every partner has unlimited liability.

DIFFERENCES BETWEEN PARTNERSHIP AND JOINT STOCK COMPANY

S. No.	*Basis*	*Partnership*	*Joint Stock Company*
1.	**Formation**	It is easy to form as registration is not compulsory.	It requires many legal formalities to be completed before the company comes into existence.
2.	**Operation**	Governed by the Partnership Act, 1932.	Governed by the Companies Act, 1956.
3.	**Membership**	Minimum is two; maximum is 10 in banking business and 20 in other business.	In case of Private Company minimum is 2, maximum is 50; in case of Public company minimum is 7 and maximum unlimited.
4.	**Legal Status**	No separate legal entity.	Separate legal entity from that of its members.
5.	**Liability**	Joint and several to an unlimited extent.	Limited to the value of shares held for limited companies.
6.	**Management**	All or any one on behalf of all partners are entitled.	Only the Board of directors is authorized.
7.	**Transfer of shares Existence**	Consent of all partners required.	Shares are freely transferable.
8.	**Finance**	Dissolves with the death, retirement or insanity of a partner etc. Relatively limited scope for raising finance.	Perpetual existence, unaffected by death, retirement, insolvency of the shareholders. Vast and unlimited scope for raising finance.

CHOICE OF AN APPROPRIATE FORM OF BUSINESS

Factors to be considered while selecting an appropriate form of business organisation.

Let us look into those factors one by one which are interrelated and inter-dependent as well.

(1) Nature of Business:

(i) The selection of a particular form of organisation is dependant upon the nature of business activity.

(ii) Businesses providing direct services like tailors, restaurants and professional services like doctors, lawyers are generally organized as proprietary concerns.

(iii) Businesses requiring pooling of skills and funds like accounting firms are better organized as partnerships.

CS NITESH KR. JAISWAL CS CLASSES

(iv) Manufacturing organizations of large size are more commonly set up as private and public companies.

(2) Volume of Business:

(i) If the volume of business or scale of operation is small, a sole proprietorship or partnership form is ideal.

(ii) If the volume of business is on a large scale, company form is the best.

(iii) Large scale enterprises catering to national and international markets can be organized more successfully as private or public companies.

(iv) Small and medium scale firms are generally set up as partnerships and proprietorship.

(3) Area of Operation:

(i) Where the area of operations is wide spread (national or international), company ownership is appropriate.

(ii) If the area of operations is confined to a particular locality, partnership or proprietorship will be a more suitable choice.

(4) Finance Required: Where the initial as well as the working capital required carrying on the business is very large, one has to opt for a company form. In other cases one can go for any other form.

(5) Ownership and Control:A person, who desires direct control of business, prefers proprietorship, because a company involves separation of ownership and management.

(6) Liability:A person who can bear the unlimited liability of business can go for sole proprietorship or partnership form, but if he does not have the capability to shoulder the burden of unlimited liability, he may opt for either company or cooperative form.

(7) Independence: The company or co-operative organizations are subject to strict government regulations. So if the entrepreneur wants to have a freedom in business with little governmental interference, he has to go for either sole proprietorship or partnership.

OTHER COROPRATION CLASSIFICATION

The corporation formation normally, in one country classified it based on various factors. The factors are :

- Objectives
- Location
- Corporate activities
- Ownership arrangement
- Sources of Fund

DOMESTIC AND FOREIGN CORPORATIONS

The words for Domestic and foreign did not meant for different in citizenship status of the business owner .it meant for different status in one country and the word for foreign does not mean for information owner in the corporation

PUBLIC AND PRIVATE CORPORATIONS

A public corporation formed by the government to meat some governmental and political purposes. The very common examples are for the cities and town benefits type of forming the corporations.

Private corporations are formed for benefits of public purposes .The word 'Private ' does not mean for the specific private or individual owner and it is wholly governed by the government or local government .

CS NITESH KR. JAISWAL CS CLASSES

NON –PROFIT CORPORATION

Common examples for nonprofit corporation are educational ,charitable, religious and community care corporations .it is a total non-to-profit type of corporation and operating with different policies under state governance private .shares of stock but not for dividend disbursement.

PROFOSSIONAL CORPORATIONS

The type of corporation mostly a professional corporation includes the professional practitioners by profession e.g. medicine, accountant, law etc .it is much better than partnership from of organization because of its tax benefits which provides medical benefits, pension plan and so forth.

CS NITESH KR. JAISWAL CS CLASSES

MCQ

1. **Forms of business organization are in which a business enterprise may be organized and operated.**
   - **(a)** Social forms
   - **(b)** General forms
   - **(c)** Legal forms
   - **(d)** Nationalised forms

2. **The individual who owns and runs the sole proprietorship business is called a_____.**
   - **(a)** Sole proprietor or sole trader
   - **(b)** Individual trader
   - **(c)** Partnership
   - **(d)** Single trader

3. **_____ pools and organizes the resources in a systematic way and controls the activities with the sole jective of earning profit.**
   - **(a)** A partner
   - **(b)** A sole proprietor
   - **(c)** A member
   - **(d)** A coparcener

4. **Sole proprietorship can be defined as "a business enterprise exclusively owned, managed and controlled by a _____ with all authority, responsibility and risk".**
   - **(a)** Number of person
   - **(b)** Single person
   - **(c)** Employees
   - **(d)** Members of the firms

5. **The business of the sole proprietor comes to an end at the will of the owner or upon _____.**
   - **(a)** His death
   - **(b)** His insolvency
   - **(c)** His becoming unsound mind
   - **(d)** His acquiring an enemy character

6. **The capital required by a _____ form of business organisation is totally arranged by the sole proprietor.**
   - **(a)** Partnership
   - **(b)** Company
   - **(c)** Sole proprietorship
   - **(d)** Family managed

7. **The controlling power in a sole proprietorship business always remains with the _____.**
   - **(a)** Owner
   - **(b)** Partner
   - **(c)** Member
   - **(d)** Coparcener

8. **The liability of the sole proprietor is _____.**
   - **(a)** Limited
   - **(b)** Unlimited
   - **(c)** Sometimes limited and sometimes unlimited
   - **(d)** Restricted

9. **The formation and operation of a sole proprietorship form of business organisation requires _____.**
   - **(a)** Almost no legal formalities
   - **(b)** Large formalities
   - **(c)** General formalities
   - **(d)** Careful formalities

10. **A sole proprietorship form of business is very _____.**
    - **(a)** Easy to form
    - **(b)** Difficult to form
    - **(c)** Time consuming
    - **(d)** Small

11. **Just like formation it is also very _____ to wind up the business.**
    - **(a)** Difficult
    - **(b)** Not so easy
    - **(c)** Easy
    - **(d)** Not so difficult

NITESH KR. JAISWAL CS CLASSES

12. **The profits earned belong to the sole proprietor alone and bears the risk of losses as well. Thus, there is a direct link between _____.**

(a) Reward and ownership
(b) Effort and reward
(c) Employer and employee
(d) Employee and society

13. **In sole proprietorship business the _____has full control over each and every activity of the business.**

(a) Partner
(b) Member
(c) Proprietor
(d) Relatives

14. **_____ enables the sole proprietor to know the individual likes, dislikes and tastes of the customers.**

(a) Direct contact
(b) Indirect contact
(c) Personal contact
(d) Group contact

15. **The sole proprietor is free to change the nature and scope of _____ as and when required as per his decision.**

(a) Business operations
(b) Business environment
(c) Social environment
(d) General operations

16. **It is often _____ for a single individual to raise a huge amount of capital.**

(a) Easy
(b) Sometimes easy & sometimes difficult
(c) Beyond imagination
(d) Difficult

17. **In case the sole proprietor fails to pay the business Q.No ligations and debts arising out of business activities, _____ may have to be used to meet those liabilities.**

(a) His personal properties
(b) The assets belonging to his other businesses
(c) Both **(a)** & **(b)**
(d) Personal properties as well as properties of family members

18. **The existence of sole proprietorship business is linked to the _____ of the proprietor.**

(a) Health **(b)** Working
(c) Life **(d)** Capacity

19. **In sole proprietorship form of business organisation there is a limit beyond which it becomes difficult to _____.**

(a) Earn profits
(b) General revenues
(c) Recruit employees
(d) Expand its activities

20. **Sole proprietorship form of business organisation is suitable. Where the market for the product is _____.**

(a) Huge
(b) Wide spread
(c) Domestic only
(d) Small and local

21. **Sole proprietorship form of business organisation is suitable. Where _____ are given personal attention, according to their personal tastes and preferences.**

(a) Customers
(b) Suppliers
(c) Employees
(d) Social obligations

22. **Sole proprietorship form of business organisation is suitable: Where the nature of business is _____.**

(a) Complex
(b) Organised
(c) Simple
(d) Unorganised

CS NITESH KR. JAISWAL CS CLASSES

23. Sole proprietorship form of business organisation is suitable: Where capital requirement is small and risk involvement is _____.

(a) Also small **(b)** Not heavy
(c) Heavy **(d)** Negligible

24. Sole proprietorship form of business organisation is suitable: Where _____ is required.

(a) Mechanical skills
(b) Computerised
(c) Manual skill
(d) Employee's skill

25. The Hindu Undivided Family (HUF) business is a form of business organization found _____.

(a) In al countries
(b) Only in India
(c) Rural areas of India
(d) Urban areas of India

26. The affairs of business are managed by the head of the family, who is known as the _____.

(a) KARTA
(b) Member
(c) Coparcener
(d) Both **(a)** and **(b)**

27. The term co-partners imply that such an individual has got the right to ask for a _____ and to have his separate share.

(a) Profits of the business of HUF
(b) Revenues generated by HUF
(c) Assets created by HUF
(d) Partition of the Hindu Undivided Family business

28. _____ has no right to ask for a partition and is, therefore, not a co-parcener.

(a) A women **(b)** Coparcener
(c) A daughter **(d)** Karta

29. Karta is the eldest _____ of the family.

(a) Female or male
(b) Male member
(c) Female
(d) Male coparcener

30. In a HUP, the responsibility of Karta is to manage the _____.

(a) HUF property
(b) HUF profits
(c) HUPs liabilities
(d) HUF"s business activities

31. _____ is a jointly owned business just like a jointly owned property. It is governed by Hindu Law.

(a) Sole proprietor
(b) Company business
(c) Karta's business
(d) The Hindu Undivided Family business

32. In the event of death of any of the co¬parcener, his _____ can claim share of profit.

(a) Son
(b) Wife
(c) Daughter
(d) Any member of family

33. The management of a Hindu Undivided Family business is in the hands of the senior-most family member who is known as the _____.

(a) Coparcener
(b) Manager
(c) Karta
(d) Director

34. The liability of each member of the Hindu Undivided Family business is limited to the extent of his _____.

(a) Share in HUF property
(b) Share in the business
(c) Personal assets
(d) Bank balances

CS NITESH KR. JAISWAL CS CLASSES

35. **The liability of the _____ is unlimited as, if extends to his personal property.**

(a) Karta
(b) Coparcener
(c) Member of HUF
(d) Any person of HUF family

36. **A Hindu Undivided Family business can be _____ any time either through mutual agreement between members or by partition.**

(a) Exchanged
(b) Shared
(c) Divided
(d) Dissolved

37. **The karta enjoys _____ in conducting the family business.**

(a) No freedom
(b) Restricted freedom
(c) Full freedom
(d) Superpower

38. **The liability of the co-parceners is except for that of the karta.**

(a) Limited
(b) Unlimited
(c) Some times limited & sometimes unlimited
(d) Not limited

39. **Hindu Undivided Family business has generally _____ financial and managerial resource.**

(a) Negotiable
(b) Restricted
(c) Unlimited
(d) Limited

40. **There is always a lack of _____ among the members to work hard. It is because the benefit of hard work does not go entirely to any individual member but shared by all the co-parceners.**

(a) Encouragement
(b) Motivation
(c) Morale
(d) Freedom

41. **The success of Hindu Undivided Family business is mostly dependent upon the efficiency of the _____ and the mutual understanding between the co-parceners.**

(a) Karta
(b) Members
(c) Coparcener
(d) Manager

42. **Partnership is an association of two or more individuals (but not more than _____) who agree to share the profits of a lawful business which is managed and carried on either by all or by any, or some of them acting for all.**

(a) 10
(b) 20
(c) 30
(d) 50

43. **A minimum of _____ persons are required to start a partnership business.**

(a) Two
(b) Three
(c) Five
(d) Ten

44. **The maximum membership limit is _____ in case of banking business and 20 in case of all other types of business.**

(a) 10 **(b)** 20
(c) 50 **(d)** 100

45. **The partners enter into partnership through an agreement which may be verbal, written or implied. If the agreement is in writing it is known as a _____.**

(a) Internal agreement
(b) Partition deed
(c) Business deed
(d) Partnership Deed

CS NITESH KR. JAISWAL CS CLASSES

46. The partners can share profit in any ratio as agreed. In the absence of an agreement, they share it _____.

(a) A§ per mutual consent
(b) Equally
(c) As per capital
(d) As per workings done

47. The partners have _____ liability.

(a) Unlimited
(b) Limited
(c) Defined
(d) Sometimes limited & sometimes unlimited

48. Partners are liable _____ for the debts and obligations of the firm.

(a) Personally
(b) Jointly and severally
(c) Jointly
(d) Severally

49. The liability of a minor is, limited to the extent of _____, in case of dissolution of a firm

(a) His share in assets
(b) His share in properties
(c) His share in profits/losses
(d) His share in the profits

50. The business in a partnership firm may be carried on by all the partners or _____.

(a) Their relatives
(b) Manager
(c) Any one of them acting for all
(d) Kana

51. Law does not recognize the _____ as a separate entity distinct from the partners.

(a) Firm
(b) Partnership
(c) Partners
(d) Sleeping partners

52. Registration of partnership is _____.

(a) Legally required
(b) Compulsory
(c) Not compulsory
(d) Optional if written in partnership deed

53. _____ implies not only a complete closure or termination of partnership business, but it also includes any change in the existing agreement among the partners due to a change in the number of partners.

(a) Dissolution of partnership
(b) Winding up
(c) Closure of business
(d) Sale of all assets of firm

54. As the liability of each partner in the organization is _____ the financial institution can safely advance loans to the firms.

(a) Restricted
(b) Limited
(c) Unlimited
(d) Sometimes limited & sometimes unlimited

55. The partners can keep the business secrets to themselves. The firm is not required by law to publish its _____.

(a) Balance sheet
(b) Profit and loss account and balance sheet
(c) Profit and loss account
(d) Annual report

56. As liability of partners is unlimited, the partners, therefore, tend to be careful in taking _____.

(a) Business decisions
(b) Business dealings
(c) Commercial transactions
(d) Selling decisions

CS NITESH KR. JAISWAL CS CLASSES

57. One of the basic defects of partnership is that the partners are _____ responsible for all the debts of the firm.

(a) Not
(b) Personally and jointly
(c) Personally
(d) Jointly

58. The duration of the partnership is always _____.

(a) Uncertain
(b) Certain
(c) At will
(d) Mentioned in partnership deed

59. It is very easy for a partner to invest money but it is _____to withdraw the investment from the business.

(a) Easy
(b) Very easy
(c) Difficult
(d) Most difficult

60. The partners should be like minded, have a common objective, be large hearted, have a cool temperament, should not unnecessarily _____among the partners.

(a) Cause friction
(b) Cause confusion
(c) Cause friction and confusion
(d) Cause disturbances

61. If is known to each and every partner that the resources of the firm are owned _____.

(a) Jointly
(b) Severally
(c) Jointly and severally
(d) Sometimes jointly & sometimes severally

62. In a partnership, the work of the business is _____among the partners according to their ability, choice and taste.

(a) Allocated
(b) Shared
(c) Distributed
(d) Divided

63. _____ is the authority vested in a partner to bind the firm with any of his acts done in connection with the business of the firms.

(a) Implied warranty
(b) Implied authority
(c) General authority
(d) Specified authority

64. In a _____, persons from different walk of life having ability, managerial talent and skill join together to carry on a business.

(a) Partnership firm
(b) Sole proprietorship firm
(c) Company
(d) HUF

65. Generally it is seen that many organizations are initially started as partnership firms and later, when it is economically viable and financially attractive for the investors, it is converted into a _____.

(a) Sole proprietorship
(b) Firm
(c) Company
(d) HUF

66. A partnership firm requires at least _____ person.

(a) Two **(b)** Three
(c) Ten **(d)** Twenty

67. The partners are liable _____and _____ for all the debts and Q.No ligations of the firm.

(a) Jointly and individually
(b) Severally and individually
(c) Jointly, severally
(d) Individually & jointly

CS NITESH KR. JAISWAL CS CLASSES

68. **Registration of a partnership firm is _____.**

(a) Required
(b) Not required
(c) Compulsory
(d) Not compulsory

69. **There exists a _____ relationship between partners.**

(a) Defined
(b) Contractual
(c) Undefined
(d) Friendly

70. **The persons who own the partnership business are individually called _____ and collectively Known as ____.**

(a) Farmers, firm
(b) Firm, partners
(c) Firm, members
(d) Members, firm

71. **A Company form of business organisation is a _____ to carry on business,**

(a) Collection of persons
(b) Association of persons
(c) Voluntary association of persons
(d) None of the above

72. **A company is given a _____ and is subject to certain legal regulations.**

(a) Corporate status
(b) National status
(c) Social
(d) Legal status

73. **It is an association of persons who generally contribute money for some _____.**

(a) Defined purpose
(b) Undefined purpose
(c) Uncommon purpose
(d) Common purpose

74. **The proportion of capital to which each member is entitled is called his share, therefore members of a company are known as shareholders and the capital of the company is known as _____.**

(a) Total capital
(b) Capital
(c) Share capital
(d) Shareholders funds

75. **The total share capital is divided into a number of units known as _____.**

(a) Shares
(b) units
(c) Stock
(d) Units or stock

76. **A company is an artificial person as it is created by _____.**

(a) Constitution of India
(b) Law
(c) Partnership Act
(d) Corporate Law

77. **Although the capital is contributed by its members called shareholders yet the property purchased out of the capital belongs _____ and not to its shareholders.**

(a) To the government
(b) To the members
(c) To the shareholders
(d) To the company

78. **The capital of the company is divided into _____.**

(a) Shares
(b) Units
(c) Stock
(d) Units/shares

79. **The shares of the company are easily transferable. The shares can be bought and sold in the _____.**

(a) Domestic market
(b) Company market
(c) Stock market
(d) Open market

CS NITESH KR. JAISWAL CS CLASSES

80. A company has an _____ distinct from its share holders.

(a) Individual existence
(b) Independent
(c) Separate existence
(d) Independent and separate existence

81. The liability of the shareholders of a company is limited to the extent of _____ shares held by them.

(a) Market value of
(b) Face value of
(c) Paid up value of
(d) Intrinsic value

82. No shareholder can be called upon to pay more than the _____of the shares held by them.

(a) Unpaid value
(b) paid up value
(c) Face value
(d) Market value

83. The number of shareholders is so large and scattered that they cannot manage the affairs of the company _____.

(a) Geographically
(b) Jointly
(c) Individually
(d) Collectively

84. Elected representatives of shareholders are individually called the _____ of the company and collectively the _____.

(a) Directors, Board of Directors
(b) Board, Directors
(c) Members, Directors
(d) Members, Board of Directors

85. A common seal is the _____ the company.

(a) Signature
(b) Valid signatures
c) Official signature
(d) Asset

86. Any document bearing the common seal of the company is _____ on the company.

(a) Binding
(b) Legally binding
(c) Not necessarily binding
(d) Binding in all situations even if Q.No tained illegally

87. The _____ of a company is not affected by the death, disability, insolvency or disagreement of a shareholder.

(a) Business
(b) Life
(c) Existence
(d) Operations

88. In a joint stock company, all the Shareholders have a _____.

(a) Limited liability
(b) Unlimited liability
(c) Sometimes limited & sometimes unlimited
(d) Restricted liability

89. In case of loss to the company, the liability of the _____is limited to the amounts; they have invested in the company.

(a) Owners
(b) Directors
(c) Members
(d) Shareholders

90. One of the basic features of joint stock company is that the shareholders can transfer the ownership of shares to the interested parties' through the _____.

(a) Share brokers
(b) Stock broker
(c) Deals
(d) Agents

CS NITESH KR. JAISWAL CS CLASSES

91. The joint stock companies divide the share capital into shares of small denominations in order to attract capital from _____ for starting big business and industrial enterprises.

(a) Defined number of investors
(b) Large number of investors
(c) Investors of the concerned state
(d) Investors in India

92. In a joint stock company, the _____ are divided according to functions.

(a) Management activities
(b) Business activities
(c) Total
(d) Extra curricular activities

93. The company can enter into contracts; borrow money, open banking account in its name. It can sue or be sued, hold, deal and dispose of property in _____.

(a) The name of directors
(b) In the name of members
(c) Its own name
(d) In the name of owners

94. Due to availability of _____, the company installs expensive and up to date machinery.

(a) Available capital
(b) Capital in bank account
(c) Unlimited capital
(d) Large capital

95. The company due to the increase in the size of business enjoys all the economies of _____.

(a) Large scale production
(b) Small scale production
(c) Medium scale production
(d) Unlimited production

96. Company type of organization can undertake _____ which sole proprietorship or partnership form of organizations cannot do.

(a) Small risks
(b) Medium risks
(c) Big risks
(d) Unlimited risks

97. In a company form of organization, the risk is distributed among large number of _____.

(a) Shareholders
(b) Owners
(c) Employees
(d) Directors

98. The _____ of the company is carried on by the elected board of directors on behalf of and for the shareholders of the company.

(a) Activities
(b) Business
(c) Administration
(d) Management

99. Joint stock companies have made it possible for the persons of _____ to invest in productive activity under unified management,

(a) All income groups
(b) Large income groups
(c) Low income groups
(d) Medium income groups

100. The formation of a joint stock company is much more _____ than sole proprietorship or partnership.

(a) Complicated **(b)** Easy
(c) Difficult **(d)** Complex

101. The shareholders of a company mostly remain _____ to one another.

(a) Silent
(b) Closely related
(c) Known
(d) Unknown

CS NITESH KR. JAISWAL CS CLASSES

102. The control of the company, therefore, generally remains in the hands of promoters who are elected as _____ of the company by the interested shareholders every year.

(a) Promoters
(b) Directors
(c) Managers
(d) Secretaries

103. In a joint stock company, the shareholders who are real investors are not allowed to take part in the operations of the business. There is thus a separation of _____.

(a) Ownership
(b) Control
(c) Ownership from control
(d) Control from employees

104. The directors in collaboration with the managers often exploit the helpless _____.

(a) Management
(b) Owners
(c) Directors
(d) Shareholders

105. If the promoters are dishonest and want to exploit the scattered-shareholders, they give a very rosy picture of high profits in the _____.

(a) Final accounts
(b) Annual accounts
(c) Annual report
(d) Prospectus

106. The directors, managers etc employ their near and dear ones at the _____ of the company.

(a) Key positions
(b) Cost
(c) General positions
(d) Lower positions

107. The management of the company remains in the hands of a group which acquires _____.

(a) Substantial powers
(b) Controlling shares
(c) Main powers
(d) Commanding shares

108. The big companies become a source of encouraging _____.

(a) Rivalry firms
(b) Competitors
(c) Oligopolies
(d) Monopolies

109. A company is suitable where the volume of business is quite large, the area of operation is widespread, the risk involved is heavy and there is a need for _____.

(a) Huge financial resources and manpower
(b) Recruiting large employees
(c) Large number of managers
(d) Huge resources

110. A company has _____ existence.

(a) Limited
(b) Unlimited
(c) Specific
(d) Perpetual

111. A company is managed by _____.

(a) Shareholders
(b) Employees
(c) Directors
(d) Managers

112. When the area of operation of the business is _____ a company form is preferred.

(a) Small
(b) Wide
(c) Medium
(d) Small and medium (SME)

CS NITESH KR. JAISWAL CS CLASSES

113. The shares of a Joint Stock Company may in the stock market.

(a) Listed **(b)** Unlisted
(c) Treated **(d)** Floated

114. A public corporation is a body corporate established through a special Act of _____.

(a) Parliament or Stat Legislature
(b) Parliament
(c) State legislature
(d) Concerned corporation

115. The public corporation is wholly owned by the _____.

(a) Central Government
(b) State Government
(c) Central and/or State Government(s)
(d) Local Municipality

116. The Corporation is not subject to the budgetary, accounting and audit regulations applicable to _____.

(a) Government departments
(b) Corporations
(c) Committees
(d) Nigam Parshads

117. A public corporation is managed by a _____ appointed by the Government.

(a) Group of persons
(b) Board of Directors
(c) Managers
(d) Trustees

118. The primary motive of the corporation is public service rather than _____.

(a) Secret profits
(b) Public profits
(c) Private profits
(d) Huge revenues

119. _____ enjoys internal autonomy as there is no Parliamentary interference in its day-to-day working.

(a) A public corporation
(b) A private corporation
(c) A public or private corp.
(d) A public sector company

120. Being relatively free from bureaucratic control, a _____ enjoys flexibility and initiative in business affairs. It can experiment in new lines of activity and decisions can be taken without undue delay.

(a) Private corporation
(b) Public corporation
(c) Public company
(d) Government company

121. A public corporation can employ _____ by offering them better terms and conditions or service than those available to government servant.

(a) Professional managers
(b) Professional directors
(c) Professional secretaries
(d) Professional employees

122. There are frequent debates and discussion on the reports and working of _____.

(a) Government corporations
(b) Private corporations
(c) Public corporations
(d) Govt. and public corporations

123. The public corporation is generally considered appropriate for _____ of industrial and commercial nature.

(a) Public enterprises
(b) Private enterprise
(c) Government enterprise
(d) Private and Govt. enterprises.

124. The public corporation is suitable for undertakings requiring _____.

(a) Restricted powers
(b) Monopoly powers, e.g. public utilities
(c) General powers
(d) Management powers

CS NITESH KR. JAISWAL CS CLASSES

125. There are certain organizations which undertake business activities with the of providing sendee to the members.

(a) Main objectives
(b) General objectives
(b) Prime objective
(d) Secondary objective

126. Those who want to work together with some common economic Q.No 127 objective can form a society which is termed as _____.

(a) Co-operative society
(c) Consumers society Agricultural society
(d) Croup housing society

127. Any _____ persons can form a co-operative society.

(a) Two **(b)** Three
(c) Twenty **(d)** Ten

128. The co-operatives are formed primarily to render services to _____.

(a) Employees
(b) Its members
(c) Society
(d) Nation

129. Consumers' Co-operative Society are formed to protect the interest of general consumers by making consumer goods available at a _____.

(a) Reasonable price
(b) Low price
(c) Very low price
(d) High price

130. Producers' Co-operative Society are formed to protect the interest of _____ by making available items of their need for production like raw materials, tools and equipments, machinery, etc.

(a) General procedures
(b) Large producers
(c) Small producers
(d) Medium procedures

131. Co-operative Marketing Society are formed by small producers and manufacturers who find it difficult to sell their products _____.

(a) Domestically
(b) Locally
(c) Collectively
(d) Individually

132. Co-operative Credit Society are formed to provide _____ to the members.

(a) General support
(b) Financial support
(c) Technical support
(d) Working support

133. Co-operative Farming Society are formed by small farmers to work jointly and thereby enjoy the benefits of _____.

(a) Large-scale farming
(b) Medium scale fanning
(c) Low scale farming
(d) Regional fanning

134. Housing Co-operative Society are formed to provide _____ to members.

(a) Industrial houses
(b) Commercial spaces
(c) Residential houses
(d) Individual spaces

135. There should be minimum of _____ members to form cooperative society but there is no maximum limit for the membership.

(a) 2 **(b)** 3
(c) 5 **(d)** 10

136. A cooperative society after registration is recognised as _____by law.

(a) Separate legal entity
(b) Independent entity
(c) Distinct entity
(d) Legal entity

CS NITESH KR. JAISWAL CS CLASSES

137. _____ is the essence of cooperative enterprises, governed by democratic principles.

(a) Cooperative Management
(b) Geographical Management
(c) Democratic Management
(d) General Management

138. According to Indian Cooperative Societies Act 1912, each society must transfer at least _____ of its profits to general reserve.

(a) One-fifth
(b) One-fourth
(c) One-sixth
(d) One-third

139. All the cooperative societies of the country are regulated by the _____ through its different rules and regulations framed from time to time.

(a) Constitution of India
(b) Corporative Societies Act
(c) Corporation
(d) Government

140. The capital of the society is raised from its members by way of _____.

(a) Share capital **(b)** Loan
(c) Either loan or share capital
(d) Subsidy

141. Generally it seems that a co-operative society is suitable for _____ size operations.

(a) Small and medium
(b) Medium and large
(c) Large
(d) Medium

142. A co-operative society has a _____ life.

(a) Discretionary
(b) Compulsory
(c) Defined
(d) Voluntary

143. Membership of a co-operative is _____.

(a) Restricted
(b) Open
(c) General
(d) Defined

144. A co-operative's primary motive is _____.

(a) To benefit member
(b) To benefit employees
(c) To benefit society
(d) To benefit consumers

145. The minimum membership to get a co-operative registered is _____.

(a) 2
(b) 10
(c) 5
(d) 20

146. A Limited Liability Partnership, popularly known as LLP combines the advantages of both the _____ into a single form of organization.

(a) Sale proprietor and partnership
(b) Partnership and cooperative society
(c) Company and Partnership
(d) Company and cooperative society

147. In an LLP one partner is not responsible or liable for _____ misconduct or negligence; this is an important difference from that of a unlimited partnership.

(a) Another partner's
(b) Another member's
(c) Another employees
(d) Another member/employee

148. Limited Liability Partnership is managed as per the _____.

(a) Partnership agreement
(b) LLP Agreement
(c) Partnership deed
(d) **(a)** or **(b)**

CS NITESH KR. JAISWAL CS CLASSES

149. LLP has a separate legal entity, liable to the full extent of its assets, the liability of the partners would be limited to their _____ in the LLP.

(a) Defined contribution
(b) Agreed contribution
(c) Undefined contribution
(d) Voluntary contribution

150. Limited Liability Partnership Act, 2008 came into effect by way of notification dated _____.

(a) 31st March 2009 **(b)** 31st March 2010
(c) 31st March 2008 **(d)** 31st March 2011

151. Business organisation refers to all necessary arrangements required to _____.

(a) Run the organisation
(b) Earn the profits
(c) Conduct a business
(d) Serve the society

152. The arrangement which follows the process of organizing is called a _____.

(a) Business undertaking or organisation
(b) Organised efforts
(c) Systematic efforts
(d) Legalised efforts

153. _____ is largely responsible for the success of an enterprise.

(a) The size of business organisation
(b) The right form of business organization
(c) The products of the business organisation
(d) The motive of business organisation

154. Limit of Liability: A business enterprise may be organized on the basis of either limited or unlimited liability.

(a) Limited or unlimited liability
(b) Limited liability
(c) Unlimited liability
(d) Social liability

155. Limited liability means that the liability of the owner as regards the debts of the business is limited only to the amount of _____ agreed to be contributed by him.

(a) Profits **(b)** Revenue
(c) Capital **(d)** Goodwill

156. Unlimited liability means that even the owners' _____ will be liable to be attached for the payment of the business debts.

(a) Personal assets
(b) Business assets
(c) Both **(a)** and **(b)**
(d) Other business assets

157. The term ownership refers to the right of an individual or a group of individuals to acquire legal title to assets or properties for the purpose of _____.

(a) Earning profits
(b) Selling goods
(c) Running the business
(d) Serving the society

158. Every business enterprise must undertake such business which is _____.

(a) Profitable **(b)** Lawful
(c) Both **(a)** and **(b)** **(d)** Socially desirable

159. Every business undertaking is engaged in the production and/or distribution of goods or services in _____.

(a) Anticipation of profits
(b) Social services
(c) Exchange of money
(d) Exchange of goods/services

160. Any unit having just one single operation or transaction is_____.

(a) Not a business unit
(b) Also a business unit
(c) Private arrangement
(d) Testing unit

CS NITESH KR. JAISWAL CS CLASSES

ANSWERS

1	(c)	**2**	(a)	**3**	(b)	**4**	(b)	**5**	(a)	**6**	(c)	**7**	(a)
8	(b)	**9**	(a)	**10**	(a)	**11**	(c)	**12**	(b)	**13**	(c)	**14**	(a)
15	(a)	**16**	(d)	**17**	(a)	**18**	(c)	**19**	(d)	**20**	(d)	**21**	(a)
22	(c)	**23**	(b)	**24**	(c)	**25**	(b)	**26**	(a)	**27**	(d)	**28**	(c)
29	(b)	**30**	(a)	**31**	(d)	**32**	(b)	**33**	(c)	**34**	(b)	**35**	(a)
36	(d)	**37**	(c)	**38**	(a)	**39**	(d)	**40**	(b)	**41**	(a)	**42**	(b)
43	(a)	**44**	(a)	**45**	(d)	**46**	(b)	**47**	(a)	**48**	(b)	**49**	(d)
50	(c)	**51**	(a)	**52**	(c)	**53**	(a)	**54**	(c)	**55**	(b)	**56**	(a)
57	(b)	**58**	(a)	**59**	(d)	**60**	(c)	**61**	(a)	**62**	(d)	**63**	(b)
64	(a)	**65**	(c)	**66**	(a)	**67**	(c)	**68**	(d)	**69**	(b)	**70**	(a)
71	(c)	**72**	(d)	**73**	(d)	**74**	(c)	**75**	(a)	**76**	(b)	**77**	(d)
78	(a)	**79**	(c)	**80**	(d)	**81**	(b)	**82**	(c)	**83**	(d)	**84**	(a)
85	(c)	**86**	(b)	**87**	(b)	**88**	(a)	**89**	(d)	**90**	(a)	**91**	(b)
92	(a)	**93**	(c)	**94**	(d)	**95**	(a)	**96**	(c)	**97**	(a)	**98**	(d)
99	(c)	**100**	(a)	**101**	(d)	**102**	(b)	**103**	(c)	**104**	(d)	**105**	(d)
106	(a)	**107**	(b)	**108**	(d)	**109**	(a)	**110**	(d)	**111**	(c)	**112**	(b)
113	(a)	**114**	(a)	**115**	(c)	**116**	(a)	**117**	(b)	**118**	(c)	**119**	(a)
120	(b)	**121**	(a)	**122**	(c)	**123**	(a)	**124**	(b)	**125**	(c)	**126**	(a)
127	(d)	**128**	(b)	**129**	(a)	**130**	(c)	**131**	(d)	**132**	(b)	**133**	(a)
134	(c)	**135**	(d)	**136**	(a)	**137**	(c)	**138**	(b)	**139**	(d)	**140**	(a)
141	(a)	**142**	(d)	**143**	(b)	**144**	(a)	**145**	(b)	**146**	(c)	**147**	(a)
148	(b)	**149**	(b)	**150**	(a)	**151**	(c)	**152**	(a)	**153**	(b)	**154**	(a)
155	(c)	**156**	(a)	**157**	(c)	**158**	(b)	**159**	(c)	**160**	(a)		

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CHAPTER 3 SCALES OF BUSINESS

KEY FACTORS

- **INTRODUCTION**
- **MICRO ENTERPRISES**
- **SMALL SCALE ENTERPRISES**
- **ROLE OF SMALL SCALE INDUSTRIES**
- **LARGE SCALE ENTERPRISES**
- **ORGANIZATION OF PUBLIC ENTERPRISES**
- **PUBLIC ENTERPRISES**
- **CURRENT SCENARIO**
- **MNCS**

INTRODUCTION

Business ranges in size from single proprietor to large multinational. The size and structure of business depends on many factors. In a nutshell, when someone is talking about the "scale" of a business, they're talking about its size.

According to Micro, small and medium enterprise development Act, 2005,'enterprise' means an industrial undertaking or a business concern or any other establishment, by whatever name called, engaged in the manufacture or production of goods, in any manner, pertaining to any industry specified in the First schedule to the Industries (Development and Regulation) Act, 1951 or engaged in providing or rendering of any service or services.

MICRO ENTERPRISES:

A small business that employs a small number of employees. A microenterprise will usually operate with fewer than 10 people and is started with a small amount of capital. Most microenterprises specialize in providing goods or services for their local areas.

- Micro enterprise in developing countries is the most frequent or common one.
- Micro enterprises require small amount of capital to enter market.
- Micro enterprises use local product and skills.
- ME are labour intensive therefore create jobs.
- Micro enterprises rely or depend on "micro loans" or "micro credit".

SMALL SCALE ENTERPRISES:

Meaning and concept Small Scale Industry

Basically, the industries which are organized on a small scale and produce goods with the help of small machines, hired labour and power are called as small scale industries.

An industrial unit can be categorized as a small-scale unit if it fulfills the capita investment limit fixed by the Government of India for the small-scale sector.

Where the investment in plant and machinery is more than 25lakh rupees but less than 5crores rupees. (25 lakh-5 crores)	Enterprises engaged in production of goods.

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Where the in equipment is more than 10lakh rupees but less than 2crores rupees.(10lakh-2crores)	Enterprise engaged in providing services.

SMALL SCALE INDUSTRIES ARE OF TWO TYPES

Traditional small scale industries	Modern small scale industries
It includes khadi and handloom, village industries, handicrafts etc.	It includes products such as television sets, electronics, and various engineering products.
More labour intensive.	Less labour intensive.

Indian small scale industries are mostly modern small scale industries. Modern small scale industries include manufacture of products that include rubber products, plastic products, bicycle parts, instruments, sports goods, stationery items etc.

Classification of small scale industry

(1) A common classification is between traditional small industries and modern small industries.

(2) Traditional small industries include khadi and handloom, village industries handicrafts, sericulture, coir, etc.

(3) Modern SSIs produce wide range of goods from comparatively simple items to sophisticated products such as television sets, electronics, control system, various engineering products, particularly as ancillaries to the large industries.

(4) The traditional small industries are highly labour-intensive while the modem small-scale units make the use of highly sophisticated machinery and equipment.

ROLE OF SMALL SCALE INDUSTRIES IN THE INDIAN ECONOMY

The small scale industrial sector plays a pivotal role in the Indian economy in terms of employment competition from large-scale industries. There are several important reasons why these industries are contributing a lot to the progress of Indian economy;

(1) ***Production:***The small-scale industries sector plays a vital role in the growth of the country. It contributes almost 40% of the gross industrial value added in the Indian economy.

(2) ***Employment:***SSI Sector in India creates largest employment opportunities for the Indian population, next only to Agriculture.

(3) ***Export:***SSI Sector plays a major role in India's present export performance.SSI Sector contributes 45%-50% of the Indian Exports.

(4) ***Opportunity:***The opportunities in the small-scale sector are enormous due to the following factors:

(i) Less Capital Intensive.

(ii) Extensive Promotion & Support by Government.

(iii) Reservation for Exclusive Manufacture by small scale sector.

(iv) Project Profiles.

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(v) Funding - Finance & Subsidies.
(vi) Machinery Procurement.
(vii) Raw Material Procurement.
(viii) Manpower Training.
(ix) Technical Managerial skills.
(x) Tooling & Testing support.
(xi) Reservation for Exclusive Purchase by Government.
(xii) Export promotion.
(xiii) Growth in demand in the domestic market size due to overall economic growth.

(5) ***Increasing Export Potential for Indian Products:***Growth in Requirements for ancillary units due to the increase in number of green field units coming up in the large-scale sector. Small industry sector has performed exceedingly well and enabled our country to achieve a wide measure of industrial growth and diversification
(i) Fashion technology,
(ii) Information technology,
(iii) Design technology.

(6) ***Welfare:***These industries are also very important for welfare reasons. People of small means can organize these industries. This in rum increases their income levels and quality of life. As such these can help in reducing poverty in the country. Further, these industries tend to promote equitable distribution of income.

LARGE SCALE ENTERPRISES:

Large scale enterprises are those industries which require huge infrastructure, man power, and more capital assets. All heavy industries of India like the iron and steel industry, textile industry, and automobile manufacturing industry fall under the large scale industries.
In India, industries with a fixed asset of more than one hundred million rupees are called large scale industries.
1MILLION = 10LAKHS

PUBLIC ENTERPRISES:

Business activities were left mainly to individual and private organizations after privatization, and the Government was taking care of only the essential services such as railways, electricity supply, postal services etc. But it was observed that private sector did not take interest in those activities where the gestation period (period of development) was long, investment was heavy and the profit margin was low. This lead to imbalance. This led to emergence or entrance of public enterprises.
Public enterprises are not only owned by central , state government but also managed and controlled by them and are termed as public sector enterprises.
A public sector enterprise may be defined as any commercial or industrial undertaking owned and managed by the government with a view to maximize social welfare and uphold the public interest.

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CHARACTERISTICS

- Autonomous or semi-autonomous organization- (Autonomous means full control under government) These enterprises are either directly under control of Government or are established under act of parliament or companies Act.
- State control- The public enterprises are owned and managed by either by state government or central government.
- Rendering services- The primary motive of these enterprises is to serve public.
- Useful to various sectors
- Monopoly enterprises- In some specific cases private sectors are not allowed and the public enterprises enjoy monopoly in operation.
- A direct channel for use of foreign money- Sometimes the government receives foreign assistance for the development of industries.
- Public accountability- These industries are liable to public for their performance because they are responsible for the nation.
- Agent for implementing government plans- The public policies and plans of government are implemented through public enterprises.
- Financial independence

THERE ARE THREE DIFFERENT FORMS OF PUBLIC ENTERPRISES

Type	Departmental Undertaking	Statutory Corporations	Government Companies
Meaning	These enterprises are directly managed by different departments of Government.	These enterprises are established by special Acts of parliament or state assembly.	Government company refers to those companies in which 51% or more of paid up capital is held by the government.
Example	Indian railways, postal telegraph etc.	Food corporation of India, Life Insurance corporation of India.	Bharat electronics limited, Hindustan machines tools limited.

CURRENT SCENARIO

- At the time of independence, India hardly had any public enterprises. We had only three departmental undertakings- One dealing with the *railways,* one dealing with the *post and telegraphs,* and the third dealing with *defense production.*
- The foundation of public enterprises was firmly laid down by our first Prime Minister Jawaharlal Nehru who was also inspired and supported by the Josip Broz Tito and Abdel Gamel Nasser.
- In 1991, the Government introduced industrial policy.
- In July 1997, Government identified nine central public sector enterprises as 'Navaratnas'.
- Navaratnas are- BHEL, BPCL, GAIL, HPCL, IOC, MTNL, NTPC, ONGC, and SAIL.

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- In October 1997, the Government granted enhanced autonomy and delegation of financial power to some other profit making public sector enterprises and categorized them as 'Miniratna'.
- Presently there are 45 Miniratna public sector enterprises functioning in India.
- The enterprises which are no more profit making and are going in loss are sick enterprises and are termed as Sick industries. These industries are referred to and are taken care by Board for industrial and financial reconstruction (BIFR).
- The Government set up a Board for reconstruction of public sector enterprises (BRPSE), which considers and advises the Government on the proposal of restructuring/revival of sick and loss making industries.

MULTINATIONAL CORPORATIONS (MNCs)

A Multinational corporation (MNC) or Multinational enterprise (MNE) is a corporation enterprise that manages production or delivers services in more than one country.

According to International labour organization, MNC is a corporation that has its management headquarters in one country, known as the HOME COUNTRY, and operates in several other countries, known as HOST COUNTRIES.

WHY MNCs EXIST---

1. Skills , production techniques and improvements in the quality of human capital
2. Availability of quality goods and services in the host country.
3. Tax revenues
4. Pollution and environmental damage
5. De-merits goods
6. Repatriation/set off of profits

MERITS OF MUTINATIONAL COMPANIES (MNCs)

ADVANTAGES TO HOST COUNTRIES	ADVANTAGES TO HOME COUNTRIES
Raise the rate of investment	Facilitate inflow of Foreign exchange
Facilitate transfer of technology	Promote global co-operations
Accelerate industrial growth	Ensure optimum utilization of resources
Promote exports and reduce imports	Promote bilateral relations
Provide services to professionals	
Provide benefits of R&D activities	
Support enterprises in host countries	
Break domestic monopolies	

DEMERITS OF MULTINATIONAL COMPANIES

1. Provide outdated technology
2. Harm the national interests
3. Charge heavy fees
4. Develop monopolies

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5. Use resources recklessly
6. Dominate domestic policies
7. Adverse effects on life style/culture
8. Interfere in economic and political system
9. Avoid tax liabilities
10. Lead to brain drain in developing countries

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MCQ

1. **In developing countries, _____ comprise the vast majority of the small business sector—a result of the relative lack of formal sector jobs available for the poor.**
   - **(a)** Small and medium enterprises (SME)
   - **(b)** Macro enterprises
   - **(c)** Micro enterprises
   - **(d)** SSI

2. **Micro enterprises add _____ by creating jobs, enhancing income, strengthening purchasing power, lowering costs and adding business convenience.**
   - **(a)** Value to a country's economy
   - **(b)** Employment opportunities
   - **(c)** Growth opportunities
   - **(d)** National income

3. **Micro-enterprise provides most of the goods and services that meet people's basic needs in _____.**
   - **(a)** Undeveloped countries
   - **(b)** Developed countries
   - **(c)** Developing countries
   - **(d)** Developing and redeveloping countries

4. **In most of the developing countries including India, Small Scale Industries (SSI) consitutes an important and crucial segment of the _____.**
   - **(a)** Tiny sector
   - **(b)** Industrial sector
   - **(c)** Agricultural sector
   - **(d)** Power sector

5. **The scarcity of capital in _____ severely limits the number of non-farm jobs that can be created because investment costs per job are high in large and medium industries.**
   - **(a)** Undeveloped nations
   - **(b)** Developing nations
   - **(c)** Under developed nations
   - **(d)** Developed nations

6. **Small scale enterprises are generally more labour intensive than _____.**
   - **(a)** Tiny organisations
   - **(b)** Small organisations
   - **(c)** Medium organisations
   - **(d)** Larger organisations

7. **Basically, the industries which are organized on a small scale and produce goods with the help of small machines, hired labour and power are called as _____.**
   - **(a)** Tiny sector
   - **(b)** Small and medium enterprises (SME)
   - **(c)** Small scale industries
   - **(d)** Large scale industries

8. **An industrial unit can be categorised as a small- scale unit if it fulfils the capital investment limit fixed by the _____ for the small-scale sector.**
   - **(a)** Government of India
   - **(b)** Government of state concerned
   - **(c)** Local government
   - **(d)** Concerned municipal crop.

9. **A common classification is between _____.**
   - **(a)** Traditional small industries and modem small industries
   - **(b)** SSI & large scale industries
   - **(c)** SSI & SME
   - **(d)** SME & large scale industries

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10. **_____ include khadi and handloom, village industries, handicrafts, sericulture, coir, etc.**

(a) Traditional SME
(b) Modem SME
(c) Traditional small industries
(d) Modern small industries

11. **_____ produce wide range of goods from comparatively simple items sophisticated products such as television sets, electronics, control system, various engineering products, particularly as ancillaries to the large industries.**

(a) Large industries
(b) SME
(c) Traditional SSIs
(d) Modem SSIs

12. **Nowadays Indian small-scale industries (SSIs) are mostly _____ small-scale industries.**

(a) Traditional
(b) Modem
(c) Traditional as well as modem
(d) Advanced

13. **The small-scale industrial sector plays a pivotal role in the Indian economy in terms of _____ has recorded a high rate of growth since Independence in spite of stiff competition from large-scale industries.**

(a) Employment and growth Employment
(b) Growth
(c) Overall development
(d) None of the above

14. **The small-scale industries sector plays a in the growth of the country.**

(a) Vital role **(b)** Pivotal role
(c) General role
(d) Unique role

15. **SSI Sector in India creates _____ for the Indian population, next only to Agriculture.**

(a) Significant employment opportunities
(b) Small employment opportunities
(c) Medium employment opportunities
(d) Largest employment opportunities

16. **SI Sector plays a major role in India's present _____.**

(a) Overall general performance
(b) Import performance
(c) Export performance
(d) Import as well as export performance

17. **Besides direct exports, it is estimated that small-scale industrial units contribute around 15% to exports _____.**

(a) Directly
(b) Indirectly
(c) Directly as well as indirectly
(d) Generally

18. **Growth in Requirements for ancillary units due to the increase in number of green field units coming up in the ____.**

(a) Small scale sector
(b) Large-scale sector
(c) Medium scale sector
(d) Small and medium Enterprises (SME)

19. **Small industry sector has performed exceedingly well and enabled our country to achieve a wide measure of ____.**

(a) Industrial growth
(b) Diversification
(c) Industrial growth and diversification
(d) Development

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20. On the one hand, _____ enable a vast number of people to earn income and on the other hand the very people among whom these are distributed generate this income.

(a) Tiny sector
(b) SME
(c) Large scale industries
(d) SSI

21. _____ refers to those industries which require huge infrastructure, man power and a have influx of capital assets.

(a) Small scale industries
(b) large scale industries
(c) Small and medium enterprises
(d) Tiny sector

22. All the heavy industries of India like the Iron and steel industry, textile industry, automQ.Noile manufacturing industry fall under the _____.

(a) Large scale industrial arena
(b) Small scale industries
(c) Small and medium enterprises
(d) Tiny sector

25. It was observed that _____ did not take interest in areas where the gestation period was long, investment was heavy and the profit margin was low.

(a) Public sector
(b) Private sector
(c) SME
(d) SSI

26. _____ as a form of business organisation have attained a great deal of significance in recent times.

(a) SME

23. Indian economy is heavily dependent on large industries for its _____.

(a) Economic growth
(b) Generation of foreign currency
(c) providing job opportunities
(d) economic growth, generation of foreign currency and for prodding job opportunities to millions of Indians

24. Fertilizer, cement, natural gas, coal, metal extraction, metal processing, petroleum, natural gas, mining, electrical, petrochemical, food processing units, tourism, banking, sugar, construction, automobile, communication equipment, cement, chemicals, earth movers, consumer durables (like television, refrigerators, etc), engineering products, vehicle assembly, beverages, gas and water; other fuels, agricultural processing, insurance and finance.

The above examples are of

(a) Small scale industries
(b) Small and medium enterprises (SME)
(c) Large scale industries
(d) Tiny sector
(b) SSI
(c) Public enterprises
(d) Private enterprises

27. A public sector enterprise may be defined as any commercial or industrial undertaking owned and managed by the Government with a view to _____.

(a) Minimise anti-eco activities
(b) Maximise social welfare
(c) Uphold public interest
(d) Maximise social welfare and uphold the public interest

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28. Public sector consists of nationalised _____ enterprises, such as, Insurance, Banks and new undertaking set up by the government such as Hindustan Machine Tools (HMT), Gas Authority of India (GAIL) etc.

(a) Private sector
(b) Public sector
(c) SME
(d) SSI

29. The public enterprises are financed, owned and managed by the _____.

(a) Municipal corp.
(b) Local Govt.
(c) State Government
(d) Government of India

30. The primary objective of the establishment of public enterprises is to serve the public at large by supplying the essential goods at a reasonable price _____.

(a) Supply the essential goods at a reasonable price
(b) Creating employment opportunities
(c) Supplying the essential goods at a reasonable price and creating the employment opportunities
(d) Creating growth opportunities

31. In some specific cases private sectors are not allowed and as such the public enterprises enjoy _____ in operation.

(a) Full freedom
(b) No competition
(c) Monopoly
(d) Oligopoly

32. The state enterprises are liable to the general public for their performances because they are responsible for the _____.

(a) Overall economic development
(b) Public
(c) Society
(d) Nation

33. The public enterprises run as per the whims of the government and as such the economic policies and plans of the government are implemented through _____.

(a) Private enterprises
(b) Public enterprises
(c) Government enterprises
(d) Public as well as private enterprises

34. There are_____ different forms of organisation used for the public sector enterprises in India.

(a) Two **(b)** Five
(c) Four **(d)** Three

35. Departmental Undertaking form of organisation is primarily used for provision of essential services such as _____.

(a) Railways
(b) Postal services
(c) Broadcasting
(d) Railways, postal services, broadcasting etc.

36. Statutory Corporation refers to a corporate body created by the Parliament or State Legislature by a special Act which defines its _____ .

(a) Powers
(b) Functions
(c) Pattern of management
(d) Powers, functions and pattern of management

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37. _____ refers to the company in which 51 percent or more of the paid up capital is held by the government.

(a) Private Company
(b) Public Company
(c) Government Company
(d) Non-profit making Company

38. Enterprises which are directly managed by different departments of Government are

(a) Department undertaking
(b) Statutory corp.
(c) Govt. companies
(d) None of the above.

39. Enterprises are established by special Act? of the parliament or state assembly are

(a) Department undertaking
(b) Statutory corp.
(c) Govt. companies
(d) None of the above.

40. Indian Railways, Posts and telegraph are example of

(a) Department undertaking
(b) Statutory corp.
(c) Govt. companies
(d) None of the above.

41. Unit Trust of India, Life Insurance Corporation of India. Food Corporation of India, are examples of

(a) Department undertaking
(b) Statutory corp.
(c) Govt. companies
(d) None of the above.

42. Bharat Heavy Electricals Limited, Bharat Electronics Limited, Hindustan Machine Tools Limited are examples of

(a) Department undertaking
(b) Statutory corp.
(c) Govt. companies
(d) None of the above.

43. _____ in India have been, perhaps, the most important strategic component of the Indian economy.

(a) Non governmental organisations
(b) Government enterprises
(c) Private enterprises
(d) Public enterprises

44. There is no doubt that _____ have played a significant role in the Indian economy.

(a) Public enterprises
(b) Private enterprises
(c) Government enterprises
(d) NGO

45. To improve the performance of the public enterprise, _____ has taken several measures.

(a) Public enterprises
(b) Private enterprises
(c) Government of India
(d) NGO

(a) Two countries
(b) Three countries
(c) One country
(d) Four countries

46. Multinational Corporation (MNC) or Multinational Enterprise (MNE) is a corporation enterprise that manages production or delivers services in more than _____.

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47. **The International Labour Organization (ILO) has defined an MNC as a corporation that has its management headquarters in one country, known as the home country, and operates in several other countries, known as _____.**

(a) Host countries
(b) Home countries
(c) Foreign countries
(d) Guest countries

48. **A multi-national corporation (MNC) is a business organisation which has its _____ in one country but has operations in a range of different countries.**

(a) Corporate office
(b) Sales office
(c) Administrative
(d) Headquarters

49. **The essence of a MNC is that they bring inward investment to countries that are not their _____.**

(a) Host base
(b) Home base
(c) Foreign base
(d) Foreign or host base

50. **MNCs bring with them new ideas and new techniques that can help to improve the quality of prQ.Nouction and help boost the quality of human capital in the _____.**

(a) Home country
(b) Host country
(c) Foreign country
(d) Foreign/home country

51. **MNC's raise the rate of investment in the _____ and thereby bring rapid industrial growth accompanied by massive employment opportunities in different sectors of the economy.**

(a) Home county
(b) Foreign country
(c) Host countries
(d) Foreign/home country

52. **Multinationals accelerate industrial growth in _____ through collaborations joint ventures and establishment and branches.**

(a) Home country
(b) Foreign country
(c) Foreign/home country
(d) Host countries

53. **MNC's help the _____ to deduce the imports and promote the exports by raising domestic production.**

(a) Home country
(b) Host country
(c) Foreign country
(d) Foreign/home country

54. **Multinationals facilitate efficient utiliza¬tion of resources available in _____.**

(a) Home country
(b) Foreign country
(c) Host countries
(d) Foreign/home country

55. **MNC's make their _____ rich by facilitating inflow of foreign exchange from other countries.**

(a) Home countries
(b) Host countries
(c) Foreign country
(d) Foreign/home country

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56. **The activities of MNC's in the _____ may be harmful to the national interests as MNC's are solely guided by the profit maximization.**

(a) Home country
(b) Foreign country
(c) Foreign/home country
(d) Host counties

57. **MNC's charge heavy fees and service charges from the enterprises in the _____.**

(a) Home country
(b) Foreign country
(c) Host countries
(d) Foreign/home country

58. **MNC's _____ and acquire monopoly power in certain areas in the host countries.**

(a) Restrict competition
(b) Promote competition
(c) Does not restrict competition
(d) Does not promote competition

59. **MNC's use the resources in the host countries in a very reckless manner, which leads to fast reduction of _____.**

(a) National resources
(b) Natural resources
(c) Renewable resources
(d) Non-renewable natural resources

60. **MNC's _____ for the formulation of policies that are favourable to them. They even topple the government in the host countries if its policies are against the MNC's and their operations.**

(a) Put pressures
(b) Does not put pressures
(c) Put direct pressures
(d) Put indirectly pressures

61. **Transfer pricing enables multinational corporations to avoid taxes by manipulating prices in the case of _____.**

(a) Inter company transactions
(b) Intra company transactions
(c) Inter as well as intra company transactions
(d) All transactions remove technological gaps in developing countries by providing techno-managerial skills.

62. **Multinationals are now entering in countries like India in a _____.**

(a) General way
(b) Moderate way
(c) Slow way
(d) Bigger way

63. **MNC's constitute a mixed blessing to _____.**

(a) Developing countries
(b) Developed countries
(c) Underdeveloped countries
(d) Advanced countries

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ANSWERS

1	(c)	**2**	(a)	**3**	(d)	**4**	(b)	**5**	(b)	**6**	(d)	**7**	(c)
8	(a)	**9**	(a)	**10**	(c)	**11**	(d)	**12**	(b)	**13**	(a)	**14**	(a)
15	(d)	**16**	(c)	**17**	(b)	**18**	(b)	**19**	(c)	**20**	(d)	**21**	(b)
22	(a)	**23**	(d)	**24**	(c)	**25**	(b)	**26**	(c)	**27**	(d)	**28**	(a)
29	(d)	**30**	(b)	**31**	(c)	**32**	(d)	**33**	(b)	**34**	(d)	**35**	(d)
36	(d)	**37**	(c)	**38**	(a)	**39**	(b)	**40**	(a)	**41**	(b)	**42**	(c)
43	(d)	**44**	(a)	**45**	(c)	**46**	(c)	**47**	(a)	**48**	(d)	**49**	(b)
50	(b)	**51**	(c)	**52**	(d)	**53**	(b)	**54**	(c)	**55**	(a)	**56**	(d)
57	(c)	**58**	(a)	**59**	(d)	**60**	(d)	**61**	(b)	**62**	(d)	**63**	(a)

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Its mandatory !

"Practice makes a man perfect"

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CHAPTER 4 EMERGING TRENDS IN BUSINESS

KEY POINTS

- ECONCEPTS ,ADVANTAGES AND LIMITATIONS
- NETWORKING
- FRANCHISING
- BUSINESS PROCESS OUTSOURCING (BPO)
- E-COMMERCE
- M-COMMERCE

FRANCHISING

A 'Franchise' means the special right given by a manufacturer or a parent organization to another individual or firm to sell to the former's product or service.

In other words where a firm allows another firm in a foreign market to use its technical know-how and trademark, it is known as franchising.

The individual or firm which grants right is called FRANCHISER.

The individual or firm to whom the right is granted is called FRANCHISEE.

The agreement between franchiser and franchisee is called Franchise agreement.

The word 'franchise' is of Anglo-French derivation from the word franc which means 'free'.

FEATURES OF FRANCHISING

(1) The franchiser allows the franchisee to use his trademark under a license.

(2) The franchise agreement requires the franchisee to follow franchiser's policy regarding business etc.

(3) The franchiser provides marketing support.

(4) The franchiser may arrange for the training of personnel working in the franchisee organization.

(5) The franchisee pays to the franchiser a sum of money called as 'royalty' for using his business.

(6) The right given to franchisee is for limited period. The agreement may be renewed from time to time

ADVANTAGES OF FRANCHISING

To the franchiser,

- The franchiser can expand his distribution system.
- The franchiser is able to expand.
- The franchiser gets feedback about the product.
- Franchiser is able to increase his goodwill and reputation.
- The rights of the franchiser are protected.

To the franchisee,

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- The business is based on experiences, survey and proven ideas.
- The franchisee gets the assistance from the franchiser.
- The benefit of using already made goodwill help the franchisee to achieve success.
- The franchisee use high quality control.
- The franchisee enjoys exclusive right in his region.

DISADVANTAGES OF FRANCHISING

To the franchiser,

- There is a danger that a franchisee may start a business using a different brand name.
- The franchiser's brand name is in danger. It can be spoiled by franchisee.
- The franchiser has to provide initial financial support to franchisee.
- There is a risk of trade secrets to be leaked out.
- Additional cost is incurred by franchiser.

To the franchisee,

- The franchisee does not enjoy complete freedom.
- Payment of royalty is to be made to franchiser.
- There is always possibility of conflicts among parties.
- The franchisee cannot sell his business without the permission of franchiser.

DIFFERENCE BETWEEN FRANCHISING/DISTRIBUTION/AGENCY

Distribution and agency are more traditional form of distributing goods and services.
Agent – commission
Franchising – royalty
Distribution – profit or percentage of sales

BUSINESS PROCESS OUTSOURCING (BPO)

In the recent times Outsourcing has become a very popular. It means "acquiring a product or service rather than producing it yourself". It is used by every organization in one way or the other. The functions being outsourced by the business are basically considered noncore to the business itself. Outsourcing is an IT enabled services 9ITES0 and is also known as Business Process Outsourcing BPO), Knowledge Process Outsourcing (KPO), and Legal Process Outsourcing (LPO).

Outsourcing is the process by which an organization contracts with another individual or company to get some of its work done. Viewed this way, most organizations go for some kind or other of outsourcing. Generally it is non-core aspects of the business that are outsourced.

BPO stands for Business Process Outsourcing, which means getting a business process, implemented using the channel of outsourcing.

Let's say you are running a business which requires various different processes to be implemented in order to accomplish different tasks required for your business. As your business expands, more and more new processes are introduced - and implementing such processes calls for increased manpower, resources, administration, HR activities etc., which would increase your

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cost. An alternative must be found; which enables you to manage these burdens by outsourcing them to a third-party firm who is equipped to implement the solutions to them (i.e. to manage your processes). This is called Business Process Outsourcing ('BPO').

Types of business process outsourcing

Back office outsourcing	Front office outsourcing
It includes internal function such as human resources or finance or accounting.	It includes customer related services.

Types of business process outsourcing

Off shore outsourcing	Near shore outsourcing
BPO that is contracted outside a company's country is called offshore outsourcing.	BPO that is contracted to a company's neighboring country is called near shore outsourcing.

NEED FOR OUTSOURCING

- Specialized performance
- Getting better results
- Achieving economy
- Ensuring smooth operations
- Expansion of business

ADVANTAGES OF BUSINESS PROCESS OUTSOURCING

- Flexible- An advantage of BPO is the way in which it helps to increase a company's flexibility.
- Cost effectiveness
- Focus
- Speed
- Growth
- Skilled manpower

DISADVANTAGES OF BUSINESS PROCESS OUTSOURCING

- Communication challenges and different standards
- Time zone
- Loss of control
- Service provider wants to diversify and wants more projects
- Customer is novice
- Other problems-Failure to meet service levels, contractual issues etc

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E- COMMERCE

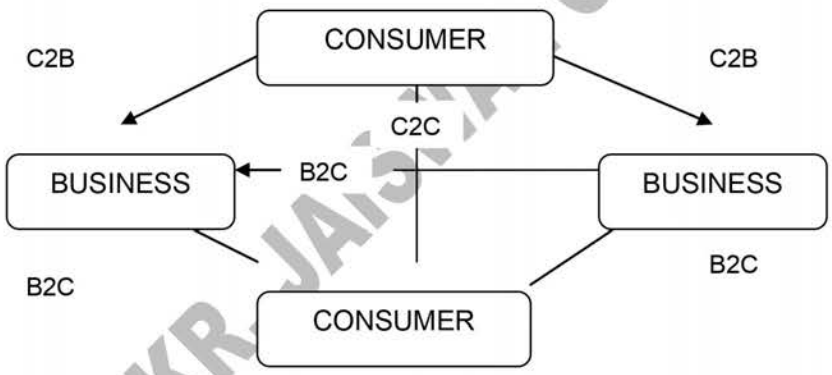
A type of business model, or segment of a larger business model, that enables a firm or individual to conduct business over an electronic network, typically the internet.

Electronic commerce operates in all four of the major market segments: business to business, business to consumer, consumer to consumer and consumer to business. Ecommerce (e-commerce) or electronic commerce is the purchasing, selling, and exchanging of goods and services over computer networks (such as the Internet).

CLASSIFICATION OF E - COMMERCE

Based upon the entities involved in transaction, electronic commerce has been classified into following categories:

- ***Business-to-Business (B2B)***
- ***Business-to-Consumer (B2C)***
- ***Consumer-to-Business (C2B)***
- ***Consumer-to-Consumer (C2C)***



ADVANTAGES OF E-COMMERCE

- Global market
- Lower transaction cost
- Quick delivery
- Saving of time and effort
- 24 X 7 Working
- Quick supplies
- Wider choice
- Customer convenience
- Direct contact between business and consumer
- Launching of new products

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DISADVANTAGES OF E-COMMERCE

- High start up cost
- High risk
- Training and maintenance
- Fulfillment problems
- Lack of personal touch
- Security
- System and integrity
- Corporate vulnerability
- People's resistance

M COMMERCE

M commerce or mobile commerce refers to the buying and selling of goods and services through mobile phones and personal digital assistants (PDAs).
Basic mobile commerce services include messaging and email, access to the Internet, GPS (global positioning services)/location finding and digital content products. Mobile consumer services include ticketing, stock trading, sports and news, games, shopping, banking and stock trading.

ADVANTAGES OF M-COMMERCE

- A new distribution network
- Secure way to do transactions.
- Large reach

DISADVANTAGES OF M-COMMERCE

- Mobile commerce solutions are limited in speed compared with computer-based systems. Even the fastest mobile phone systems are typically slower than hard-wired computers and are capable of offering only basic services.
- Acceptance of m-commerce is slow.
- Lack of infrastructure, poor input, display capabilities are other problems associated with m-commerce.

LIMITATIONS OF M-COMMERCE?

The following are the constraints in the application and growth of m-commerce.

- The existing technology is not best suited for mobile data transfer. The connections are unstable, the data transfer rate is limited, transfer duration is too long and the costs involved are high.
- Acceptance of m-commerce is slow
- Lack of infrastructure, competing standards, poor input and display capabilities in cell phones, and human fear to learn new things are other constraints in the use of m-commerce.

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FUTURE OF M-COMMERCE".

(1) Some application of M-commerce will become popular.

(2) These are time critical services that people will need on their way, e.g. traffic news, stock market reports. Booking tickets etc.

(3) For instance, the travel industry in realizing the possible benefits of m-commerce, is working on technologies that will take care of travel arrangement, update customers on flight status, notify them when this information changes and will offer to make new arrangements based on preset user preferences requiring no input from the user.

(4) Therefore, a customer's entire trip can be scheduled and managed using only their mobile devices.

CONCEPT OF INCUBATORS, ASSET LITE MODELS

These days, some new concepts are also emerging in business such as Incubators and Asset Lite Models.

Incubator

An incubator is an organization designed to accelerate the growth and success of entrepreneurial companies through an array of business support resources and services that could include physical space, capital, coaching, common services, and networking connections. Incubators provide numerous benefits to owners of startup businesses.

Incubators are critical for driving the growth of startups at all stages of their entrepreneurial journey. They help provide mentorship & handholding support and above all foster a culture of innovation.

Asset Light Model

Asset light model is a business model where businesses now instead of purchasing the land enter into a contract with the land owner, where they share a certain percentage of profit arising out of the business done on the land.

This helps in saving a huge cost of land to the business.

Although there are many asset-light models, some of the most common are outsourcing, asset sharing, licensing in, and licensing out.

Asset-light models can deliver a better return on assets, lower profit volatility, greater flexibility, and higher scale-driven cost savings than asset-heavy models.

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MCQ

1. **Network Marketing is a mode of direct marketing by the _____.**

   (a) Supplier
   (b) Manufacturer
   (c) Consumer
   (d) Government

2. **A network of _____ is formed who operate at various levels.**

   (a) Retailers
   (b) Traders
   (c) Distributors
   (d) Manufacturers

3. **A method of marketing that utilizes independent representative to reach potential customers that a company otherwise would not reach with traditional online or offline marketing methods is known as _____.**

   (a) Tele marketing
   (b) Indirect marketing
   (c) Direct marketing
   (d) Network marketing

4. **Distributors receive a net commission on the _____ they had created from their group personal volume.**

   (a) Total turnover
   (b) Individual turnover
   (c) Group turnover
   (d) Areawise turnover

5. **Some of the best-known American companies Avon, Oriflamme, Tupperware, Amway and so on, fall under the _____ umbrella.**

   (a) Tele marketing
   (b) Indirect marketing
   (c) Network marketing
   (d) Direct marketing

6. **Under network marketing the product reaches the _____ from the manufacturers via distributors.**

   (a) Customers **(b)** Suppliers
   (c) Retailers **(d)** Consumers

7. **A 'franchise' means the _____ given by a manufacturer or a parent organization to another individual or firm to sell to the former's product or service in a specified given area(s).**

   (a) Special privilege
   (b) Normal right
   (c) Special right
   (d) General right

8. **Where a firm allows another firm in a foreign market to use its technical know-how and trade mark, it is known as _____.**

   (a) Franchising
   (b) Networking marketing
   (c) Tele marketing
   (d) Technical marketing

9. **The individual or firm which grants right is called _____**

   (a) Distributor
   (b) Manufacturer
   (c) Franchisee
   (d) Franchiser

10. **The individual or firm to whom the right is granted is called _____.**

    (a) Distributor
    (b) Manufacturer
    (c) Franchisee
    (d) Franchisee

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11. A franchiser may have such agreement with more than one _____.

(a) Franchisee
(b) Distributor
(c) Manufacturer
(d) Franchisee

12. Franchising is the practice of using another firm's successful _____.

(a) Franchisor's model
(b) Business model
(c) Franchisee model
(d) Model model

13. The franchiser allows the franchisee to use his trade mark under a _____.

(a) Obligation
(b) Agreement
(c) Brand
(d) License

14. The franchise agreement requires the franchisee to follow _____ regarding mode of operation of business.

(a) Franchisee's policies
(b) Franchiser's policies
(c) Manufacturers policies
(d) Governmental policies

15. Franchiser virtually sets up the business for the _____

(a) Distributor
(b) Manufacturer
(c) Franchisee
(d) Franchisee

16. The franchisee pays to the franchiser _____ for using his business know-how and trade mark.

(a) A sum of money (called royalty)
(b) A part of profit
(c) A fixed amount
(d) An agreed amount

17. The franchiser can expend his distribution system in the _____

(a) Minimum time
(b) Maximum time
(c) Average time
(d) Least possible time

18. The franchiser gets important feedback about the popularity of the product and specific need and preferences of the local customers from the _____

(a) Franchiser
(b) Franchisees
(c) Manufacturer
(d) Distributor

19. The franchiser gains wider acceptance of his brand name through the _____.

(a) Franchisees
(b) Franchiser
(c) Manufacturer
(d) Distributor

20. The franchise ensures a high degree of quality control. This enables the franchisee to satisfy his customers by offering _____

(a) Quality products
(b) General product
(c) Any product
(d) ISI marked product

21. There are ongoing costs of supporting the franchisee and _____

(a) Local advertising
(b) State advertising
(c) National advertising
(d) International advertising

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22. **There is always a possibility of _____ between the parties regarding maintenance of accounts, payment of royalty, violation of quality norms, etc.**

(a) Confirmation
(b) Confusion
(c) Collusion
(d) Conflict

23. **The franchisee cannot sell his business without taking approval from _____.**

(a) Franchisee
(b) Franchiser
(c) Manufacturer
(d) Distributor

24. **The key distinguishing feature of a franchise is the higher degree of control that a franchisor exercises over a _____.**

(a) Franchiser
(b) Manufacturer
(c) Franchisee
(d) Distributor

25. **_____ are some of the sub-segments of business process outsourcing industry.**

(a) Knowledge process outsourcing
(b) Legal process outsourcing
(c) Knowledge process outsourcing (KPO) and legal process outsourcing (LPO)
(d) General process outsourcing

26. **BPO that is contracted outside a company's country is called _____**

(a) Offshore outsourcing
(b) Onshore outsourcing
(c) Local outsourcing
(d) International outsourcing

27. **BPO that is contracted to a company's neighboring (or nearby) country is called _____.**

(a) National outsourcing
(b) At the shore outsourcing
(c) Far from shore outsourcing
(d) Near shore outsourcing

28. **An advantage of BPO is the way in which it helps to _____ a company's flexibility.**

(a) Decrease
(b) Increase
(c) Maintain
(d) Generate

29. **Another way in which BPO contributes to a company's flexibility is that a company is able to focus on its _____.**

(a) Pure competencies
(b) Core competencies
(c) General competencies
(d) Extraordinary competencies

30. **BPO _____ organizational flexibility is by increasing the speed of business processes.**

(a) Increase
(b) Decrease
(c) Does not increases
(d) Does not decrease

31. **Sometimes in the business of outsourcing _____ usually comes.**

(a) Communication problems
(b) Business problems
(c) Administrative problems
(d) Marketing problems

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32. **Time zone would be creating _____ of outsourcing.**

(a) Advantages (b) Benefits
(c) Disadvantages (d) Opportunities

33. **_____ refers to all forms of business transactions which are carried out through electronic processing and transmission of data including text, sound and visual images.**

(a) E-Commerce
(b) M-Commerce
(c) B2B Commerce
(d) B to C Commerce

34. **_____ enables business firms to reach out to customers all over the world who have an access to internet.**

(a) E-Commerce
(b) M-Commerce
(c) B2B Commerce
(d) B to C Commerce

35. **_____ reduces the cost of business transactions substantially.**

(a) M-Commerce
(b) B2B Commerce
(c) B to C Commerce
(d) E-Commerce

36. **_____ enables business firms to establish a direct contact with their customers by eliminating middlemen.**

(a) M-commerce
(b) E-Commerce
(c) B2B Commerce
(d) B to C Commerce

37. **_____ refers to the buying and selling of goQ.Nos and services through wireless handheld devices such as mobile phone and personal digital assistants (PDAs).**

(a) E-Commerce
(b) M-Commerce
(c) B2B Commerce
(d) B to C Commerce

38. **The basic idea of _____ is to distribute information and thus to generate business in a mobile way.**

(a) M-commerce
(b) E-Commerce
(c) B2B Commerce
(d) B to C Commerce

39. **_____ is the ability to conduct commerce using a mobile device, such as a mobile phone, a Personal Digital Assistant (PDA), a smart phone, or other emerging mobile equipment such as dash top mobile devices.**

(a) E-Commerce
(b) B2B Commerce
(c) M-Commerce
(d) B to C Commerce

40. **_____ is about the explosion of applications and services that are becoming accessible from Internet-enabled mobile devices.**

(a) M-Commerce
(b) E-Commerce
(c) B2B Commerce
(d) B to C Commerce

41. **_____ refers to all forms of business transactions which are carried out through electronic processing and transmission of data including text, sound and visual images.**

(a) E-Commerce
(b) M-Commerce
(c) B2B Commerce
(d) B to C Commerce

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42. _____ refers to the buying and selling of goQ.Nos and services through wireless handheld devices such as mobile phone and personal digital assistants (PDAs).

(a) E-Commerce
(b) B2B Commerce
(c) M-Commerce
(d) B to C Commerce

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ANSWERS

1	(b)	**2**	(c)	**3**	(d)	**4**	(a)	**5**	(c)	**6**	(a)	**7**	(c)
8	(a)	**9**	(d)	**10**	(d)	**11**	(a)	**12**	(b)	**13**	(d)	**14**	(b)
15	(c)	**16**	(a)	**17**	(d)	**18**	(b)	**19**	(a)	**20**	(a)	**21**	(c)
22	(d)	**23**	(d)	**24**	(b)	**25**	(c)	**26**	(a)	**27**	(d)	**28**	(b)
29	(b)	**30**	(a)	**31**	(a)	**32**	(c)	**33**	(a)	**34**	(a)	**35**	(d)
36	(b)	**37**	(b)	**38**	(a)	**39**	(c)	**40**	(a)	**41**	(a)	**42**	(c)

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CHAPTER 5 BUSINESS FUNCTION

KEY POINTS

- STRATEGIC
- SUPPLY CHAIN
- FINANCE
- MARKETING
- HUMAN RESOURCES

INTRODUCTION

Business function is a process or operation that is performed routinely to carry out a part of an organization .The series of activities undertaken to create a product or deliver a service Companies often lay down specific rules for business process to ensure activities are completed in an organized and efficient manner.

MAIN BUSINESS FUNCTIONS-

Management	Financial	Production	Strategy
Control	Human resources	Sales	Legal
Organization/location of business	Marketing	Research and development	Planning
Decision making	Government policy	Supply chain	Secretarial functions
Accounting	Administration	Information & communication technology	

STRATEGY

"Strategy is the direction and scope of an organisation over the long-term: which achieves advantage for the organisation through its configuration of resources within a challenging environment, to meet the needs of markets and to fulfill stakeholder expectations."

BACKGROUND OF STRATEGY.

(i) The term strategy is derived from the Greek word 'Strategies' which means 'the art of the general'.

(ii) This concept was primarily used in military science where it implies the plan to win the battle.

(iii) In context of business, strategy is a plan specially designed to match the potential of competitors.

(iv) Strategy reflects managerial response to changes In business environment.

FEATURES OF STRATEGY.

1. It is a specialized planning to retaliate competitors.
2. It explains how managers have to respond to changes in business environment.

3. It redefines direction towards, common efforts.
4. It reflects concern to effectively mobilize resources.
5. It maximizes chances to achieve objectives.
6. Formulating strategies is the job of top management.

PLANNING

In simple words, planning is deciding in advance what is to be done, when where, how and by whom it is to be done. A plan is a predetermined course of action to achieve a specified goal. It is an intellectual process characterized by thinking before doing. It is an attempt on the part of manager to anticipate the future in order to achieve better performance. Planning is the primary function of management.

An organization without planning is like a sailboat minus its rudder. Without planning, organization, are subject to the winds of organizational change. Planning is one of the most important and crucial functions of management.

BUDGETARY CONTROL

BUDGET- With a budget, an individual is able to carefully look at how much money they are taking in during a given period, and figure out the best way to divide it among a variety of categories. When making a personal budget, we make a budget of our expenses in a month to be incurred with our given salary.

BUDGETS ARE STATEMENT IN

Financial terms	Non- financial terms
Revenue, expense and capital budget	Labour hours, materials, physical sales Volume or units of production.

BUDGETING- It is a formulation of plans for future period. It is a method of formulating budgets.

BUDGETARY CONTROL- It is a technique where standard is set, so that it can be compared with actual performance.

It is a very useful activity to control over employees.

FEATURES OF BUDGETRY CONTROL

- Financial statement
- Prepared for future control period.
- It is a goal oriented.
- Its components are Income, Expenditure, and employment of capital.

ADVANTAGES OF BUDGETING

- Budgeting focuses on specific targets.
- Budgeting is a source of motivation to employees.
- Budgeting helps in utilization of resources.
- It helps in achieving co-ordination.
- It facilitates management by exception.

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TYPES OF BUDGETS

Type of Budget	Purpose of Budget
Sales Budget	Specifies expected sales of goods during a period(s).
Production Budget	Specifies volume of production during different period(s).
Material Budget	Specifies estimated quantity and cost of material during different volumes of production.
Cash Budget	Specifies expected cash inflow and outflow and net liquidity position at different time periods.
Working capital Budget	Specifies available working capital, i.e., investment in current assets like inventory, debtors, etc., at different points of time.
Profitability Budget	Specifies at different levels of sales, expected profit level.
R&D Budget	Specifies estimated expenditure to carry out research and development.

FEATURES OF BUDGETARY CONTROL:

1. **Financial and/ or quantitative statement.**
2. **Futuristic-** prepared and approved prior to a defined period of time.
3. **Goal Oriented-** for the purpose of attaining a given objective.
4. **Components-** Income, Expenditure and Employment of capital.

RESEARCH AND DEVELOPMENT

Research and development means. Discovering new knowledge about products, processes, and services, and then applying that knowledge to create new and improved products, processes, and services that fill market needs.

It is systematic activity combining both basic and applied research, and aimed at discovering solutions to problems or creating new goods and knowledge.

LOCATION OF BUSINESS

For business, the search for a good location is vitally important. Many people take the locations of businesses for granted, but to the people that own them their locations are very important and can depend on a number of factors.
Factors affecting location of business.

COMMUNICATION	LABOUR	MARKET-CUSTOMER & POPULATION	SUPPLIERS	GOVERNMENT ASSISTANCE
Most businesses need to be easily accessible to their suppliers and distributors. If the business is	Business shall be set up at a populated area especially if it is labour intensive enterprise.	Business requires market i.e. it requires customer. If the business is related to deal in video games and	Most of the industries and business requires raw material. Therefore it is an important point	There are areas where businesses are given assistance by government in form of subsidy, tax rates

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located where there is no access to transport facility to reach to customers, suppliers, distributors etc. So, this factor is equally important while deciding location of business.	Business also needs skilled labour; hence it shall be established in an area where skilled employees are available.	toys for children. Then owner shall make sure that it is opened in an area where the population of children is more.	to be kept in a mind while deciding the location of business. This can help business to reduce its cost if it is located near its suppliers.	etc.

DECISION MAKING

Decision making is an important activity for every business. It is required at all levels- top level, middle level, lower level. Decision making is an extended form of planning.
A good decision can lead to success whereas hasty /wrong decision can leads to disaster.

GOVERNMENT POLICY-

Government policy is also one of the major business functions. Few businesses are co-operative towards Government. Whereas few does not bother to take government policy seriously in respect of paying tax etc.

SUPPLY CHAIN

Supply Chain Management (SCM) deals with the management of materials, information, and financial flows in a network consisting of suppliers, manufacturers, distributors and customers.

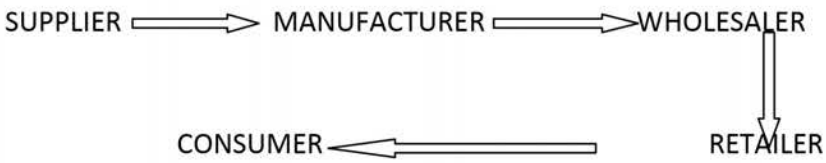
Supply chain management (SCM) is the oversight of materials, information, and finances as they move in a process from supplier to manufacturer to wholesaler to retailer to consumer.

Supply Chain Management is primarily concerned with the efficient integration of suppliers, factories, warehouses and stores so that products/goods are produced and distributed in the right quantities, to the right locations and at the right time.

Types of flows in SCM.

Supply chain management flows can be divided into three main-flows:

- Product Flow.
- Information Flow.
- Finances Flow.



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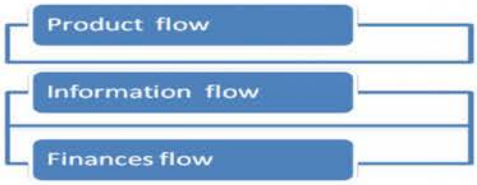
SUPPLY CHAIN FLOWS CAN BE DIVIDED INTO THREE MAIN



Product flow - It includes the movement of goods from supplier to customer.
Information flow - This flow transmitting orders and updating the status of delivery.
Finances flow – This flow consist of payment schedules, credit etc.

THERE ARE TWO TYPES OF SUPPLY CHAIN SOFTWARE-

Planning application	Executive application
This application relates to best way to fill an order.	It tracks the physical status of goods like management of materials and financial information of parties.

This software helps to provide –
Upstream data (with company's suppliers), and
Downstream data (with company's clients)

OBJECTIVES OF SUPPLY CHAIN MANAGEMENT-

- Greater efficiency and lower costs.
- Enhance flexibity
- Improve customer service
- Optimize the chain

SUPPLY CHAIN MANAGEMENT INCLUDES-

- Managing supply and demand
- Sourcing raw material and parts
- Manufacturing and assembly
- Warehousing and inventory/stock
- Order entry
- Distribution
- Delivery to the customer

IMPORTANCE OF SCM.

(1) Supply chain management is essential to company success and customer satisfaction.
(2) It also plays a critical role in society. Us knowledge and capabilities can be used to support medical missions, conduct disaster relief operations, and handle other types of emergencies.
(3) It also plays a role in cultural evolution and helps improve our quality of life.

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PRODUCTION

A Business needs resources in order to trade. The activities of business should be arranged or planned in such a way to turn those resources into products and services that customers are willing to pay for. This process is known as the 'transformation processes'. Production function is that part of an organization, which is concerned with the transformation of a range of inputs into the required outputs (products).

Production is defined as "the step-by-step conversion of one form of material into another form through chemical or mechanical process to create the product to the user." Thus production is a value addition process. At each stage of processing, there will be value addition.



PRODUCTION AND OPERATION MANAGEMENT (POM)

Production management is a process of planning, organizing, directing and controlling the activities of the production function. The objective of the production management is 'to produce goods services of right quality and quantity at the right time and right manufacturing cost'.

Objectives of operations management can be categorized into customer service and resource utilization.

There are several methods of handling the conversion of production processes-

They are-

- Job method
- Batch method
- Flow and group method

Job method- In this system Products is manufactured to meet the requirements of a specific order. The quality involved is small and the manufacturing of the product will take place as per the specifications given by the customer.

The complete task is handled by single workers or group of workers.

Jobs can be small or low technology as well as complex or high technology.

Low technology jobs are extremely simple, with the required skills according to customer preferences. This kind of method is seen in hairdressers, tailoring.

High technology jobs are the one that involves complexity. The major ingredient of this type of production is project management or project control. The Job produced only once. The job produced at irregular intervals.

Batch production method- It is a form of manufacturing in which the job passes through the functional departments in lots or batches and each lot may have a different routing. Each operation is completed first and then the next step/operation is started.

The advantage of batch production method is that it ensures specialization and control over workers/employees/labour. The disadvantage of this method is that it sometimes left product to be unfinished and enhance inventory.

Flow methods- This method is similar to batch method. This method is better than batch method as it ensures that product is not left unfinished and task is completed in a flow on time.

In order to make flow method effective, one has to keep following points in mind.

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- There must be constant demand -If demand is irregular, then the flow production line can lead to build up of stocks.
- The task must be standardized-Flow methods are rigid - they cannot deal with variations in the product.
- Each operation must be recorded in detail.
- The output must be up to quality standards.

FINANCE

One need money to make money. Finance is the livelihood of business and there must be a continuous flow of funds in and out of a business enterprise. Money makes the business run smoothly.

Finance represents long term and short term requirements of an organization.

Money required for carrying out business activities is called business finance. Finance is needed to establish firm, to expand it, to modernize it etc.

FINANCIAL MANAGEMENT

Financial management may be defined as planning, organizing, directing and controlling the financial activities of business. It is concerned with the procurement and utilization of funds.

From the point of view of a corporate unit , financial management is related not only to raising funds but also related to manage finances for company's success.

Financial management is concerned with investment, financing and dividend decisions.

FINANCIAL MANAGEMENT

Financing decision	**Investment decision**	**Dividend decision**
It comprises of – • Capital structure decision: Decision for raising funds from long term sources are called capital structure decisions. • Financial planning: It means estimating sources of funds and application of funds.	It comprises of – • Fixed capital management: Decisions related to investment in long term assets such as land, plant and machinery is called capital budgeting decisions. • Working capital management: Short term decisions are called as working capital decisions.	When business earns profit, it has two options whether it can pay dividend to debenture holders or retain the profit for re investing in business. It comprises of- • Dividend payment decision: This is decision as to how much to be paid to debenture holders. • Retention of profit: This is a decision as to how much profit is to be retained.

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FINANCIAL PLANNING

Financial planning is the process that involves the preparation of plans for the procurement, investment and administration of funds. Financial planning is an integral part if financial management. A Firm prepares plans for both long term and short term. Financial planning ensures right amount of finance at right time.

MARKETING MANAGEMENT

Marketing is defined as a process of determining the needs of consumers and being able to deliver products that satisfy those needs and wants. Marketing includes all the activities necessary to move a product from the producer to the consumer. Marketing does not only concern with physical distribution of goods, it is much more than that. Marketing is the process of discovering and translating consumer wants into goods or services.

DIFFERENCE BETWEEN MARKETING AND SELLING

Basis	Selling	Marketing
Focus	It focuses on producers.	It focuses on customers.
Supremacy	Producer is important	Customer is important
Demand	It assumes demand	It generates demand
Motive	Profit is sole motive	Profit and customer satisfaction are motives.
Process	It is exchange of goods for cash	It involves identifying and satisfying consumer's needs
Scope	It is concerned with only flow of goods	It is concerned with all the activities which are required to flow of goods such as advertising, after sale service etc.
Emphasis	Sale is emphasized	Customer satisfaction is emphasized
Law	Caveat emptor, let the buyer beware applies.	Caveat vendor, let the seller beware applies.
Perspective	Selling has a short term perspective	Marketing has a long term perspective

MARKETING MIX

In order to satisfy needs and wants of customers, a business enterprise must develop an appropriate marketing mix. Marketing mix is the term used to describe the combination of four inputs which form important part of company's marketing system. They are-

- THE PRODUCT
- THE PRICE
- THE PROMOTIONAL ACTIVITIES
- THE DISTRIBUTION SYSTEM

Borden's marketing mix included the following ingredients or elements-

- Product planning
- Pricing

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- Branding
- Channels of distribution
- Advertising
- Promotion
- Packaging
- Displays
- Servicing
- Physical handling

FUNCTIONS OF MARKETING-

- Market and consumer research
- Permanent adaptation
- Full satisfaction of demand
- Maximizing of economic efficiency
- Market knowledge
- Research of consumer preferences
- Marketing for the company, not company for marketing.

HUMAN RESOURCES

Human resources of an organization refer to the people working in it. Human resources are the mo0st valuable asset of business organization. Human resources mean people at work. All the individuals engaged or employed at different levels in the organization are its human resources. Human resource management is that part of management which is concerned with the recruitment, selection, development, motivation, and utilization of human resources in an organization.

NATURE

Human Resource Management is a process of bringing people and organizations together so that the goals of each are met. The various features of HRM include:

- It is pervasive in nature as it is present in all enterprises.
- Its focus is on results rather than on rules.
- It tries to help employees develop their potential.
- It encourages employees to give their best to the organization.
- It is all about people at work, both as individuals and groups.
- It tries to put people on assigned jobs in order to produce good results.
- It helps an organization meet its goals in the future by providing for competent and well-motivated employees.
- It tries to build and maintain cordial relations between people working at various levels in the organization.
- It is a multidisciplinary activity, utilizing knowledge and inputs drawn from psychology, economics, etc.

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OBJECTIVES OF HUMAN RESOURCE MANAGEMENT

- To help the organization reach its goals.
- To ensure effective utilization and maximum development of human resources.
- To ensure respect for human beings.
- To ensure reconciliation of individual goals with those of the organization.
- To achieve and maintain high morale among employees.
- To provide the organization with well-trained and well-motivated employees.
- To increase to the fullest the employee's job satisfaction.
- To develop and maintain a quality of work life.
- To develop overall personality of each employee in its multidimensional aspect.
- To enhance employee's capabilities to perform the present job.
- To equip the employees with precision and clarity in transaction of business.
- To inculcate the sense of team spirit, team work and inter-team collaboration.

SERVICES

1. **LEGAL**

The legal department of business handles legal issues which may come up in the course of business. It carries out all activities from drafting for employees to handling complaints from angry customers.

One of the most important roles of the legal department is as legal advisers.

The legal department will also become involved in customer complaints.

This department also represents company in suit/cases.

It also handles filing of patents and other legal document s with official agencies.

2. **SECRETARIAL FUNCTIONS**

In business the secretarial function is performed by the company secretary.

Company secretary is the officer dealing with secretarial functions.

These functions are as follows-

- Conducting board meetings as required under company's act, 1956.Its functions also includes issuance of notices, drafting agenda, recording minutes and preparing reports etc.
- Conducting general meeting of share holders.
- Representing the organization for registration of company, change of name , shifting of registered office etc.
- Managing procedural formalities.

3. **ACCOUTING**

Accounting is an important function of management. The list of accounting functions-

- Record keeping function
- Protect business property
- Legal requirement function
- Communicating the results

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4. **ADMINISTRATION**

Administration is the department that makes sure all office work is completed and also make sure all the paper work can be accessed easily if necessary. It tries to make business operates effectively.

Administration can be defined as the universal process of organizing people and resources so as to direct to achieve common goal.

Administrative function includes-

- Administration of department's human resource function.
- Initiatives to encourage economic development.
- Methods to create effective plans.
- Programs to enhance reusable resources and natural resources.

5. **INFORMATION AND COMMUNICATION TECHNOLOGY FUNCTION**

The information and communication technology department will try and enable the business to benefit from implementing modern technology at workspace. This department ensures the organization that it follows updated trends and modern equipments.

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1. **Business function is a process or operation that is performed routinely to carry out a part of the _____ of an organization.**

   (a) Vision
   (b) Mission
   (c) Objectives
   (d) Targets

2. **_____ may involve division of labor between multiple persons and/or technologies.**

   (a) Business process
   (b) Business purpose
   (c) Business mission
   (d) Business vision

3. **Strategies exist at several levels in any _____.**

   (a) Country
   (b) Economy
   (c) Company
   (d) Organisation

4. **_____ is concerned with the overall purpose and scope of the business to meet stakeholder expectations.**

   (a) Master Strategy
   (b) Corporate Strategy
   (c) Corporate Vision
   (d) Corporate Mission

5. **_____ is concerned more with how a business competes successfully in a particular market.**

   (a) Business Unit Strategy
   (b) Business
   (c) Strategy
   (d) Business unit

6. **_____ is concerned with how each part of the business is organised to deliver the corporate and business-unit level strategic direction.**

   (a) Marketing Strategy
   (b) Corporate Strategy
   (c) Synergic Strategy
   (d) Operational Strategy

7. **Planning is the _____ function of management.**

   (a) Primary
   (b) Secondary
   (c) Main
   (d) Primary as well as secondary

8. **_____ is a financial and/ or quantitative statement, prepared and approved prior to a defined period of time of the policy to be pursued during that period for the purpose of attaining a given objective.**

   (a) Planning **(b)** Budget
   (c) Forecasting **(d)** Financial budget

9. **_____ is the formulation of plans for a given future period in numerical terms.**

   (a) Planning **(b)** Forecasting
   (c) Budgeting **(d)** Standardising

10. **_____means certain standards for performance are laid down. These standards are used to monitor, measure and regulate the actual performance.**

    (a) Financial Planning
    (b) Performance Budgeting
    (c) Budgetary Control
    (d) Standardising

11. **_____ is the department that makes sure all of the office work is completed and also make sure all the paper work can be accessed easily if necessary and sent to any people that need it, it also tries to make the business operate as efficiently as possible.**

(a) Accounting **(b)** Administration
(c) Finance **(d)** Marketing

12. **Budgeting is a source of _____ to the employees who know the standards against which their performance will be appraised and thus, enables them to perform better.**

(a) Motivation **(b)** Morale
(c) Spirit **(d)** Encouragement

13. **Budgeting helps in _____ by allocating them according to the requirements of different departments.**

(a) Optimum utilization of resources
(b) Planning
(c) Forecasting
(d) Performing

14. **Decision making is regarded as the _____ resulting in the selection of action among alternative scenarios.**

(a) Special processes
(b) General professes
(c) Menial processes
(d) Model processes

15. **_____ is a reasoning or emotional process which can be rational or irrational, can be based on explicit assumptions or tacit assumptions.**

(a) Planning
(b) Decision making
(c) Forecasting
(d) Budgeting

16. **_____ is the oversight of materials, information, and finances as they move in a process from supplier to manufacturer to wholesaler to retailer to consumer.**

(a) Chain management
(b) Supply chain management (SCM)
(c) Supply
(d) Planning & forecasting

17. **The ultimate gl of any effective supply chain management system is to _____ (with the assumption that products are available when needed).**

(a) Reduce inventory
(b) Increase inventory
(c) Maintain inventory
(d) Avoid excess inventory

18. **Supply chain management flows can be divided into _____ main flows.**

(a) One **(b)** Two
(c) Three **(d)** Four

19. **_____ includes the movement of goods from a supplier to a customer, as well as any customer returns or service needs.**

(a) The process flow
(b) The product flow
(c) The market flow
(d) The utilisation flow

20. **Some SCM applications are based on _____ that support the sharing of data both inside and outside the enterprise (this is called the extended enterprise, and includes key suppliers, manufacturers, and end customers of a specific company).**

(a) General models
(b) Silent data models
(c) Closed data models
(d) Open data models

21. **The supply chain — a term now commonly used _____ encompasses every effort involved in producing and delivering a final product or service, from the supplier's supplier to the customer's customer.**

(a) Internationally
(b) Nationally
(c) Locally
(d) Nationally as well as internationally

22. **Supply chain management is essential to company success and _____ satisfaction.**

(a) Manufacture
(b) Distributor
(c) Supplier
(d) Customer

23. **In _____ the organisation of production is extremely simply, with the required skills and equipment easily obtainable.**

(a) Technology jobs
(b) Average technology jobs
(c) Low technology jobs
(d) High technology jobs

24. **In _____ high technology jobs involve much greater complexity - and therefore present greater management challenge.**

(a) Technology' jobs
(b) High technology jobs
(c) Average technology jobs
(d) Low technology jobs

25. **Batch methods require that the work for any task is divided into _____.**

(a) Parts
(b) Operations
(c) Parts or operations
(d) Units

26. **Flow methods are similar to batch methods except that the prlem of _____ is eliminated.**

(a) Rest
(b) Idle production
(c) Batch queuing
(d) Rest/idle production/batch queuing

27. **_____ has been defined as a "method of production organisation where the task is worked on continuously or where the processing of material is continuous and progressive,"**

(a) Process
(b) Progress
(c) Flow
(d) Batch

28. **_____ mean that as work on a task at a particular stage is complete, it must be passed directly to the next stage for processing without waiting for the remaining tasks in the "batch".**

(a) Flow methods
(b) Process methods
(c) Job methods
(d) Batch methods

29. **If demand is _____, then the flow production line can lead to a substantial build up of stocks and possibility storage difficulties.**

(a) Unpredictable
(b) Irregular
(c) Unpredictable or irregular
(d) Uncertain

30. **Flow methods are _____ they cannot deal effectively with variations in the product (although some "variety" can be accomplished through applying different finishes, decorations etc at the end of the production line).**

(a) Flexible
(b) Inflexible
(c) Rigid methods
(d) Normal methods

31. **Since the flow production line is working continuously, it is not a _____ to use materials that vary in style, form or quality.**

(a) Wort idea
(b) Better idea
(c) Good idea
(d) Best idea

32. **Each _____ in the production flow must be carefully defined - and recorded in detail.**

(a) Unit
(b) Process
(c) Flow
(d) Operation

33. **The _____ from each stage of the flow must conform to quality standards.**

(a) Input
(b) Output
(c) Input and output
(d) Flow

34. **Money required for carrying out business activities is called _____.**

(a) Personal finance
(b) General finance
(c) Business finance
(d) Bank finance

35. **_____ is concerned with optimal procurement as well as the usage of finance.**

(a) General management
(b) Company management
(c) Financial management
(d) Marketing management

36. **Financial management aims to reduce the cost of _____.**

(a) Finance **(b)** Market
(c) URD **(d)** Business

37. **A group of experts says that Financial Management is simply the task of providing funds needed by the business or enterprise on terms that are _____ in the light of its objectives.**

(a) Favourable
(b) Less favourable
(c) More favourable
(d) Most favourable

38. **From the point of view of a corporate unit, financial management is related not only to _____ but encompasses wider perspective of managing the finance for the company efficiently.**

(a) Fund-raising
(b) Fund-utilisation
(c) Fund-spending
(d) Fund-planning

39. **Financial Management, to be more precise, is, thus concerned with _____ decisions in relation to objectives of the company.**

(a) Investment
(b) Financing
(c) Dividend
(d) Investment, financing and dividend

40. _____ comprises of a) Financial Planning and b) Capital Structure Decision.

(a) Financing Decision
(b) Investment Decision
(c) Dividend Decision
(d) Finance, Investment & Dividend decisions

41. _____ comprises of a) Fixed Capital Management and b) Working Capital Management.

(a) Financing Decision
(b) Dividend Decision
(c) Investment Decision
(d) Finance, Investment & Dividend decisions

42. _____ comprises of a) Dividend Payment Policy Decision and b) Decision for Ploughing back or Retention of Surplus/ Profit.

(a) Financing Decision
(b) Investment Decision
(c) Finance, Investment & Dividend decisions
(d) Dividend Decision

43. Investment decision means deciding the quantum of investment out of available finance on _____.

(a) Average basis
(b) Long term basis
(c) Short-term basis
(d) Long term basis as well as on short-term basis.

44. _____ comprises two decisions, viz., i) financial Planning; and ii) Capital structure decision.

(a) Financing decisions
(b) Investment Decision
(c) Dividend Decision
(d) Finance, Investment & Dividend decisions

45. A part of profits after payment of tax is appropriated for reinvestment in business as retained pro/its and a part is distributed as _____.

(a) Profit to shareholders
(b) Revenue to shareholders
(c) Dividend to shareholder
(d) Dividend to debenture holders

46. Financial planning is the managerial activity that _____.

(a) Estimates capital requirements
(b) Decides capital structure
(c) Designs capital structure
(d) Estimates capital requirements, decides and designs capital structure to exercise effective financial control

47. Market means the _____ through which products and services are sold, exchanged and transferred.

(a) Style **(b)** Method
(c) System **(d)** Mechanism

48. Market comprises of buyers, sellers, middlemen and all those concerned with _____.

(a) Sale of goods
(b) Sale and purchase of goods
(c) Purchase of goods
(d) Market

49. _____ is defined as the process of determining the needs and wants of consumers and being able to deliver products that satisfy those needs and wants.

(a) Marketing **(b)** Selling
(c) Promoting **(d)** Advertising

50. Marketing starts with _____, a learning process in which marketers get to know everything about the needs and wants of consumers, and it ends when somebody buys something.

(a) Selling research
(b) Marketing research
(c) Promoting research
(d) Advertising research

51. Marketing and Selling are _____.

(a) Contrary
(b) Different
(c) Not synonymous
(d) Synonymous

52. Selling is a _____ which involves transfer of goods or services from producers to consumers.

(a) Inclusive concept
(b) Exclusive concept
(c) Narrow concept
(d) Wider concept

53. Selling has a _____ perspective with profit maximization.

(a) Short-term
(b) Short-term
(c) Medium-term
(d) Average term

54. Marketing has a _____ with emphasis on customer creation, satisfaction, growth and stability.

(a) Short-term perspective
(b) Long-term perspective
(c) Medium-term perspective
(d) Average-term perspective

55. In marketing, on the one side is the marketeer or the firm and on the other the _____.

(a) Market or the customers
(b) Market functions
(c) Customers
(d) Market as well as customers

56. Marketing mix refers to the ingredients or the tools or the variable, which the marketeer mixes in order to _____.

(a) Deal with market
(b) Deal with particular market
(c) Interact with the general market
(d) Interact with a particular market

57. Kotler defines Marketing Mix as "set of _____ that the firm uses to pursue its marketing objectives in the target market".

(a) Selling goods
(b) Marketing tools
(c) Promoting goods
(d) Advertising goods

58. The functions of _____are embodied in the aggregate of economic activities related to the transfer of property right, selling and buying, the transport and storage of goods, distribution, packaging, financing and procurement.

(a) Advertising
(b) Promoting
(c) Selling
(d) Marketing

59. Market and Consumer Research is the main function of all _____.

(a) Advertising activities
(b) Promoting activities
(c) Marketing activities
(d) Selling activities

60. **"People are our _____" is a cliche 'which no member of any senior management team would disagree with.**
    (a) Most valuable asset
    (b) Valuable asset
    (c) Asset
    (d) Liabilities

61. **_____ is a process of bringing people and organizations together so that the goals of each are met.**
    (a) Financial Management
    (b) Marketing Management
    (c) Human Resource Management
    (d) Sales Management

62. **HRM is pervasive in nature as it is _____.**
    (a) There in an enterprises
    (b) Not available in any enterprise
    (c) Available only in specified enterprises
    (d) Present in all enterprises

63. **HRM focus is on results rather than on _____.**
    (a) Systems
    (b) methods
    (c) Laws
    (d) Rules

64. **HRM fries to help _____develop their potential fully.**
    (a) Employees
    (b) Employers
    (c) Middlemen
    (d) Recruiting agency

65. **HRM encourages employees to give their best to _____.**
    (a) Themselves
    (b) The society
    (c) The nation
    (d) The organization

66. **HRM is all about _____, both as individuals and groups.**
    (a) Employees
    (b) People at work
    (c) Employers
    (d) People generally

67. **HRM tries to put people on assigned jobs in order to produce _____.**
    (a) Average results
    (b) Better results
    (c) Good results
    (d) Best results

68. **HRM helps an organization meet its goals in the future by providing for _____.**
    (a) All employees
    (b) Competent and well-motivated employees
    (c) Competent employees
    (d) Motivated employees

69. **HRM tries to build and maintain _____ between people working at various levels in the organization.**
    (a) Informal relations
    (b) Cordial relations
    (c) Hostile relations
    (d) Formal relations

70. **HRM is a _____, utilizing knowledge and inputs drawn from psychology, economics, etc,**
    (a) General activity
    (b) Recruiting activity
    (c) Employment activity
    (d) Multidisciplinary activity

71. **The practice of HRM needs to be integrated with the overall strategy to ensure effective use of people and provide better returns to the**

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organizations in terms of _____ for every rupee spent on them.

(a) Return on capital
(b) Return on turnover
(c) ROI (Return on investment)
(d) Returns generally

72. In business the secretarial functions performed by secretarial division and the _____ is the officer dealing with such functions.

(a) Cost accountant
(b) Chartered accountant
(c) Chartered secretary
(d) Company secretary

73. _____ is the function of business that gathers data and information from all the different aspects of the business.

(a) Accounting
(b) Finance
(c) Marketing
(d) Selling

74. The primary function of accounting is to keep a _____ of financial transaction.

(a) Track record
(b) Perfect record
(c) Unsystematic record
(d) Systematic record

75. The function of accounting is to protect the property of business from _____.

(a) Unjustified and unwanted use
(b) Unjustified
(c) Unwanted use
(d) Justifiedness

76. The function of accounting is to devise such a system as will meet the _____.

(a) Social requirements
(b) Personal requirements
(c) Legal requirements
(d) Official requirements

77. The function of accounting is to communicate the results to _____.

(a) Government
(b) Owners
(c) Disinterested parties
(d) Interested ponies

78. Match the following.

Type of Budget	Purpose of Budget
1. Sales Budget	A. Specifies expected cash inflow and outflow and net liquidity position at different time periods.
2. Production Budget	B. Specifies expected sales of goods during a period(s).
3. Material Budget	C. Specifies available working capital, i.e., investment in current assets like inventory, debtors, etc., at different points of time.
4. Cash Budget	D. Specifies volume of production during different period(s).
5. Working capital Budget	E. Specifies at different levels of sales, expected profit level.
6. Profitability Budget	F. Specifies estimated quantity and cost of material during different volumes of production.
7. R&D Budget	G. Specifies estimated expenditure to carry out research and development.

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ANSWERS

1	(b)	**2**	(a)	**3**	(d)	**4**	(b)	**5**	(a)	**6**	(d)	**7**	(a)
8	(b)	**9**	(c)	**10**	(c)	**11**	(b)	**12**	(a)	**13**	(a)	**14**	(c)
15	(b)	**16**	(b)	**17**	(a)	**18**	(c)	**19**	(b)	**20**	(d)	**21**	(a)
22	(d)	**23**	(c)	**24**	(b)	**25**	(c)	**26**	(d)	**27**	(c)	**28**	(a)
29	(c)	**30**	(b)	**31**	(c)	**32**	(d)	**33**	(b)	**34**	(c)	**35**	(c)
36	(a)	**37**	(d)	**38**	(a)	**39**	(d)	**40**	(a)	**41**	(c)	**42**	(d)
43	(d)	**44**	(a)	**45**	(c)	**46**	(d)	**47**	(d)	**48**	(b)	**49**	(a)
50	(b)	**51**	(c)	**52**	(c)	**53**	(a)	**54**	(b)	**55**	(a)	**56**	(d)
57	(b)	**58**	(d)	**59**	(c)	**60**	(a)	**61**	(c)	**62**	(d)	**63**	(d)
64	(a)	**65**	(d)	**66**	(b)	**67**	(c)	**68**	(b)	**69**	(b)	**70**	(d)
71	(c)	**72**	(d)	**73**	(a)	**74**	(d)	**75**	(a)	**76**	(c)	**77**	(d)
78	1.B.	2.D.	3.F.	4.A.	5.C.	6.E.	7.G						

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CHAPTER 6 INTRODUCTION TO LAW

KEY POINTS

MEANING OF LAW

- **PRINCIPAL SOURCES OF INDIAN LAW.**
- **SECONDARY SOURCES OF INDIAN LAW.**

THE PRINCIPAL SOURCES OF INDIAN LAW ARE:

- **CUSTOMS OR CUSTOMARY LAW**
- **JUDICIAL DECISIONS OR PRECEDENTS.**
- **STATUES OR LEGISLATION.**
- **PERSONAL LAW.**

SECONDARY SOURCE OF INDIAN LAW:

- **JUSTICE, EQUITY AND GOOD CONSCIENCE.**
- **SOURCES OF ENGLISH LAW.**

INTRODUCTION TO LAW

Law is the command of the sovereign, Law is an instrument to regulate human behavior, Be it social life or business life.-***Jack Welch***

The nature and meaning of law has been described by various jurists. However, there is no unanimity of opinion regarding the true nature and meaning of law. The reason for lack of unanimity on the subject is that the subject has been viewed and dealt with by different jurists as to formulate a general theory of legal order at different times and from different point of view of nature, source, function and purpose of law , to meet the needs of given period of legal development.

We may classify the various definitions into five broad classes-

Natural	Positivistic	Historical	Sociological	Realistic

NATURAL SCHOOL

Under this school fall most of the ancient definitions given by Romans and other ancient Jurists.

Ulpine *defined law as "the art or science of what is equitable and good"*

Cicero *said that law is" the highest reason implanted in nature"*

Justinian's digest *defines Law as " the standard of what is just and unjust"*

In all these definitions, propounded by Romans "justice" is the main guiding element of law. Ancient Hindu view was that 'law' is the command of God and not of any political sovereign. Thus, 'law' is a part of 'Dharma'. The idea of 'justice' is always present in Hindu concept of law.

Salmond, *the prominent modern natural law thinker, defines law as "the body of principles recognized and applied by the state in the administration of justice".*

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Vinogradoff *described law as " a set of rules imposed and enforced by society with regard to the attribution and exercise of power over persons and thing."*

POSITIVISTIC DEFINITION OF LAW

According to **Austin,** "Law is the aggregate of rules set by man as politically superior, or sovereign, to men as political subject."
In other words, Law is the 'command of the sovereign'. Thus, command, duty and sanction are the three elements of law. **Kelsen** gave a 'pure theory of law'. According to him, law is 'normative science'
All norms derive their power from the ultimate norm called Grund norm.

HISTORICAL DEFINITION OF LAW

Savigny's theory of law can be summarized as follows-

- That a law is matter of unconscious and organic growth.
- Law is not universal in its nature.
- Custom not only precedes legislation but it is superior to it.
- Legislation is the last stage of law making.

According to Sir Henry Maine, "The word law has come down to us in a close aasociation with two notions, the notion of order and the notion of force."

SOCIOLOGICAL DEFINITION OF LAW

Duguit defines law as "essentially and exclusively as social fact"
First in this definition law is treated as only one means of social control. Second, law is to serve social purpose. Third, it is coercive in character.

REALIST DEFINITION OF LAW

According to Holmes, "Law is a statement of the circumstances in which public force will be brought to bear upon through courts".
According to Cardozo," A principle of rule of conduct so established as to justify a prediction with reasonable certainty that it will be enforced by the courts if its authority is challenged, is a principle or rule of law"

The modern Indian law as administered in courts is derived from various sources and these sources fall under following two heads-

Principle source of Indian law	Secondary source of Indian law

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SIGNIFICANCE OF LAW

Law is not static. As circumstances and conditions in a society changes, laws are also changed to fit the requirements of the society. At any given point of time the prevailing law of a society must be in conformity with the general statements, customs and aspirations of its people.

SOURCES OF INDIAN LAW

The modern law as administered in courts is derived from various sources and these sources fall under the following two heads-

Principle sources of Indian law	Secondary sources of Indian law

PRINCIPLE SOURCES OF INDIAN LAW

The principle sources of Indian law are:

Customs or customary law	Judicial decisions or precedents	Statutes or legislation	Personal law

PRINCIPLE SOURCES OF INDIAN LAW

1. Customs or customary law
2. Judicial decisions or precedents
3. Statutes or legislation
4. Personal law eg. Hindu law and mohammedan law

1. **Customs or customary law-**

Customs have played an important role in making the law and therefore are also known as customary law. Every custom does not become law. A custom, to be valid, must be observed continuously for a very long time without any interruption. Further, a practice must be supported not only for very long time, but also it must be supported by the general public opinion.

Classification of customs-

- Customs without sanction – Customs without sanction are those customs which are non-obligatory and are observed due to the pressure of public opinion . These are called as ' positive morality'.
- Customs having sanction – Customs having sanction are those customs which are enforced by the state

Legal customs

These customs operate as a binding rule of law. They have been recognized and enforced by the courts. These customs are further divided into-

1. Local customs

   LocaL custom is the custom Which prevails in some definite Locality and constitutes a source Of law for that place only.
2. General customs

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A general custom is that which prevails throughout the country and constitutes one of sources of law of the land.

Conventional customs

These are also known as 'usages'. These customs are binding due to anagreement between the parties andnot due to any legal independent authority.

Requisites of valid custom-

- Immemorial (Antiquity) - It must be ancient.
- Certainty – The custom must be certain and definite.
- Reasonableness – A custom is unreasonable if it is opposed to the principles of justice, equality and good conscience.
- Compulsory observance – A custom to be valid must have been continuously observed.
- Conformity with law and public morality – A custom must not be opposed to morality or public policy nor must it conflicts with statute law.
- Unanimity of opinion – The custom must be general or universal.
- Peaceable enjoyment – The custom must have been enjoyed peaceably without any disputes in a law court or otherwise.
- Consistency – There must be consistency among the customs.

JUDICIAL DECISION OR PRECEDENTS

The term "precedent" means some set pattern guiding the future conduct. In the judicial field, it means the guidance or authority of past decisions of the courts for future cases. Only such decisions which lay down some new rule or principle are called judicial precedents. Judicialprecedent is an important source of law. The rule that a court decision becomes a precedent to be followed in similar cases is known as doctrine of stare decisis.

General principles of doctrine of precedents

HIGH COURTS

(i) The decisions of high court are binding on all the subordinates courts and tribunals within its jurisdiction.

(ii) A single judge constitutes the smallest bench. A bench of two judge is known as division bench. Three or more judges constitutes a full branch. A decision of such a bench is binding on a smaller bench.

(iii) The decision of one high court is not binding on the high courts and has persuasive value only.

(iv) The Supreme Court is the highest court and its decision is binding on all courts and other judicial tribunals of the country.

SUPREME COURT

The expression "all courts" used in article 141 refers only to courts other than the Supreme Court. Thus, the supreme courts not bound by its own decisions.

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Kind of precedents may be classified as:

- Declaratory and original precedent
- Persuasive precedents
- Absolutely authoritative precedents
- Conditionally authoritative precedents.

(i) **Declaratory and original precedents:** according to salmond, a declaratory precedent is one which is merely the application of an already existing rule of law. An original precedent is one which creates and applies a new rule of law.

(ii) **Persuasive precedents:** a persuasive precedent, therefore is not a legalsource of law; but is reguarded as a historical source of law. Thus, in India, the decisions of one high court are only persuasive precedents in the other high courts.. obiter dicta also have only persuasive value.

(iii) **Absolutely authoritative precedents:** an authoritative precedent is one which judge must follow whether they approve of it or not.

(iv) **Conditionally authoritative precedents:** a conditionally authoritative precedent is one which, though ordinarily binding on the court before which it is cited, is liable to be disregarded in certain circumstances.

DOCTRINE OF STARE DECISIS

The doctrine of stare decisis means "adhere to the decision and do not unsettle things which are established". It is a useful doctrine intended to bring about certainly in the law. Under the stare decisis doctrine, a principle of law which has become settled by series of decisions generally is binding on the courts and should be followed in similar cases.

RATIO DECIDENDI

The underlying principle of a judicial decision ,which is only authoritative ,is termed as ratio decidendi. The proposition of law which is necessary for the decision or could be extracted from the decision constitutes the ratio. The concrete decision is binding between the parties to it.

OBITER DICTA

The literal meaning of this latin expression is "said by the way". The expression is used especially to denote those judicial utterances in the course of delivering a judgement which taken by themselves, were not strictly necessary for the decisionof the particular issue raised. These statements thus go beyond the requirement of the particular case and have the force of persuasive precedents only.

STATUTES OF LEGISLATION

legislation is that source of law which consists in the declration or promulgation of lagal rules by an authority duly empowered by the constitution in that behalf. It is sometimes called jus scriptum as contrasted with the customary law or jus non scriptum. Salmond prefers to call it as "enacted law". Statute law or statutory law is what is created by legislation ,for example, act of parliament or to state legislature. Legislature is either supreme or subordinate(delegated).

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PERSONAL LAW

Hindus are governed by their personal law as modified by statue law and custom in all matters relating to inheritance, succession, marriage, adoption, co-parcenary, partition of joint family property ,pious obligations of sons to pay their father's debts, guardianship, maintenance and religious and charitable endowment .

The personal law of mahammedans is to be found in

(a) The holy Koran

(b) The action, precept and saying of the prophet mohammed which though not written during his life time were preserved by tradition and handed down by authorized person. These are known as hadis.

(c) Jjmas i.e. concurrence of opinion of the companions of the prophet and his disciples.

(d) kiyas or reasoning by analog

(e) digest and commentaries on mohammedan law, the most important and famous of them being the hedaya which was composed in the 12th century and the fatawa alamgiri which was compiled by commands of the mughal emperor Aurangzeb alamgiri.

SECONDARY SOURCE OF INDIAN LAW

JUSTICE, EQUITY AND GOOD CONSCIENCE

the concept of "justice, equity and good conscience" was introduced by impey's regulations of 1781. In personal law disputes, the court s are required to apply the personal law of the defendant if the point at issue is not covered by any statute or custom.

SECONDARY SOURCE OF INDIAN LAW

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SOURCES OF ENGLISH LAW

The chief sources of English law are:

1. Common law

2. Law merchant

3.principle of equity

4.statute law.

1. Common law: the common law ,in this context is the name given to those principles of law evolved by the judges in making decisions on cases that are brought before them.

2. Law merchant: the law merchant is the most important source of the merchantile law. Law merchant means those customs and usages which are binding on traders in their dealings with eachother.

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3. Principle of equity: equity is a body of rules, the primary source of which was neither custom nor written law, but the imperative dictates if conscience and which had been set forth and developed in the courts of chancery.

4. Statute law: "statute law is that portion of law which id derived from the legislation or enactment of parliament or the subordinate and delegated legislative bodies." It is now a very impotant source of mercantile law.

MERCANTILE OR COMMERCIAL LAW

There are many branches of law; viz.,

* constitutional law
* administrative law
* criminal law
* civil law
* mercantile or commercial law

Mercantile law is related to the commercial activities of the people of the society. The mercantile law or law merchant or lex merchant is the name given to that part of law which grew up from the customs and usages of merchants or traders in England which eventually becomes a part of common law of England.

SOURCES OF MERCANTILE

* LAW MERCHANT
* STATUE LAW
* COMMON LAW
* PRINCIPLES OF EQUITY

Mercantile law in India prior to 1872, mercantile transactions were regulated by the law of the parties to the suit. In 1872, the first attempt was made to codify and establish uniform principles of mercantile law when Indian contract Act, 1872 was enacted. Since then various acts have been enacted to regulate transactions regarding partnership, sale of goods, negotiable instruments, etc.

LEGAL TERMINOLOGY

TERM	MEANING
Ab initio	From the beginning
Ad hoc	Not intended to be able to be adapted to other purpose
Ad idem	To the same thing
Ad infinitum	To infinity
Ad valorem	According to value
Alter ego	A second identity living within a person
Amicus curiae	Friend of the court
Audi alteram partem	Here the other side
Bona fide	In good faith
De facto	In fact

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De jure	In law
De nova	A new
Dehors	Outside of
Ex gratia	As a matter of grace or favour
Ex officio	By virtue of an office
Ex parte	Expression used to signify that something done or said by one person not in the presence of his opponent
Fait accompli	An accomplished act
Ictus reus	Guilty act
In personam	Against the person
In rem	An act done or directed with reference to no specific person or with reference to all whom it might concern
Inter alia	Amongst other things
Inter vivos	Between living persons
Interstate	A person is deemed to die intestate in respect of property of which he or she has not made a testamentary disposition ('will') capable of taking effect
Inter vires	Within the powers
Ipso facto	By the mere fact
Ipso jure	By the law itself
Lis pendens	A pending suit
Locus standi	Signifies a right to be heard
Mens rea	A guilty mind
Mesne profits	Immediate profits
Modus operandi	Mode of operating
Mutatis mutandis	With the necessary changes in point of detail
Obiter dictum	An opinion of law not necessary to the decision
Pendent lite	During litigation
Quid pro quo	The giving of one thing of value for another thing for value
Ratio decidendi	Reasons for deciding
Res integra	Untouched matter
Res judicata	A case already decided
Rule nisi	A rule to show cause why a party should not do certain act
Sine die	Without day
Sine qua non	An important requisite
Stare decisis	To stand by things decided
Status quo	Existing conditions
Sub judice	Before a judge or court
Ultra vires	Beyond one's powers

CS NITESH KR. JAISWAL CS CLASSES

UNDERSTANDING CASE CITATION

Known how to read and write case citations is an important skill for everyone skills for everyone studding law.The figure below and the comments that may help with your understanding of the basis elements.

READING CASE CITATION



Case name

There are typically two names for a case .Usually, the first name identifies who is brining the court action and the second name is the person against whom action is being brought .In a criminal law case action is almost always brought by the state (e.g. People or State) against a person (e.g. Sunil) as in Nathu Ram Shukla v. State of Madhya Pardesh or Union of India V Union Carbide.

Year

This is The year in which the decision was delivered by the court .it may not be (and in appellate cases, probably isn't) the year in which the case was heard.

Name of Reporter

A " Reporter " is a multi-volume publication where court decision are found .The full name and abbreviations for the reporters you are most likely to encounter as undergraduates are :

Full name	Official abbreviation	Type of case reported
All India Reports	AIR	Important decision from Supreme Court and High Court
Supreme Court Cases	SSC	Indian Supreme Court
Company Law Journal	CLJ	Important decision relating to company law matters .
Income Tax Report	ITR	Important decision relating to Income Tax matters .
Labour Report	LR	Important decision relating to Labour law matters .

CS NITESH KR. JAISWAL CLASSES

MCQ

1. **The nature and meaning of law has been described by various _____.**
   - **(a)** Legendries
   - **(b)** Legal persons
   - **(c)** Jurists
   - **(d)** Judges

2. **There is no unanimity of opinion regarding the _____.**
   - **(a)** Nature of law
   - **(b)** Meaning of law
   - **(c)** True nature and meaning of law
   - **(d)** Definition of law

3. **It is not practicable to give a _____ meaning to law which may hold good for all times to come.**
   - **(a)** Universally truth
   - **(b)** Precise
   - **(c)** Definite
   - **(d)** Precise and definite

4. **Separate rules and principles are known as 'laws'. Such laws may be _____.**
   - **(a)** Mandatory
   - **(b)** Prohibitive
   - **(c)** Permissive
   - **(d)** Mandatory, prohibitive or permissive

5. **A _____ requires negative conduct, as in the case of law prohibiting the carrying of concealed weapon or running a lottery.**
   - **(a)** Prohibitive law
   - **(b)** Assertive law
   - **(c)** Mandatory law
   - **(d)** Obligatory law

6. **A _____ law is one which neither requires nor forbids action, but allows certain conduct on the part of an individual if he desires to act.**
   - **(a)** Mandatory
   - **(b)** Declaratory
   - **(c)** Restrictive
   - **(d)** Permissive

7. **Laws and made effective.**
   - **(a)** by requiring damages to be paid for an injury due to disobedience
   - **(b)** by requiring one, in some instances, to complete an obligation he has failed to perform
   - **(c)** by preventing disobedience and by administering some form of punishment
   - **(d)** All of the above.

8. **The State, in order to maintain peace and order in society, formulates certain rules of conduct to be followed by the people. These rules of conduct are called _____.**
   - **(a)** Bye-laws
   - **(b)** Regulations
   - **(c)** Rules
   - **(d)** Laws

9. **Law is _____.**
   - **(a)** Static
   - **(b)** Dynamic
   - **(c)** Not static
   - **(d)** Fast changing.

10. **There is a _____ of opinion among the jurists about the origin of law.**
    - **(a)** Wide differences
    - **(b)** Contrary
    - **(c)** Difference
    - **(d)** Similarity

CS NITESH KR. JAISWAL CS CLASSES

11. The principal sources of Indian law are.

(a) Customs or Customary Law
(b) Judicial Decisions or Precedents
(c) Personal Law e.g., Hindu and Mohammedan Law, etc.
(d) All of the above

12. When the same thing was done again and again in a particular way, it assumed the form of _____.

(a) Regulation
(b) Law
(c) Rules
(d) Custom

13. Custom as a source of law has a very _____ place in the Mohammedan Law.

(a) Inferior
(b) Superior
(c) Interior
(d) Exterior

14. _____ is the custom which prevails in some definite locality and constitutes a source of law for tat place only.

(a) National custom
(b) Local custom
(c) International custom
(d) Regional

15. A _____ is that which prevails throughout the country and constitutes one of the sources of law of the land.

(a) Regional custom
(b) Local custom
(c) General custom
(d) Particular custom

16. _____Customs are also known as "usages".

(a) Conventional
(b) Inventional
(c) Peculiar
(d) General

17. Only such decisions which lay down some new rule or principle are called _____.

(a) General rules or principles
(b) Specific rules or principles
(c) Legal precedents
(d) Judicial precedents

18. Judicial precedents are an important source of law. They have enjoyed high authority at all times and in all _____

(a) States
(b) Countries
(c) Regions
(d) Boundaries

19. The rule that a court decision becomes a precedent to be followed in similar cases is known as doctrine of _____.

(a) Custom
(b) Precedent
(c) Stare decisis
(d) Decisis

20. The reason why a precedent is recognized is that a judicial decision is presumed to be _____.

(a) Legal
(b) Vague
(c) Incorrect
(d) Correct

21. The practice of following precedents creates confidence in the minds of the _____.

(a) People
(b) Litigants
(c) Public at large
(d) Concerned persons only

CS NITESH KR. JAISWAL CS CLASSES

22. **The first rule is that each court lower in the hierarchy is absolutely bound by the decisions of the _____.**

(a) Supreme court
(b) Higher court
(c) Courts above it
(d) Court subordinate to it

23. **In general higher courts are bound by their _____.**

(a) Own decisions
(b) Precedents
(c) Decision of any other high court
(d) Decision of lower courts

24. **The decisions of High Court are binding on all the subordinate courts and tribunals within _____.**

(a) The country
(b) The state
(c) Its jurisdiction
(d) Its district

25. **In case of any conflict between the two decisions of _____, generally the later decision is to be followed.**

(a) Co-equal Benches
(b) Single Bench
(c) Two Bench
(d) Full Bench

26. **In a High Court, a single judge constitutes the _____.**

(a) Two Bench
(b) Single Bench
(c) Smallest Bench
(d) Full Bench

27. **A Bench of two judges is known as _____.**

(a) Division Bench
(b) Double Bench
(c) Two Judge Bench
(d) Full Bench

28. **Three or more judges constitute a _____.**

(a) Largest Bench
(b) Single Bench
(c) Division Bench
(d) Full Bench

29. **One Bench of the same High Court cannot take a view contrary to the decision already given by _____.**

(a) Another Bench
(b) Co-ordinate Bench
(c) Another co-ordinate Bench of any High Court
(d) Another co-ordinate Bench of that High Court

30. **The decision of one High Court is not binding on the _____.**

(a) Any High Court
(b) Neighbouring High Court
(c) Supreme Court
(d) Other High Courts and have persuasive value only

31. **The Supreme Court is the Highest Court and its decisions are binding _____.**

(a) Subordinates courts
(b) High courts
(c) Tribunals
(d) On all courts and other judicial tribunals of the country

32. **Supreme Court is _____ by its own decisions.**

(a) To follow
(b) Bound
(c) Not bound
(d) Sometimes bound and sometimes not bound

CS NITESH KR. JAISWAL CS CLASSES

33. English decisions have only _____ value in India.

(a) Persuasive
(b) Restricted
(c) Classical
(d) Prohibited

34. The Supreme Court is ____ by decisions of Privy Council or Federal Court.

(a) To follow
(b) Bound
(c) Not bound
(d) Sometimes bound and sometimes not bound

35. The doctrine of precedent as it operates in India lays down the principal that decisions of higher courts _____.

(a) Must be followed by some high courts.
(b) Not required to follow its earlier decisions
(c) Are to be followed by all courts
(d) Must be followed by the courts subordinate to them

36. Precedents may be classified as.

(a) Declaratory and Original Precedents
(b) Persuasive Precedents
(c) Absolutely Authoritative Precedents
(d) Conditionally Authoritative Precedents.
(e) All of the above.

37. According to Salmond, a declaratory precedent is one which is merely the application of an already existing _____.

(a) Rule of law
(b) Principles of law
(c) Substantive law
(d) Natural law

38. In the case of a declaratory precedent, the rule is applied because it is already _____.

(a) A rule
(b) A law
(c) A principle
(d) A verdict

39. A persuasive precedent is one which the judges are _____ but which they will take into consideration and to which they will attach great weight as it seems to them to deserve.

(a) Not obliged to follow
(b) Obliged to follow
(c) Not obliged to apply in the present case
(d) Obliged to apply in the present case

40. A persuasive precedent, therefore, is not a legal souce of law; but is regarded as a _____.

(a) Substantive law
(b) Declaratory law
(c) Historical source of law
(d) Historical rule of law

41. An authoritative precedent is one which judges must follow _____.

(a) Whether they approve of it or not
(b) In all situations
(c) In the concerned territory only
(d) In the present case before them

42. The subordinate courts are bound to follow the decisions of the _____ to which they are subordinate.

(a) Any Court
(b) Supreme Court
(c) Higher Court
(d) High Court

CS NITESH KR. JAISWAL CS CLASSES

43. **A conditionally authoritative precedent is one which, though ordinarily binding on the court before which it is cited, is liable to be _____.**

(a) Disregarded
(b) Regarded
(c) Restricted
(d) Prohibited

44. **The court is entitled to _____ a decision if it is a wrong one, i.e., contrary to law and reason.**

(a) Regarded
(b) Restricted
(c) Disregard
(d) Prohibited

45. **The doctrine of stare decisis means _____.**

(a) Adhere to the decision
(b) Settle things
(c) Unsettle things
(d) Adhere to the decision and do not unsettle things which are established

46. **Under the stare decisis doctrine, a principle of law which has become settled by a series of decisions generally is binding on the courts and should be followed in _____.**

(a) All case
(b) Similar cases
(c) Similar cases in the concerned state
(d) All case cases in the concerned state

47. **The underlying principle of a judicial decision, which is only authoritative, is termed as _____.**

(a) Ratio decidendi
(b) Authoritative decision
(c) Judicial decision
(d) Substantive decision

48. **Where an issue requires to be answered on principles, the _____ which are deduced by way of abstraction of the material facts of the case eliminating the immaterial elements is known as ratio decidendi.**

(a) Rules **(b)** Principles
(c) Laws **(d)** Regulations

49. **The literal meaning of Latin expression _____ is "said by the way".**

(a) Obiter
(b) Dicta
(c) Obiter Dicta
(d) Arbitrary Dicta

50. **Obiter Dicta are of different kinds and of varying _____.**

(a) Degrees
(b) Degrees of weight
(c) Weight
(d) Values

51. **Supreme Legislation is that which proceeds from the _____ in the State or which derives its power directly from the Constitution.**

(a) Sovereign power
(b) Govt. power
(c) Special power
(d) General power

52. **In our legal system, Acts of Parliament and the Ordinances and other laws made by the President and Governors in so far as they are authoised to do so under the Constitution are _____.**

(a) Supreme rules
(b) Supreme law
(c) Supreme legislation
(d) Subordinate legislation

CS NITESH KR. JAISWAL CS CLASSES

53. **The legislation made by various authorities like Corporations, Municipalities, etc. under the authority of the supreme legislation are _____.**

(a) Supreme rules
(b) Supreme law
(c) Supreme legislation
(d) Subordinate legislation

54. **_____ are governed by their personal law as modified by statute law and custom in all matters relating to (inheritance, succession, marriage, adoption, co-parcenary, partition of joint family property, pious obligations of sons to pay their father's debts, guardianship, maintenance and religious and charitable endowments.**

(a) Hindus
(b) Muslims
(c) Sikhs & Parsis
(d) All communities

55. **The concept of "justice, equity and good conscience" was introduced by Impey's Regulations of _____.**

(a) 1771 **(b)** 1871
(c) 1781 **(d)** 1881

56. **The Ancient Hindu Law had its own versions of the doctrine of _____.**

(a) Justice, equity and good conscience
(b) Justice
(c) Equity
(d) Good conscience

57. **The chief sources of English law are.**

(a) Common Law
(b) Law Merchant
(c) Principle of Equity
(d) Statue Law
(e) All of the above.

58. **The Common Law is the name given to these principles of law evolved by the _____ in making decisions on cases that are brought before them.**

(a) Judges
(b) Jurists
(c) Judiciary
(d) Judicature

59. **Common Law denotes that body of legal rules, the primary sources of which were the general _____.**

(a) Rules
(b) Regulations
(c) Customs
(d) Immemorial customs

60. **The Law Merchant is the most important source of the _____.**

(a) Business Law
(b) Mercantile Law
(c) Economic Law
(d) All Laws

61. **" _____ is that portion of law which is derived from the legislation or enactment of Parliament or the subordinate and delegated legislative bodies".**

(a) Statue law
(b) State law
(c) Regional law
(d) Supreme law

62. **_____ is related to the commercial activities of the people of the society..**

(a) Business Law
(b) Economic Law
(c) Mercantile Law
(d) All Laws

CS NITESH KR. JAISWAL CS CLASSES

63. The main sources of Indian Mercantile Law are.

(a) English Mercantile Law
(b) Acts enacted by Indian Legislature
(c) Judicial Decisions
(d) All of the above.

64. Customs having sanction are those customs which are _____.

(a) Enacted by the state
(b) Enacted by the nation
(c) Enforced by the state
(d) Enforced by the territory

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ANSWERS

1	(c)	**2**	(c)	**3**	(d)	**4**	(d)	**5**	(a)	**6**	(d)	**7**	(d)
8	(d)	**9**	(c)	**10**	(c)	**11**	(e)	**12**	(d)	**13**	(a)	**14**	(b)
15	(c)	**16**	(a)	**17**	(b)	**18**	(b)	**19**	(c)	**20**	(d)	**21**	(b)
22	(c)	**23**	(a)	**24**	(c)	**25**	(a)	**26**	(c)	**27**	(a)	**28**	(d)
29	(d)	**30**	(d)	**31**	(d)	**32**	(c)	**33**	(a)	**34**	(c)	**35**	(d)
36	(e)	**37**	(a)	**38**	(b)	**39**	(a)	**40**	(c)	**41**	(a)	**42**	(d)
43	(a)	**44**	(c)	**45**	(d)	**46**	(b)	**47**	(a)	**48**	(b)	**49**	(c)
50	(b)	**51**	(a)	**52**	(c)	**53**	(d)	**54**	(a)	**55**	(c)	**56**	(a)
57	(e)	**58**	(a)	**59**	(d)	**60**	(b)	**61**	(a)	**62**	(c)	**63**	(e)
64	(c)												



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CHAPTER 7 ELEMENTS OF COMPANY LAW

KEY POINTS

- **MEANING AND NATURE OF COMPANY**
- **PROMOTION AND INCORPORATION OF A COMPANY**
- **FAMILIARIZATION WITH THE CONTROL OF THE BOARD**
- **REGISTRATION OF A COMPANY**
- **COMMENCEMENT OF BUSINESS**

MEANING AND CHARACTERISTICS

- ✓ A company, in common parlance, means a group of persons associated together for the attainment of a common end, social or economic.
- ✓ It has "no strictly technical or legal meaning."
- ✓ The word company is derived from the Latin word (Com = with or together; Panis = bread).

A company may be an incorporated company or an unincorporated company

Company is called body corporate because the person composing it are made into one body by incorporating it according to the law, and clothing it with legal personality, and so turn into a corporation.

The word 'corporation' is derived from the Latin term ' Corpus ' which means 'Body'.

INCORPORATED COMPANY	UNINCORPORATED COMPANY
An incorporated company is a person in law in its own right, for example a limited company	An unincorporated business is a sole trader or partnership where the people running the business are directly responsible for the transactions of the business.
The incorporated company exist to a special Act of parliament or Companies Act 2013	The unincorporated company are the companies which does not exist to a special Act of parliament oe companies Act 2013, like Partnership firms under Partnership Act
Eg. Limited, unlimited company	Eg. Sole proprietorship, Partnership.

CHARACTERISTICS OF COMPANY

1. CORPORATE PERSONALITY

A company has a legal distinct entity and is independent of its members. The creditors of the company can recover their money only from the company and the property of the company. They cannot sue individual members.

Similarly, the company is not in any way liable for the individual debts of its members. The property of the company is to be used for the benefit of the company and not for the personal benefit of the shareholders.

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2. **LIMITED LIABILITY**

A company may be company limited by shares or a Company limited by guarantee. In company limited by shares, the liability of members is limited to the unpaid value of the shares.

For example, if the face value of a share in a company is Rs. 10 and a member has already paid Rs. 7 per share, he can be called upon to pay not more than Rs. 3 per share during the lifetime of the company.

In a company limited by guarantee the liability of members is limited to such amount as the member may undertake to contribute to the assets of the company in the event of its being wound up.

3. **PERPETUAL SUCCESSION**

A company is a stable form of business organization. Its life does not depend upon the death, insolvency or retirement of any or all shareholder(s) or director (s). Law creates it and law alone can dissolve it. Members may come and go but the company can go on forever. "During the war all the member of one private company, while in general meeting, were killed by a bomb. But the company survived; not even a hydrogen bomb could have destroyed it".

4. **TRANSFERABILITY OF SHARES**

In a public company, the shares are freely transferable. The right to transfer shares is a statutory right and it cannot be taken away by a provision in the articles. However, the articles shall prescribe the manner in which such transfer of shares will be made and it may also contain reasonable restrictions on the right of members to transfer their shares. But absolute restrictions on the rights of members to transfer their shares shall be ultra vires.

However, in the case of a private company, the articles shall restrict the right of member to transfer their shares in companies with its statutory definition.

5. **SEPARATE PROPERTY**

As a corporate person, the company is entitled to own and hold property in its own name. No member can claim ownership.

6. **COMMON SEAL**

A company being an artificial person has no body similar to natural person and as such it cannot sign documents for itself. It acts through natural person who are called its directors. But having a legal personality it can be bound by only those documents which bear its signature. Therefore, the law has provided for the use of common seal, with the name of the company engraved on it, as a substitute for its signature.

7. **CAPACITY TO SUE AND TO BE SUED**

A company being a body corporate , can sue and can be sued in its own name. All legal proceedings against the company are to be made in its own name. Similarly, the company may bring an action against anyone in its own name.

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DIFFERENCE BETWEEN COMPANY AND PERTNERSHIP

BASIS	COMPANY	PARTNERSHIP
Mode of creation	By registration by statute	By agreement
Legal statute	Legal entity distinct from members	Firm and members are not separate
Liability	Limited liability	Unlimited liability
Authority	Ownership and management are different	Ownership and management are same
Transfer of shares	Easily transferable	Ristriction of shares
Number of members	Private company Min- 2 Max-200 Public company Min- 7 Max- unlimited	Min – 2 Max – 20 and 10 (in case of banking firms) CA firm - 50
Resources	Large and unlimited resources	Resources are limited
Legal formalities	Lots of legal formalities	No legal formalities
Dissolution	It can be dissolved only according to provision of law	It can be dissolved by agreement,by notice etc.

DIFFERENCE BETWEEN COMPANY AND HINDU UNDIVIDED FAMILY

BASIS	COMPANY	HINDU UNDIVIDED FAMILY
Members	Heterogeneous members	Homogenous members
Sole authority	There is no sole authority	Karta is the sole authority.
To become a member	A person does not become a member by birth	A person become a member by birth
Registration	Registration is compulsory	Registration is not compulsory

DIFFERENCE BETWEEN COMPANY AND A CLUB

BASIS	COMPANY	CLUB
Association	It is a trading association	It is a non-trading association
Registration	Registration is compulsory	Registration is not compulsory

Generally speaking, an association of persons incorporated according to the relevant law and clothed with legal personality separate from the persons constituting it is known as a corporation.

The word 'corporation' or words 'body corporate' is/are both used in the Companies Act, 2013.

Definition of the same which is reproduced below is contained in Clause (11) of Section 2 of the Act:

"Body corporate" or "corporation" includes a company incorporated outside India, but does not include—

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(*i*) a co-operative society registered under any law relating to co-operative societies; and
(*ii*) any other body corporate (not being a company as defined in this Act),
which the Central Government may, by notification, specify in this behalf;

ADVANTAGES OF INCORPORATION

An incorporated company has the following advantages:

1. *Corporate personality:*

   A company is a distinct or justice person independent of its members. Under the law, an incorporated company is a distinct entity, even the one man company as discussed above in Salomon&co.ltd. section34(2) of the company act,1956 provides that from the date of incorporation ,the subscribers to the memorandum and the other members shall be a body corporate by the name contained in the memorandum, capable of exercising all the function of an incorporated company and having perpetual succession and a common seal.

2. Limited liability*:*

   The companies act provides that in the event of the company being wound-up, the members shall have a liability to contribute to the assets of the company in accordance with the act[section34(2)].

   In the case of companies limited by shares, no member is bound to contribute anything more than the nominal value of the shares held by him which remains unpaid.

3. Perpetual succession: as stated in section 34(2) of the companies act, an incorporated company has perpetual succession. The death or insolvency of individual members does not in any way, affect the corporate entity, its existence or continuity. "Members may come and may go but the company can go on forever".

4. Transferable shares: section 82 of the companies act provides "the shares or other interest of any member in a company shall be movable property, transferable in the manner provided by the articles of the companies". This encourages investment of funds in the shares, so that the members may encash them at any time. Thus, it provides liquidity to the investors as shares could be sold in the open market and in stock exchange. It also provides stability to the company.

5. Separate property: a company as a legal entity is capable of owning its funds and other assets. The property of the company is not the property of the shareholders; it is the property of the company.

6. Capable to sue: as a juristic legal person, a company can sue in its name and be sued by others. The managing director and other directors are not liable to be sued for dues against a company.

7. Flexibility and autonomy: the company has an autonomy and independence to form its own policies and implement them, subject to the general principles of law, equity and good conscience and in accordance with the provision contained in the companies in the companies act, memorandum and articles of association.

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DISADVANTAGES OF INCORPORATION

There are certain disadvantages and inconveniences in incorporation.

- **Formalities and expenses:**incorporation of a company is coupled with complex, cumbersome and detailed legal formalities and procedures, involving considerable amount of time and money.
- **Corporate disclosures:**designed to ensure maximum disclosure of corporate information.
- **Separation of control from ownership:**members of a company are not having as effective and intimate control over its working as one can have in other forms of business organization, says a partnership firm. The members of a company are neither the owners nor the agents of company.
- **Greater social responsibility:**the companies are called upon to show greater social responsibility in their working and, for that purpose, are subject to greater control and regulation that that by which other forms of business organization are governed and regulated
- **Greater tax burden in certain cases:**the tax burden on a company is more than that on the other form of business organization. A company is liable to tax without any minimum taxable limits as is prescribed in the cases of registered partnership firms and others. Also it has to pay income tax on the whole of its income at a flat rate whereas others are taxed graduated scale or slab system.
- **Detailed winding-up procedure:** the act provides elaborate and detailed procedure for winding-up of companies which is more expensive and time consuming.

LIFTING THE CORPORATION UP VEIL

Law has clothed a corporation with a distinct personality. A company, being am artificial person, cannot act on its own; it can act only through natural persons. The separate personality of the company is a statutory privilege. The court will break through the corporate shell and apply the principle of what is known as "lifting of or piercing through the corporate veil". Such as for the evasion of tax, an entity relies on its corporate personality as a shield to cover its wrong doings.
In the following cases the courts have lifted the corporate veil:

- Fraud or improper conduct
- Where the corporate is really an agency or trust for someone else and the corporate façade is used to cover up that agency or trust.
- For determining the true character or status of the company
- Where veil has been used for evasion of taxes and duties
- Where it was found that the sole purpose for which the company was formed was to evade taxes the court will ignore the concept of separate entity, and make the individuals liable to pay the taxes which they would have paid but for the formation of the company .
- Where the purpose of the company formation was to avoid welfare legislation. Where it was found that the sole purpose for the formation of the new company was to use it as a device to reduce the amount.

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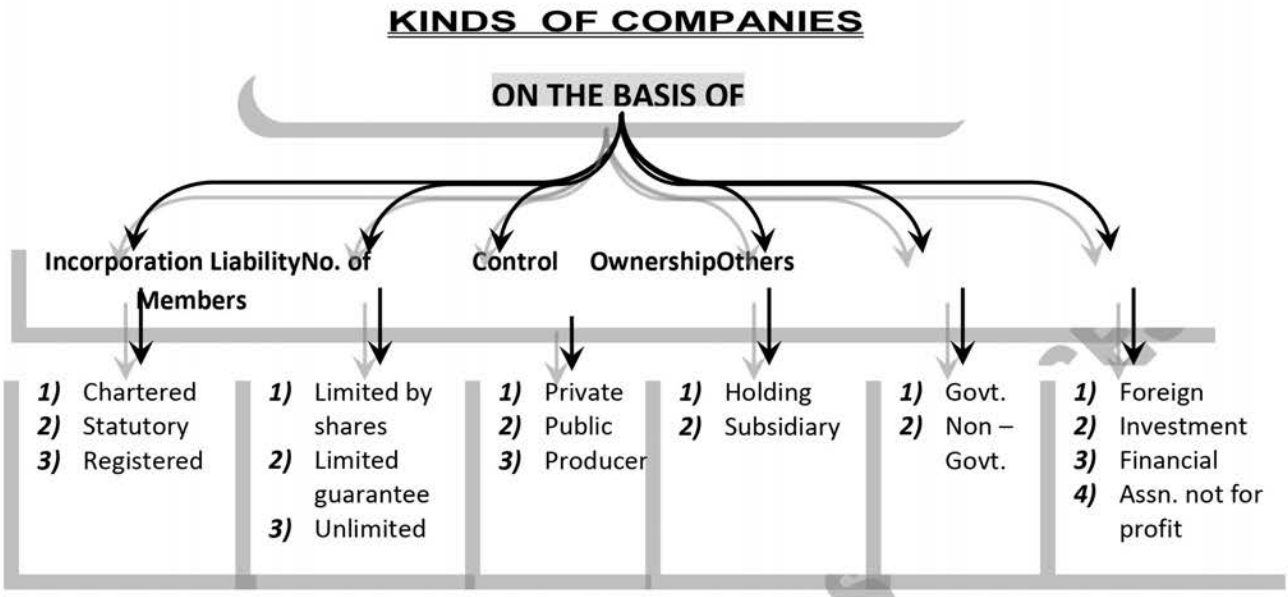
KINDS OF COMPANIES



PRIVATE COMPANY [Section 2(68)]

By virtue of Section 2(68) of Companies Act, 2013 "private company" means a company having a minimum paid up share capital of one lakh rupees or such higher paid-up share capital as may be prescribed, and which by its articles, –

(i) restricts the right to transfer its shares;

(ii) except in case of One Person Company, limits the number of its members to two hundred:

(iii) prohibits any invitation to the public to subscribe for any securities of the company;

Maximum number of members that a private company can have is 200.

There should be at least two persons to form a private company. A private company can therefore be registered with a minimum of 2 members and cannot have more than 200 members (excluding employee and ex-employee members).

It cannot invite the public to subscribe for its shares or debentures nor can its shares be freely transferred.

The words "Private Limited" must be added at the end of its name by a private limited company

PUBLIC COMPANY: [SECTION 2(71)]

"Public company" means a company which –

(a) is not a private company;

(b) has a minimum paid-up share capital of five lakh rupees or such higher paid-up capital, as may be prescribed:

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

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It is clarified the status of a private company which is a subsidiary of a public company by providing specifically in the proviso that such company shall be deemed to be public company irrespective of its status as private company in its articles

Distinction between a Public and a Private Company

1. *Minimum number:* The minimum number of persons required to form a public company is 7. It is 2 in case of a private company.
2. *Maximum number:* There is no restriction on maximum number of members in a public company, whereas the maximum number cannot exceed 200 in a private company.
3. *Number of directors:* A public company must have at least 3 directors, whereas a private company must have at least 2 directors.
5. *Restriction on invitation to subscribe for shares:*A public company invites the general public to subscribe for the shares in, or the debentures of the company. A private company by its Articles prohibits any such invitation to the public.
6. *Transferability of shares:*In a public company, the shares are freely transferable. In a private company the right to transfer shares is restricted by the Articles.
7. *Special privileges:* A private company enjoys some special privileges. A public company enjoys no such privileges

ONE PERSON COMPANY (OPC)

With the implementation of the Companies Act, 2013, *a single person could constitute a Company, under the One Person Company (OPC) concept.*

The introduction of OPC in the legal system is a move that would encourage corporatisation of micro businesses and entrepreneurship.

As per section 2(62) of the Companies Act, 2013, "One Person Company" means a company which has only one person as a member.

The MEMORANDUM OF ONE PERSON COMPANY is required to indicate the name of the other person, with his prior written consent in the prescribed form, who shall, in the event of the subscriber's death or his incapacity to contract become the member of the company

AND

the written consent of such person shall be filed with the Registrar at the time of incorporation of the One Person Company along with its memorandum and articles.

Other conditions for One Person Company are as under:

(1) Only a natural person who is an Indian citizen and resident in India –

- ✓ shall be eligible to incorporate a One Person Company;
- ✓ shall be a nominee for the sole member of a One Person Company.

It may be noted that "resident in India" means a person who has stayed in India for a period of not less than*one hundred and eighty two days* during the immediately preceding one calendar year.

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(2) No person shall be eligible to incorporate more than a One Person Company or become nominee in more than one such company.

(3) No minor shall become member or nominee of the One Person Company or can hold share with beneficial interest.

(4) Such Company cannot be incorporated or converted into a company under section 8 of Companies Act, 2013(section 8 deals with Formation of company with charitable objects, etc.)

(5) Such Company cannot carry out Non-Banking Financial Investment activities including investment in securities of any body corporates.

(6) No such company can convert voluntarily into any kind of company unless two years have expired from the date of incorporation of One Person Company, except threshold limit

- ⇨ paid up share capital is increased beyond *fifty lakh rupees* or
- ⇨ its average annual turnover during the relevant period exceeds *two crore rupees*.

A COMPANY LIMITED BY SHARES

A company limited by shares may be defined as the registered company whether public or private company having the liability of its members limited by its memorandum to the amount, unpaid on the shares respectively held by them.

A COMPANY LIMITED BY GUARANTEE

A company limited by guarantee is a registered company having the liability of its members limited by the memorandum to such an amount as the members may respectively undertake by the memorandum to contribute to the assets of the company in the event of being wound up.

AN UNLIMITED COMPANY

An unlimited company is a company not having any limit on the liability of its members. Thus the maximum liability of the members of such a company, in the event of being wound up, might stretch up to the full extent of their properties to meet the obligations of the company

Company with charitable objects

Section 8 of the Companies Act, 2013 provides that where it is proved to the satisfaction of the Central Government that a person or an association of persons proposed to be registered as a limited company –

(*a*) has in its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;

(b) intends to apply its profits, if any, or other income in promoting its objects; and

(*c*) intends to prohibit the payment of any dividend to its members,

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The Central Government may, by licence issued in such prescribed manner and on such conditions as it deems fit, allow that person or association of persons to be registered as a limited company without the addition to its name of the word "Limited", or as the case may be, the words "Private Limited", and thereupon the Registrar shall, on application, in the prescribed form, register such person or association of persons as a company under this section

SMALL COMPANY

Small company is a new form of private company under the Companies Act, 2013. A classification of a private company into a small company is based on its size i.e. paid up capital and turnover. In other words, such companies are small sized private companies.

As per section 2(*85*) ''small company'' means a company, other than a public company, –

(i) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees; or

(ii) turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than twenty crore rupees

GOVERNMENT COMPANIES

Section 2(45) of the Companies Act, 2013 defines "Government Company" as any company in which not less than fifty one per cent. of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company.

Where the Central Government is a member of a Government company, the Central Government shall cause an annual report on the working and affairs of that company to be prepared within three months of its annual general meeting, and laid before both Houses of Parliament together with a copy of the audit report and comments upon or supplement to the audit report, made by the Comptroller and Auditor-General of India.

Where in addition to the Central Government, any State Government is also a member of a Government company, that State Government shall cause a copy of the annual report prepared within three months of its annual general meeting and laid before the House or both Houses of the State Legislature together with a copy of the audit report and the comments upon or supplement to the audit report, made by the Comptroller and Auditor- General of India.

Where the Central Government is not a member of a Government company, every State Government which is a member of that company, or where only one State Government is a member of the company, that State Government shall cause an annual report on the working and affairs of the company to be prepared and as soon as may be after such preparation, laid before the House or both Houses of the State Legislature together with a copy of the audit

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report and comments upon or supplement to the audit report made by the Comptroller and Auditor-General of India.

FOREIGN COMPANIES

As per section 2(42) of the Companies Act, 2013 "foreign company" means any company or body corporateincorporated outside India which –

(a) has a place of business in India whether by itself or through an agent, physically or through electronicmode; and

(b) conducts any business activity in India in any other manner.

Where *not less than fifty per cent.of the paid-up share capital*, whether equity or preference or partly equity andpartly preference, of a foreign company is held by

- ⇨ one or more citizens of India or
- ⇨ by one or more companies or
- ⇨ bodies corporate incorporated in India, or
- ⇨ by one or more citizens of India and one or more companies or bodiescorporate incorporated in India, whether singly or in the aggregate,

such company shall comply with the provisionsof Chapter XXIII deals with companies incorporated outside India contains Sections 379 to 395 and such otherprescribed provisions of the Companies Act, 2013 as may be with regard to the business carried on by it in Indiaas if it were a company incorporated in India.

HOLDING & SUBSIDIARY COMPANY

Holding company

As per Section 2(46) of the Companies Act, 2013, holding company, in relation to one or more other companies, means a company of which such companies are subsidiary companies.

Subsidiary company

Section 2(87) of the Companies Act, 2013 provides that subsidiary company or subsidiary, in relation to any other company (that is to say the holding company), means a company in which the holding company—

(i) controls the composition of the Board of Directors; or

(ii) exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies:

Provided that such class or classes of holding companies, shall not have layers of subsidiaries beyond the prescribed limit.

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PRODUCER COMPANY

Section 465(1) of the Companies Act, 2013 provides that the Companies Act, 1956 and the Registration of Companies (Sikkim) Act, 1961 (hereafter in this section referred to as the repealed enactments) shall stand repealed.

However, proviso to section 465(1) provides that the provisions of Part IX A of the Companies Act, 1956 shall be applicable mutatis mutandis to a Producer Company in a manner as if the Companies Act, 1956 has not been repealed until a special Act is enacted for Producer Companies.

In view of the above provision, Producer Companies are still governed by the Companies Act, 1956. Companies (Amendment) Act, 2002 had added a new Part IXA to the main Companies Act, 1956 consisting of 46 new Sections from 581A to 581ZT relating to Producer Companies.

According to the provisions as prescribed under Section 581A(l) of the Companies Act, 1956, a producer company is a body corporate having objects or activities specified in Section 581B and which is registered as such under the provisions of the Act.

The membership of producer companies is open to such people who themselves are the primary producers, which is an activity by which some agricultural produce is produced by such primary producers.

THE WHOLE PROCESS OF THE COMPANY FORMATION MAY BE DIVIDED INTO THREE DISTINCT STAGES, NAMELY:

(i) Promotion;
(ii) Incorporation by Registration; and
(iii) Commencement of Business.

Promotion

"Promotion" is the process of conceiving an idea and developing it into a concrete proposition or project to be accomplished by the incorporation and floatation of a company. The person who takes the necessary steps to accomplish these objectives is known as promoter.

Promoters

Section 2 (69) of the Companies Act, 2013 defines the term 'promoter' as under:-

"Promoter" means a person –

(a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or

(b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or

(c) in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act Is a director/officer/employee of the issuer a promoter?

A director/officer/employee who has control over the affairs of the company, directly or indirectly whether as ashareholder, director or otherwise is considered as a promoter. As per

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section 2 (27), control" shall include theright to appoint majority of the directors or to control the management or policy decisions exercisable by aperson or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholdingor management rights or shareholders agreements or voting agreements or in any other manner.

However, a director or officer or employee of the issuer or a person, if acting as such merely in his professionalcapacity, shall not be deemed as a promoter.

Legal Position of a Promoter

While the accurate description of a promoter may be difficult, his legal position is quite clear. A promoter is neither an agent of, nor a trustee for, the company because it is not in existence. But he occupies a fiduciary position in relation to the company and therefore requires to make full disclosure of the relevant facts, including any profit made by him.

INCORPORATION OF COMPANYMPANIES - PROCEDURAL ASPECTS

F COMPANIES - PROCEDURAL ASPECTS

INCORPORATION OF COMPANIES - PROCEDURAL ASPECTS

(a) Application for Availability of Name of company

A company being a legal entity must have a name of its own to establish its separate identity. The name of the company is a symbol of its independent corporate existence. The first clause in the memorandum of associationof the company states the name by which a company is to be known. The company may adopt any suitablename provided it is not undesirable.

According to section 4(*2*) of the Companies Act, 2013, the name stated in the memorandum shall not –

(a) be identical with or resemble too nearly to the name of an existing company registered under this Act or any previous company law; or

(b) be such that its use by the company –

(i) will constitute an offence under any law for the time being in force; or

(ii) is undesirable in the opinion of the Central Government

Section 4(*5*)(i) lays down that upon receipt of an application under sub-section (*4*), the Registrar may, on the basis of information and documents furnished along with the application, reserve the name for a period of 60 days from the date of the application.

(b) Preparation of Memorandum and Articles of Association

THE MEMORANDUM OF ASSOCIATION

The Memorandum of Association is a document which sets out the constitution of a company and is therefore the foundation on which the structure of the company is built. It defines the scope of the company's activities and its relations with the outside world.

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The first step in the formation of a company is to prepare a document called the memorandum of association. In fact memorandum is one of the most essential pre-requisites for incorporating any form of company under the Act. where the company to be formed is a One Person Company by subscribing their names or his name to a memorandum and complying with the requirements of this Act in respect of its registration. To subscribe means to append one's signature or mark a document as an approval or attestation of its contents.

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

Section 4 of the Companies Act, 2013 specifies in clear terms the contents of this important document which is the charter of the company.

The memorandum of association of a company contains the objects to pursue which the company is formed It not only shows the objects of formation but also determines the scope of its operations beyond which its actions cannot go.

"THE MEMORANDUM OF ASSOCIATION",

- ❖ is a document of great importance in relation to the proposed company".
- ❖ Memorandum of Association is the charter of a company. It is a document, which amongst other things, defines the area within which the company can operate.

Section 4(1) states that the memorandum of a company shall state –

(A) the name of the company with the last word "Limited" in the case of a public limited company, or the last words "Private Limited" in the case of a private limited company

(B) the State in which the registered office of the company is to be situated;

(C) the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof;

(D) the liability of members of the company, whether limited or unlimited, and also state,— (i) in the case of a company limited by shares, that liability of its members is limited to the amount unpaid, if any, on the shares held by them; and (ii) in the case of a company limited by guarantee, the amount up to which each member undertakes to contribute

(E) in the case of a company having a share capital, –

(i) the amount of share capital with which the company is to be registered and the division thereof into shares of a fixed amount and the number of shares which the subscribers to the memorandum agree to subscribe which shall not be less than one share; and

(ii) the number of shares each subscriber to the memorandum intends to take, indicated opposite his name;

(F) in the case of One Person Company, the name of the person who, in the event of death of the subscriber, shall become the member of the company.

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ARTICLE OF ASSOCIATION

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

It also includes the regulations contained in Table A in Schedule I of the Act, in so far as they apply to the company.

In terms of section 5(1) of the Companies Act, 2013, the articles of a company shall contain the regulations for management of the company. The articles of association of a company are its bye-laws or rules and regulations that govern the management of its internal affairs and the conduct of its business.

The articles play a very important role in the affairs of a company. It deals with the rights of the members of the company inter se. They are subordinate to and are controlled by the memorandum of association.

The articles set out the rules and regulations framed by the company for its own working. The articles should contain generally the following matters:

1. Exclusion wholly or in part of Table F.
2. Adoption of preliminary contracts.
3. Number and value of shares.
4. Issue of preference shares.
5. Allotment of shares.
6. Calls on shares.
7. Lien on shares.
8. Transfer and transmission of shares.
9. Nomination.
10. Forfeiture of shares.
11. Alteration of capital.
12. Buy back.
13. Share certificates.
14. Dematerialisation.
15. Conversion of shares into stock
16. Voting rights and proxies.
17. Meetings and rules regarding committees.
18. Directors, their appointment and delegations of powers.
19. Nominee directors.
20. Issue of Debentures and stocks.
21. Audit committee.
22. Managing director, Whole-time director, Manager, Secretary.
23. Additional directors.
24. Seal.
25. Remuneration of directors.

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26. General meetings.
27. Directors meetings.
28. Borrowing powers.
29. Dividends and reserves.
30. Accounts and audit.
31. Winding up.
32. Indemnity.
33. Capitalisation of reserves.

FILING OF DOCUMENTS WITH REGISTRAR OF COMPANIES

Section 7(1) of the Companies Act, 2013 states that there shall be filed with the Registrar within whose jurisdiction the registered office of a company is proposed to be situated, the following documents and information for registration, namely: –

(a) Application for Incorporation of Companies

Rule 12 of Companies (Incorporation) Rules 2014 states that an application for incorporation shall be filed with ROC in form INC-2 (in case of one person company or INC-7 in case of other companies.

(b) Memorandum and Articles of Association of the company duly signed

Section 7(1)(a) the filing of the memorandum and articles of the company duly signed by all the subscribers to the memorandum in such manner as may be prescribed.

(c) Declaration from the professional

Section 7(1)((b) of the Companies Act, 2013 requires filing of a declaration in the prescribed form by an advocate, a chartered accountant, cost accountant or company secretary in practice, who is engaged in the formation of the company, and by a person named in the articles as a director, manager or secretary of the company, that allthe requirements of this Act and the rules made thereunder in respect of registration and matters precedent or incidental thereto have been complied with.

(d) Affidavit from the subscribers to the Memorandum

Section 7(1)(c) of the Companies Act, 2013 requires the filing of an affidavit from each of the subscribers to the memorandum and from persons named as the first directors, if any, in the articles that he is not convicted of any offence in connection with the promotion, formation or management of any company, or that he has not been found guilty of any fraud or misfeasance or of any breach of duty to any company under this Act or any previous company law

(e) Furnishing verification of Registered Office

Under Section 12 of the Companies Act, 2013, a company shall, on and from the 15th day of its incorporation and at all times thereafter, have a registered office capable of receiving and acknowledging all communications and notices as may be addressed to it.

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The company can furnish to the registrar verification of registered office within 30 days of incorporation in the manner prescribed. As per rule 25(1) of Companies (Incorporation) Rules 2014, the verification of registered office shall be filed in Form no INC 22.

Where the location of the registered office is finalised prior to Incorporation of a company by the promoters, the promoters can also file along with the Memorandum and Articles, the verification of its registered office in Form no INC 22.

(f) Particulars of subscribers

Section 7(1)(e) of the Companies Act, 2013 requires the filing of the particulars of name, including surname or family name, residential address, nationality and such other particulars of every subscriber to the memorandum along with proof of identity, as may be prescribed, and in the case of a subscriber being a body corporate, such particulars as may be prescribed.

(g) Particulars of first directors along with their consent to act as directors

Section 7(1)(f) of the Companies Act, 2013 requires filing of the particulars of the persons mentioned in the articles as the first directors of the company, their names, including surnames or family names, the Director

Identification Number, residential address, nationality and such other particulars including proof of identity as may be prescribed.

Section 7(1)(g) of the Companies Act, 2013 states that the particulars of the interests of the persons mentioned in the articles as the first directors of the company in other firms or bodies corporate along with their consent to act as directors of the company in such form and manner as may be prescribed.

(h) Power of Attorney

With a view to fulfilling the various formalities that are required for incorporation of a company, the promoters may appoint an attorney empowering him to carry out the instructions/requirements stipulated by the Registrar.

This requires execution of a Power of Attorney on a non-judicial stamp paper of a value prescribed in the respective State Stamp Laws.

Issue of Certificate of Incorporation by Registrar

Section 7(2) of the Companies Act, 2013 states that the Registrar on the basis of documents and information filed under sub-section (1) of section 7, shall register all the documents and information referred to in that subsection in the register and issue a certificate of incorporation in the prescribed form to the effect that the proposed company is incorporated under this Act.

CONCLUSIVE EVIDENCE

A Certificate of Incorporation given by the Registrar in respect of any association shall be conclusive evidence that all the requirements of the Act have been complied with in respect of registration and matters precedent and incidental thereto, and that the association is a company

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authorised to be registered and duly registered under the Act. The Certificate of Incorporation is conclusive evidence that everything is in order as regards registration and that the company has come into existence from the earliest moment of the day of incorporation stated therein with rights and liabilities of a natural person, competent to enter into contracts.

Allotment of Corporate identity number

Section 7(3) of the Companies Act, 2013 states that on and from the date mentioned in the certificate of incorporation issued under sub-section (2), the Registrar shall allot to the company a corporate identity number, which shall be a distinct identity for the company and which shall also be included in the certificate.

MEANING OF DIRECTOR

A company, though a legal entity in the eyes of law, is an artificial person, has no physical existence.

It cannot act in its own person. It can do so only through some human agency. *The persons who are in charge of the management of the affairs of a company are termed as directors. They are collectively known as Board of Directors or the Board*. The directors are the brain of a company. They occupy a pivotal position in the structure of the company.

An appointed or elected member of the board of directors of a company who, with other directors, has the responsibility for determining and implementing the company's policy.

- Company has neither soul nor the body of its own.
- It can act only through human agency.
- The persons who are in charge of the management of the affairs of the company are termed as directors. They are collectively called as Board of directors.
- The directors are the brain of a company.

Minimum/Maximum Number of Directors

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

Number of directorships

As per Section 165 of the Companies Act, 2013**, maximum number of directorships, including any alternate directorship a person can hold is 20.** It has come with a rider that number of directorships in public companies***OR***private companies that are either holding or subsidiary company of a public company shall be limited to 10.

Further the members of a company may restrict abovementioned limit by passing a special resolution

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Residence of a director in India

Section 149 (3) of the Companies Act, 2013 has provided for residence of a director in India as a compulsory i.e.every company shall have at least one director who has stayed in India for a total period of not less than 182days in the previous calendar year.

Woman Director

Every listed company shall appoint at least one woman director and Every other public company having paid up share capital of Rs. 100 crores or more or turnover of Rs. 300 crore or more as on the last date of latest audited financial statements, shall also appoint at least one woman director under Section 149(1) of the Companies Act, 2013

Director elected by Small Shareholders

According to section 151 of the Companies Act, 2013 every listed company may have one director elected bysuch small shareholders. For the purpose of this section, "small shareholder" means a shareholder holdingshares of nominal value of not more than twenty thousand rupees or such other sum as may be prescribed.

Appointment of directors

First Director

The first directors of most of the companies are named in their articles. If they are not so named in the articles ofa company, then subscribers to the memorandum who are individuals shall be deemed to be the first directorsof the company until the directors are duly appointed.

General provisions relating to appointment of directors

1. Except as provided in the Act, every director shall be appointed by the company in general meeting.
2. Director Identification Number is compulsory for appointment of director of a company.
3. Every person proposed to be appointed as a director shall furnish his Director Identification Number and adeclaration that he is not disqualified to become a director under the Act.
4. A person appointed as a director shall on or before the appointment give his consent to hold the office ofdirector.
5. Articles of the Company may provide the provisions relating to retirement of the all directors. If there is noprovision in the article, then not less than two-thirds of the total number of directors of a public company shall bepersons whose period of office is liable to determination by retirement by rotation and eligible to be reappointed at **ANNUAL GENERAL MEETING.**

At the annual general meeting of a public company

⇩

one-third of such of the directors for the time being as areliable to retire by rotation, or if their number is neither three nor a multiple of three, then, the number nearest toone-third, shall retire from office.

The directors to retire by rotation at every annual general meeting shall be those who have been longest in office since their last appointment.

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Duties of directors

As per Section 166 of the Companies Act, 2013, a director of a company shall:

- ✓ Act in accordance with the articles of the company.
- ✓ Act in good faith in order to promote the objects of the company for the benefit of its members as a whole,and in the best interests of the company, its employees, the shareholders, the community and for theprotection of environment.
- ✓ Exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.
- ✓ Not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company.
- ✓ Not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company.
- ✓ Not assign his office and any assignment so made shall be void.

If a director of the company contravenes the provisions of this section such director shall be punishable with finewhich **shall not be less than Rs. 1,00,000 but which may extend to Rs. 5,00,000.**

Section 179 of the Companies Act, 2013 deals with the powers of the board; all powers to do such acts andthings for which the company is authorised is vested with board of directors. But the board can act or do thethings for which powers are vested with them and not with general meeting.

The following powers of the Board of directors shall be exercised only by means of resolutions passed at meetings of the Board, namely :-

(1) to make calls on shareholders in respect of money unpaid on their shares;
(2) to authorise buy-back of securities under section 68;
(3) to issue securities, including debentures, whether in or outside India;
(4) to borrow monies;
(5) to invest the funds of the company;
(6) to grant loans or give guarantee or provide security in respect of loans;
(7) to approve financial statement and the Board's report;
(8) to diversify the business of the company;
(9) to approve amalgamation, merger or reconstruction;
(10) to take over a company or acquire a controlling or substantial stake in another company;
(11) to make political contributions;
(12) to appoint or remove key managerial personnel (KMP);
(13) to take note of appointment(s) or removal(s) of one level below the Key Management Personnel;
(14) to appoint internal auditors and secretarial auditor;
(15) to take note of the disclosure of director's interest and shareholding;

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(16) to buy, sell investments held by the company (other than trade investments), constituting five percent or more of the paid–up share capital and free reserves of the investee company;

(17) to invite or accept or renew public deposits and related matters;

(18) to review or change the terms and conditions of public deposit;

(19) to approve quarterly, half yearly and annual financial statements or financial results as the case may be.

MEETINGS OF THE BOARD

- The way we run board meetings says much about how we run the company.
- Successful companies use boardmeetings to create and improve key business strategies.
- The board of directors of a company is primarily an oversight board.
- It oversees the management of the company to ensure that the interest of non-controlling shareholders is protected.
- It also functions as advisory board.
- Independent directors bring diverse knowledge and expertise in the board room and the CEO uses the knowledge pool in addressing issues being faced by the company.

The most important function of a monitoring board is to provide direction to the company. Another very important function of a monitoring board is to set the 'tone at the top'. It is expected to create the right culture within the company.

Section 173 of the Companies Act, 2013 deals with Meetings of the Board and it provides that the first Boardmeeting should be held within thirty days of the date of incorporation.

In addition to the first meeting to be held within thirty days of the date of incorporation, **there shall be minimum of four Board meetings every year and not more one hundred and twenty days shall intervene between two consecutive Board meetings.**

In case of One Person Company (OPC), small company and dormant company,

⇩

at least one Board meeting should be conducted in each half of the calendar year

AND

the gap between two meetings should not be less than Ninety days. Directors may participate in the meeting either in person or through video conferencing or other audio visual means.

Notice of Board Meetings

The Companies Act, 2013 requires **that not less than seven days' notice in writing shall be given to every director at the registered address as available with the company**.

The notice can be given by

- ✓ hand delivery or
- ✓ bypost or
- ✓ by electronic means.

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In case the Board meeting is called at shorter notice, at least one independent director shall be present at themeeting.

If he is not present, then decision of the meeting shall be circulated to all directors and it shall be finalonly after ratification of decision by at least one Independent Director.

Quorum for Board Meetings

One third of total strength

OR

two directors,

whichever is higher, shall be the quorum for a meeting.

If due toresignations or removal of director(s), the number of directors of the company is reduced below the quorum asfixed by the Articles of Association of the company, then, the continuing Directors may act for the purpose ofincreasing the number of Directors to that required for the quorum or for summoning a general meeting of theCompany.

The meeting shall be adjourned due to want of quorum, unless the articles provide shall be held to the same dayat the same time and place in the next week or if the day is National Holiday, the next working day at the sametime and place.

Key Managerial Personnel

The Companies Act, 2013 has for the first time recognized the concept of Key Managerial Personnel.

As persection 2(51) of the Companies Act, 2013 "key managerial personnel", in relation to a company, means—

(i) the Chief Executive Officer or the managing director or the manager;

(ii) the company secretary;

(iii) the whole-time director;

(iv) the Chief Financial Officer; and

(v) such other officer as may be prescribed

MANAGING DIRECTOR

Section 2(54) of the Companies Act, 2013, defines 'managing director'. It stipulates that a "managing director" means a director who, **by virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors,** is entrusted with substantial powers of managementof the affairs of the company and includes a director occupying the position of managing director, by whatevername called.

WHOLE TIME DIRECTOR

Section 2 (94) of the Companies Act, 2013 defines "whole-time director" as a director in the whole-time employmentof the company.

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MANAGER

Section 2(53) of the Companies Act, 2013 defines "manager" as an individual who, subject to the superintendence,control and direction of the Board of Directors, has the management of the whole, or substantially the whole, ofthe affairs of a company, and includes a director or any other person occupying the position of a manager, by

whatever name called, whether under a contract of service or not.

CHIEF EXECUTIVE OFFICER

Section 2(18) of the Companies Act, 2013 defined "Chief Executive Officer" means an officer of a company, whohas been designated as such by it.

CHIEF FINANCIAL OFFICER

Section 2(19) of the Companies Act, 2013 defined "Chief Financial Officer" means a person appointed asChief Financial Officer of a company.

COMPANY SECRETARY

Section 2(24) of the Companies Act, 2013 defines "company secretary" or "secretary" means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 who is appointed by a company to perform the functions of a company secretary under this Act.

Appointment of Whole-Time Company Secretary

As per Rule 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules 2014 providesthat a company which has a ***paid up capital of Five crore rupees or more shall have a whole-time company secretary.***

FUNCTIONS OF COMPANY SECRETARY

According to Section 205 of the Companies Act, 2013 the functions of the company secretary shall include,—

(a) to report to the Board about compliance with the provisions of this Act, the rules made thereunder and other laws applicable to the company;

(b) to ensure that the company complies with the applicable secretarial standards;

(c) to discharge such other duties as may be prescribed.

For the purposes of clause (c) of sub-section (1) of section 205, the Central Government has prescribed that theduties of Company Secretary shall also include –

(1) to provide to the directors of the company, collectively and individually, such guidance as they mayrequire, with regard to their duties, responsibilities and powers;

(2) to facilitate the convening of meetings and attend Board, committee and general meetings, and maintainthe minutes of these meetings;

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(3) to obtain approvals from the Board, general meetings, the Government and such other authorities asrequired under the provisions of the Act;

(4) to represent before various regulators, Tribunal and other authorities under the Act in connection withdischarge of various functions under the Act;

(5) to assist the Board in the conduct of the affairs of the company;

(6) to assist and advise the Board in ensuring good corporate governance and in complying with the corporategovernance requirements and best practices; and

(7) to discharge such other duties as may be assigned by the Board from time to time;

(8) such other duties as have been prescribed under the Act and Rules.

Role of Secretary in a Company

Generally speaking, the role of a secretary is threefold, viz.,

- ✓ as a statutory officer/Key Managerial Personnel,
- ✓ asa co-ordinator and
- ✓ as an administrative officer.

Similarly, the responsibility of a company secretary extends not only to the company, but also to its shareholders, depositors, creditors, employees, consumers, society and the Government.

Thus a company secretary plays a vital role in company administration. His role can conveniently be studied from three different angles:

(a) as a statutory officer/key managerial personnel ;

(b) as a coordinator;

(c) as an administrative officer.

(a) Statutory Officer/Key Managerial Personnel

According to Section 203 of the Companies Act, 2013 read with Rule 8 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules 2014 mandates the appointment of Key Managerial Personnel

And makes it obligatory for a listed company and every other public company having a paid up share capital of rupees ten crores or more, to appoint following whole-time key managerial personnel:

(i) managing director, or Chief Executive Officer or manager and in their absence, a whole-time director;

(ii) company secretary; and

(iii) Chief Financial Officer

(b) Co-ordinator

The Company Secretary as a co-ordinator has an important role to play in the administration of a company's business and affairs. It is for the secretary to ensure effective execution and implementation of the management policies laid out by the Board. The position that the Company Secretary occupies in the administrative set up of the Company makes his function as one of co-ordinator and link between the top management and other levels.

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(c) Administrative Officer

The principal duty of a secretary as an administrator is to ensure that the activities of a company are in conformity with the company's policy. In his role as an administrator, the secretary provides the very foundation on which the entire structure of company administration is constructed. The role of company secretary can be subdivided into organisational, financial, office and personnel administration.

MEMBERS' MEETINGS

- ✓ A company is composed of members, though it has its own entity distinct from members.
- ✓ The members of acompany are the persons who, for the time being, constitute the company, as a corporate entity.
- ✓ However, acompany, being an artificial person, cannot act on its own. It, therefore, expresses its will or takes its decisionsthrough resolutions passed at validly held Meetings.
- ✓ The primary purpose of a Meeting is to ensure that acompany gives reasonable and fair opportunity to those entitled to participate in the Meeting to take decisions asper the prescribed procedures.
- ✓ The decision making powers of a company are vested in the Members and the Directors and they exercise theirrespective powers through Resolutions passed by them.
- ✓ General Meetings of the Members provide a platformto express their will in regard to the management of the affairs of the company.

Members' Meetings are:

– Annual General Meeting
– Extraordinary General Meeting
– Class Meeting

Annual General Meeting

Annual general meeting (AGM) is an important annual event where members get an opportunity to discuss the activities of the company. Section 96 of the Companies Act, 2013 provides that every company, other than a one person company is required to hold an annual general meeting every year.

Following are the key provisions regarding the holding of an annual general meeting:

1. Annual general meeting should be held once every year.
2. First annual general meeting of the company should be held within 9 months from the closing of the first financial year. Hence it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation.
3. Subsequent annual general meeting of the company should be held within 6 months from the closing of the financial year.
4. The gap between two annual general meetings should not exceed 15 months.

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Extension of validity period of AGM

In case, it is not possible for a company to hold an annual general meeting within the prescribed time, the Registrar may, for any special reason, extend the time within which any annual general meeting shall be held.

Such extension can be for a period not exceeding 3 months. No such extension of time can be granted by the Registrar for the holding of the first annual general meeting,

Time and place for holding an annual general meeting

An annual general meeting can be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday. It should 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 situate. The Central Government

is empowered to exempt any company from these provisions, subject to such conditions as it may impose.

"National Holiday" for this purpose means and includes a day declared as National Holiday by the Central Government.

Default in holding the annual general meeting

Section 99 of the Companies Act, 2013 provides that if any default is made in complying or holding a meeting of the company, the company and every officer of the company who is in default shall be punishable with fine which may extend to Rs. 1 lakh and in case of continuing default, with a further fine which may extend to Rs. 5,000/- for each day during which such default continues

EXTRA ORDINARY GENERAL MEETING

All general meetings other than annual general meetings are called extraordinary general meetings.

Extraordinary General Meetings shall called by:

– By Board
– By Board on requisition of shareholders
– By requisitionists
– By Tribunal

All businesses items can be transacted at the extraordinary general meetings are special business.

Following are the key provisions, provided in section 100, regarding calling and holding of an extraordinary general meeting:

(I) *By Board*

The Board may, whenever it deems fit, call an extraordinary general meeting of the company.

(II) *By Board on requisition of shareholders*

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The Board must call an extraordinary general meeting on receipt of the requisition from the following number of Members.

(a) in the case of a company having a share capital: members who hold, on the date of the receipt of the requisition, not less than one-tenth of such of the paid-up share capital of the company as on that date carries the right of voting;

(b) in the case of a company not having a share capital: members who have, on the date of receipt of the requisition, not less than one-tenth of the total voting power of all the members having on the said date a right to vote.

(III) *By requisitionists*

- ✓ If the Board does not within 21 days from the date of receipt of a valid requisition in regard to any matter, proceedto call a meeting for the consideration of that matter on a day not later than 45 days from the date of receipt ofsuch requisition, the meeting may be called and held by the requisitonists themselves.
- ✓ However in such case, the meeting should be held within a period of 3 months from the date of the requisition.
- ✓ Reasonable expenses incurred by the requisitionists in calling such a meeting shall be reimbursed by thecompany to the requisitionists.
- ✓ The company in turn recover such expenses from any fee or other remunerationunder section 197 payable to such of the directors who were in default in calling the meeting.
- ✓ In case, thequorum is not present within half-an-hour from the time appointed for holding a meeting called by requisitionists,the meeting shall stand cancelled.

(IV) *By Tribunal*

- ✓ Section 98 of the Companies Act, 2013 provides that if for any reason it is impracticable to call a meeting of acompany or to hold or conduct the meeting of the company, the Tribunal may, either suo motu or on the applicationof any director or member of the company who would be entitled to vote at the meeting:Order a meeting of the company to be called, held and conducted in such manner as the Tribunal thinks fit; and
- ✓ Give such ancillary or consequential directions as the Tribunal thinks expedient, including directions modifyingor supplementing in relation to the calling, holding and conducting of the meeting, the operation of the provisionsof this Act or articles of the company.
- ✓ Such directions may include a direction that one member of the companypresent in person or by proxy shall be deemed to constitute a meeting. Meeting held pursuant to such ordershall be deemed to be a meeting of the company duly called, held and conducted.

Notice of Member'sMeeting

A general meeting of a company may be called by giving not less than 21 clear days' notice either in writing orthrough electronic mode. Notice through electronic mode shall be given in such manner as may be prescribed.

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Short notice

A general meeting may be called after giving a shorter notice also if consent is given in writing or by electronicmode by not less than 95% of the members entitled to vote at such meeting.

Contents of Notice

Place of meeting

The notice should state the place where the general meeting is scheduled to be held. In case of an annualgeneral meeting, the place of the meeting has to be either the registered office of the company or some otherplace within the city, town or village in which the registered office of the company is situated. No such restrictionapplies to an extraordinary general meeting.

Day of meeting

The day and date of the meeting should be clearly stated in the notice. In case of an annual general meeting, theday should be one that is not a National Holiday. An extraordinary general meeting can however be held on anyday.

Time of meeting

Exact time of holding the meeting should be given in the notice. An annual general meeting can be called duringbusiness hours only, that is, between 9 a.m. and 6 p.m. There is no need to follow such timings in case of anextraordinary general meeting.

Agenda

A statement of the business to be transacted at the general meeting should be given in the notice. In case, themeeting is to transact a special business, a explanatory statement should be attached about such item.

Proxy clause with reasonable prominence

Every notice calling a meeting of a company which has a share capital, or the articles of which provide for votingby proxy at the meeting, should carry with reasonable prominence, a statement that a member entitled to attendand vote is entitled to appoint a proxy, or, where that is allowed, one or more proxies, to attend and vote instead of himself, and that a proxy need not be a member.

Notice through Electronic Mode

A company may give notice through electronic mode. Electronic mode' means any communication sent by acompany through its authorized and secured computer programme which is capable of producing confirmationand keeping record of such communication addressed to the person entitled to receive such communication atthe last electronic mail address provided by the member.

Class Meetings

Class meetings are those meetings which are held by holders of a particulars class of shares/ debenture holders/creditors

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E- GOVERNANCE

- With the advent of Information and Communication Technology in all sectors today, Governments across the globe are taking major initiatives to integrate IT in all their processes.
- These initiatives aimed at electronic governance, embrace policy changes, legal reforms, business process reengineering, change management and infrastructure creation. They are also realizing that public/private partnership is very critical to the success of any e-governance Project and are accordingly entering into partnerships with private IT companies to implement e-governance.
- It is being felt that IT enablement of various Government to Business processes along with Business Process Reengineering will not only improve efficiency and transparency of the government operations, but will also provide speedy transactions between the government and the businesses.

ELECTRONIC GOVERNANCE AND MCA 21

Electronic Governance is the application of Information Technology to the Government functioning in order to bring about Simple, Moral, Accountable, Responsive and Transparent (SMART) Governance. E-governance is a highly complex process requiring provision of hardware, software, networking and re-engineering of the procedures for better delivery of services.

- ✓ MCA-21 is an ambitious e-governance initiative of Government of India that builds on the Government's vision of National e-governance in the country.
- ✓ As part of the Government's focus on governance norms to meet the expectations arising from globalization, MCA project was launched as a flagship initiative of Ministry of CorporateAffairs (MCA).
- ✓ The project was named MCA 21 as it aimed at repositioning MCA as an organization capable of fulfilling the aspirations of its stakeholders in the 21st Century.
- ✓ Rather than compelling the business community to physically travel to MCA offices, MCA services are made available at the place of their choice, be it their homes or offices.

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MCQ

1: A company is a _____ having status and personality distinct and separate from that of the members constituting it.

(a) Corporate body
(b) Corporate body and a legal person
(c) Legal body
(d) Artificial person

2: By incorporation under the Act, the company is vested with _____ quite distinct from individuals who are its members.

(a) A separate personality
(b) A separate identity
(c) A corporate personality
(d) A separate veil

3: Assets of a company are separate and distinct from those of its _____.

(a) Owners
(b) Directors
(c) Members
(d) Shareholders

4: A shareholder cannot be held liable for the acts of the _____ even If he holds virtually the entire share capital.

(a) Other shareholders
(b) Directors
(c) Members
(d) Company

5: The company being a separate entity, leading its own business life, the members _____ for its debts.

(a) Are not liable
(b) Are liable
(c) Are affected
(d) Are not affected

6: The liability of the members of a company is limited to the extent of the _____ of the shares held by them.

(a) Quoted value
(b) Face value
(c) Nominal value
(d) Paid up value

7: In no event can a shareholder be asked to pay anything more than the _____ of his shares.

(a) Paid value
(b) Unpaid value
(c) Face value
(d) Quoted value

8: _____ but the company goes on for ever..

(a) Shareholders may come and go
(b) Directors may come and go
(c) Managerial personnel may come and go
(d) Members may come and members may go

9: The capital of a company is divided into parts, called _____.

(a) Debentures
(b) Stock
(c) Units
(d) Shares

10: The shares of joint stock companies are _____.

(a) Easily transferable
(b) Freely transferable
(c) Not transferable
(d) Transferable subject of conditions

11: As a corporate person, the company is _____ to own and hold property in its own name.

(a) Entitled
(b) Not entitled
(c) Disentitled
(d) Free

12: On incorporation, a company acquires ___ with perpetual succession and a common seal.

(a) Separate entity
(b) Legal entity
(c) Distinct entity
(d) Corporate entity

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13: A document not bearing common seal of the company is not _____ and has no legal force behind it.

(a) Authentic
(b) Authoritative
(c) True
(d) Valuable

14: A company being a _____, can sue and be sued in its own name.

(a) Corporate personality
(b) Body
(c) Body corporate
(d) Separate entity

15: Though there are a number of _____ between a limited company and other forms of associations, there are many dissimilarities.

(a) Dissimilarities
(b) Similarities
(c) Common points
(d) Distinct features

16: The expression "corporation" or "body corporate" is wider than the word ' ____ '.

(a) Corporate
(b) Body corporate
(c) Corporation
(d) Company

17: Under the law, an incorporated company is a distinct entity, event the one-man company in Salomon & Co. Ltd., case is different from its _____.

(a) Members
(b) Subscribers
(c) Owners
(d) Shareholders

18: "Members may come and members may go but the company can go on _____".

(a) Permanently
(b) Forever
(c) For indefinite period
(d) For a period specified by law

19: "The shares or other interest of any member in a company shall be _____, transferable in the manner provided by the articles of the company".

(a) Immoveable property
(b) Movable property
(c) Restrictedly
(d) Capable of being

20: The property of the company is not the property of the _____.

(a) Shareholders members
(b) Shareholders
(c) Directors
(d) Managerial personnel

21: As a _____, a company can sue in its name and be sued by others.

(a) Juristic legal person
(b) Juristic person
(c) Legal person
(d) Separate person

22: The managing director and other directors are _____ to be sued for dues against a company. .

(a) In all cases
(b) Not
(c) Not liable
(d) Liable

23: Members of a company are not having as _____ over its working as one can have in other forms of business organization, say, a partnership firm.

(a) General control
(b) Effective control
(c) Intimate control
(d) Effective and intimate control

24: The members of a company are _____ of the company.

(a) Neither the owners nor the agents
(b) The owners
(c) The agents
(d) The owners and the agents

CS NITESH KR. JAISWAL CS CLASSES

25: The Act provides _____ for winding-up of companies which is more expensive and time consuming than that which is applicable to other forms of business organization.

(a) Elaborate procedure
(b) Detailed procedure
(c) Elaborate and detailed procedure
(d) Lengthy procedure

26: Where the corporate veil has been used for _____, Courts have lifted the veil and looked at the realities of the situation.

(a) Commission of fraud or improper conduct
(b) Commission of fraud
(c) Improper conduct
(d) Proper conduct

27: Where the corporation is really an _____ for someone else and the corporate façade is used to cover up that agency or trust.

(a) Agency
(b) Trust
(c) Agency or trust
(d) Institution

28: Where the doctrine conflicts with public policy, Courts have lifted the _____.

(a) Company veil
(b) Shareholders veil
(c) Corporate veil
(d) Corporate veil for protecting the public policy

29: For determining the true _____ of the company.

(a) Character or status
(b) Character
(c) Status
(d) Nature

30: Where the veil has been used for evasion of _____.

(a) Profit
(b) Taxes and duties
(c) Taxes
(d) Duties

31: Where it was found that the sole purpose for which the company was formed was to _____ the Court will ignore the concept of separate entity, and make the individuals liable to pay the taxes which they would have paid but for the formation of the company.

(a) Evade taxes
(b) Evade duties
(c) Pay taxes
(d) Hide profits

32: The corporate veil can be lifted where the purpose of company formation was to avoid _____.

(a) General legislation
(b) Corporate legislation
(c) Welfare legislation
(d) Social legislation

33: A private company means a company which has a minimum paid-up capital of _____ or such higher paid up capital as may be prescribed.

(a) Ten thousand
(b) Two lacs
(c) One lakh rupees
(d) Five lakh rupees

34: There should be at least _____ persons to form a private company.

(a) Three
(b) Two
(c) Five
(d) Ten

35: The maximum limit on number of members in a Pvt. Ltd. Company is _____.

(a) 5
(b) 20
(c) 10
(d) 50

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36: The words "Private Limited" must be added at the _____ of its name by a private limited company.

(a) Start
(b) Middle
(c) End
(d) Anywhere

37: Public Company means a company which has a minimum paid-up capital of _____ rupees or such higher paid-up capital as may be prescribed.

(a) Ten lakh
(b) Two lakh
(c) One lakh
(d) Five lakh

38: The minimum number of members of a Public Ltd. Co. is _____.

(a) 5
(b) 2
(c) 7
(d) 10

39: The maximum number of numbers in a Public Ltd. Co. is _____.

(a) 50
(b) 100
(c) 1 lacs
(d) Unlimited

40: A member of a company limited by shares is required to pay only the _____ of shares held by him and nothing more.

(a) Real amount
(b) Nominal amount
(c) Unpaid amount
(d) Specified amount

41: A special feature of guarantee company is that the liability of members to pay _____ amount arises only when the company goes into liquidation and not when it is a going concern.

(a) Their guarantee
(b) Their warranty
(c) Their written amount
(d) Their specified amount

42: An unlimited company is a company not having any limit on the _____.

(a) Number of members
(b) Profits of the company
(c) Liability of its members
(d) Number of directors

43: A Company, which has been granted licence under Section 25 cannot alter the provisions of its _____ with respect to its objects except with the previous approval of the Central Government in writing.

(a) Articles
(b) Memorandum
(c) Prospectus
(d) Bye-laws

44: Government companies being _____ companies, their audit assumes special relevance.

(a) Private sector
(b) Government sector
(c) Public sector
(d) General

45: A "foreign company" is a company which is incorporated in a country outside India under the law of that other country and has established a place of business _____.

(a) In India
(b) Outside India
(c) Both in India as well as outside India
(d) Anywhere

46: Every company public or private has to be registered with the _____.

(a) Registrar
(b) Registrar of the state
(c) Registrar of Companies (ROC)
(d) Ministry of affairs (MCA)

47: "Promotion" is the process of conceiving an idea and developing it into a concrete proposition or project to be accomplished by the _____ of a company.

(a) Formation
(b) Incorporation
(c) Flotation
(d) Incorporation and floatation

CS NITESH KR. JAISWAL CS CLASSES

48: A promoter has been described as _____ with reference to a given object and to set it going, and who takes the necessary steps to accomplish that purpose".

(a) One who undertakes to form a company
(b) One who form a company
(c) One who floats a company
(d) One who incorporates a company

49: The promoter decides the company's name and ascertains that it will be _____.

(a) Sanctioned by the accepted by the Registrar of Companies
(b) Made available by the accepted by the Registrar of Companies
(c) Adopted by the accepted by the Registrar of Companies
(d) Accepted by the Registrar of Companies

50: A company cannot be registered with the name which is _____ or which is identical to or too nearly resembles the name of an existing company.

(a) Desirable
(b) Undesirable
(c) Prohibited
(d) Restricted

51: For ascertaining as to whether the proposed name is available for adoption, the promoters are required to make an application to the Registrar of Companies of the State in which the _____ of the proposed company is to be situated.

(a) Company office
(b) Corporate office
(c) Registered office
(d) Head office

52: The promoters must within _____ months from the date of name availability intimation, complete all the formalities as to registration.

(a) 3
(b) 2
(c) 1
(d) 4

53: The fees for applying FNIA for name availability is _____.

(a) Rs. 1,500
(b) Rs. 1,000
(c) Rs. 500
(d) Rs. 10,000

54: The memorandum has to be divided into _____ clauses.

(a) Two
(b) Three
(c) Four
(d) Five

55: The memorandum shall mention the State in which the _____ of the company is to be situated.

(a) Corporate office
(b) Registered office
(c) Laison office
(d) Head office

56: Every memorandum should be signed by each _____.

(a) Promoter **(b)** Member
(c) Shareholders **(d)** Subscriber

57: The articles of association should be signed separately by the _____.

(a) Promoter
(b) Member
(c) Subscribers
(d) Shareholders

58: Particulars consent of directors is filed in _____.

(a) e-form 5
(b) e-form 32
(c) e-form 18
(d) e-form 1

CS NITESH KR. JAISWAL CS CLASSES

59: Notice of registered office its field in _____.

(a) e-form 5
(b) e-form 32
(c) e-form 18
(d) e-form 1

60: Statutory declaration that all the formalities of registration have been completed is filed in _____.

(a) e-form 5
(b) e-form 32
(c) e-form 18
(d) e-form 1

61: The fee prescribed for registration of company is required to be paid to the _____.

(a) Registrar
(b) MCA
(c) Central govt.
(d) State govt. concerned

62: The quantum of registration fee depend on the _____ of the company to be incorporated.

(a) Minimum authorized capital
(b) Minimum paid up capital
(c) Nominal capital
(d) Paid up capital

63: A company is an association of persons, upon which law confers a _____.

(a) Special privilege
(b) Status
(c) Power
(d) Personality

64: The decisions of a company are taken by its owners who are the _____.

(a) Members
(b) Shareholders
(c) Subscribers
(d) Directors

65: Which of the companies can commence business only after receiving certificate of commencement of business _____.

(a) Pvt. Ltd. Co.
(b) Guarantee Company
(c) Public Ltd. Co.
(d) Section 25 Company.

66: Decisions of the company are taken by owners _____.

(a) Individually
(b) Collectively
(c) Collectively in meetings
(d) None of the above.

67: Minimum number of members to constitute valid meeting is _____.

(a) 5
(b) 3
(c) 10
(d) 2

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ANSWERS

1	(b)	**2**	(c)	**3**	(c)	**4**	(d)	**5**	(a)	**6**	(c)	**7**	(b)
8	(d)	**9**	(d)	**10**	(b)	**11**	(a)	**12**	(b)	**13**	(a)	**14**	(c)
15	(b)	**16**	(d)	**17**	(d)	**18**	(b)	**19**	(b)	**20**	(b)	**21**	(a)
22	(c)	**23**	(d)	**24**	(a)	**25**	(c)	**26**	(a)	**27**	(c)	**28**	(d)
29	(a)	**30**	(b)	**31**	(a)	**32**	(c)	**33**	(c)	**34**	(b)	**35**	(d)
36	(c)	**37**	(d)	**38**	(c)	**39**	(d)	**40**	(b)	**41**	(a)	**42**	(c)
43	(b)	**44**	(c)	**45**	(a)	**46**	(c)	**47**	(d)	**48**	(a)	**49**	(d)
50	(b)	**51**	(c)	**52**	(a)	**53**	(d)	**54**	(b)	**55**	(d)	**56**	(c)
57	(c)	**58**	(b)	**59**	(c)	**60**	(d)	**61**	(a)	**62**	(c)	**63**	(d)
64	(b)	**65**	(c)	**66**	(c)	**67**	(d)						

CHAPTER 8 ELEMENTS OF LAW RELATING TO PARTNERSHIP

UNIT- 1 : General Nature of a Partnership

What is partnership (Section 4):

Partnership is the **relation between persons** who have agreed to **share the profits** of a **business** carried on by **all or anyone of them acting for all.**

Thus, partnership consists of the following essential elements:

a) There must be an agreement.
b) There must be two or more persons.
c) There must be some business
d) There must be sharing of profits of the business.
e) There must be mutual agency between partners

ESSENTIAL ELEMENTS OF PARTNERSHIP:

1. Agreement	The partnership comes into existence only by an **agreement** between all the partners and **not by status or operation of law**. The agreement may be **written or oral.**
2. Two or more persons	There must be **atleast two persons** to form partnership and they must be competent to contract. There is no limitation on the maximum number of partners in Partnership Act, but Sec 11 of Companies Act, 1956, provides that: • Where a firm is carrying on **banking business**, the number of partners should not exceed **10**, and • Where a firm is carrying on **any other business**, the number of partners should not exceed **20**.
3. Business	A partnership can be formed only to carry on a business. • Where there is **no business**, there is **no partnership**. • Business includes every **trade, occupation or profession**. • The business must be carried on with the view to **earn profits**. • It is not necessary that the business should consist of a long and permanent undertaking. A partnership may exist in a **single business venture or undertaking.**
4. Sharing of profits	There must be an agreement between **all** the partners to **share the profits** of the business. • No person can claim to be a partner in a business unless he has a **right to share in the profits** of the business. • The partners may share the profits in **any proportion**. • However, the **sharing of losses is not an essential** element of partnership. Thus, the partners may agree that one or more of them shall not be liable for losses.

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5. Mutual agency	The agency relationship means that **the business** of partnership must be **carried on by all or any one of them acting for all**. • The partners carrying on business of the firm are **agents as well principal** of each other. • A partner is an **agent** of other partners in a sense that he **binds the other partners by his acts.** • A partner is a **principal** in a sense that he is liable for the acts of the other partners.

Test of partnership: To test whether partnership exists, it is to be checked whether all essential elements of partnership exists or not. The most important element of partnership is the agency relationship between the partners. The partners should be representative of each other and should be able to bind each other by there acts.

Sharing of profits is not a real test of partnership:

A person who receives the profits of business is not necessarily a partner. Thus, sharing of profits is not the final test of partnership. In some cases, the persons are not partners but they still share the profits of the business, such as:

- Joint owners sharing profits or gross returns.
- Where profits are received by the creditor in payment of a debt or as interest on loan.
- Where profits are received as wages by an employee.
- Where profits are received as an annuity by a widow or representative of a deceased partner.
- Where profits are received as consideration of the sale of property.

PARTNERS, FIRM AND FIRM NAME:

Sec 4 of the Partnership Act provides; "Persons who have entered into partnership with on another are individually called **'partners'** and collectively **'a firm'** and the name under which their business is carried on is called the **'firm name'**.

The partners of a firm may carry on business under any name which they please to adopt. However the following factors should be kept in mind while choosing the name of the firm:

- The firm's name should be similar or identical to the name of existing firms.
- A firm name shall not contain any of the following words, namely- 'Crown', 'Emperor', 'Empress', 'Imperial', 'King', 'Queen', 'Royal' or words implying or expressing the sanction, approval or patronage of Government except where the Government signifies its consent to the use of such words as part of the firm name by order in writing.

BASIS	PARTNERSHIP	JOINT STOCK COMPANY
Formation	It is formed by agreement between parties.	It is formed by getting it registered under the Companies Act, 1956.
Separate entity	It has no separate legal entity apart from its members. It is simply a collection of members.	It has a legal entity of its own separate from its members.

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Number of members	Maximum number of members allowed is 10 in a banking firm and 20 in a non-banking firm.	Maximum number of members in private company is 50, and in a public company there is no limit.
Liability	Liability of partners is unlimited.	Liability of members is limited to the extent of the value of their shares.
Agency relationship	Every partner is an agent of the other partner as well as of the firm.	A member is neither an agent of other members nor of a company unless specifically appointed so.
Right to manage	Every partner has a right to take part in the management of the affairs of the firm.	Its management is entrusted to elected members of the company known as directors.
Ownership of property	The partners are joint owners of the property of the firm.	The members of a company are not joint owners of its property.
Transfer of share	A partner cannot transfer his share in the firm without consent of all the partners.	A member can transfer his shares in the company at his own will without taking consent from anybody.
Dissolution	It is dissolved on the death or insolvency of any of the partner.	A Company has a perpetual succession which is not affected by the death or insolvency of any members.
Governing Act	Itis governed by the Indian Partnership Act, 1932.	It is governed by the Companies Act, 1956.

BASIS	PARTNERSHIP	HINDU UNDIVIDED FAMILY
Position of females	Females can be full-fledged partners.	Membership is restricted to the male members only.
Agency relationship	Every partner is an agent of the other partner as well as of the firm.	There is no agency relationship.
Right to manage	Every partner has a right to take part in the management of the affairs of the firm.	It generally vests with Karta, the governing member of the family.
Liability	All the partners are personally liable for the debts of partnership.	Only Karta is personally liable for the debts of the HUF. Liability of other members is limited to the extend of his share in the property of the family.
Share in partnership	The share of each partner is defined by agreement.	Share of each member keeps fluctuating with the births and deaths of male members in the family.
Partition of property	A partner cannot sue for the partition of partnership property. However, he can sue for dissolution.	A co-member can demand partition of HUF property.

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Right to see accounts	A partner has a right to demand, inspect, and copy the accounts of the firm.	A member has no right to ask for any accounts of the past dealings of the family.
Registration	The partnership may be registered or unregistered.	There is no concept of registration of HUF.
Dissolution	It is dissolved on the death or insolvency of a partner.	It is not dissolved on the death or insolvency of a member.
Governing law	It is governed by the Indian Partnership Act, 1932.	It is governed by the Hindu Law.

BASIS	PARTNERSHIP	CO-OWNERSHIP
Formation	It is constituted by two or more persons.	Co-ownership arises only when two or more persons jointly own a property.
Formation	It is created by an agreement.	It may be created by an agreement or byany other way like inheritance.
Number of members	Maximum 10 in case of a banking firm, and 20 in case of a non-banking firm.	There is no statutory limit on maximum number of co-owners.
Business	Carrying on of a business is necessary for existence of a partnership.	It can exist with or without business.
Agency relationship	Every partner is agent of other partners as well as of the firm.	Co-owners are not agents of each other.
Profits sharing	Profit sharing is must.	It does not necessary involves sharing of profits and losses.
Transfer of share	A partner cannot transfer his share without consent of all the partners.	A co-owner can transfer his share with out the consent of other co-owners.
Partition of property	A partner cannot sue for partition of partnership property. However he can sue for dissolution.	A co- owner can sue for the transfer of joint property.
Right of lien	A partner has a right to retain the partnership property for the expenses incurred by him.	A co-owner has no such right to retain the property.

BASIS	PARTNERSHIP	CLUB
Objective	It is formed to earn profits by carrying out a business activity.	It is formed for recreation or such other activities like games, social services, etc.
Agency relationship	Every partner is an agent of the other partner as well as of the firm.	No such agency relationship exists between members inter se and members and club.
Liability	All the partners are personally liable for the debts of partnership.	A member of a club is not liable for the debts of the club unless he had participated in the transaction.

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Admission	A person may be admitted to partnership with the consent of all.	For admission to a club, consent of other members is not required.
Death	Death or insolvency of a partner dissolves a partnership.	Death or resignation of a member does not affect the existence of club.

TYPES OF PARTNERSHIP:

a) **Particular partnership:** When a partnership is formed for a **particular period or for particular purpose**, it is called a particular partnership. A particular partnership comes to an end at the expiry of the fixed period or on completion of the venture. However, if all the partners consent to dissolve the partnership before the expiry of the fixed period, the particular partnership will dissolve accordingly. Similarly, if the partners agree to continue the partnership even after the expiry of the fixed term, they can do so. In this case the particular partnership will convert in partnership at will.

b) **Partnership at will:** It is a partnership where no provision is made in the contract between the partners for the duration of their partnership or for the determination of their partnership. Such partnership **depends on the will** of the partners. It can be dissolved by any partner at any time by giving notice to other partners.

TYPES OF PARTNERS

1. Active Partner	Partner who actively **participates in the conduct of thepartnership business**. Also known as actual or ostensible partner. He is liable to third party for the acts of the firm done in ordinary course of business.
2. Dormant (sleeping) partner	Partner who **does not take an active part** in the conduct of the partnership business and is not known to the outsiders. He becomes partner by investing money in the firm. He is also liable to third party for the acts of the firm done in ordinary course of business whether or not his existence is known to third party.
3. Nominal partner	Partners who have **no real interest** in the firm. They neither invest nor participate in the business of the firm. They only **give their name** to a firm. He is also liable to the third party like active partner.
4. Partner in profits only	Partners who are entitled to **share only the profits** of the firm and is not liable for losses. Generally, such partners do not take part in the management of the firm. But they are liable to third parties like active partners.
5. Sub partner	When a partner of a firm agrees to share his own share in profits with an outsider, a sub-partnership comes into existence between the contracting partner and the outsider. Such outsider is known as sub partner. • Sub partner is not a partner in the main firm. • A sub partner can claim the agreed share only from the partner with whom he has entered into an agreement.

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	• A sub partner has no right against the main firm or to take part in its business or to examine its accounts.
6. Partner by holding out (by estoppel)	A partner by holding out or estoppel is one who; i) Represents himself, or ii) Knowingly permits himself to be represented as a partner in the firm, though in reality **he is not a partner** in the firm. Where an outsider deals with the firm believing him to be a partner in the firm, he is stopped from denying that he is not a partner. It is only the person to whom the representation has been made and who has acted thereon has the right to enforce liability arising out of "Holding Out".

PARTNERSHIP DEED:

A written partnership agreement between the partners is called **'partnership deed'.** When a partnership business is started usually the partners make a properly drafted deed and get it stamped according to the provisions of Indian Stamp Act. Each partner keeps a copy of the deed. In case of registered firm, a copy of partnership deed is filed with the Registrar of Firms.

Contents of partnership deed:

a) Name and address of the firm.
b) Nature of business to be carried on.
c) Name and addresses of the partners.
d) Date of commencement and duration of partnership.
e) That capital to be contributed by each partner.
f) The profit sharing ratio and the ratio in which losses will be borne by the partners.
g) Interest on capital and loan given by partners.
h) The salary, commission, drawings etc of each partner.
i) Rights and duties of each partner.
j) Method and arrangement of keeping goods.
k) The circumstances in which the partnership firm will be dissolved.

Where partnership deed is silent regarding any issue, rules contained in Partnership Act will apply. The partnership deed is to be signed by all the partners.

UNIT 2: RELATION OF PARTNERS

Mutual Rights and Duties of Partners

Partnership is formed by an agreement, express or implied, between two or more persons. The rights and duties of partners are usually determined in accordance with the terms and conditions of an agreement. However, where such rights and duties are not decided they are governed by the Indian Partnership Act. The rights and duties of the partners according to the Act are:

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RIGHTS OF PARTNERS:

(1)Right to take part in the conduct of the business:

Every partner has the right to take part in the management of the business of the firm. However, where the partnership agreement provides that this right will not available to some of the partners then they will not have any right to take part in the management of the business. A partner who has been wrongfully deprived of the right of participation in the management can take legal action against the other partners.

(2) Right to be consulted:

It is the right of every partner to be consulted in all important matters affecting the business of the firm. Thus, every partner has a right to express his opinion before any decision is taken by the other partners. Where any difference arises between the partners with regard to the business of the firm, unless there is an agreement to the contrary, it shall be determined by a majority of the partners. However, fundamental matters such as change in the nature of business, admission of new partners etc. has to be decided with the consent of all the partners.

(3) Right of access to books:

Unless there is an agreement to the contrary, every partner has a right to access to and to inspect and copy any of the books of the firm.

(4) Right to remuneration:

No partner is entitled to receive any remuneration in addition to his share in the profit of the firm for taking part in the business of the firm. However, the partnership agreement may expressly provide for the payment of remuneration to active partners.

(5) Right to share profits:

In the absence of an agreement to the contrary, every partner is entitled to share the profits equally. The partners may however, agree to share the profits in different proportions.

(6) Interest on capital:

Generally the partners are not entitled to charge any interest on the capital contributed by them. However, the interest on capital may be paid to them if there is:

(i) An express agreement to pay interest on capital, or

(ii) Any trade custom to that effect

However, such interest will be payable only out of profits.

(7) Interest on advances:

Where a partner makes an advance to the firm in addition to the amount of capital he has agreed to subscribe, he is entitled to claim interest thereon @ 6% per annum. Interest on advance is payable even if the firm suffers losses.

(8)Right to be indemnified:

Every partner has the right to be indemnified by the firm in respect of payments made and liabilities incurred by him:

- In the ordinary and proper conduct of the business of the firm

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- In the performance of an act in an emergency for protecting the firm from any loss, as would be done by a prudent man under similar circumstances.

(9) Right to stop admission of a new partner:

Every partner has the right to be consulted at the time of admitting a new partner in the firm. A new partner cannot be admitted without the consent of all the existing partners.

(10)Right to retire:

Every partner has the right to retire from firm when he feels so.

(11) Right not to be expelled:

Every partner has the right to continue in the firm and cannot be expelled from the firm by other partners. However, the partnership agreement may provide for expulsion of a partner by majority and such right can be exercised only in the good faith.

(12) Right of outgoing partner to carry on competing business:

An outgoing partner may carry on business competing with that of the firm but without using the firm name or representing himself as carrying on the business of the firm or soliciting the firm's parties.

(13) Right of outgoing partners to share subsequent profits:

If continuing partners carry on the business of the firm with the property of the firm without any final settlement of account as between them and the outgoing partner, the outgoing partner or his estate has at his or his representative's option, has the right to such share of the profit made since he ceased to be a partner.

(14)Right to use partnership property:

Every partner is a joint owner of partnership property. He has a right to use partnership property exclusively for the purpose of the partnership business.

DUTIES OF PARTNERS:

Duties of partner may be put into two categories:

I. **Mandatory duties:** Relation of partners is based on mutual trust and confidence. Every partner should act in good faith and carry on the business of the firm for mutual benefit and common interest of all partners. Thus, the mandatory duties of partners are:

(i) To carry on the business of the firm to the **greatest common advantage**.
(ii) To be **just and faithful** to each partner.
(iii) To render **true account and full information** of all things affecting the firm, to any partner or to his legal representative.
(iv) To **indemnify the firm for any damage** caused to it by **reason of his fraud** in the conduct of the business of the firm.

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II. Duties subject to agreement:

(1) **Duty to work diligently:** Every partner is bound to diligently attend to the affairs of the business of the firm. Thus, he must perform his duties in reasonable manner with full care and required efforts.

(2) **Duty to indemnify for willful neglect:** Where a firm suffers due to willful neglect of the partner in the conduct of the business of the firm, the partner is bound to compensate the firm for the loss suffered. However, the partner will not be liable for cats done in good faith.

(3) **Duty to share losses:** Unless there is an agreement to the contrary, it is the duty of every partner to share equally the losses suffered by the firm.

(4) **Advantage to other partners of personal skill:** It is a duty of every partner to let his partners have the advantage of his knowledge and skill.

(5) **Duty not to do any competing business:** The partnership agreement may restrict the partners to carry on similar business to that of the firm, so long as he is partner in the firm. If a partner carry on business competing with the business of the firm then all profits are to be surrendered to the firm but firm is not liable to any loss.

(6) **Duty to account for personal profits:** If a partner derives any profit for himself from any transaction of the firm or from the use of the property or business connection of the firm or firm's name then he is bound to account for that profit and refund it to the firm.

(7) **Duty to use firm's property exclusive for the firm:** It is the duty of every partner to use the partnership property exclusively for the business of the firm. If a partner makes any personal profit by using the partnership property, he will have to give full account of profits arising out of such use to the firm.

MINOR'S POSITION IN PARTNERSHIP FIRM

Minor has no contractual capacity and cannot be a partner in a firm. But, he can be admitted to the benefits of partnership with the consent of all the other partners. Thus, a minor can be admitted to the benefits of the partnership by an agreement executed through his guardian with other partners. However, a minor can be admitted to the benefits of the partnership only if there are atleast two major partners in the firm. Thus, there cannot be partnership with one major and all other minors. Further, the partnership must be in existence before the minor is admitted to the partnership.

Rights of a minor:

1) Right to share property and profits of the firm in accordance with the agreement.
2) Right to have access to and inspect and copy any of the accounts of the firm. But he can access only account books and not the other books of the firm.
3) Right to file suit for accounts or for demand of his share in profits and property of the firm. However, he can exercise this right only when he leaves the firm.
4) Right to exercise the option to leave or remain in the partnership on attaining the age of majority within 6 months of such attaining.

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Liabilities of minor:

1.) The minor is liable to the firm to the extent of his share in the property and profits of the firm, but he is not personally liable for the debts of the firm.
2.) No right to participate in the management of the business of the firm.
3.) When the firm is declared insolvent, minor's share in the firm is vested in official receiver or assignee.
4.) Within 6 months from the date of attaining majority, the minor has to elect whether he wants to continue with the partnership or not.

Position of minor on attaining majority:

Within 6 months of the date of attaining majority, the minor has to decide whether he will remain in the firm or leave the firm. Within the period of 6 months, the minor has to give public notice of his decision. If the minor fails to give such public notice within the said time he will be deemed to have chosen to become a partner in the firm.

Rights and liabilities when he becomes partner:

(i) His rights and liabilities will be similar to a full fledged partner.
(ii) He will be personally liable for all acts of the firm done from the date he was admitted as a minor to the benefits of partnership.
(iii) His share in the property and the profits of the firm remains the same to which he was entitled as a minor.

Rights and liabilities when he dose not become partner:

(i) His rights and liabilities will continue to be those of a minor up to the date of giving public notice.
(ii) His share shall not be liable for any acts of the firm done after the date of the notice.
(iii) He shall be entitled to sue the partners for his shares of the property and profits.

Relation of partners to third parties:

Every partner is an agent as well as principal of other partners. Thus, a partner binds all the other partners by his acts done on behalf of the firm provided such acts are done in the ordinary course of the business and in the name of the firm. Therefore, all partners are liable for such acts to third parties.

AUTHORITY OF A PARTNER

The authority of a partner means the capacity of a partner to bind the firm by his acts. The authority of the partner may be express or implied.

a) **Express authority of a partner:** The authority which is given to a partner by an express agreement between the partners is called express authority. The partners are free to give any authority to any partner by a mutual agreement. The firm is bound by the acts of a partner done within the scope of his express authority.

b) **Implied authority of a partner of the firm:** A partner has an authority to bind the firm by the acts done by him, provided that the act is done in the ordinary course of the firm's business and in the firm name. This authority is the implied authority. Thus, the firm will be binded by the acts of a partner done within his implied authority provided:

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- The act is done to carry on the normal business of the firm.
- The act is done in the usual way of carrying on the firm's business.
- The act is done in the name of the firm (where an act is done in the personal name of a partner, the firm will not be liable for such acts).

Acts within the implied authority:

- To buy and sell goods in which the firm deals.
- To hire servants to perform the business of the firm.
- To engage a lawyer to defend a suit filed against the firm.
- To settle accounts with persons dealing with the firm.
- To receive debts due to the firm and give receipts for the same.
- To contract debts and pay debts on behalf of the firm.
- To borrow money for the purpose of the firm and pledge the goods of the firm as security of the loan.
- To make, draw and accept and endorse negotiable instruments in the name of the firm.

Acts beyond implied authority: In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not allow him to:

(a) To submit a dispute relating to the business of the firm to arbitration.
(b) To open a bank account on behalf of the firm in his own name;
(c) To compromise or relinquish any claim or portion of a claim by the firm against a third party
(d) To withdraw a suit or proceedings filed on behalf of the firm;
(e) To admit any liability in a suit or proceedings against the firm;
(f) To acquire immovable property on behalf of the firm;
(g) To transfer immovable property belonging to the firm; and
(h) To enter into partnership on behalf of the firm.

Extension and restriction of partner's implied authority (Section 20):

The partners, by contract between them (with consent of all the partners), can extend or restrict the authority of any partner. Inspite of such restriction if a partner does, on firm's behalf, any act which falls within his implied authority, the firm will be bound unless person known about such restriction. Thus, a third party is not affected by a secret limitation of a partners implied authority unless he has actual notice of it.

Admission by a partner:

Every partner is an agent of the firm. Thus, any admission or representation made by a partner about the affairs of the firm is sufficient evidence against the firm provided it is made in the ordinary course of business of the firm and is made regarding an affair related to firm's business.

Notice to an acting partner:

A notice, on any matter related to the firm's business, given to any partner of the firm who receives it in the ordinary course of business of the firm is taken to be the notice to the firm. However, in case of fraud committed by a partner, the notice should be given to any partner other than the partner committing the fraud.

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Liability of a firm and its partners to a third party:

(i) **Contractual Liability**: Every partner is jointly as well as severally liable to the third party for all the acts of the firm done while he is a partner. The expression 'act of firm' connotes any act or omission by all the partners or by any partner or agent of the firm, which gives rise to a right enforceable by or against the firm.

(ii) **Liability for wrongful act of a partner**: A firm will be liable to the third party for the wrongful acts of a partner. However, the firm will be liable only if the wrongful acts are done by the partner either in the ordinary course of the business of the firm or with the authority of all the other partners.

(iii)Liability for misappropriation of money or property by a partner:

The firm is liable to make good the loss to the third party caused

a) When a partner, acting within his apparent authority, receives money or other property from a third person and misapplied it or

b) Where a firm, in the course of its business, receives money or property from a third person and the same is misapplied by a partner, while it is in the custody of the firm,

RECONSTITUTION OF A FIRM:

ADMISSION OF A PARTNER:

Unless there is an agreement to the contrary, a new partner can be admitted in an existing firm only with the consent of all the other partners. An incoming partner is not liable for the acts of the firm done before his admission in the firm. Thus, the liability of an incoming partner starts from the date of his admission into the firm. However, by mutual agreement, such partner may undertake to share the liability for the past acts of the firm also.

RETIREMENT OF A PARTNER:

A partner may retire;

(i) With the consent of all other partners.

(ii) In accordance with an express agreement between the partners; or

(iii) Where the partnership at will, by giving notice in writing to all other partners of his intention to retire.

In case of retirement of a partner, public notice of such retirement is required to be given.

Rights of a retiring partner:

1) Unless there is an agreement to the contrary, a retiring partner may start a business in competition to the firm's business and he may also advertise the same. However, he cannot use the name of the firm or solicit customers of the firm.

2) Right to receive his share of the property of the firm, including goodwill.

3) If continuing partners carry on the business without any final settlement of account, the outgoing partner or his representative has option to share of the profit made since he ceased to be a partner as may be attributable to the use of his share of the property of the firm or to interest @ 6% on amount due.

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Liabilities of a retiring partner:

- A retiring partner continues to be liable to third parties for the acts of the firm done before and upto the date of his retirement. He will also be liable for the acts which started but were unfinished at the time of his retirement.
- A retiring partner continues to be liable for acts of the firm to 3rd parties until a public notice of his retirement is given.

EXPULSION OF A PARTNER:

A partner cannot be ordinarily expelled from a firm. However, a partner may be expelled by a majority of partners if the following conditions satisfy:

a) The power of expulsion must be given to the partners by an express agreement between the partners;
b) The power has been exercised by a majority of the partners; and
c) The power of expulsion must have been exercised in good faith.

A partner who is expelled from the firm will have same rights and liabilities as those of a retiring partner.

INSOLVENCY OF A PARTNER:

On being adjudicated insolvent, the partner ceases to be a partner from the date of the order of insolvency. Under ordinary circumstances, the firm is automatically dissolved as one of its member ceases to be a partner due to insolvency. However, the remaining partners may specifically decide that the firm will not dissolve. In case the firm is not dissolved:

a) The estate of the insolvent partner ceases to be liable for any act of the firm done after the date of the order of insolvency.
b) The firm is also not liable for any act of such a partner done after the date of the order of insolvency.

The share of an insolvent partner in the assets of the firm will be first used for the payment of the debts of the firm and then for his personal debts.

DEATH OF A PARTNER:

Usually, death of a partner results in dissolution of the firm. However, the remaining partners may expressly decide not to dissolve the firm but to continue it.

If a firm is not dissolved by the death of partner, the estate of the deceased partner is not liable for acts of the firm after his death. In case of death of a partner, public notice is not required to be given.

TRANSFER OF PARTNER'S INTEREST:

The interest of a partner in a firm means the value of his share in the assets and profits of the firm. If a partner wants to dispose off his partnership interest otherwise than by way of retirement, there are two options open to him. He may ask his Company partners to buy his interest or he may sell his interest to a third person. When the interest is sold to a third person, it is open to the partners of the firm to accept him as a partner or not. If all the members of the firm consent for his becoming a partner, the transferee will be a full fledged partner. But if the members of the firm do not accept such transferee as a partner, his rights will be as follows:

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- The transferee has a right to receive the share of profits of the transferring partner.
- On dissolution, he will have a right to receive the share in assets of the transferring partner.

However, the transferee will not have any right to interfere in the management of the business and also the right to access or inspect the books of account.

Revocation of continuing guarantee by change in the firm:

Continuing guarantee means a guarantee which extends to a series of transactions. A continuing guarantee given to a firm or to a third party in respect of the transaction of a firm is, in the absence of an agreement to the contrary, revoked (taken back) as to future transactions from the date of any change in the constitution of the firm.

PARTNERSHIP PROPERTY:

The expression 'property' of the firm, also referred to as partnership assets, joint stock, common stock or joint estate. It denotes all property, right and interests to which the firm may be entitled. The property of the firm in the absence of a contract to the contrary includes:

(i) All property, rights and interests which partners may have brought into the common stock as their contribution to the common business;
(ii) All the property, rights and interests acquired or purchased by or for the firm, or for the purposes and in the course of the business of the firm; and
(iii) Goodwill of the business

All partners of the firm are joint owners of its property. They have a right to hold and use the firm's property exclusively for the business of the firm.

UNIT-3 REGISTRATION AND DISSOLUTION OF A FIRM

REGISTRATION OF FIRM

Registration of a firm means the recording of the firm's name, along with prescribed particulars, in the register of firms kept in the office of the registrar of firms. The firm is registered with the registrar of the area in which the place of business of the firm is situated.

The registration of the firm is not compulsory. It is optional for the firm to get itself registered or not. There is no penalty for non-registration of the firm. Further, the non-registration does not effect the partnership agreement or any transaction between the partners and the third party.

However, Indian Partnership Act attaches certain disabilities with the unregistered firm to encourage the registration of the firms.

Time for registration:

The Act does not provide for any specific time for registration of the firm. A firm may be registered at any time, either at the time of its formation or any time thereafter during its existence.

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Procedure for registration:

The registration of a firm is obtained by filling an application for registration with the Registrar of Firms. The registration of a firm is affected by sending, to the Registrar of Firms of the state in which the place of business of the firm is situated, an application for registration on the prescribed form along with the prescribed fees.

The application for registration may be given by hand or sent by post. The application for registration contains the following particulars:

(i) The firm's name
(ii) The principal place of business
(iii) The names of its other places of business
(iv) The date of joining of each partner
(v) The names in full and the permanent addresses of the partners and
(vi) The duration of the firm.

The application form should be **signed by all the partners** or by their agents specially authorized in this behalf.

When the registrar is satisfied that the provision of section 58 have been duly complied with, he shall **record an entry** of the statement in a register called the register of firms and shall issue a **Certificate of Registration**.

Registration is deemed to be complete as soon as an application the prescribed form with the prescribed fee and necessary details concerning the particular of the partnership is delivered to the Registrar. The recording of an entry in the register of firms is a routine duty of registrar.

After a firm is registered, changes may take place in its particulars from time to time, i.e, change in the name, place of business, names and addresses of partners etc. If **any change** takes place it should be **notified to the registrar** who shall there upon record it in the register of firms.

EFFECTS OF NON-REGISTRATION:

Although registration of firms is not compulsory, yet the consequences or disabilities of non-registration have a persuasive pressure for their registration. These disabilities briefly are as follows:

(i) An unregistered firm cannot file a suit against any third party for the enforcement of any right arising out of some contract.
(ii) If an action is brought against the firm by a third party then neither the firm nor the partner can claim any set off, if the suit be valued for more then Rs. 100.
(iii) A partner of an unregistered firm cannot file a suit against the firm or any other present or past partners for the enforcement of any right.

No effect of non-registration:

Non registration of a firm does not affect the following:

a) A third party can file a suit against the Firm whether it is registered or not.
b) The partner of an unregistered firm may sue for dissolution of the firm or for accounts of the dissolved firm and realization of his share in the firm's property where the firm is dissolved.

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c) The official assignee or receiver or court may sue bring an action to realize the property of an insolvent partner.

d) The unregistered firm or its partners may sue or enforce a claim of set off if the subject matter of the suit or set off does not exceeds Rs. 100.

e) The rights of an unregistered firm or of its partners are not affected if the firm has no place of business in India.

DISSOLUTION OF FIRM

Meaning:

The Dissolution of firm means putting an end to partnership relationship between all the partners. In this case, the business of the firm is closed down.

Dissolution of partnership means change in the relations of partners. In this case, the business of the firm is not closed down but only there is change in relationship of the partners.

Modes of dissolution of a firm:

(a) Dissolution by agreement: A firm may be dissolved at any time with the consent of all the partners even in case of particular partnership.

(b) Compulsory dissolution

(i) Insolvency of all the partners or of all but one partner

(ii) When **business** of the firm becoming **unlawful**

(c) On the happening of certain contingencies such as;

(i) **Expiry of fixed time**- Where the firm is constituted for fixed term; the firm is dissolved at the expiry of the fixed period.

(ii) **Completion of the venture for which it was entered into-** Where the firm is formed to carry out a particular venture, the firm gets dissolved on the completion of such venture.

(iii) **Death of a partner**- Unless there is an agreement to the contrary, the firm gets dissolved at the death of a partner.

(iv) **Insolvency of a partner**- Unless there is an agreement to the contrary, the firm gets dissolved at the insolvency of a partner.

(d) **Dissolution by notice:** Where the partnership is at will, a partner can dissolve the firm after giving notice to other partners of his intention to dissolve the firm.

(e) **By Court:** Where a partner wants to dissolve the firm and the other partners do not agree for dissolution, the desiring partner may go to the Court of Law and file a suit for dissolution. On hearing the application, the Court may or may not allow the dissolution of the firm. A partner may file a suit for dissolution of the firm on anyone of the following grounds:

(i) A partner becoming of unsound mind- The suit for dissolution may be filed either by any other partner or the legal representative of the insane partner.

(ii) Permanent incapacity of a partner- Where a partner becomes permanently incapable of performing his duties, the Court may allow dissolution of the firm. The incapacity

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may be due to illness, mental or physical or disablement of any kind. However, it should be of permanent nature. The suit for dissolution may be filed by any of the other partners in the firm.

(iii) **Misconduct of a partner-** Where a partner is guilty of misconduct which is likely to affect prejudicially the business of the firm, the court may allow dissolution of the firm. It is not necessary that the misconduct should be related to the business of the firm, it is sufficient if it is capable of damaging the goodwill or business prospects of the firm.

(iv) **Willful persistent breaches of agreement by a partner-** Where a partner willfully or persistently commits a breach of agreements relating to the management of the affairs of the firm, or conducts the partnership business in such a manner that the other partners finds it difficult to carry on the partnership business with him, any of the other partner may file a suit for the dissolution of the firm.

(v) **Transfer or sale of the whole interest of a partner-** Where a partner transfers his whole interest in the partnership firm to a third party without the consent of his Company-partners, the Court may allow dissolution of the firm.

(vi) **Perpetual losses-** Where the business of the firm cannot be carried on, except at a loss, the Court may allow the dissolution of the firm.

(vii) **Other just and equitable grounds-** The court may dissolve the firm on any ground which is fair and reasonable according to the opinion of the Court.

CONSEQUENCES OF DISSOLUTION:

(a) **Continuing liability of partners after dissolution**: On dissolution the partners are bound to give public notice of dissolution. The partners will continue to be bound by the acts of the firm after dissolution till a proper public notice is given. However, this rule does not apply to a deceased partner, insolvent partner or retiring dormant partner.

Till the affairs of the dissolved firm is in the process of winding up, it is the duty of every partner not to make any personal profits out of the transaction of the firm. in case any partner makes personal profit, he must surrender it to the firm.

(b) **Right for utilization of assets**: On a partnership being dissolved, any partner or his representative shall have right, against the other

(i) To have property of the firm applied in payment of the debts and liabilities of the firm.

(ii) To have the surplus distributed among all the partners or their representatives according to their respective rights.

(c) **Continuing authority of partners:** The authority of a partner to bind the firm and other partners by his act ceases except for the acts necessary:

(i) For winding up of partnership affairs.

(ii) To complete the unfinished transactions pending at the date of dissolution.

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(d) Return of premium on premature dissolution:

Where a partner pays any premium on entering into partnership for fixed term, and the firm dissolves the expiry of fixed time, such a partner shall be entitled for a rateable return of his premium.

However, no return of premium is made in the following cases:

(i) Where the firm is not constituted for fixed term.

(ii) Where the firm is dissolved by the death of a partner.

(iii) Where the dissolution is mainly due to the misconduct of the new partner himself.

(iv) Where the dissolution is in pursuance of an agreement containing no provision for the return of the premium or any part of it.

(e) Right to make an agreement in restraint of trade:

Either before or after the dissolution of the firm, the partners may agree between themselves that some of them would not carry on a business similar to that of the firm.

Settlement of accounts upon dissolution:

The mode of settlement of accounts between partners upon dissolution of the firm is determined by the partnership agreement. In the absence of such an agreement, the following shall apply:

(i) **Payment of losses:** Losses of the firm including deficiency of capital shall be paid in the following manner:

- **(a)** First, the losses shall be paid out of profits.
- **(b)** Secondly, if the profits are insufficient to pay losses, then the balance of loss shall be paid out of capital.
- **(c)** If still some balance of losses remains, it shall be paid by the partners individually in the proportions in which they were entitled to share profits.

(ii) **Application of assets:** The assets of the firm, including any sums contributed by the partners to make up deficiencies of capital shall be applied in the following manner and order:

- **(a)** In paying the debts of the firm to third parties;
- **(b)** In paying to each partner rateable what is due to him from the firm for advances as distinguished from capital.
- **(c)** In paying to each partner rateably what is due to him on account of capital and;
- **(d)** The residue, if any, shall be divided among the partners in the proportion in which they are entitled to share profits.

(iii) **Firm debts v. Private debts:** Where there are both debts due from the firm and also personal debts of a partner, the following rules will apply:

a) The property of the firm shall be applied first for the payment of firm's debts and if there is any surplus then the share of each partner shall be applied to the payment of his separate debts.

b) The separate property of a partner shall be applied first in the payment of his separated debts and if any surplus is left, then it is applied in the payment of debts of the firm.

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Goodwill on dissolution:

Goodwill is the value of reputation of the business of the firm. Goodwill can be sold like any other asset of the firm. The partners may decide to sell it separately or along with the other assets of the firm. The purchaser of the goodwill of the firm has:

(i) The right to carry on the same business under the old name and

(ii) The right to represent himself to the customers of the old firm as the successor in the business of the old firm.

However, the partners selling the goodwill of a firm can:

(i) carry on a similar business

(ii) also compete with the business sold by them to purchaser and

(iii) advertise their business in such manner as they deem fit

but subject to an agreement to the contrary they:

a) Should not use the firm name
b) Should not represent themselves as carrying on the old business and
c) Should not solicit the customers of the old firm.

PUBLIC NOTICE:

Public notice is required to be given:

a) When a minor admitted to the benefits of partnership elects, on attaining majority, to become or not to become a partner in the firm.
b) When a partner retires from partnership firm.
c) When a partner is expelled form partnership business.
d) When partnership is dissolved.

The notice is to be published in the official Gazette and in at least one vernacular newspaper circulating in the district where the firm to which it relates, has its place or principal place of business. In case of registered firms, notice is also required to be given to the Registrar of Firms.

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MCQ

1. **The Objective of the Partnership Act, 1932 is to define and amend the law relating to-**

   (a) Partnerships
   (b) Joint Ventures
   (c) Business Collaborations
   (d) All the above

2. **The Partnership Act, 1932 came into force on-**

   (a) 1st day of April 1932
   (b) 1st day of October 1932
   (c) 1st day of January, 1932
   (d) 31st day of December, 1932

3. **The Partnership Act extends to the whole of India except the state of-**

   (a) Gujarat
   (b) Maharashtra
   (c) Jammu & Kashmir
   (d) Tamilnady.

4. **The term "Act of a Firm", means an act or omission by all the partners, or by any partner or agent of the Firm, which gives rise to a right-**

   (a) Enforceable by the firm
   (b) enforceable against the firm
   (c) Either **(a)** or **(b)**
   (d) Neither **(a)** nor (b

5. **According to the Partnership Act, "Business" includes-**

   (a) Trade
   (b) Occupation
   (c) Profession
   (d) all of the above

6. **In relation to a Firm or Partnership, "Third Party" means-**

   (a) A relative of a Partner
   (b) Lineal ascendant of a Partner
   (c) Lineal descendant of a Partner
   (d) Person, not a Partner in the Firm.

7. **The relationship of Partnership arise from-**

   (a) Contract
   (b) Status
   (c) Operation of law
   (d) Contract and status.

8. **Which of the following constitutes Partnership?**

   (a) Members of HUF carrying on family business
   (b) Persons who have inherited a house property jointly
   (c) Two parties carrying on business for defined share in profits.
   (d) A Burmese Buddhist husband and wife carrying on a business.

9. **Which of these gives the correct definition of Partnership?**

   (a) It is a written agreement between the persons for sharing the profits of the business mutually
   (b) It is oral arrangement between parties for sharing profits of the business mutually
   (c) It is a relation between the persons who have agreed to share the profits of the business carried on by all or any of them acting for all
   (d) It is an unregistered form of a Private Ltd. Company.

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10. **"Which of this is not a valid Partnership?**

(a) Minor admitted to benefits of the Partnership
(b) Company admitted as a Partner
(c) Partnership between Indian national &alien friend
(d) Partnership between Indian national and alien enemies.

11. **To form a Partnership, the minimum capital contribution should be -**

(a) Rs.1 Lakh
(b) Rs.5 Lakh
(c) Rs.1 Crore
(d) There is no minimum limit.

12. **The maximum number of persons permissible for a valid Partnership for doing Banking business is –**

(a) 2 **(b)** 10
(c) 15 **(d)** 20

13. **Which of the following purpose is permissible in a Partnership?**

(a) Charitable purpose
(b) Religious purpose
(c) Social purpose
(d) Business purpose.

14. **Which of these statements does not reflect the mutual agency principle in Partnership?**

(a) The Partner is both an Agent and Principal
(b) A Partner can, by his act bind other partners and is in turn bound by acts of other Partners.
(c) All Partners should actively participate in the business of the firm
(d) Business may be managed by one or more Partners.

15. **The partnership deed must be signed by the:**

(a) One of the partners
(b) Majority of the partners
(c) All senior partners
(d) All partners

16. **L was a partner of LMN & Co., a Partnership Firm. L died and the continuing partners agreed to pay Mrs. L, 9% of the profits of the Firm as annuity. Here-**

(a) Mrs. L is not deemed as a Partner in the Firm
(c) The payment of annuity is immoral
(b) Mrs. L is deemed as a Partner in the Firm,
(d) The payment of annuity is invalid.

17. **Which of this arrangement indicates a Partnership?**

(a) X agrees with Y a goldsmith, to buy and furnish gold to Y to be worked upon by him and sold, and that they shall share the resulting profit or loss
(b) S and Y agree to work together as carpenters but X shall receive all profit and shall pay wages to Y
(c) X and Yare joint owners of a ship
(d) X, a publisher, agrees to publish at his own expense a book written by Y and to pay Y half the Net Profit.

18. **To from a Partnership, the parties should share-**

(a) Only profits
(b) Only losses
(c) Both profits and losses
(d) Profits and losses but some Partners may get a share only in the profits.

CS NITESH KR. JAISWAL CS CLASSES

19. The real test of existence of Partnership lies in

(a) Written Contract
(b) Share of Profits
(c) Mutual agency relationship
(d) Two or more individuals carrying on a business.

20. Which of the following statement is correct?

(a) A servant who agrees to receive, in addition to or in place of his regular remuneration, a portion of profits of business, is considered to be partner.
(b) A widow of a deceased partner, who receives a portion of profits as annuity, is considered to be a partner.
(c) A seller of goodwill, who is given a share in the profits of a business he has sold, is considered to be a partner.
(d) A joint owner of property who receives a share of profit arising from the property, is not considered to be a partner.

21. When the Company-owners of a joint property agree to start a joint business and share the profits, they

(a) Remains Company-owners only
(b) Become partners
(c) Become agents of each other
(d) Both **(b)** and **(c)**

22. Which of this is not a Partnership at will?

(a) When the parties of a particular Partnership decide to, continue the Partnership after completion of the adventure
(b) When a Partnership is entered into for a fixed term, but the Partners carry on business even after such period
(c) When the duration of Partnership is not fixed
(d) When the duration of Partnership can be implied from the Partner's conduct.

23. A person may become a Partner with another person for particular adventures or undertakings. This arrangement is called –

(a) Partnership at Will
(b) Particular Partnership
(c) Undisclosed Partnership
(d) Joint Venture.

24. When the Partners carry on the business even after the expiry of the agreed fixed period, it becomes -

(a) Particular Partnership
(b) Partnership at Will
(c) Undisclosed Partnership
(d) Illegal Association.

25. Minor when admitted into Partnership-

(a) Can interfere in the day to day affairs of the Firm
(b) Cannot inspect any books of accounts of the Firm
(c) Becomes personally liable
(d) Can opt to continue as a Partner or not, on attaining majority

26. A, Partner who has not entered into a partnership agreement and conducts or represents himself as a Partner in a Firm is called -

(a) Sleeping Partner
(b) Partner by estoppel
(c) Working Partner
(d) Sub-Partner.

CS NITESH KR. JAISWAL CS CLASSES

27. Which of the following is not covered by "General Duties of Partners"?

(a) To carry on the business of the Firm to the greatest common advantage of the Firm.

(b) To be just and faithful to each other

(c) To arrange for audit of accounts of the Firm

(d) To render true accounts and full information of all things affecting the Firm to any Partner or his legal representative.

28. For loss caused to the Firm by his fraud in the conduct of the business, every Partner shall-

(a) Indemnify the, Firm

(b) Indemnify the other Partners

(c) Indemnify all the retiring Partners

(d) Indemnify only the working Partner

29. The mutual rights and duties of Partners may be determined by -

(a) Provisions of the Partnership Act, 1932

(b) Contract between the Partners

(c) **(a)** but subject to **(b)**

(d) **(b)** but subject to **(a)**.

30. If there is a contract that, the Partner shall not carry on the business other than that of the Firm while he is a Partner, such contract is -

(a) Valid

(b) Void

(c) Voidable at the option of the Partner

(d) Voidable at the option of the Firm.

31. Which of, the following cannot be altered by Partners by making contract among them selves?"

(a) To have access to and to inspect and copy any of the books of the Firm

(b) To take part in the conduct of the business

(c) To express opinion on matters connected with the business of the Firm

(d) To indemnify the Firm for any loss caused to do by his fraud in the conduct of the Firm's business.

32. Where a Partner has given any loan to the Firm and the agreement provides for interest, but does not specify any rate, the rate shall be-

(a) 6%

(b) 8%

(c) 10%

(d) 12%.

33. Which of the following statements is incorrect?

(a) A firm has no separate legal entity.

(b) Same partners may constitute different firms.

(c) Partners of a firm are considered its employees.

(d) A firm cannot enter into partnership with another firm.

34. "Which of the following is not covered by the term "Property of the Firm"?

(a) Property and rights and interest in property originally brought into the stock of the Firm

(b) Properly acquired by or for the Firm

(c) Goodwill of the business

(d) Property of the Partners.

CS NITESH KR. JAISWAL CS CLASSES

35. **In which of the following cases a partner is not required to surrender the personal profits to the Firm?'**

(a) Deriving any profit for himself from any transaction of the Firm
(b) Deriving any profit from the use of property or business name of the firm
(c) Receiving any gifts from his close friends and relatives
(d) Earning profits from a business of the same nature as that of the Firm.

36. **In case of change in the constitution of the Firm, the mutual rights and duties of the Partners in the reconstituted Firm -**

(a) Should be compulsorily determined by a new written agreement
(b) Will remain the same as they were immediately before the change as far as may be
(c) Will be decided by the Registrar of Firms
(d) Will be decided upon by the working Partners.

37. **Subject to the provisions of the Act, for the purpose of the business of the Firm, the Partner is**

(a) Agent of the Firm
(b) Agent of the working Partner
(c) Agent of the dormant Partner
(d) Not an agent at all.

38. **Any act of the Partners, which is done to carry on in the usual way, business of the kind carried on by the firm, should bind the firm. This is called -**

(a) Express authority
(b) Implied authority
(c) Mutual agency
(d) Rights of working Partner.

39. **To bind the Firm under Implied Authority, the act must be done in the ..... of carrying on the Firm's business.**

(a) Regular way
(b) usual way
(c) Routine way
(d) Extraordinary way.

40. **Which of the following is not a "usual activity" for a trading concern, for implied authority purposes?**

(a) Buying and selling of goods,
(b) Drawing and accepting bills of exchange
(c) Withdrawing suits filed on behalf of the concern
(d) Taking Loans.

41. **Which of this falls outside the implied authority?**

(a) Pledging as security, goods of the Firm for loans
(b) Drawing, accepting and endorsing negotiable instruments on behalf of the Firm
(c) Acquire immovable property on behalf of the Firm.
(d) Hiring Solicitors to defend actions against the Firm.

42. **Which of these acts are within the implied authority of a Partner?**

(a) Acquire immovable property on behalf of the Firm.
(b) Borrowing money on behalf of the Firm
(c) Enter into Partnership on behalf of the Firm
(d) Transfer immovable property belonging to the Firm.

CS NITESH KR. JAISWAL CS CLASSES

43. The Implied authority of any Partner may be-

(a) Restricted by contract between, the Partners
(b) Extended by contract between the Partners
(c) Either extended or restricted by contract between the Partners
(d) Can be extended but not restricted by contract between the Partners

44. Where the money received from a third party by the firm, in the ordinary course of business, is misapplied by one of the partners to his own use, then the:

(a) Defaulting partner alone is liable for the same
(b) Firm is liable for the same
(c) Firm is not liable for the same
(d) Third party has no remedy

45. In case of an emergency, a Partner has the authority to do all such acts so as to protect the Firm from loss, as would be done by..... under similar " conditions.

(a) any of the Working Partners
(b) any of the Sleeping Partners
(c) any agent of the Firm
(d) any man of ordinary prudence.

46. To bind the Firm, an act done by a Partner or other person on behalf of the Firm shall be done

(a) in the Firm's name
(b) in any manner expressing or implying an intention to bind the Firm.
(c) Either **(a)** or **(b)**
(d) Both **(a)** and **(b)**.

47. Which of the following is an absolute duty and cannot be excluded by an agreement to the contrary?

(a) Duty to share losses equally
(b) Duty to indemnify for loss caused by partner's fraud
(c) Duty to indemnify for loss caused by negligence
(d) Duty to account for profits of a competing business

48. For an effective notice on the Firm, it must be made to

(a) All the Partners jointly.
(b) To anyone of the working Partners
(c) Anyone of the working Partners and all the dormant Partners
(d) Only the dormant Partners.

49. If any loss or injury is caused to any third party' due to a wrongful act or omission of a Partner acting within express or implied authority-

(a) Only the Partner is liable

(b) Only the Firm is liable
(c) The Firm is liable to the same extent as such Partner
(d) Neither the Firm nor the Partner is liable.

50. Which of the following Partners are not liable in relation to the Firm?

(a) Partner by holding out
(b) Working Partner
(c) Sub-Partner
(d) Partner by estoppel.

CS NITESH KR. JAISWAL CS CLASSES

51. A Partner by estoppel is liable to anyone who gives credit to the Firm -

(a) On the faith of the representation that he is a Partner
(b) Only when such third party knows that he is a Partner
(c) Only when he induces such third party into giving credit to the Firm
(d) On the faith of the represe\1tation that he is not a real Partner.

52. A induces B to believe that he (a) is a Partner of a Firm P & Co. B believing that A is a Partner, gives credit to P & Co. What is A's liability?

(a) A is liable to compensate B
(b) A can plead innocence saying that he is not a Partner of PQ & Co.
(c) A can require B to give credit to him **(a)** and not the Firm
(d) A is liable to PQ & Co.

53. In case of transfer of Partners' Interest U/S 29, which of the following is a right of the Transferee?

(a) To interfere with the conduct of the business
(b) To require accounts
(c) To inspect books of the Firm
(d) To receive the share of the Transferring Partner.

54. For admitting a minor into the benefits of the Partnership, which of the following is required?

(a) Consent of majority Partners of the Firm
(b) Parent or guardian's consent
(c) Consent of the Registrar of Firms
(d) Consent of all the Partners of the Firm.

55. For the acts of the Firm-

(a) Minor is personally liable.
(b) Minor's share is liable.
(c) Guardian is personally liable.
(d) There is no liability at all for or on behalf of the minor.

56. With in .....period on his attaining majority or obtaining knowledge that he has been admitted to the benefits of the Partnership, whichever is later, a minor may. Give public notice of his decision to continue or withdraw from the Firm.

(a) Three months
(b) Six months
(c) Nine months
(d) One year.

57. Which of the following statement is incorrect when the minor elects not to become a Partner?

(a) His rights and liabilities continue to be those of a minor up to the date of giving public notice
(b) His share is not liable for any acts of the Firm done after the date of notice
(c) He is entitled to sue the Partners for his share in the profits and property
(d) He becomes personally liable for all acts with retrospective effect from the date of his admission.

58. A Partnership deed provides that the minor were to share the profits and losses, such a document is -

(a) Valid
(b) Invalid
(c) Valid to the extent of profit sharing but not loss sharing
(d) Valid to the extent of loss sharing and not profit sharing.

CS NITESH KR. JAISWAL CS CLASSES

59. Which of the following conditions is not necessary for "Good Faith" in an expulsion of a Partner?

(a) Such expulsion is done to protect the interests of Partnership and of the Firm

(b) The Partner who is to be expelled had been served with a Notice

(c) Such Partner has been given an opportunity of being heard

(d) The Firm should be adjudicated insolvent.

60. When a Partner is expelled otherwise than in good faith, he can -

(a) Claim reinstatement

(b) Sue for the refund of his share of Capital and profits in the Firm

(c) Either **(a)** or **(b)**

(d) Both **(a)** and **(b)**

61. When on attaining the age of majority the minor decides to become a partner in the firm, he shall be liable for all the acts and debts of of the firm from the date of his:

(a) Decision to become a partner

(b) Attaining the age of majority

(c) Admission to the benefits of the firm

(d) Attaining majority or decision to become a partner, whichever is earlier

62. Which of the following partnership with minor can be formed?

(a) With one major and all other minors

(b) With one minor and minimum two majors

(c) It can be formed with minimum two majors and minor can only be admitted to the benefits of firm

(d) A partnership firm cannot be made with minor as a partner

63. Where a partner retires and the remaining partners carry on business with firm's property without settling the accounts with the retiring partners, the retiring partner is entitled to interest, on the amount due to him at the rate of:

(a) 4% per annum

(b) 10% per annum

(c) 6% per annum

(d) 12% per annum

64. Where the continuing Partners carry on the business of the Firm, the Outgoing Partner whose claim is not settled, is entitled to -

(a) Share of profits since date of cessation of as Partner.

(b) 18% interest p.a. on the unsettled amount

(c) 12% interest p.a. on the unsettled amount

(d) 10% interest p.a. on the unsettled amount.

65. Where the continuing Partners carry on the business of the Firm, the Outgoing Partner whose claim is not settled, is entitled to -

(a) Share of profits since date of cessation as Partner

(b) 6% interest p.a. on the unsettled amount

(c) Both **(a)** and **(b)**

(d) Either **(a)** or **(b)** at his option.

CS NITESH KR. JAISWAL CS CLASSES

66. In case of improper and wrongful expulsion, the expelled partner:

(a) Does not cease to be partner
(b) Is entitled to be reinstated in his position
(c) Can recover damages for wrongful expulsion
(d) Bothe **(a)** and **(b)**

67. In case of change in the constitution of the Firm, the continuing guarantee given to the Firm or the third party in respect to the transactions of the Firm -

(a) Is not affected at all
(b) Is revoked as to future transactions
(c) Is revoked with retrospective effect
(d) Ceases to be continuing guarantee.

68. Dissolution of Partnership between all the Partners of a Firm is called -

(a) Dissolution of Partnership
(b) Dissolution of Firm
(c) Dissolution of Firm Name
(d) Reconstitution of Firm.

69. A and B agree that their Partnership business will be dissolved on completion of Project X. when the Project X completes -

(a) The Partnership is dissolved
(b) The Firm is dissolved
(c) Partnership continues
(d) Firm continues.

70. Dissolution agreement u/s 40, can be -

(a) In a express form i.e. written document
(b) Implied from conduct of the parties
(c) Both **(a)** and **(b)**
(d) Either**(a)** or **(b)**.

71. Where one of the several businesses, carried on by the firm, becomes unlawful, the firm:

(a) Is compulsorily dissolved for the purpose of all business.
(b) Continues to exist for lawful business
(c) Cannot carry on the business which has become unlawful
(d) Both **(b)** and **(c)**

72. If some event happens which makes it unlawful for the business of the Firm to be carried on or for the Partners to carry it on in Partnership, then -

(a) Firm becomes an illegal association
(b) Partnership is reconstituted
(c) Firm is automatically dissolved
(d) Firm is declared insolvent.

73. In which of the following situations the Firm will not be compulsorily dissolved?

(a) All Partners or anyone of the Partners is declared insolvent
(b) The business of the Firm becomes unlawful
(c) The Partnership has various adventures & one such adventure becomes illegal
(d) The decision is taken by all the Partners to dissolve the Firm.

74. In the absence of contract to the contrary, which of the following will not result in dissolution of the Firm?

(a) Expiry of the fixed term agreed upon by the Partners
(b) Death of a Partner
(c) Admission of a new Partner
(d) Adjudication of a Partner as insolvent.

CS NITESH KR. JAISWAL CS CLASSES

75. Which of the following statements is incorrect?

(a) A firm is compulsorily dissolved when all the partners become insolvent

(b) A firm is compulsorily dissolved when all the partners except one have become insolvent.

(c) A firm is not compulsorily dissolved when all the partners except one have become insolvent.

(d) A partner ceases to be a partner from the date of his insolvency

76. Transfer by a partner the whole of his interest in the firm to a third party, is:

(a) Not allowed under the Indian Partnership Act

(b) A voidable transaction under the Indian Partnership Act

(c) A ground for dissolution of the firm

(d) Not a ground for dissolution of the firm

77. In case of a Partnership at Will, Notice of intention to dissolve the Firm should be served on

(a) Sleeping Partners only

(b) Working Partners only

(c) All the other Partners

(d) Majority of the Partners.

78. In caseof a notice of dissolution in a Partnership at Will, where no date has been mentioned in the notice, the Firm is dissolved from -

(a) The date decided by the Registrar of Firms

(b) The date as decided by the Partners

(c) The date when the notice is communicated

(d) The date mentioned in the notice of dissolution.

79. Which of the following do not constitute ground for dissolution by Court?

(a) Insanity of the Partner

(b) Incapacitation of Partner

(c) Admission of Minor to the benefits of Partnership

(d) Heavy losses of the Firm.

80. Where a Partner has become of unsound mind, a suit for-dissolution may be brought by-

(a) Any other Partner

(b) Next friend of the Partner who has become of unsound mind

(c) Either **(a)** or **(b)**

(d) Both **(a)** and **(b)**

81. A petition for dissolution of a firm can be filed in a Court when there is:

(a) Permanent incapacity of a partner

(b) Persistent breach of agreement

(c) Transfer by a partner of his whole share

(d) All of the above

82. In a firm where a partner transfers the whole of his interest or share to a third party, the firm:

(a) Is automatically dissolved

(b) Is compulsorily dissolved

(c) May be dissolved by the Court

(d) Cannot be dissolved on this ground

83. If public notice of dissolution of the firm is not given, the partners shall:

(a) Continue to be liable to the third party for the acts of the firm done after dissolution

(b) Be liable to deposit fine in the Court

(c) Be guilty of misconduct and liable to be convicted

(d) Not be liable to third party for the acts of the firm done after dissolution in any case

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84. Where dissolution of Firm is sought for on the ground that a Partner conducts himself in such a way that it is not reasonably practicable for the other Partners to carry on business in Partnership with him, the suit shall be brought by -

(a) All the other Partners
(b) Majority of the Partners
(c) The Partner who is guilty of misconduct
(d) Any other Partner.

85. Where dissolution of Firm is sought for on the ground that a Partner has in any way allowed his share to be charged on account of a decree passed by a Court towards payment of liabilities of that Partnership, the suit shall be brought by -

(a) All the other Partners
(b) A majority of the Partners
(c) The Partner whose share has been charged
(d) Any other Partner.

86. In which of the following cases, the firm is 'at will' and can be dissolved by notice of dissolution by any partner?

(a) Where partnership deed does not make any provision for dissolution of the firm
(b) Where a partnership deed provides that a firm can be dissolved by mutual agreement only
(c) Where in a firm of only two partners, a partnership deed provides that any one of the partners can retire with the consent of the other.
(d) In all these cases, the firm is at will

87. Which of the following statements is correct?

(a) The estate of insolvent partner is not liable for the acts of the firm done after the order of insolvency.
(b) The public notice of insolvency of a partner is not necessary
(c) The firm is not liable for any acts of the insolvent partner done after the date of order of insolvency
(d) All of the above

88. Public notice of dissolution u/s 45 may be given by -

(a) All Partners
(b) The Firm
(c) Any Partner
(d) Registrar of Firms.

89. Section 46 .of the Partnership Act deals with

(a) Dissolution .of Firm
(b) Dissolution by the Court
(c) Registration of Firms
(d) Right of Partners to have business would up after dissolution.

90. Upon dissolution of Firm, the Surplus left after settlement of the debts and liabilities of the Firm shall be-

(a) Credited to the Reserve Account
(b) Credited tothe Government of India Alc
(c) Distributed among the Partners equally
(d) Distributed among the Partners according to their rights.

91. A left dissolution, the Firm is not bound by the acts of a Partner who -

(a) Was a Working Partner
(b) Was a Sleeping Partner
(c) Has been adjudicated insolvent.
(d) Has transferred his interest.

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92. The firm is liable to a third party for misapplication of third party's money or property by a partner to his own use, where the money or property is received by:

(a) A partner and then misapplied by the same partner
(b) The firm and then misapplied by any of its partners
(c) Both of these
(d) None of these

93. Upon dissolution of Firm, Losses, including deficiencies of Capital, shall be paid first out of Profits and then out of Capital and finally -

(a) Out of Profits
(b) Out of Capital
(c) By the Partners individually in their profit sharing ratio
(d) By the Partners equally.

94. pon dissolution of Firm, any sum contributed by Partners to make up deficiencies of Capital u/s 48, is considered as -

(a) Business of the Firm
(b) Goodwill of the Firm
(c) Liabilities of the Firm
(d) Assets of the Firm.

95. Upon dissolution, which is the proper order for application of the Firm's assets?

I. Payment of Debts & Liabilities of the Firm
II. Payment of Partner's Loan
III Payment of Partner's Capital
IV Distribution of Surplus to Partners in their Profit Sharing Ratio.

(a) I, II, III, IV
(b) I, II, IV, III
(c) II, III, IV,I
(d) IV, II, III, I

96. Where a Partner's Capital Account has a debit balance and he is unable to bring in necessary cash to make up the deficiency, it is called-

(a) Loss on Dissolution of Firm
(b) Loss on Dissolution of Partnership
(c) Loss arising out of piecemeal distribution of assets
(d) Loss arising out of Partner's insolvency.

97. In case of Joint Debts due from Firm and also separate debts due from Partners, where there is any Surplus after payment of the Firm's debts, then the share of each Partner shall be -

(a) Applied in the payment of his separate debts
(b) Paid to him directly
(c) Either **(a)**or**(b)**
(d) Neither **(a)** nor **(b)**.

98. An incoming partner, who has been validly admitted in the firm, is:

(a) Liable for the past debts of the firm
(b) Not liable for the past debts of the firm
(c) Liable for debts of the firm incurred after his admission
(d) Both **(b)** and **(c)**

99. Personal Profits earned by using the Firm's name after dissolution need not be surrendered to the Firm, where any partner or his representative has bought the Goodwill of the Firm.

(a) True
(b) Partly True
(c) False
(d) None of the above.

CS NITESH KR. JAISWAL CS CLASSES

100. Partner agrees not to carry on the business other than that of the Firm, while he is a Partner in the Firm. This agreement in restraint of trade is -

(a) Valid
(b) Invalid
(c) Voidable
(d) Wholly void.

101. Bharath paid a premium for entering into Partnership for a fixed term. The Firm is dissolved before the expiry of such term. In which of these cases is Bharath entitled to return of premium or any part thereat'?

(a) Dissolution is caused by death of a Partner
(b) Dissolution is due to Bharath's misconduct
(c) Dissolution is based on agreement which contains no provision as to return to the premium
(d) Dissolution is due to the retirement of another Partner

102. 'Where a Partnership Contract is rescinded on grounds \/ of fraud or misrepresentation, the party entitled to rescind, is entitled to ..... of the surplus or assets of the Firm remaining after settlement of Firm's debts, for any sum paid by him for purchase of share or for contribution of capital.

(a) A lien
(b) Right of retention
(c) Either**(a)**or**(b)**
(d) Neither **(a)** nor **(b)**.

103. Where a Partnership Contract is rescinded on grounds of fraud or misrepresentation, the party entitled to rescind, is also entitled to rank as a Creditor of the Firm in respect of -

(a) His own Capital
(b) His share of Profits
(c) Any payment made by him for the Firm's debts
(d) All of the above.

104. After dissolution of a Firm, any Partner or his representative may restrain any other Partner or his representative from carrying on similar business in the Firm Name or by using Firm's Property for own benefit, until -

(a) The affairs of the Firm are fully wound up
(b) Public notice of dissolution is given
(c) Dissolution deed is signed by all Partners
(d) All of the above.

105. After retirement from the firm, which of the following persons is not liable by holding out, even if the public notice of retirement is not given?

(a) Active partner
(b) Sleeping partner
(c) Representative of deceased partner
(d) Both **(b)** and **(c)**

106. Upon dissolution of Firm, all or some of the Partners agree not to carry on similar business for a specified period or within specified local limits. This agreement in restraint of trade is valid provided the restrictions imposed are -

(a) Understandable
(b) Reasonable
(c) Implementable
(d) Feasible.

CS NITESH KR. JAISWAL CS CLASSES

107. When goodwill of the Firm is sold, the Partners agree with the Buyer, not to carry out similar business a specified period or within the specific local limits. Such agreement in restraint to trade is –

(a) Valid
(b) Invalid
(c) Voidable
(d) Wholly void.

108. When Goodwill of the Firm is sold upon dissolution, a Partner can carry on a competing business and also advertise such business. For this purpose, in the absence of contract to the contrary -

(a) He can use the Firm's name
(b) He cannot use the Firm's name
(c) He can use Firm's letter head
(d) He can hold out that he is still Partner in the Firm

109. It is the right of every partner to be consulted in:

(a) The matters affecting the interest of concerned party only
(b) All matters affecting the business of the firm
(c) Ordinary matters only but not in fundamental matters
(d) None of the above

110. Which of the following is not required to be given in an application for registration of a Firm?

(a) Firm Name
(b) Date when each Partner joined the Firm
(c) Date of Birth of each Partner of the Firm
(d) Duration of the Firm, if any.

111. Which of the following is required to be given in an application for registration of a Firm?

(a) Names in full and permanent address of the Firm's Auditors
(b) Names in full and permanent address of the Firm's Partners
(c) Names in full and permanent address of the Firm's Lawyers
(d) Names in full and permanent address of the Firm's Advisors.

112. Which of the following words are not permissible in a Firm's name?

(a) & Co.
(b) Imperial
(c) Business Ventures
(d) Consultants.

113. Which of the following words are not permissible in a Firm's name?

(a) Empire
(b) Multinational
(c) International
(d) Transnational

114. Which of the following words are permissible in a Firm's name?

(a) Crown
(b) King
(c) Empress
(d) And Company.

115. Registrar is satisfied that the provisions of Sec. 58 are duly complied with, he shall record an entry of statement (application) in -

(a) List of Firms
(b) Register of Firms
(c) Schedule of Firms
(d) Index of Firms.

CS NITESH KR. JAISWAL CS CLASSES

116. Intimation to Registrar, of any change in name and address of Partners of Registered Firms, should be signed by -

(a) All the Partners or their agents
(b) Majority of the Partners or their agents
(c) All Working Partners or their agents
(d) Anyone Partner or his agent.

117. Intimation of a Dissolution of Registered Firm, to the Registrar of Firms, may be given by-

(a) Any person who was a Partner prior to dissolution.
(b) Agent of the person in **(a)**
(c) Any person specially authorized in this behalf
(d) Anyone of the above.

118. Application for rectification of mistake in the documents or the Register of Firms shall be made by –

(a) Anyone Partner or his agent
(b) Majority of the Partners or their agents
(c) All Working Partners or their agents
(d) All the Partners or their agents.

119. The Register of Firms shall be open to inspection by -

(a) The Registrar of Firm's
(b) Partners of the Firm
(c) Creditors of the Firm
(d) Any person.

120. Which of the following is incorrect regarding registration of the firm?

(a) It may be effected before filing the suit against third party
(b) It may be effected at any time after its formation
(c) It may be effected at the time of its formation
(d) It must be effected at the time of its formation

121. Unregistered Firm suffers from the following disabilities-

(a) No Suit between Partners arid Firm
(b) No Suit by Firm on a Third Party
(c) No claim of set-off
(d) All of the above.

122. A, B and C are Partners of an Unregistered Firm. D owes the Firm Rs.1,000 on a contract. The Firm files a suit against D. The suit is dismissed for non registration of Firm. The Firm is registered later on. Can the Firm now successfully bring the suit against D?

(a) Yes, the Firm is registered at the time of filing the fresh suit
(b) No, the Firm' must have been registered at the time of earlier suit .
(c) No, the suit is barred by limitation
(d) Yes, Registration is not relevant here.

123. M and N were in Partnership but did not register their Firm. The Firm is dissolved by mutual consent of Partners but accounts are not settled. M wants to sue for the accounts of the dissolved Firm. Is M's claim valid?

(a) Yes, Non-registration is not relevant here
(b) No, the Firm is not registered
(c) No, Both Land N have to file a suit.
(d) No, All Partners, L, M and N have to file a suit.

124. Which of the following rights of Partners is affected by non-registration of the Firm?

(a) To sue for dissolution of the Firm
(b) To sue for settlement of accounts of a dissolved Firm.
(c) To sue for realizing the property of a dissolved Firm
(d) To sue for enforcing a right· arising from a contract.

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125. Non-registration of the Firm does not affect the right the Firm to institute a suit or claim of set-0ff not exceeding -

(a) Rs.100
(b) Rs.1,000
(c) Rs.10,000
(d) Rs.50,000

126. Any person signing any statement, notice.or intimation who knows the particulars stated in the document to be false, shall be punishable with -

(a) Imprisonment of maximum three months
(b) Fine
(c) Both **(a)** and **(b)**
(d) **(a)** or **(b)** or both .

127. When is a public notice required to be given in case of Minor admitted to benefits of a Registered Partnership Firm?

(a) At the time of admission of Minor
(b) At the time of exercising option to continue or not, on attainment of majority
(c) Both **(a)** and **(b)**
(d) Neither **(a)** nor **(b)**.

128. In case of Registered Firm's, which of the following is not a proper mode of giving Public Notice?

(a) Serving a copy of the Notice to the Registrar of Firms
(b) Publishing the Notice in the Official Gazette
(c) Publishing the Notice in one English newspaper circulating in the district where the Firm's principal place of business is situated
(d) Publishing the Notice in one vernacular newspaper circulating in the district where the Firm's principal place of business is situated.

129. The application form for registration of the firm should be signed by:

(a) All partners or their authorized agents
(b) Active partners only
(c) Minimum two partners
(d) The managing partner only

130. Information to the Registrar about the closing and opening of a branch, after registration, is required to be given by:

(a) All the partners jointly
(b) Any partner
(c) An agent of the firm
(d) Either **(b)** or (c)

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ANSWERS

1	(a)	**2**	(b)	**3**	(c)	**4**	(c)	**5**	(d)	**6**	(d)	**7**	(a)
8	(c)	**9**	(c)	**10**	(d)	**11**	(d)	**12**	(b)	**13**	(d)	**14**	(c)
15	(d)	**16**	(a)	**17**	(a)	**18**	(d)	**19**	(c)	**20**	(d)	**21**	(d)
22	(d)	**23**	(b)	**24**	(b)	**25**	(d)	**26**	(b)	**27**	(c)	**28**	(a)
29	(d)	**30**	(a)	**31**	(d)	**32**	(a)	**33**	(c)	**34**	(d)	**35**	(c)
36	(b)	**37**	(a)	**38**	(b)	**39**	(b)	**40**	(c)	**41**	(c)	**42**	(b)
43	(c)	**44**	(b)	**45**	(d)	**46**	(c)	**47**	(b)	**48**	(b)	**49**	(c)
50	(c)	**51**	(a)	**52**	(a)	**53**	(d)	**54**	(d)	**55**	(b)	**56**	(b)
57	(d)	**58**	(b)	**59**	(d)	**60**	(c)	**61**	(c)	**62**	(c)	**63**	(c)
64	(a)	**65**	(d)	**66**	(d)	**67**	(b)	**68**	(b)	**69**	(b)	**70**	(d)
71	(d)	**72**	(c)	**73**	(c)	**74**	(c)	**75**	(c)	**76**	(c)	**77**	(c)
78	(c)	**79**	(c)	**80**	(c)	**81**	(d)	**82**	(c)	**83**	(a)	**84**	(d)
85	(d)	**86**	(a)	**87**	(d)	**88**	(c)	**89**	(d)	**90**	(d)	**91**	(c)
92	(c)	**93**	(c)	**94**	(d)	**95**	(a)	**96**	(d)	**97**	(c)	**98**	(d)
99	(a)	**100**	(a)	**101**	(d)	**102**	(c)	**103**	(a)	**104**	(a)	**105**	(d)
106	(b)	**107**	(a)	**108**	(b)	**109**	(b)	**110**	(c)	**111**	(b)	**112**	(b)
113	(a)	**114**	(d)	**115**	(b)	**116**	(d)	**117**	(d)	**118**	(d)	**119**	(d)
120	(d)	**121**	(d)	**122**	(a)	**123**	(a)	**124**	(d)	**125**	(a)	**126**	(d)
127	(b)	**128**	(c)	**129**	(a)	**130**	(d)						

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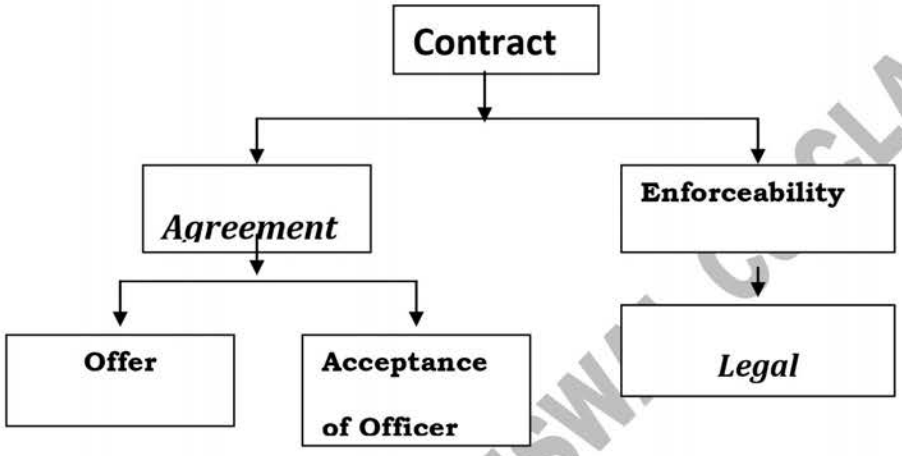
CHAPTER 9 ELEMENTS OF LAW RELATING TO CONTRACT

Meaning and Nature of Contract

- The law of contract is contained in Indian Contract Act, 1872.
- It extends to throughout India except the State of **Jammu and Kashmir**.
- It came into force on **1st September 1872.**
- There are separate Acts related to Negotiable Instruments, Transfer of Property, Sale of Goods, Partnership, Insurance etc.



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ESSENTIALS OF A VALID CONTRACT

1. **Offer and Acceptance**
   There must be **lawful** offer and lawful **acceptance.**
   Lawful **implies** that both must satisfy the **requirements** of Contract Act.

2. **Intention to Create Legal Relations:**
   Agreement should **be** attached by **legal** consequences & create legal obligation.
   - **Duties** and **rights** should be legal and not merely moral.

3. **Lawful Consideration: Price** paid by one party **forthe promise** of the other is known as consideration.
   It is referred to as **"quid pro quo"** means something in **return.**

4. **Free Consent:**There must be **free consent** of the **parties** to the contract. According to **Section 14**., consent **is** said to be **free** when it is **not** caused by **(i) coercion, (ii) undue influence, (iii) fraud, (iv) misrepresentation, or (v) mistake.**

   Example: X threatens to kill Y if he does not sell his house to X. Y agrees to sell his house to X, In this case, Y's consent has been obtained by coercion and therefore, it cannot be regarded as free.

5. **Capacity of Parties:** The **parties** to an agreement **must** be competent to contract. According to **Section 11 of Indian Contract Act, 1872,** "every **person** is competent to contract who is of the age of **majority** according to the law to which he is subject and who is of **sound mind** and is **not disqualified** from contracting by any law to which is subject."

Example: X, a minor borrowed Rs.8000/- from Y and executed mortgage of his property in favour of the lender. This was not a valid contract because X is not competent to contract. Therefore, the mortgage was not valid and the money advanced to minor could not be recovered.

Lawful Object: The **object** of an agreement must be **lawful**. According to **Section 23** "the object is considered lawful unless it is **forbidden** by law or is **fraudulent or involves or implies injury** to the person or property of person or is **immoral** or is opposed to public policy."

Example I: X, Y and Z enter into an agreement for the division among them y fraud. The agreement is void because its object is unlawful

Agreement not Expressly Declared Void: The agreement must not have been expressly declared void under the provision of **Sec 24 to30** of Indian Contract Act, 1872. Under these provisions, **agreement** in restraint of marriage, agreement is **restraint** of legal proceedings, and agreement in restraint **of trade** and agreement **by way of wager** have been expressly **declared void**.

Example I: X and Y carried on business in Chandni Chowk area of Delhi. X promised to sop business in that locality if Y paid Rs.1,00,000/-. X stopped his business but Y did not pay hi the promised money. It was held that X was not entitled to recover anything because the agreement was in restraint of trade and as such void.

Certainty of Meaning: The terms of the agreement must be certain and unambiguous. **According to Section 29 of the Indian Contract Act, 1872** agreements the meaning of which is not certain or capable of being made certain are void.

Example I: X a dealer in different types of oils agreed to sell 100 tones of oil to Y. This agreement is void on the ground of uncertainty because it is not clear what kind of oil is intended to be sold.

Possibility of Performance: The terms of the agreement must be such as are capable of performance. According to **Section 56,** "an agreement to do an impossible act is void."

Example I: X agrees with Y to discover treasure by magic and Y agrees to pay Rs,1000/- D X. This agreement is void because it is an agreement to do an impossible act.

Example II: X agrees with Y to enclose some area between two parallel lines and Y agrees to pay Rs.1000/- to X. This agreement is void because it is an agreement to do an impossible act.

Legal Formalities: The agreement must **comply** with necessary formalities as to **writing, registration, stamping etc**. If any required in order to make it enforceable by law.

Example I: An oral agreement for arbitration is unenforceable because the law requires that arbitration agreement must be in writing.

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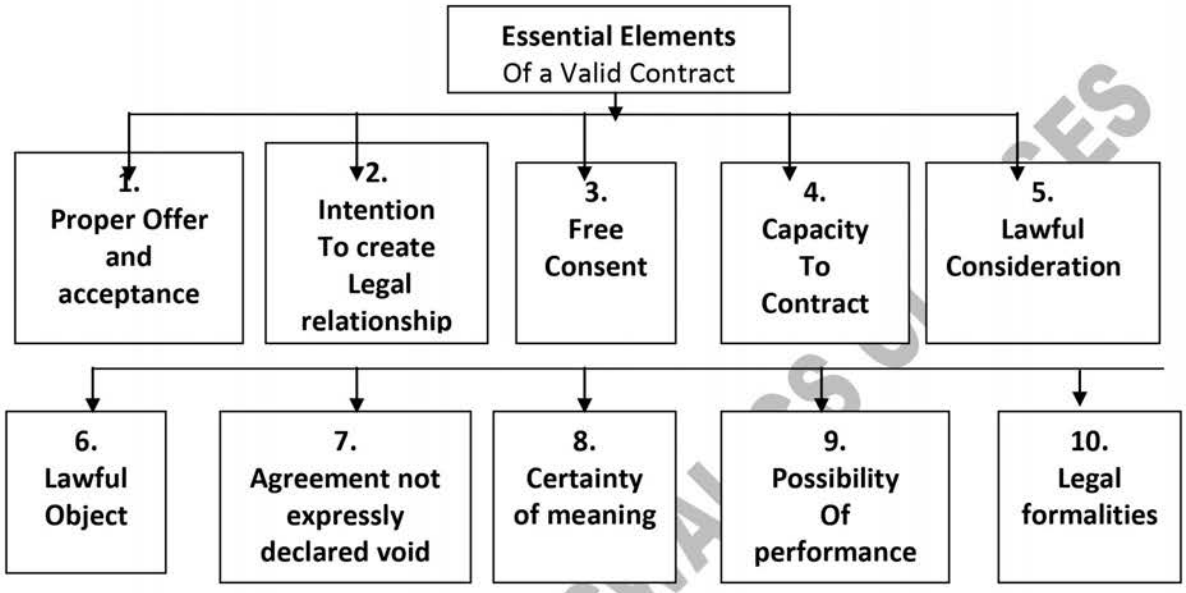
Example II: An oral agreement for sale of immovable property is unenforceable because the law requires that such agreement must be in writing and registered.

Conclusion:-All the aforesaid elements must be present in an agreement in order to create a valid contract. If anyone of them is missing or absent, the agreement will not be enforceable by law.



OFFER AND ACCEPTANCE

Meaning: An offer is starting point in the making of an agreement. An offer is also called 'proposal'. According to **Section 2(a)** of The Indian Contract Act, 1872. **"A person is said to have made the proposal when he signifies to another his willingness to do or to abstain from doing anything with a view to obtaining the assent of that offer to such act or abstinence."**

Essential Elements: An offer involves the following essential elements:

(a) It must be made by one person to another person. In other words, there can be no proposal by a person to himself.

Example: X says to Y that he wants to sell his car to himself for Rs.1 lakh. There is no proposal because there can be no proposal by a person to himself.

(b) It must be an expression of or willingness to do **(i.e. positive act)** or to abstain from doing something **(i.e. negative act).**

Example I: X offers to sell his car to Y for Rs, 1 lakh. It is a positive act on the part of X.

Example II: X offers not to file a suit against Y if Y pays X the outstanding amount of Rs,1 lakh. It is a negative act on the part of X.

It must be made with a view to obtain the consent of that other person to proposed act or abstinence.

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Example: X jokingly ways to Y "I am ready to sell my car for Rs.1,000." Y, knowingly that X is not serious in asking the offer, says "I accept your offer." In this case, X's offer was not the real offer, as he did not make it with a view to obtain the consent of Y,

OFFERER (or 'PROMISOR') AND OFFEREE (or PROMISEE)

Meaning of Offer: The person making the proposal is called the 'offeror' or 'proposer'.

Meaning of Offeree: The person to whom the proposal is made is called the **'offeree'** or **'proposee'.**

Example: X says to Y, "I want to sell my car to your for Rs.1 lakh." Here, 'to sell car' is an offer or proposal. X who has made the offer is called offeror or promisor; Y to whom the offer has been made is called the offeree or proposee.

On the basis of

HOW TO MADE AN OFFER

An offer can be made by any act, which has the effect of communicating it to another person. An offer may, either be an **'express offer'** or **'implied offer'**.

Express Offer: An express offer is one, which is made by words spoken or written.

Example I: X says to Y, "Will you purchase my car for Rs.1 lakh?

Example II: X writes to Y in a letter, " I want to sell my house for Rs.1 lakh".

Example III: X advertises in a newspaper, "I will pay Rs.1,000/- to anyone who traces my missing nephew".

Implied Offer: An implied offer is one which is made otherwise than in words. In other words, it is inferred from the conduct of the person or the circumstances of the particular case.

Example I: A transport company runs buses on different routes to carry passengers. This is an implied offer by the transport company to carry passengers for a certain fare.

Example II: A bid at an auction is an implied offer to buy.

On the basis of

TO WHOM AN OFFER IS MADE

An offer may be 'specified' or 'general'.

Specific Offer: A specific offer is one, which is made to a definite person or particular group of persons. A specific offer can be accepted only by that definite person or that particular group of persons to whom it has been made.

Example: X offers to buy car from Y for Rs.1 lakh. This offer is a specific offer, which has been made to a definite person Y. No person other than Y can accept this offer. **{Boulton v. Jones}**

Similarly, an offer made to a company is an offer to a group of persons and hence a specific offer.

General Offer: A general offer is one, which is not made to a definite person, but to the world at large or public in genera. A general offer can be4 accepted by a person by fulfilling the terms of

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the offer. In case of general offer, the contract is made with person who having the knowledge of the offer comes forward and acts according to the conditions of the offer.

Example : Carbolic Smoke Ball Co. advertised in the newspaper that it would pay Rs.1000/- to anyone who contracts influenza after using the smoke ball of the company according to the printed instructions. Mrs. Carlil uses the smoke ball according to the printed directions but subsequently contracted influenza. On a suit for the reward she was held entitled to recover the same because she had accepted the offer by fulfilling the terms of the offer. **{Carlil v. Carbolic Smoke Ball Co.}.**

LEGAL RULES FOR A VALID OFFER

An offer to be valid must fulfill the conditions discussed below:

1. **Intention to Create Legal Relationship:** An offer must intend create legal relations. An offer must be such that when accepted, it will create legal relationship among the parties.

2. **Certain and Unambiguous Terms:** The terms of the offer must be certain and unambiguous and not vague. If the terms of the offer are vague, no contract can be entered into because it is not clear as to what exactly the parties intended to do.

3. **Different from a Mere Declaration of Intention:** The offer must be distinguished from a mere declaration of intention. Such statement or declaration merely indicates that an offer will be made or invited in future.

4. **Different from an Invitation to an Offer:** An offer must be distinguished from an invitation to offer. In case of an invitation to offer, the person making an invitation invites others to make an offer to him. It is prelude to an offer inviting negotiations or preliminary discussions.

5. **Communication:**An offer must be communicated to the person to whom it is made. An offer is complete only when it is communicated to the offeree. One can accept the offer only when he knows about it. Thus, an offer accepted without its knowledge does not confer any legal rights on the acceptor.

   Example I: G sent his servant L to trace his lost nephew. When the servant had left. G announced a reward of Rs.500 to anyone who traces the missing boy. L found the boy and brought him home. When L came to know about reward, he filed a suit against G to recover the reward. It was held that L was not entitled the reward because he did not know about the reward when he found the missing boy. **{Lalman Shukla v. Gauri Dutt}.**

   Example II: S offered a reward to anyone who traces his lost dog. F brought the dog without any knowledge of the offer of reward. It was held that F was not entitled to the reward because F cannot be said to have accepted the offer, which he did not know. **{Fitch v. Snedakar}.**

6. **No Term the Non-compliance of which Amounts to Acceptance:** The offer must not contain a terms the non-compliance of which would amount to accept an. It means that while making the officer, the offeror cannot say that if offer is not accepted before a certain date, it will be presumed to have been accepted.

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Example: X writes a letter to Y. If offer to sell my car for Rs. 1 lakh. If I do not receive your reply by Friday next, I shall assume that your have accepted the offer. Here if Y does not reply, it does not mean that he has accepted the offer.

7. **Communication of Special terms or Standard Form Contracts:** The special terms of the offer must also be communicated along with the offer. If the special terms of the offer are not communicated, the offeree will not be bound by those terms. The question of special terms arises generally in case of standard form of contracts. Standard contracts are made with big companies such as insurance companies, railways, shipping companies, banking companies, hotel companies, and dry cleaning companies. Since such companies, are in position to exploit the weakness of general public by including certain terms I the contract which may limit their liabilities, it is provided that the special terms of the offer must be brought to the notice of general public.

CROSS OFFERS

Meaning: Two offers, which are similar in all respects made y two parties to each other, in ignorance of each other's offer are known as **'cross offers'**.

Effect: Cross offers do not amount to acceptance of one's offer by the other. Hence, no contract is entered into on cross offer.

STANDING OFFER/OPEN OFFER/CONTINUING OFFER:

Meaning: An offer of a continuous nature is known as **'standing offer'.**

A standing offer is in the nature of a tender. It is the same thing as n invitation to an offer.

A contract is said to have been entered into only when an order is placed on the basis of the tender.

Example: Z Ltd. requires a large quantity of certain goods during the 12 months period and gives an advertisement inviting tender in the leading newspaper. Z submitted the tender to supply those goods at a specific rate. Z's tender is accepted or approved. Now, Z's tender becomes a standing offer. Each order given by X Ltd., will be an acceptance of the offer.

MEANING OF ACCEPTANCE

Acceptance means giving consent to the offer. It is an expression by the offeree of his willingness to be bound by terms of the offer. According to **Section 2(b)** of the Indian Contract Act, 1872, **"A proposal is said to be accepted when the person to whom the proposal is made signifies his assent thereto. A proposal when accepted becomes a promise".**

Example: X offers to sell his car to Y for Rs.1 lakh. Y agrees to buy the car for Rs. 1 lakh. Y's act is an acceptance of X's offer.

WHO CAN ACCEPT AN OFFER

In General, an offer can be accepted only by the person or persons to whom it is made. The Specific Answer To This question ca be given with reference to type of offer as under:

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1. **In case of Specific Offer:** An offer made to a definite person or particular group of persons (called specific offer) can be accepted only by that definite person or that particular group of persons to whom it has been made and none else.

3. **In case of General Offer:** General offer) can be accepted by any person having knowledge of the offer by fulfilling the terms of the offer.

HOW TO MAKE AN ACCEPTANCE

1. **Express Acceptance:** An express acceptance is one, which is made by words spoken or written.

2. **Implied Acceptance:** An implied acceptance is one which is made otherwise than in words. In other words, it is inferred from the conduct of the person or the circumstances of the particular case.

LEGAL RULES FOR A VALID ACCEPTANCE

An acceptance to be valid must fulfill certain conditions, which are discussed below:

1. **Absolute and Unqualified:** According to Section 7(1) of the Indian Contract Act, 1872, **"In order to convert a proposal into a promise, the acceptance must be absolute and unqualified."** It means, that an offer must be accepted as it is without any reservation, variation or conditions. A qualified and conditional acceptance amounts to marking of a counter offer which puts an end to the original offer and it cannot be revived by acceptance.

   Example I: X offered to sell his car for Rs.1 lakh to Y. B agreed to buy it for Rs. 90,000/- Y's act is a counter offer and not an acceptance of X's offer. Now if Y accepts the original offer to buy the car for Rs.1 lakh X will not be bound to sell the car because Y's counter offer has put an end to the original offer. **{Nihal Chand v. Amar Nath}**

2. **Manner of Acceptance:** According to Section 7(2) of the Indian Contract Act, 1872, the acceptance of an offer must be given in the following manner.

(a) If the proposal does not prescrib the manner in which it is to be accepted.	The offer must be accepted in some usual and reasonable manner.
(b) If the proposal prescribes the manner in which it is to be accepted.	The offer must be accepted in the prescribed manner.

   Consequences of not accepting the offer in the prescribed manner: If the offer is not accepted in the prescribed manner, the offeror may approve or reject such acceptance. If the offeror wants to reject it, he must inform the acceptor within a reasonable time that he is not bound by acceptance because it is not in the prescribed manner. If he does not do so within a reasonable time the presumption will be that he doesn't mind the offer being accepted in a different mode and will be bound by such acceptance.

3. **Communication Of Acceptance:**The acceptance must be signified (i.e. Indicated or declared).In other words , the acceptance is complete only when it has been communicated to the offeror. A mere mental determination to acceptance in eyes of law unless there is some external manifestation of that determination by words or conduct.

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Example: X offered to supply coal to a Railway Company. The manager of the company accepted the offer and put it in the drawer of his table and forgot all about it. It was held that no contract was made because acceptance was not communicated.**{Brogden V. Metropolitan Railway Co}**.

4. **By whom**Acceptance must be communicated by the offeree himself or by a person who has the authority to accept. In other words, if acceptance is communicated by an unauthorized person, it will not given rise to legal relations.

   Example: P applied for the post of headmaster in a school. The managing committee passed a resolution approving P to the post but this decision was not communicated to P. But one member of managing committee in his individual capacity and without any authorized informed P about the decision. Subsequently, the managing committee cancelled its resolution and appointed someone else. P filed a suit for breach of contact. It was held that P's suit was not maintainable because there was no communication of acceptance, as he was not informed about his appointment by some authorized person. **{Powell v. Lee}.**

5. **To Whom** Acceptance must be communicated to the offeror himself. In other words, if acceptance is communicated to an unauthorized person, it will not give legal rise to relations.

6. **Time Limit:**The acceptance must be given within the time prescribed (if any) or within reasonable time (if no time is prescribed). What is reasonable time depends upon the facts and circumstances of case.

   Example: An offer to buy shares of a company was made in June but the acceptance was communicated in November, it was held that the offeror was not bound by the acceptance because the acceptance was not given within a reasonable time. **{Ramsgate Victoria Hotel Co. v. Montefiore}.**

7. **Before Lapse of Offer:**The acceptance must be given before the offer lapses or is withdrawn. In other words, if an acceptance is made after the lapse or withdrawal of the offer, it will not give rise to legal relation.

   Example: X offered by a letter to sell his car for Rs.1 lakh. Subsequently, X withdrew his offer by a telegram, which was duly received by Y. After the receipt of telegram, Y sent his acceptance to X. In this case, the acceptance is invalid because it was made after the effective withdrawal of the offer.

PROVISIONS RELATING TO COMMUNICATION OF OFFER AND ACCEPTANCE

The communication of offer and acceptance must complete so as to bind the concerned parties because as soon as the communication is complete the parties loose the right of withdrawal or revocation. The legal provisions relating to communication of offer and acceptance are as under:

1. **When is Communication of Offer Complete?** The communication of offer is complete when it comes to knowledge of the person to whom it is made. In case an offer is made by post, its communication will complete when the letter containing the offer reaches the offeree.

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Example: X of Agra sends a letter by post to Y of Delhi offering to sell his car for Rs.1 lakh. The letter is posted on 1st January and this letter reached on 7th January. The communication of the offer is complete on 7th January.

Note: An offer accepted without its complete communication does not bind the offerer.

2. **When is Communication of Acceptance Complete:** The communication of acceptance is complete at different times for the proposer and acceptor. The rules regarding the communication of acceptance are as under:

The communication of acceptance is complete...	When does the communication of acceptance complete?
(i) As against the proposer	When it is put in a course of transmission to him, so as to be out of the power of the acceptor. In case of acceptance made by post, the proper becomes bound by the acceptance as soon as the properly addressed and stamped letter of acceptance is duly posted even if such letter of acceptance is lost or delayed in post.
(ii) As against the accepter	When it comes to the knowledge of the proposer. In case of acceptance made by post, the acceptor becomes bound by the acceptance only when the letter of acceptance is actually received by proposer.

Example: X of Agra sends a letter by post to Y of Delhi offering to sell his car for Rs.1 lakh. The letter is posted on 1st January and this letter reaches Y on 7th January. Y sends his acceptance by post on 10th January but X receives this letter of acceptance on 15thJanuary. In this case the legal position relating to the communication of offer and acceptance is as under:

Communication	When does the communication	Reason
(a) Communication of offer.	7th January	The letter containing the offer reaches the offeree on 7th January.
(b) Communication of acceptance as against the proposer	10th January	The letter of acceptance is posted on 10th January.
(c) Communication of acceptance as against the acceptor	15th January	The letter of acceptance is received by the proposer on 15th January.

After posting the letter of acceptance on 10th January, Y can withdraw his acceptance by a speedier mode of communication so that the revocation notice reaches the proposer before the letter of acceptance.

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3. **Position of Contracts over telephone/telex/fax**A contract by telephone/telex/fax is treated on the same principle as n oral agreement made between two parties when they are face to face with other. In such case, the will complete only when the acceptance is received by the proposer and not when it is transmitted by the acceptor. Therefore, the acceptor must ensure that his acceptance is properly received by the proposer.

   Example: X made on offer to Y over telephone. While Y was conveying his acceptance, the line went dead and X could not hear anything. In this case, there was no contract at that merchant.

PROVISIONS RELATING TO REVOCATION OF OFFER AND ACCEPTANCE

1. **Meaning of Revocation:** The terms 'revocation' means **'taking back'** or **'withdrawal'.**
2. **What is the Time Limit within which Offer can be Revoked:** According to **Section 5** of the Indian Contract Act, a o may be revoked at any time before the communication of its acceptance is complete as against he proposer, but not afterwards. We know that communication of acceptance is complete as against the proposer when a properly addressed and stamped letter of acceptance is duly posted by the acceptor.Hence, an offer can be revoked at any time before the letter of acceptance is duly posted by the acceptor. Thus the proposer may revoke is offer by a speedier mode of communication which will reach before the letter of acceptance is posted by the acceptor.

   Example: X of Agra offers by a letter dated 1st January sent by post to sell his car to Y of Delhi for Rs.1 lakh. Y accepts the offer on 7th January at 1 p.m. by letter sent by post. Here, X may revoke his offer at any time before 1 p.m. on 7th January but not afterwards.

   Notes:

   (i) Revocation must always be expressed.

   (ii) Revocation must move from the offeror himself f or a duly authorized agent.

   (iii) Notice of revocation of a general offer must be give through the same channel by which the original offer was made.

   (iv) Offer cannot be revoked even if the letter of acceptance is lost or delayed in transit.

3. **What is the Time Limit within which Acceptance can be Revoked:** According to **Section 5** of the Indian Contract Act, "An acceptance **may be** revoked at any time **before** the communication of the **acceptance** is complete as **against** the acceptor, but not afterwards." We know that communication of acceptance is complete as against the acceptor when the letter of acceptance is actually received by the proposer. Hence, an acceptance can be revoked at any time before the letter of acceptance is actually received by the proposer. Thus an acceptor may revoke his acceptance by a speedier mode of communication, which will reach before the letter of acceptance is received by the proposer.

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Example: X of Agra offers by a letter dated 1st January sent by post to sell his car to Y of Delhi for Rs.1 lakh. Y accepts the offer on 7th January at 1 p.m. by a letter sent by post. X receives the letter of acceptance on 15th January at 3 p.m. Here, Y may revoke his acceptance at any time before 3 p.m. on 15th January but not afterwards.

Acceptance is to Offer what a Lighted Match is to a Train of Gunpowder: The position relating to revocation of proposal and acceptance has been described by the following words

"Acceptance is to offer what a lighted match is to a train of gunpowder. It produces something which can not be recalled or undone."

This statement primarily holds good under English law.

Here, **gunpowder** = **offer** and **lighted match** = **acceptance.**

When a lighted match is shown to a train of gunpowder, it explodes and something happens which cannot be undone. Similarly, an offer once accepted cannot be revoked. But so long a lighted match is no shown, the gunpowder remains inert and can be removed, similarly an offer can be revoked before it is accepted.

Similarly, once acceptance is given it cannot be revoked. But under Indian Contract Act, acceptance can be revoked by resort in to quicker means of communication so that the offeror learns about it before acceptance. Thus, the above statement doesn't hold in relation to revocation of acceptance under Indian law.

4. **Simultaneous delivery of Letter of Acceptance and the telegram Containing Revocation of Acceptance:** In case the letter of acceptance and the telegram containing revocation of acceptance are delivered to the proposer at the same time, the formation of contract depends upon the fact which one is read first by the offeror. The contract shall be said to have been formed if the letter of acceptance is read first but shall not be said to have been formed if the telegram containing revocation of acceptance is read first. Generally, it is presumed that a man of ordinary prudence will first read the telegram. Hence the revocation will be quite effective.

5. **No Revocation in case of Contract over Telephone or Telex or Fax:** In case of contracts over telephone or telex or fax, the question of revocation does not arise because there is instantaneous communication of the offer and its acceptance (i.e. the offer is made and accepted at the same time).

6. **When is Communication of Revocation Complete [Section 4]:** The communication of revocation is complete at different times for person who makes it and the person to whom it is made. The rule regarding the communication revocation are as under:

The communication of revocation is complete...	When does the communication of revocation complete?
(i) As against the person who makes it	When it is put in a course of transmission to the person to whom it is made so as to be out of the power of the person who makes it.

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(ii) As against the person to whom it is made	When it comes to his knowledge.

Lapse of an Offer: An offer must be accepted before it lapses (i.e. comes to an end). An offer may come to end in any of the following ways:

1. **By Revocation:** An offer lapses if the offeror revokes the offer before its acceptance by the offeree. According to Section 5 of the Indian Contract Act, a proposal may be revoked at any time before the communication of acceptance is complete as against the proposer but not afterwards.

   Example I: X of Agra offers by a letter dated 1st January sent by post to sell his car to Y of Delhi for Rs.1 lakh. Y accepts the offer on 7th January at 1 p.m. by a letter sent by post. Here, X may revoke his offer at any time before 1 p.m. on 7th January but not afterwards.

2. **By Lapse of Time:**An offer lapses if it is not accepted within the fixed time (if any prescribed in the offer) or within reasonable time (if no time is prescribed in the offer).

   Example: an offer to buy shares of a company was made in June but the acceptance was communicated in November. It was held that offer to buy shares had lapsed because it was not accepted within a reasonable time. **{Ramsgate Victoria Hotel Co. v. Montefiore}**

3. **By Death or Insanity of the Offeror or Offeree:** An offer lapses by the death or insanity of the offeror if the fact of his death or insanity comes to the knowledge of the acceptor before he makes his acceptance. In other words, if the offer is accepted in ignorance of the death or insanity of the offeror, there will be a valid contract. It may be noted that in English law the death of the offeror terminates the offer even if acceptance is made in ignorance of the death.

4. **By Failure of Accept condition Precedent:** An offer lapses if it is accepted without fulfilling the conditions of the offer.

   Example: X offered to sell his car to Y for Rs.1 lakh subject to the condition that Y should pay an advance of Rs.20,000/- before certain date. Y accepted the offer but did not send an advance of Rs.20,000/-. In this case, the offer has lapsed because the advance was not paid.

5. **By Counter Offer:** An offer lapses if the counter offer is made because a counter offer amounts to rejection of the original offer. Counter means making a fresh offer instead of accepting the original offer.

6. **By not Accepting in the Prescribed Mode or usual Mode:** An offer if it is not accepted in the specific manner (if any, prescribed in the offer) or in some usual and reasonable manner (if no manner has been prescribed in the offer).

7. **By Rejection of Offer by Offeree:** An offer lapse if it is rejected by the offeree. An offer is said to be rejected if the offeree expressly rejects it or accepts it subject to certain conditions. It may be noted that once an offer is rejected, it cannot be revived subsequently.

8. **By Subsequent illegality or Destruction of Subject Matter of the Offer:** An offer lapses if it becomes illegal or the subject matter is destroyed before its acceptance by offeree.

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Example I: X of Delhi offered supply of 100 tones of sugar to Y at Mumbai a certain date. Before Y accepts this offer, the Central Government issued an order prohibiting the inter-state movement of sugar. Here, X's offer has come to an end.

CONSIDERATIONS

MEANING OF CONSIDERATION

Consideration is one of the essential elements of a valid Contract. The term 'Consideration' means something in return, i.e. quid-pro-quo. What is 'something' has been explain by Justice lush J. in a leading English case **Currie v. Misa** as under:

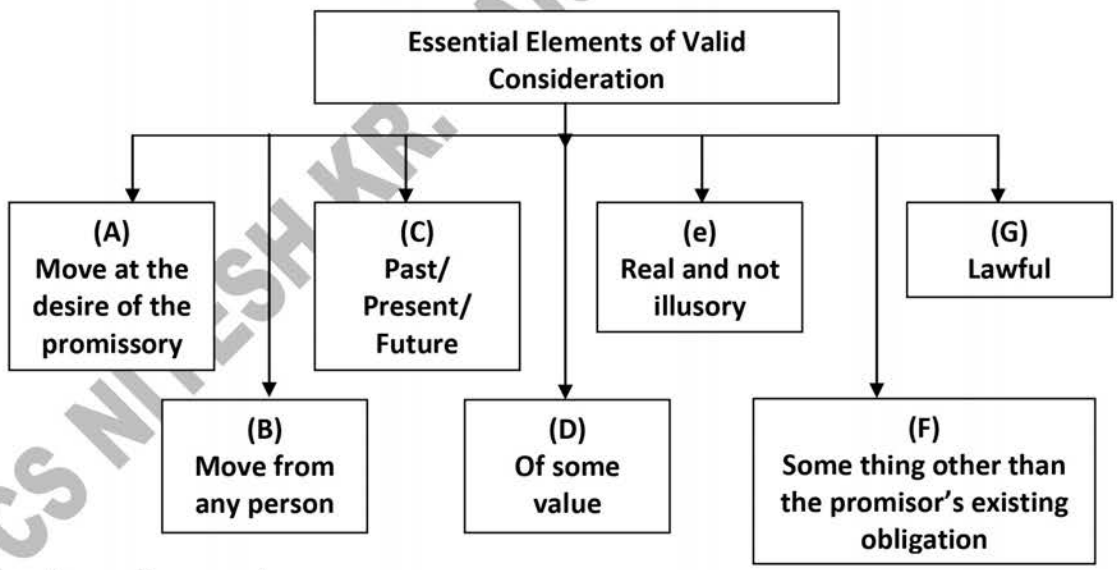
"A valuable consideration in the sense of the law may consist either in some right, interest, profit or benefit accruing to the one party or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other."

Section 2**(d)** of the Indian Contract Act, 1872 defines consideration as under;

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

ESSENTIAL ELEMENTS OF VALID CONSIDERATION

On the basis of definition of consideration as per Section 2**(d)**, the essential elements of valid consideration are shown below:



Let us discuss them one by one.

(a) **It must be given only at the Desire of the Promisor:** An act constituting consideration must have been done at the desire or request of the promisor. Thus, an act done at the desire of a third party or without the desire of the promisor cannot constitute a valid consideration.

(b) **It may Move from any Person:** An Act constituting consideration may be done by the promise himself or any other person (i.e. stranger to consideration). Thus, it is immaterial who furnishes the consideration and therefore, may move from the promise or any other person.

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Example: X, by a deed of gift transferred certain property to her daughter Y with a direction that Y should pay Z an annuity. On the same day, Y executed a deed in writing in favor of Z and agreed thereby to pay the annuity. Later, Y refused to pay the annuity on the please that no consideration had moved from Z. **It was held** that Z was entitled to maintain suit because a consideration need not necessarily move from the promise, it may move from any other person. (i.e. X in the present case.

(c) **It may be Past or Present or Future:**The consideration may be past, present or future.

Past Consideration	The consideration, which has already moved before the formation of agreement. **Example**: X renders some service to Y at Y's request in the month of May. In June, Y promises to pay X Rs.1000/- for his past services. Past services amount to past consideration. X can recover A's 1000/- from Y.
Present Consideration.	The consideration, which moves simultaneously with promise, is called present consideration. **Example:** In case of cash sale, promise to pay the price and promise to deliver the goods are performed simultaneously.
Future Consideration.	The consideration, which is to be moved after the formation of agreement, is called future consideration. **Example:** X promises to deliver certain goods to Y after 10 days and Y promises to pay after 10 days from the date of delivery.
Tutorial Note: - The English Law does not recognize the past consideration.	

(d) **It must be of some Value:**The consideration need not be adequate to promise but it must be of some value in the eye of the law. It is understood in the sense of something in return and that something can be anything, adequate or grossly inadequate. **According to Explanation 2 of Section 25,** an agreement to which the consent of the promisor is freely given in not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promissory was freely given.

Example: A agrees to sell a horse worth Rs.1000/- for Rs.10/-. A denies that his consent to the agreement was freely given. The inadequacy of the consideration is a fact which the Court should taken into account in considering whether or not A's consent was freely given.

(e) **It must be Real and non-Illusory:** The consideration must be real and not illusory.

Example: X engages Y for doing a certain work and promises to pay reasonable remuneration. This promise is not enforceable because the consideration is uncertain.

(f) **Something other than the Promisor's Existing Obligation:** The act constituting consideration must be something which the promisor is not already bound to do because a promise to do what a promisor is already bound to do adds nothing to the existing obligation.

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Example: X promises Y, his advocate, t pay an additional sum of the suit was successful. The suit was declared in favour of X but X refused to pay additional sum. It was held that Y could not recover additional sum because the promise to pay additional sum was void for want of consideration as Y was already bound to render his best services under the original agreement. **{Ramchandra Chintamana v. Kalu Raju}**

(g) Lawful: The consideration must neither be unlawful nor opposed to public policy.

Example I: X promises Y to pay Rs.1000/- to beat Z, Y beats Z and claims Rs.1000/- from X, X refuses to pay. Y cannot recover because the agreement is void on the ground of unlawful consideration.

STRANGER TO A CONTRACT

Though a stranger to consideration can sue because the consideration can be furnished or supplied by anyperson whether he is the promisee or no, but a stranger to a contract cannot sue because of the absence of privity of contract (i.e. relationship' subsisting between the parties to a contract).

Example: X owes Y Rs. 1 lakh and sells his property to Z. Z promises to payoff Xs debt to Y. Z fails to pay. Y cannot sue Z because he is a stranger to a contract.

Exceptions:

The rule that a **stranger to a contract cannot sue,** is subject to the following **exception:**

(a) In case of Trusts: The beneficiary (i.e. the person for whose benefit the trust has been created) may enforce the contract.

Example: X transferred certain properties to be held by Y for the benefit of Z. Z can enforce the agreement even though he is not a party to the agreement. **{M. K. Rapsi v. John}**

(b) In case of Family settlement: The person for whose benefit the provision is made under family arrangement may enforce the contract.

Example: A provision of marriage expenses of a female member was made in a Joint Hindu Family. On partition, the female member sued for such expenses. It was held that she was entitled to sue. **{Rakhmanbai v. Govind}**

(c) Acknowledgement: The person who becomes an agent of third part by acknowledgment or otherwise, can be sued by such third party.

Example: X receives Rs.1000/- from Y for paying the same to Z. X acknowledges this receipt to Z. Z an recover the amount from X because X will be regarded as Z's agent.

(d) Assignment of a Contract: Where a benefit under a contract has been assigned, the assignee can enforce the contract subject to all equities between the original parties to the contract e.g. the assignee of an insurance policy.

CONTRACTS WITHOUT CONSIDERATION

General Rule According to Section 10, consideration is one of the essential elements of a contract. According to Section 25, an agreement made without consideration is void. For example, X promises to pay Rs.5000/- to his girlfriend Y. Y cannot enforce this promise because she is not giving anything to X for this promise.

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Exceptions to the General Rule No Consideration, No Contract

The following are the exceptions to the general rule No Consideration, No Contract:

(a) Agreements Made on Account of Natural Love and Affection [Section 2(1)]. Such agreement made without consideration is valid if;

(i) it is expressed in writing,

(ii) it is registered under the law,

(iii) it is made on account of love and affection, and

(iv) it is between parties standing in a near relation to each other.

Note: Nearness of relation by itself does not necessarily import love and affection.

Example: A Hindu husband by a registered document promised to pay his wife Rs.1000/- per month as her pin-pocket money. This agreement is valid.

(b) Promise to Compensate [Section 25(2)]: Such promise made without consideration is valid if;

(i) it is a promise to compensate (wholly or in part); and

(ii) the person who is to be compensated has already done something voluntarily or has done something which the promisor was legally bound to do.

Example : X finds Y's purse and gives it to him. Y promises to give Rs.500/- to X. This is a valid contract even though the consideration did not move at the desire of Y, the promisor.

(c) Promise to Pay Time Bared Debt [Section 25(3)]: Such promise without consideration is valid if;

(i) it is made in writing,

(ii) it is signed by the debtor or his agent, and

(iii) it relates to a debt which could not be enforced by a creditor because of limitation.

Note:

According to the law of limitation, a debt that remains unpaid or unclaimed for a period of 3 years becomes a time barred debt, which is legally not recoverable. But a promissory note issued in personal capacity b the wife of a debtor to pay his time barred debt of her husband is not enforceable. **{Pestonjee v. Bai Meharbai}**

(d) Completed Gifts [Explanation to Section 25]: The gifts actually made by a donor and accepted by the donor are valid even without consideration. Thus a completed gift needs no consideration.

Example: X transferred some property to Y by a duly written and registered deed as a gift. This is a valid contract even though no consideration moved.

(e) Agency [Section 185] No consideration is necessary to create an agency.

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FREE CONSENT

CONSENT

Meaning of Consent:

The consent means an act of assenting to an offer. According to Section 13, **"Two or more person are said to consent when they agree upon the same thing in the same sense".** Thus, consent involves identity of minds in respect of the subject matter of the contract. In English Law, this is called **'Consensus-ad-idem'.**

Effect of Absence of Consent:

When there is no consent at all, the agreement in void ab-initio, i.e. it is not enforceable at the option of either party.

FREE CONSENT

Meaning of Free Consent [Section 14]

Free consent is one of the essential elements of a valid contract as it is evidenced by Section 10, which provides that all agreements are contract if they are made by the free consent of the parties. According to Section 14, Consent is said to be free when it is not caused by (a) coercion, or **(b)** under influence, or (c) fraud, or **(d)** misrepresentation, or (e) mistake.

Effect of absence of Free Consent [Section 19]

When there is consent but it is not free (i.e. when it is caused by coercion or undue influence or fraud or misrepresentation), the contract is usually voidable at the option of the party whose consent was so caused.

Example – X threatens to kill Y if he does not sell his house to X. Y agreed to sell his house to X. In this case, Y's consent has been obtained by coercion and therefore, it cannot be regarded as free.

COERCION

Meaning of Coercion [Section 14]

Coercion means compelling a person to enter into contract under a pressure or a threat. According to Section 15, a contract is said to be caused by coercion when it is obtained by (a) committing any act which is forbidden by the Indian Penal Code; or **(b)** threatening to commit any act which is forbidden by the Indian Penal Code; or (c) unlawful detaining of any property; or **(d)** threatening to detain any property.

Example I - X beats Y and compels him to sell his car for Rs.50000/-. Here, Y's consent has been obtained by coercion because beating someone is an offence under the Indian Penal Code.

Note: The Indian Penal Code need not be in force in place where the coercion is employed.

Against Whom/by Whom Coercion may be exercised

Coercion may proceed from ay person, and ma be directed against any person, even a stranger.

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Example – X threatens to kill Z, Y's son, if Y refuses to sell his house to him. Y agrees to sell his house. Here, Y's consent has been obtained by coercion though Z is a stranger to the contract.

Effect of threat to File a Suit

A threat to file a suit (whether civil or criminal) does not amount to coercion unless the suit is on false charge. Threat to file a suit on a false is an action forbidden by the Indian penal code and thus will amount to an act of coercion.

Effect of threat to commit suicide

A suicide and a 'threat to commit suicide' are not punishable under the Indian Penal Code. It does not mean that 'suicide and threat to commit suicide are permitted by Indian Penal Code. The question whether a threat to commit suicide amounts to coercion or not was considered by Madras High Court in case of Chickham Ammiraju v. Seshamma. In case, a person threatened to commit suicide if his wife and son did not execute a release deed in a favour of his brother in respect of certain property .It was held that through a threat to commit suicide is not punishable under the Indian Penal Code, it is deemed to be forbidden by that code. Hence, the treat to commit suicide amounted to coercion and the release deed was therefore, voidable.

Duress V. Coercion: The English law uses the term 'duress' for coercion. However, the two are different in the following way:

a) Duress does not include detaining of property or threat to detain property.
b) Duress can be employed only by a party to the contract or his agent.

Effects of Coercion [Sections 19, 64, 72]

The effects of coercion are as follows:

Effects	Provision
(a) Option of aggrieved party to avoid the contract.	When consent to an agreement is obtained by coercion, the agreement is a contact voidable a the option of the party whose consent was obtained by coercion (also called aggrieved party), [Section 19].
(b) Obligation of aggrieved party to restore benefit.	The party rescinding a voidable contract shall restore the benefit received by him under the contract, to the person from whom the benefit was received. [Section 64].
(c) Obligation of other party to repay or return	A person to whom money has been paid or anything delivered under coercion must repay or return it. [Section 72]

Burden or Onus of Proof

The burden of providing that consent was obtained by coercion, and the aggrieved party would not have entered into contract had coercion been employed, lies on the party intending to avoid the contract.

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UNDUE INFLUENCE

Meaning of Undue Influence [Section 16(1)]

The term 'undue influence' means dominating the will of the other person to obtain an unfair advantage over the other. According to Section 16(1), a contract is said to be induced by undue influence.

(a) Where the relations subsisting between the parties are such that on of them is in a position to dominate the will of the other, and

(b) The dominant party uses that position to obtain an unfair advantage over the other.

Presumption of Domination of Will [Section 16(2)]

According to Section 16(2), a person is deemed to be in a position to dominate the will of another in the following three circumstances:

Circumstances	**Examples**
(a) Where he holds a real or apparent authority over the other.	Master and servant, parent and child, Income Tax Officer and assessee, Principal and a temporary teacher.
(b) Where he stands in a fiduciary relation to the other.	Trustee and beneficiary, spiritual adviser (Guru) and his disciples, solicitors and client, guardian and ward.
(c) Where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness or mental or bodily distress.	Medical attendant and patient.

No Presumption of Domination of Will

According to judicial decisions held in various cases, there is no presumption of undue influence in the following relationships:

(a) Husband and wife 9(other than pardanashin)

(b) Landlord and tenant

(c) Creditor and debtor

Effect of Undue Influence [Section 19A]

When consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused.

Discretion of Court: Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it has received ay such benefit there under, upon such terms and conditions as the court may seem just.

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Burden of Proof

When a contract is avoided on the ground of undue influence, the liabilities of dominant party and weaker party to prove are as under:

The weaker party has to prove (a) That the other party was in a position to dominate the will. (b) That the other party actually used his influence to obtain an unfair advantage. (c) That the transaction is unconscionable (unreasonable)	In case of unconscionable transaction the dominant party has to prove that such contract was not induced by undue influence. **Note:** A transaction is said to be unconscionable if the dominant party makes an exorbitant profit of the other's distress.

Example – X was in great need of money. The market rate of interest prevailing at that time was 15% to 24%. A lender agreed to grant the loan at 30% because of stringency in the money market. This cannot be called as unconscionable transaction merely because of an unusual high rate of interest. However, f the lender agreed to grant the load at a rate, which is so high (say 75% or 100%) then the court considers it unconscionable, and the transaction will be called unconscionable.

Contracts with Pardanashin Woman

Meaning of Pardanashin Woman: A woman who observes complete seclusion (i.e. who does not come in contract with people other than herfamily members) is called pardanashin woman.

Legal Presumption: A contract with a pardanashin woman is presumed to have been included by undue influence.

Burden of Proof: The other part who enters into contract with a pardanashin woman must prove;

(a) that he made full disclosure of all the facts to her;
(b) that she understood the contracts and the implications of the contract;
(c) that she was in receipt of competent independent advice before entering into the contract.

Comparison between Coercion and Undue Influence Similarities: *In case of both coercion and undue influence, the consent is not free and the contract is voidable at the option of the aggrieved party.*

Distinction: Coercion differs from the undue influence in the following respects:

Basis of Distinction		Coercion	Undue Influence
1.	Relationship	Parties to contract may or may not be related to each other.	Parties to a contract are related to each other under some sort of relationship.
2.	Consent	Consent is obtained by giving a threat of an offence or committing an offence.	Consent is obtained by dominating the will.
3.	Nature of pressure	It involves physical pressure.	It involves moral pressure.

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4.	Who can exercise	Even a stranger to the contract can exercise it.	It can be exercised only by a party to a contract and not by a stranger.
5.	Restoration of benefit	The aggrieved party has to restore the benefit received under Section – 64.	The party avoiding the contract mayor may not return the benefit under Section 19A.
6.	Presumption	Coercion has to be proved by the party alleging it, in no case it is presumed by the law.	The law under certain circumstances may presume it. The party against whom such presumption lies must disprove it.
7.	Nature of Liability	The party committing the crime make be punishable under I. P. C.	It doesn't involve any criminal liability.

Rebutting Presumption:

The presumption of undue influence can be rebutted by showing;

(a) That the dominant party has made a full disclosure of all the facts to the weaker party before making the contract.

(b) That the price was adequate; and

(c) That the weaker party was in receipt of competent independent advice before entering into the contract.

FRAUD

Meaning and Essential Elements of Fraud [Section17]

Meaning: The term 'fraud' means a false representation of fact made wilfully with a view to deceive the other party. Section 17 defines the fraud as follows:

'Fraud' means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another partly thereto or his agent or to induce him, to enter into the contract:

(a) The suggestion, as to a fact, of threat which is not true, by one who does not believe4 it to be true, e.g. X sells to Y locally manufactured goods as imported goods charging a higher price. It amounts to fraud.

(b) The **active concealment** of a fact y one having knowledge or belief of the fact. Mere concealment is no fraud. But where steps are taken by a seller concealing some material facts so that the buyer even after a reasonable examination cannot trace the defects, it will amount to fraud, e.g. X a furniture dealer, conceals the cracks in furniture sold by him by using some packing material and polishing it in such a that the buyer even after reasonable examination cannot trace the defect, it would tent amount to fraud through active concealment.

(c) A **promise** made **without** any intention of performing it; e.g. in Shireen v. John, AIR (1952) Punj 227, a man and a woman underwent a ceremony of marriage with the husband not regarding it as a real marriage. Held, the husband had no intention to perform the promise from the time he made it and hence the consent of the wife was obtained under fraud.

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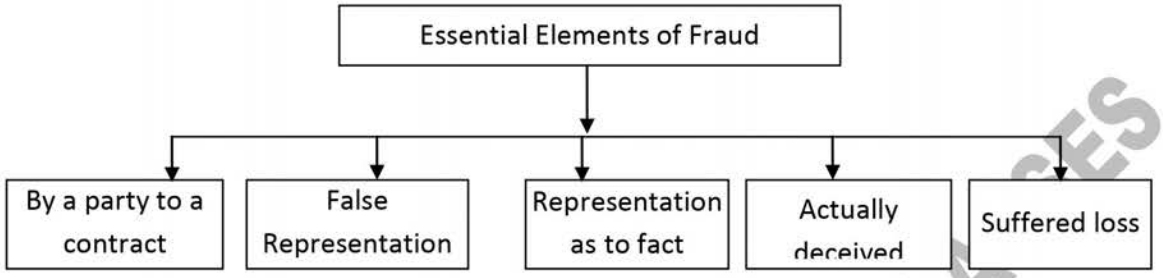
(d) Any such **act** or omission as the **law** specially **declares** to be **fraudulent**,.

(e) **Any** other **act** fitted to **deceive**. It covers those acts, which deceive but are not covered under any other clause.

(b) **Essential Elements:** on the basis of aforesaid definition of fraud, the essential elements of fraud are shown below in Figure.



Let us discuss them one by one:

(i) **By a party to a contract:** The fraud must be committed by a party to a contract or by anyone with his connivance or by his agent. Thus, the fraud by a stranger to the contract does not affect the validity of the contract.

Example – The directors of a company issued a prospectus containing false statements. A shareholder who had subscribed for the shares on the faith of the prospectus wanted to avoid the contract. It was held that he could not do so because the false statement made y directors amounted to fraud. **{Reese River Silver Mining Co. v. Smith}**

(ii) **False Representation:** There must be a false representation and it must be made with the knowledge of its falsehood. Where the representation was true at the time when it was made but becomes untrue before the contract is entered into and the party who made the representation knows this fact, it must be corrected. If it is not so corrected, it will amount to a fraud.

Example - X fraudulently informs Y that X's estate is free from encumbrance. On the faith of X's statement, Y buys the estate. Actually the estate is subject to mortgage. Here, Y may avoid the contract because X with the intention to deceive Y induced Y to enter into a contract.

(iii) **Representation as to Fact:** The representation must relate to a fact. In other words, a mere opinion, a statement of expression or intention does not amount to fraud.

(iv) **Actually deceived:** The fraud must have actually deceived the other party who has acted on the other party is not actually deceived is not a fraud.

Example – X had defective cannon. In order to conceal the defect, he put a metal plug on it. Y bought this cannon without examining. When Y used it, it burst. Y refused to pay the balance. It was held that Y was liable to pay, as he was not actually deceived by fraud because he would have bought it even if no deceptive plug were inserted. **{Horsefull v. Thomas]**

(v) **Suffered Loss:** The party acting on the representation must have suffered some loss.

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Effects of Fraud [Section 19]

The effects of fraud are as follows:

(a) The party whose consent was caused by fraud can rescind (cancel) the contract but he cannot do so in the following cases;

(i) Where silence amounts to fraud, the aggrieved party cannot rescind the contract if he had the means of discovering the truth with ordinary diligence;

(ii) Where the party gave the consent in ignorance of fraud;

(iii) Where the party after becoming aware of the fraud takes a benefit under the contract;

(iv) Where an innocent third party before the contract is rescinded acquired for consideration some interest in the property passing under the contract;

(v) Where the parties cannot be restored to their original position.

(b) The party whose consent was caused by fraud may, if he thinks fit, insist that the contract shall be performed and that he shall be put in the position in which he would have been if representation made had been true.

Example – A fraudulently informs B that A's estate is free from encumbrance. B thereupon buys the estate. The estate is subject to a mortgage. B may either avoid the contract, or may insist on its being carried out and the mortgage-debt redeemed.

(c) The party whose consent was caused by fraud, can claim damage if he suffers some loss.

Silence as to Fraud

General Rule: According to explanation to Section 17, "Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud."

Example – A sells, by auction, to B a horse which A knows to be unsound. A says nothing to B about the horse's unsoundness. This is not fraud by A

Example – In shri Krishna v. Kurukshetra University AIR 1975 SC 376) a candidate failed to mention the fact of shortage of attendance in the examination form. Held, no fraud.

Exceptions to the General Rule: The general rule that silence doesn't amount to fraud has the following exceptions;

Where the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak. Such duty arises in the following two cases:

(i) Where parties stand in fiduciary relationship like parent-child, trustee-beneficiary.

Example - A sells by auction to B, a horse that A knows to be unsound. B is A's daughter and has just come of age. Here, the relation between the parties would make it A's duty to tell B if the horse is unsound.

(ii) Where the silence itself is equivalent to speech.

Example - B says to A, "If you do not deny it, I shall assume that the horse is sound." A says nothing. Here A's silence is equivalent to speech. If the horse turns out to be vicious A can be held liable for fraud.

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(iii) **Half Truth:** Half-truth is worse than a blatant lie. Partial truthful disclosures may easily deceive the other party, e.g., prospectus of a company disclosing only average dividend declared by the company in the last 5 years instead of the actually dealing dividends over that period is a glaring example of half truth amounting to fraud.

MISREPRESENTATION

Meaning and Essential Elements of Misrepresentation [Section 19]

(a) Meaning: The term 'Misrepresentation' means a false representation of fact made innocently or non-disclosure of a material fact without any intention to deceive the other party. Section 18 defines the term 'misrepresentation' as follows:

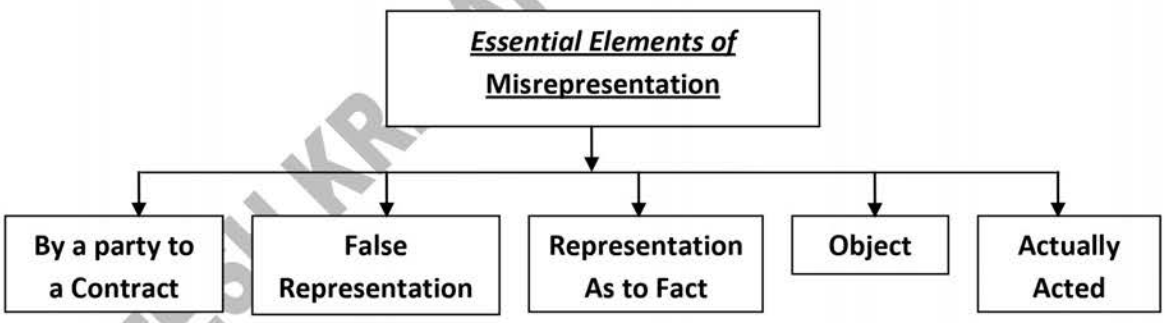
"Misrepresentation" means as includes –

(a) The positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;

(b) Any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or anyone claiming under him, by misleading an other to his prejudice or to the prejudice of anyone claiming under him;

(c) Causing, however innocently, a party to an agreement, to make a mistake as to the substance of the thing, which is the subject of the agreement.

(b) Essential Elements: On the basis of the aforesaid definition of misrepresentation, the essential elements of misrepresentation are shown below in Figure.



(i) **By a party to a contract**: The representation must be made by a party to a contract or by anyone with his connivance or by his agent. Thus, the representation by a stranger to the contract does not affect the validity of the contract.

(ii) **False representation:** There must be a false representation and it must be made without the knowledge of its falsehood i.e. the person making it must honestly even it is to be true.

(iii) **Representation as to Fact:** The representation must be related to a fact. In other words, a mere opinion, a statement of expression or intention does not amount to misrepresentation.

Example - X sold his Hotel to Y and stated that a tenant who is most desirable occupies a part of the hotel. In fact the rent from the tenant could only be recovered under pressure and was currently much in arrear. It was held that Y was entitled to avoid the contract because X's statement amounted to misrepresentation. **{Smith's Case}.**

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(iv) object: The representation must be made with a view to including the other party to enter into contract but without the intention of deceiving the other party.

(v) Actually Acted: The other party must have acted on the faith of the representation.

Effects of Misrepresentation [Section 19]

The effects of misrepresentation are as follows: -

(a) Right to Rescind the Contract: The party whose consent was caused by misrepresentation can rescind (cancel) the contract but he **cannot** do so in the following cases:

(i) Where the party whose consent was caused by misrepresentation had the means of discovering the truth with ordinary diligence;

(ii) Where the party gave the consent in ignorance of misrepresentation;

(iii) Where the party after becoming aware of the misrepresentation take a benefit under the contract;

(iv) Where an innocent third party, before the contract is rescinded, acquired for consideration some interest in the property passing under the contract;

(v) Where the parties cannot be restored to their original position.

Example - X, leads Y erroneously to believe that 1000 mounds of indigo are made annually at X's factory. Y examines the accounts of X's factory which shows that only 800 mounds of indigo have been made. After this Y buys the factory. Here, the contract is not voidable on account of X's misrepresentation because Y after becoming aware of misrepresentation take the benefit under the contract.

(b) Right to Insist upon Performance: The party whose consent was caused by misrepresentation may if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representation made had been true.

MISTAKE

Meaning of Mistake [Section 20]

A mistake is said to have occurred where the parties intending to do one thing by error do something else. Mistake is an erroneous belief concerning something. The mistake can be of two types shown below:

Let us discuss them one by one:

1. Mistake of Law [Section 21]

Type of Indian Law	Effect
(a) Mistake of Indian Law	The contract is not voidable because everyone is supposed to know the law of his country.
(b) Mistake of Foreign Law	A mistake of foreign law is treated as mistake of fact, i.e. the contract is void if both parties are under a mistake as to a foreign law because on cannot be expected to know the law of other country.

II Mistake of Fact: Mistake of fact can be either bilateral mistake or unilateral mistake.

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(a) Bilateral Mistake [Section 20]: The term 'bilateral mistake' means where both the parties to agreement are under a mistake. According to Section 20, "Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void." Thus, the following three conditions must be satisfied before declaring a contract void under this section:

(i) Both the parties must be under a mistake.

(ii) Mistake must be of fact but not of law.

According to explanation to Section 20, "An erroneous opinion as to the value of the thing which forms the subject matter of the agreement is not to be deemed a mistake as to a matter of fact."

Example - X buys a painting believing it to be worth Rs.50000/- while in fact it is worth only Rs.5000/-. The contract is not void.

(iii) Mistake must relate to an essential fact.

Example - A agrees to sell to B a specific cargo of goods supposed to be on its way from England to Mumbai. It turns out that, before the date of the bargain, the shop conveying the cargo had been cast away and the goods lost. Neither party was aware of facts. The agreement is void.

Bilateral Mistake as to the Subject Matter: An agreement is void where there is a bilateral mistake as to the subject matter. A bilateral mistake as to the subject matter includes the following:

(i) Mistake as to the existence of subject matter.
(ii) Mistake as to the quantity of subject matter.
(iii) Mistake as to the quality of subject matter.
(iv) Mistake as to the price of subject matter.
(v) Mistake as to the identity of subject matter.
(vi) Mistake as to the title of subject matter.

Example I - A agrees to buy from B a certain horse. It turns out that the horse was dead at the time of bargain though neither party was aware of the fact. The agreement is void because there is bilateral mistake as to the existence of subject matter.

Example II- A, agrees to buy from B all his horses believing that B has two horses but B actually has three horses. The agreement is void because there is bilateral mistake as to the quantity of subject.

Example III- A agrees to buy a particular horse from B. Both believe it to be a racehorse but it turns to be a carthorse. The agreement is void because there is bilateral mistake as to the quantity of the subject matter.

Example IV-A agrees to buy a particular horse from B who mentioned in his letter the price as Rs.1150/- instead of 5150/-. The agreement is void because there is bilateral mistake as to the price of the subject matter.

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Example V –A agrees to buy from B a certain horse. B has one racehorse and one carthorse. A thinks that he is buying racehorse but B thinks that he is selling carthorse. The agreement is void because there is bilateral mistake as to the identity of subject matter.

Example VI - A agrees to buy a particular horse from b. A already owns that horse. The agreement is void because there is bilateral mistake as to the title of the subject matter.

Bilateral Mistake as to the Possibility of Performance: The agreement is void where there is a bilateral mistake as to the possibility of performance. In other words, where the parties to an agreement believe that the agreement is capable of performance, while in fact it is not so, the agreement is treated as void. The impossibility may either be physical or legal.

(b) Unilateral Mistake [Section 22]: The term 'unilateral mistake' means where only one party to the agreement is under a mistake. According to Section 22, "A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to matter of fact."

Exceptions: The agreement is void where a unilateral mistake relates to the identity of the person contracted with or as to the nature of contract.

Effects of Mistake

The effects of mistake are as follows:

(a) In case of Bilateral Mistake as to essential fact.	The agreement is void.
(b) In case of Unilateral Mistake (i) As to the identity of the person contracted with (ii) As to the nature of contract **(iii)** As to other matter	The agreement is void. The agreement is void. The agreement is not void.
(c) Obligation of aggrieved party	He must restore any benefit received by him under the contract to the other party from whom the benefit had been received [Section 64].
(d) Obligation of other party	The person to whom money has been paid or anything delivered by mistake must repay or return it. [Section 72]

CIRCUMSTANCES UNDER WHICH THE OBJECT OR CONSIDERATIONS IS DEEMED TO BE UNLAWFUL

The object and the consideration of an agreement must be lawful; otherwise, the agreement is void. According to Section 23 of The Indian Contract Act, 1872, the consideration or the object of an agreement is unlawful in the following cases:

(a) <u>If it is forbidden by Law:</u> If the object or the consideration of an agreement is the dong of an act, which is forbidden (i.e. prohibited) by the law, the agreement is void. An act is said to be

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forbidden by law when it is punishable either by the criminal law of the country or by special legislation.}

Example – X granted a loan to the guardian of a minor to enable him to celebrate the minor's marriage. It was held that X could not recover back because agreement is void as its object (i.e. minor's marriage) is illegal. {C. Srinivas v. K. Raj Rama Mohana Rao}

(b) <u>If it Defeats the Provisions of any Law:</u> If the object or the consideration of an agreement is of such nature that, if permitted, it would defeat the provisions of any law, the agreement is void.

(c) If it is Fraudulent: If the object of an agreement is to defraud others, the agreement is void.

Example – A, B and C enter into an Agreement of the division among them of gains acquired, or be acquired, by them by fraud. The agreement is void, as its object is unlawful. If the object of an agreement is to be defraud other, the

Example II – A, being agent for a landed proprietor, agrees for money, without the knowledge of his principal, to obtain for B a lease of land belonging to his principal. The agreement between A and B is void, as it implies a fraud by concealment by A, on his principal.

(d) If it involves or Implies Injury to a Person or Property of Another: If the object of an agreement is to injure a person or the property of another, the agreement is void.

Example – X promised to pay Rs.10,000/- to Y when he agreed to publish a libel (i.e. defamatory article against someone). It was held that Y could not recover the amount because the agreement was void as it involved injury to someone. {Clay v. Yates}

(e) If the Court Regards it as Immoral or Opposed to Public Policy: If the object or consideration is immoral or is opposed to the public policy, the agreement is void.

Example – A, who is B's mukhtar, promises to exercise his influence, as such, with B in favour of C, and C promises to pay Rs.1000/- to A. The agreement is void, because it is immoral.

Example V – Agreements for past or future cohabitation are void because the consideration, which is immoral at the time when it passes, cannot become legal by passage of time. {S. Yellappa v. Y. Sabu (Bombay High Court)}

ILLEGAL AGREEMENTS

Meaning of Illegal Agreements:

Illegal agreements are those agreements, which are:

(a) The collateral transactions to an illegal agreement also become illegal and hence, cannot be enforced.

(b) No action can be taken for the recovery of money paid or property transferred under an illegal agreement and for the breach of an illegal agreement.

(c) In case of an agreement containing the promise, some part of which is legal and other part illegal, the legal position is as under:

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Case	Provision
1. If the illegal part cannot be separated from the legal part.	The whole agreement is altogether illegal.
2. If the illegal part can be separated from the legal part.	The Court will enforce the legal part and Reject the illegal part.

Example – X lent Rs1 lakh to Y to enable him to purchase certain smuggled goods from Z. X cannot recover the amount from Y if he knows the Y's purpose of borrowing.

VOID AGREEMENTS IF CONSIDERATION OR OBJECTS UNLAWFUL IN PART

According to Section 24, if one of the several considerations or objects of an agreement is unlawful, the agreement is void.

AGREEMENTS OPPOSED TO PUBLIC POLICY

It is not easy to define the term 'Public Policy' with any degree of precision because 'public policy' by its very nature, is highly uncertain and keeps on fluctuating with the passage of time. An agreement, which conflicts with morals of the time and contravenes any, established interest of society might be said to be opposed to public policy. In India, it has been left to Court to hold any contract as unlawful o the ground of being opposed to public policy.

The following agreements have been held to be opposed to public policy:

(a) **Agreements of Trading with Enemy:** Agreements made with an alien enemy are illegal on the ground of public policy.

(b) **Agreement for Stifling Prosecution:** An agreement for stifling prosecution is illegal on the ground of public policy.

Example: X, who knows that Y has committed a murder, receives Rs.7 lakh from Y in consideration of not exposing Y. This agreement is illegal.

(c) **Agreements in the Nature of Maintenance and Champerty:** Maintenance is an agreement whereby one party having no interest in suit, agrees to assist another to maintain suit. For example, X promises t pay Y Rs.5000/- if Y files a suit against Z. H is a maintenance agreement. Champerty is an agreement whereby one party agrees to assist another in recovering property and in turn is to share in the proceeds of the action.

Example – X, agreed to pay Rs.10,000/- to Y to enable him to file a suit for the recovery of his property and Y promised to give him 314 share I the property, if recovered. The agreement was held to be champertous and void. **{Nuthahi Venkataswami v. Katta Nagl}**

Position in England: Both of these agreements are declared illegal and void.

Position in India: All of these agreements are not illegal. The Court will refuse to enforce such agreements if its object is not bonafide or the terms of reward are unreasonable in the opinion of court.

(d) **Agreement for the Sale/Transfer of Public Offices and Titles:** The agreements for the sale or transfer of public offices or to obtain public titles like Padma Shree are illegal on the ground of public policy.

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Example – X promises to pay Y Rs.50,000/- if Y secures him an employment in Government Service. This agreement is opposed to public policy.

Agreements in Restraint of Parental Rights: An agreement, which prevents a parent to exercise his right of guardianship, is void on the ground of public policy.

Example – G, a father having two sons, agreed to transfer guardianship in favour of A and also agreed not to revoke the transfer during his life. Subsequently, G filed a suit for the recovery of boys. It was held that he had a right to revoke his authority and get back his children.

(e) Agreement in Restraint of Personal Liberty: An agreement that unduly extracts the personal liberty of any person is void on the ground of public policy.

Example – X borrowed Rs.1 lakh from Y on the promise that he would not, without the Y's written permission leave his job, borrow money, dispose of his property or change his residence. It was held that the agreement was illegal on the ground of public policy. **{Harwood v. Miller's Timber and Trading Co.}**

(f) Agreement Tending to Create monopoly: An agreement, which tends to create monopoly, is void on the ground of public policy.

Example – A local body granted a monopoly to X to sell vegetables in a particular locality. This agreement is void on the ground of being opposed to public policy.

(g) Agreements Interfering with Course of Justice: An agreement which interferers with course of justice is void on the ground of being opposed to public policy.

(h) Marriage Brokerage Contracts: A marriage contract is one whereby one or more persons receive money or money's worth in consideration of marriage.

(i) Agreement in Restraint of Marriage {Section 26}: Every agreement is restraint of marriage of any person other than a minor is void.

(j) Agreement in Restraint of Trade {Section 27}: Every agreement, by which any one is restraint from exercising a lawful profession trade or business of any kind, is to the extent void.

(k) Agreement in Restraint of Legal Proceeding {Section 28}: An agreement which restraints a party absolutely from enforcing his legal rights arising under a contract or an agreement which curtails the period of limitation within which the legal rights may be enforced is void.

VOID AGREEMENTS AND CONTINGENT CONTRACTS

Meaning of Void Agreements

According to Section 2(g) of the Indian Contract Act, 1872, a void agreement is an agreement, which is not enforceable law. The agreements, which are not enforceable by law right from the time when they are made, are void-ab-initio.

The following types of agreements have expressly been declared void under various sections of the Indian Contract Act.

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1. Agreements by or with person's incompetent to contract (Section 10 & 11).
2. Agreements entered into through a mutual mistake of fact between the parties (Section 20).
3. Agreement, the object or consideration of which is unlawful (Section 23)
4. Agreement, the consideration or object of which is partly unlawful (Section 24).
5. Agreement made without consideration (Section 25).
6. Agreements in restraint of marriage (Section 26).
7. Agreements in restraint of trade (Section 27).
8. Agreements in restraint of legal proceedings (Section 29).
9. Wagering agreement (Section 30).
10. Impossible agreements (Section 56).
11. An agreement to enter into an agreement in the future.

Agreements from No 1 to 5 have already been discussed in earlier chapters. The other agreements are discussed this chapter.

AGREEMENTS IN RESTRAINT OF MARRIAGE

According to Section 26 of the Indian Contract Act, every agreement in restraint of the marriage of any person other than a minor is void.

Example I – X promised to marry Y only and none else, and to pay Rs.2000/- in default. X married Z and Y sued X for recovery of Rs.2000/-. It was held that Y could not recover anything because the agreement was in restraint of marriage. **{Lowe v. Peers}**

It may be noted that an agreement which provides for a penalty upon remarriage may not be considered as a restraint of marriage.

Example II - An agreement between two co-widows that if one of them remarried, she should forfeit her right to her share n the deceased husband's property, was not void because no restraint was imposed upon either of the two windows from remarrying.

Example III - Nkah Nama (i.e. a marriage agreement in Muslims) which authorizes wife to divorce herself and to claim maintenance from the husband on his marrying a second wife, was not void because no restraint was imposed upon husband from marring a second wife. **{Badu v. Badarannessa}.**

AGREEMENTS IN RESTRAINT OF TRADE

According to Section 27 of Indian Contract Act, 1872, "every agreement y which anyone is restrained from exercising a lawful profession, trade or business of an kind, is to that extent void." This is because Article 19 (9) of the Constitution of Indian regards the freedom of trade and commerce as a right of every individual. Therefore, no agreement can deprive or restrain a person from exercising such a right.

Onus of Proof: Where an agreement is challenged on the ground of its being in restraint of trade, the party supporting the contract must show that the restraint is reasonably necessary to protect his interests, and the party challenging the contract must show that the restraint is injurious to the public.

Let us discuss them one by one:-

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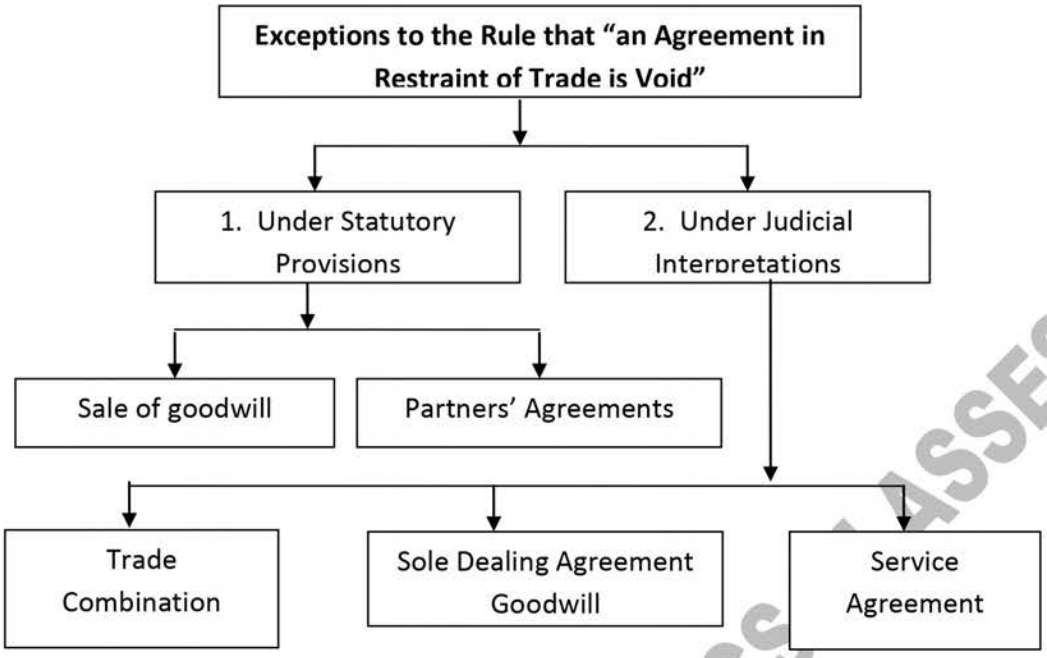

Exceptions to the Rule that **"An Agreement in Restraint of Trade is Void."**

I. <u>Exceptions Under Statutory Provisions:</u>

(a) <u>Sale of Goodwill</u> [Exception 1 to Section 27]: An agreement, which restrains the seller of goodwill from carrying on a business, is valid if all the following conditions are fulfilled:

(i) Such restrictions must relate to a similar business.

(ii) Such restriction must be within specified local limits.

(iii) Such restriction must be for the time so long as the buyer or any person deriving title to the goodwill from him carries on a like business in the specified local limits.

(iv) Such specified local limits must be reasonable having regarded to the nature of the business. Thus, the buyer of good will may restrain the seller for carrying on any business similar to the one sold by him within certain vicinity and for a certain period of time provided the restrictions in regard to time and vicinity are found reasonable.

(b) <u>Partners Agreements:</u> The Indian Partnership Act, 1932, recognizes the following agreements in restraint of trade as valid:

(i) Restriction on existing partner[Section 11(2)] - A partner shall not carry on any business other than that of the firm while he is a partner.

(ii) Restriction on outgoing partner(Section 36(2)) – an outgoing partner may agree with his partners that he will not carry on any business similar to that of the fir within a specified period or within specified local limits. Such agreement shall be valid only if the restrictions are reasonable.

(iii) Restriction on partners upon or in anticipation of the dissolution of the firm[Section 54] - Partners may, upon or in anticipation of the dissolution of the firm, make an agreement that some or all of them will not carry on a business similar to that of the

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firm within specified period or within specified local limits. Such agreement shall be valid only if the restrictions are reasonable.

(iv) **Restriction in case of sale of goodwill[Section 55(3)]** – a partner ma upon the sale of the goodwill of a firm, make an agreement that such partner will not carry on any business similar to that of the firm within a specified period or within specified local limits. Such agreement shall be valid if the restrictions are reasonable.

II. **Exceptions Under Judicial Interpretations:**

(a) **Trade Combinations:** Trade combinations which have been formed to regulate the business or to fix prices are not void, the trade combinations which tend to create monopoly and which are against the public interest are void.

Example –: An agreement by two firms to avoid competition is void because it tends to create monopoly and is against the public interest. **{Jai Ram v. Kahna Ram}**

(b) **Sole Dealing Agreements:** Agreements to deal in the products of a single manufacturer or to sell the whole procedure to a single dealer are valid if their terms are reasonable.

Example –: An agreement by a person to sell all the mica produced by him to the plaintiffs and not to an other firm, and not to keep any in stock, is valid. **{Subha Naidu v. Har Badsha Sahib}**

(c) **Service Agreements:** A clause in service agreement mayor may not be in restraint of trade. An analysis of some of the clauses of service agreement is a sunder:

Clause	Whether held as restraint of Trade
(i) A clause to serve the employer for a stipulated period.	Such agreements if reasonable, do not amount to restraint of trade and hence, are enforceable.
(ii) A clause to prevent the employee from accepting any other engagement during his employment.	Such agreements do not amount to restraint of trade and hence, are enforceable.
(iii) A clause to prevent the employee from accepting a similar engagement after the termination of his services.	
(a) If a restraint is intended only to protect an employer against an employee making use of trade secrets learned by him in the course of his employment.	**(a)** Such agreements do not amount to restraint of trade and hence, are enforceable by law. **Example:** An employee who possesses certain trade secrets, agreed not to carry on the similar business during 5 years after termination of service **{Forster & Sons Ltd. V. Sugget}**
(b) If a restraint is intended to serve any other purpose (say to avoid competition).	**(b)** Such agreements amount to restrain of trade and hence, are not enforceable by law. **Example:** an agreement to restraint a servant from completing for 5 years after the period of service, is void. **{Brahamputra Tea Co., v. E. Scarth}**

AGREEMENTS IN RESTRAINT OF LEGAL PROCEEDINGS:

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According to Section 28, the following two agreements amount to restraint of legal proceedings and are thus void to the extent.

(a) **Agreements Restricting Enforcement of Right:** An agreement by which any party is restricted absolutely from enforcing his legal rights under or in respect of any contract is void to that extent.

Example: A clause in a contract provided tat no action should be brought upon it in case of breach. Such a clause is void because it restricts both parties from enforcing their legal rights.

Note: - where two courts have jurisdiction to try a suit, an agreement between th4e parties that the suit should be filed in one of those courts alone and not in the other in not invalid. **[CO Milton & Co. & v. Ojha Automobile Co.]**

(b) **Agreements Limiting the Period of Limitation:** An agreement, which limits the time within which an action may be brought so as to make it shorter than that prescribed by the Law of Limitation, is void because its object is to defeat the provisions of law.

Example: A clause in a contract provides that no action should be brought after two years. Such a clause is void because it limits the period of limitation to two years w3hich is less than the period of limitation (Le: three year) prescribed by the law of limitation.

UNCERTAIN AGREEEMTNS

An uncertain agreement means an agreement the meaning of which is not certain or capable of being made certain. Such agreements are void.

Example: A agrees to sell **B** a hundred ton of **oil**. There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty.

WAGERING AGREEMENTS (SECTION 30)

Meaning of Wagering Agreements

An agreement between two person under which money or money's worth is payable by one person to another on the happening or non-happening of a future uncertain event is called a wagering event. Such agreements are chance or oriented and therefore, completely uncertain.

Essentials of Wagering Agreement

The aforesaid definition highlights the following essentials of wagering agreement:

(a) **Promise to pay Money or Money's Worth:** The wagering agreement must contain a promise to pay money or money's worth.

(b) **Uncertain Event:** The performance of the promise must depend upon the determination of an uncertain event. An event is said to be uncertain when it is yet to take place or it might have already happened but the parties are not aware of its result.

(c) **Mutual Chances of Gain or Loss:** Each party must stand to win or lose upon the determination of an uncertain event. If either of parties may win but cannot lose or may lose but cannot win, it is not a wagering agreement.

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(d) Neither Partly to have Control over the Event: neither party should have control over the happening of the event one-way or the other.

(e) No other Interest in the Event: Neither party should have interest in the happening or non-happening of the event other than the sum or stake he will win or loose.

Example of Wagering Agreements

(a) An agreement to settle the difference between the contract price and market price of certain goods or shares on a particular day.

(b) A lottery (i.e. a game of change), but parties running a Govt. approved lottery cannot be prosecuted.

(c) An agreement to buy a lottery ticket.

(d) A crossword puzzle in which prizes depend upon correspondence of the competitor's solution with previously prepared solution kept with the editor of newspapers is a lottery and hence a wagering transaction **[State of Bombay v. R.M.D. Chamarbaughwala]**. But a crossword puzzle is generally a game of skill and intelligence and hence nor a wager.

Effect of Wagering Agreement (Section 30) The effects of wagering agreements are given as under:

(a) Agreements by way of wager are void in India.

(b) Agreements by way of wager have been declared illegal in the states of Maharashtra and Gujarat.

(c) No suit can be filed to recover the amount won on any wager.

(d) Transactions, which are collateral to wagering agreements, are not void in India except in the State of Maharashtra and Gujarat.

(e) Transactions, which are collateral to wagering agreements, are illegal in the states of Maharashtra and Gujarat.

Example: A Cricket match is to be held between India and Pakistan. **X** agrees to pay Rs.1 lakh to **Y** if India wins the match and agrees to deposit the money with **Z** a third person of confidence for this purpose. **X** borrows Rs.1 lakh from **W**. The implications of this case are summarized as under:

(a) The agreement between **X** and **Y** is a wagering agreement because the performance of an agreement depends upon the happening or non-happening of a future uncertain event and each party stands to win or loose.

(b) If India wins the match, **Y** (a winner) cannot recover the amount but **X** (a looser) can recover if the amount has not been paid to **Y**. Thus, a winner cannot recover the amount but a looser can if the amount has not been paid to the winner.

(c) If India wins the match and **Z** (a stakeholder) pays the money to **y** (a winner), **X** (a looser) cannot recover it from **Z[Bridger v. Savage].**

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DISTICTION BETWEEN CONTRACTS OF INSRANCE AND WAGERING AGREEMENT

The contracts of insurance differs from the wagering agreements in the following respects:

Basis of distinction	Contracts of Insurance	Wagering agreement
1. Insurable Interest	Person having an insurable interest can insure his life or property.	Parties to a wagering agreement need not have insurable interest.
2. Actual amount payable.	In case of contracts of insurance except life insurance, the actual amount payable need not necessarily be the full amount for which the property is insured.	In case of wagering agreements, the actual amount payable is usually fixed.
3. Beneficial/against the public policy.	These are regarded as beneficial to the public policy.	These are considered to be against public policy.
4. Gamble	Such agreements do not tantamount to gambling as they involve the element of investment and protection.	Being chance oriented, these are closer to gambling.

AGREEMENTS CONTINGENT ON IMPOSSIBLE EVENTS (SEC - 36)

According to Section 36 of the Indian Contract Act, 1872 contingent agreements to do or not to do anything, if an impossible event happens are void whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made.

Example: A agrees to pay Rs.1000/- if **B** marries **C** (a Hindu) who is already married to **D**. This agreement is void.

AGREEMENTS TO DO IMPOSSIBLE ACTS (SEC - 56)

According to Section 56 of the Indian Contract Act, 1872, **"An agreement to do an impossible act is void".**

Example:A undertakes to put life into the dead wife of **B**. This agreement is void.

RESTITUTION [SEC – 64 & 65]

Restitution means **'return or restoration of benefit'.** The provisions relating to 'restitution' are given below:

Case	Provision
(a) When a person at whose option a contract is voidable rescinds it [Section – 64].	The party rescinding a voidable contract must restore the benefit to the person from whom he has received it.
(b) When an agreement is discovered to be void or the contract becomes void [Section – 65].	The person who has received any benefit or advantage under such agreement of contract must restore it or compensate for it to the person from whom he has received it.

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Example: A, a lady singer contracts with B the manager of a theatre to sing at his theatre for two nights every week during the next two months and B agrees to pay her Rs.100 for each night's performance. On the sixth night, A wilfully absents herself form the theatre and B in consequence rescinds the contract, B must pay to A for the five nights on which she has sung.

Non-applicability of the Principle of Restitution

The principle of restitution does not apply to contacts, which are void ab-initio with the exception where the minor has entered into agreement by misrepresenting his age.

Example: X pays Rs.1000/- to Y to beat Z. Y does not beat Z. X claims Rs.1000/- from Y. X cannot recover anything because this agreement is void ab-initio.

MEANING AND ESSENTIAL FEATURES OF A CONTINGENT CONRACT

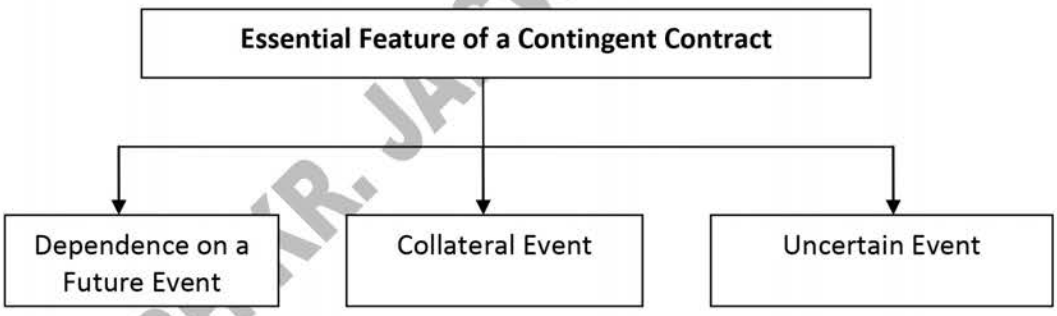
A **'contingent contract'** is a contract to do or not to do something if some event, collateral to such contract, does or does not happen. Insurance contracts provide the best example of contingent contracts.

Example - I: A contracts to pay B Rs.10,000/- if B's house is burnt. This is a contingent contract.

Example – II: A promises to pay B Rs.1 crore if a certain ship does not return within a year.

Essential Features of a Contingent Contract

The essential features of a Contingent Contract are shown below;



Let us discuss them one by one.

(a) **Dependence on a Future Event:** The performance of a contingent contract depends upon the happening or non-happening of some future event.

(b) **Collateral Even:** The event must be collateral to the contract.

(c) **Uncertain Event:** The event must be uncertain.

Note: The performance of a contingent contract must depend upon the happening or non-happening of an event and not on the mere will of the promisor. For **Example:-** If A promises to pay to B Rs.10,000/- if he so chooses, it is not a contingent contract.

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RULES REGARDING CONTINGENT CONTRACTS [SEC – 32 TO 36]

The various rules regarding the enforcement of contingent contract are given below:

Kind of contingent Contract	Rule Regarding Enforcement
1. Contracts contingent upon the happening of an uncertain future event. **(Section – 32)**	Law cannot enforce such contracts unless and until that event has happened. If the vent becomes impossible, such contracts become void. **Example:** A makes a contract with B to buy B's horse if A survives C. Law cannot enforce this contract unless and until C dies in A's lifetime. **Example:** A makes a contract with B to sell a horse to B at a specified price, if C, to whom the horse has been offered, refuses to buy him. The contact cannot be enforced by law unless and until C refuses to buy the horse.
2. Contracts contingent upon the non-happening of a certain future event. **(Section-33)**	Such contracts can be enforced when the happening of that event becomes impossible and not before. **Example:** A agrees to pay B a sum of money if a certain ship does not return. This ship is sunk. The contract can be enforced when the ship sinks.
3. Contracts contingent upon the future conduct of a living person **(Section – 34).**	If the uncertain event is the future conduct of a living person, such event shall be considered impossible if that such person does anything by which it becomes impossible to perform the contract within any definite time. **Example:** A agrees to pay to B a sum of money if B marries to C. C marries to D. The marriage of B to C must now be considered impossible, although it is possible that D may dies, and that C may afterwards marry to B.
4. Contracts contingent upon the happening of an uncertain specified event within a fixed time **(Section 35).**	Such contracts become void if before the expiry of fixed time; **(a)** Such event does not happen, or **(b)** Such event becomes impossible. **Example:** A promises to pay to B a sum of money if a certain ship returns within a year. The contract may be enforced if the ship returns within the year, and become void if the ship is burnt within the year.

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5.	Contracts contingent upon the non-happening of an uncertain specified event within a fixed time. **(Section – 36).**	Such contracts can be enforced by law if before the expiry of fixed time; **(a)** Such event does not happen, or **(b)** It becomes certain that such event will not happen. **Example:** A promises to pay to B a sum of money if a certain ship does not return within a year. The contract may be enforced if the ship does not return within the year, or is burnt within the year.
6.	Agreements contingent upon impossible events. (Section – 36)	Such agreements are void whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made.

DISTINCTION BETWEEN A WAGERING AGREEMENT AND A CONTINGENT CONTRACT

A wagering agreement differs upon a contingent contract in the following ways:

Basis of Distinction		**Wagering Agreement**	**Contingent Contract**
1.	Reciprocal promises	It consists of reciprocal promises.	It may or may not consist of reciprocal promises.
2.	Void /valid	It is void.	It is void.
3.	Main/Collateral Future Event.	Future event is essential to the contract.	Future event is collateral to the contract.
4.	Nature	It is always of a contingent nature.	It may not be of a wagering nature.
5.	Interest of Parties	Its parties have no other interest in the subject matter of the agreement except wining or losing of wagering amount.	Its parties may have other interest as well.

MEANING OF DISCHARGE OF A CONTRACT

Discharge of a contract means termination of the contractual relations between the parties to a contract. A contract is said to be discharged when the rights and obligations of the parties under the contract come to an end.

Modes of Discharge of Contract

A contract can be discharged by performance in any of the following ways:

(a) By Actual Performance: A contract is said to be discharged by actual performance when the parties to the contract perform their promises in accordance with the terms of the contract.

(b) By attempted Performance or Tender: So far as the tenderer of performance is concerned, a contract is said to be discharged by attempted performance when the promisor has made an offer of performance to promisee but it has not been accepted by the promisee.

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Discharge by Mutual Agreement

Since a contract is created by mutual agreement, it can also be discharged by mutual agreement. A contract can be discharged by mutual agreement in any of the following ways:

(a) Novation (Section – 62): Novation means the substitution of a new contract for the original contract. Such a new contract may be either between the same parties or between different parties. The consideration for the new contract is the discharge of the original contract. Such a new contract may be either between the same parties or between different parties. The consideration for the new contract is the discharge of the original contract.

Example: A owes money to B under a contract. It is agreed between A, B and C that B shall henceforth accept C as his debtor, instead of A. The old debt of A to B no longer exists and a new debt from C to B has been contracted.

(b) Rescission (Section 62) Rescission means cancellation of the contract by any party or all the parties to a contract.

Example: X promises Y to sell and deliver 100 bales of cotton on 1st October at his godown and Y promises t pay for goods on 1st November. X does not supply the goods. Y may rescind the contract.

(c) Alteration (Section 62) Alteration means a change in the terms of a contract with mutual consent of the parties. Alteration discharges the original contract and creates a new contract. However, parties to the new contract must not change.

Example: X promises to sell and deliver 100 bales of cotton on 1st October and Y promises to pay for goods on 1st November. Afterwards, X and Y mutually decide that the goods shall be delivered in five equal instalments at Z's godown.

(d) Remission (Section 63) remission means acceptance by the promisee of a lesser fulfilment of the promise made. According to Section 63, 'Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for which performance, or may accept instead of it any satisfaction which he thinks fit.'

Example: A promises to paint a picture for B. B afterwards forbids him to do so. A is no longer bound to perform the promise.

(e) Waiver: Waiver means intentional relinquishment of a right under the contract. Thus, it amounts to releasing a person of certain legal obligation under a contract.

Example: A promises to supply goods to Y. Subsequently, Y exempts X from carrying out the promise. This amounts to waiving the right of performance on the part of Y.

Discharge by Operation of Law

A contract may be discharged by operational of law in the following cases.

(a) By Death of the Promisor: A contract involving the personal skill ability of the promisor is discharged o the death of the promisor.

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(b) By Insolvency: When a person is declared insolvent, he is discharged from his liability up to the date of his insolvency.

(c) By Unauthorised Material Alteration: If any party makes any material alteration in the terms of the contract without the approval of the other party, the contract comes to and end.

(d) By the Identity of Promisor and Promisee: When the promisor becomes the promisee, the other parties are discharged.

Example: X draws a bill receivable on Y who accepts the same. X endorses the bill in favour of Z who in turn endorses in favour of Y. Here, Y is both promisor and promisee and hence the other parties are discharged.

Discharge by Impossibility of Performance

The effects of impossibility of the performance of a contract ma be discussed under the following two heads:

(a) Effects of Initial Impossibility

(b) Effects of Supervening Impossibility

(a) Effects of Initial Impossibility (Section 56 Para's 1 and 3): Initial impossibility means the impossibility existing at the time of making the contract. The effects of initial impossibility are as under;

Case		Effects
1.	Where both the promisor and promisee know about the initial impossibility.	Such agreement is void ab-initio. **Example:** X undertakes to put life into the dead wife of Y. This agreement is void.
2.	Where both the promisor and promisee do not know the initial impossibility.	Such agreement is void on the ground of mutual mistake. **Example:** X agrees to sell his horse to Y. Unknown to both the parties, the horse was dead at the time of making the agreement. This agreement is void.
3.	Where the promisor a lope know about the initial impossibility.	Such promisor must compensate for any loss, which such promsee sustains through the non-performance of the promise.
4.	Where an act becomes unlawful by reason of some even beyond the control of promisor.	The contract to do such an act becomes void when the act becomes unlawful. (Section – 56 Para 2).
5.	Where the promisor alone knows about the impossibility.	Such promisor must compensate the promisee for any loss, which such promisee might have suffered on account of non-performance of the promise. (Section – 56 Para 2).

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6.	Where an agreement is discovered to be void or where a contract becomes void.	Any person who has received any benefit under such agreement or contract is bound to restore it or to make compensation for it, to the person from whom he received it. (Section 65). **Example:** X contracts to sign for Y at a concert for Rs.1000/-, which is paid in advance. X is too ill to sign. X must refund Rs.1000/- to Y.

(b) Effects of Supervening Impossibility (Sec –56 Para 2): Supervening impossibility means impossibility which does not exists at the time of making the contract but which arises subsequently after formation of the contract. The effects of supervening impossibility are as under:

Case	Effect
1. Where an act becomes impossible after the contract is made.	The contract to do such an act becomes void when the act becomes impossible. (Section – 56 Para 2).

Cases when a Contract is discharged on the Ground of Supervening Impossibility:

A contract is discharged by supervening impossibility in the following cases:

(a) Destruction of Subject Matter: The contract is discharged if the subject matter of the contract is destroyed after the formation of the contract without any fault of either party.

Example: X agreed to sell his cop of wheat. The entire crop was destroyed by fire though no fault of the party. The contract was discharged.

(b) Death or Personal Incapacity: The contract is discharged on the death or incapacity or illness of a person if the performance of a contract depends on his personal skill or ability.

Example: X agreed to sign on a specified day. X fell seriously ill and could not perform on that day. The contract was discharged.

(c) Declaration of War: The pending contracts at the time of declaration of war are either suspended or declared as void.

Example: X contracts to take in cargo for Y at a foreign port. X's government afterwards declares war against the country in which the port is situated. The contract becomes void when the war is declared.

(d) Change of Law: The contract is discharged if the performance of the contract becomes impossible or unlawful due to change in law after the formation of the contract.

Example: X agreed to sell his land to Y. After the formation of the contract the Government issued a notification and qcqui8red the land. The contract was discharged. **{Shyam Sunder v. Durga}.**

(e) Non-Existence or Non-Occurrence of a Particular State of Things Necessary for Performance: The contract is discharged if that particular state of thing, which forms the basis of a contract, ceases to exist or occur.

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Example: The contract is discharged if that particular state of thing, which forms the basis of a contract, ceases to exist or occur.

Cases when the Contract is not discharged on the Ground of supervening Impossibility: Impossibility of performance is, as a rule, not an excuse for non-performance. It means that when a person has promised to do something, he must perform his promise unless the performance becomes absolutely impossible. A contract is not discharged by the supervening impossibility in the following cases:

(a) Difficulty of Performance: A contract is not discharged simply on the ground that its performance has become more difficult, more expensive or less profitable than that agreed at the time of its formation.

Example: X agreed to supply coal within a specified time. He failed to supply in time because of government's restriction on the transport of coal from collieries. Here X will not be discharged because the coal was available in the open market from where X could have obtained.

(b) Commercial Impossibility: A contract is not discharged simply on the ground of commercial impossibility, i.e. when the contract becomes commercially unviable or unprofitable.

Example: X, a furniture manufacturer agreed to supply certain furniture to Y at an agreed rate. Afterwards, there is sharp increase in the rates of the timber and rates of wages. Since, it was no longer profitable to supply at the agreed rate, X did not supply. X will not be discharged on the ground of commercial impossibility.

(c) Default of a Third Party: A contract is not discharged if it could not be performed because of the default of third party on whose work the promisor relied.

Example: X entered into a contract with Y for the sale of goods to be manufactured by Z, a manufacturer of those goods. Z did not manufacture those goods. X will not be discharged and will be liable to Y for damages.

(d) Strikes, Lockouts and Civil Disturbances: A contract is not discharged on the grounds of strikes, lockouts and civil disturbances unless otherwise agreed by the parties to the contract.

Example: X agreed to supply to Y certain goods to be imported from Algeria. The goods could not be imported due to riots n that country. It was held that his was no excuse for non-performance of the contract. **[Jacobs v. Credit Lyonnais].**

(e) Partial Impossibility: A contract is not discharged simply on the ground of impossibility of some of the objects of the contract.

Example: X agreed to let a boat to H **(i)** to w the naval review at the coronation of king and **(ii)** to cruise round the fleet. Due to illness of the king, the naval review was cancelled but the fleet was assembled and the boat could have been used to cruise round the fleet. It was held that the contract was not discharged.

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Discharge by Lapse of Time

A contract is discharged if it is not performed or enforced within a specified period, called period of limitation. The Limitation Act, 1963 has prescribed the different periods for different contracts, e.g. period of limitation for exercising right to recover a debt is 3 ears, and to recover an immovable property is 12 years. The contractual parties cannot exercise their right after the expiry of period of limitation.

Example: On 1st July 2011 X sold goods to Y for Rs.1 lakh and Y has made no payment till Aug 2014. State of legal position as on 1st Aug 2014 **(a)** if no credit period was allowed **(b)** if 2 months credit period was allowed.

Solution:

Case (a) The contract is discharged by lapse of time (i.e. 3 years) from 1st July 2011 because the debt has become time barred and hence X cannot exercise his right to recover this debt.

Case (b) The contract is not discharged by lapse of time because the period of limitation is year to expire on 31st Aug 2014 (i.e.3 year from the expiry of the credit period).

Discharge by Breach of Contract

A contract is said to be discharged by breach of contract if any party to the contract refuses or fails to perform his part of the contract or by his act makes it impossible to perform his obligation under the contract. A breach of contract may occur in two ways.(refer to next chapter)

BREACH OF CONTRACT

MEANING OF BREACH OF CONTRACT

A breach of contract occurs if any party refuses or fails to perform his art of contract or h his act makes it impossible to perform his obligation under the contract. In case of breach, the aggrieved party (i.e. the party not at fault) is relieved from performing his obligation and gets a right to proceed against the party at fault. A breach of contact may arise in two ways: - **(a)** Anticipatory breach and **(b)**Actual breach.

ANTICIPATORY BREACH OF CONTRACT

Meaning of Anticipatory Breach of Contract (Sec – 39)

Anticipatory breach occurs when the party declares his intention of not performing the contract before the performance is due. Thus, when a party refuses to perform a contract eve before it is due for performance, it is called anticipatory breach.

Modes of Declaring an Intention not performing the Contract (Section - 39)

A party may declare his intention of not performing the contract in the following ways:

(a) When a party to a contract has refused to perform his promise.

Example: X, a farmer agrees to sell to Y his entire crop of 10 tons of wheat @ Rs.8000/- per ton to be delivered on 20th October. On 1st October, X informs Y that he is not going to supply the goods. X has committed anticipatory breach of contract b express repudiation.

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(b) When a party to a contract has disabled himself from performing his promise in it, entirely.

Example: X, a farmer agrees to sell t Y his entire crop of 10 tones of wheat @ Rs.8000/- per ton to be delivered on 20th October. On 1st October, X sold his entire crop to Z @ 10000/- per ton. X has committed anticipatory breach of contract by implied repudiation.

Options Available to Aggrieved Party (Section – 39)

In case of anticipatory breach, the aggrieve party has the following two options:

(a) He can rescind the contract and claim damages for breach of contract with out waiting until the due date for performance, or

(b) He may treat the contract as operative and wait till the due date for performance and claim damages if the promise still remains unperformed.

Consequences of Treating Contract as Operative

In case of anticipatory breach, if the aggrieved party treats the contract as operative and waits till the due date for performance, the consequences will be as follows:

(a) The promisor ma performs his promisor or before the due date of performance and the promisee will be bound to accept the performance.

(b) The promisor may take advantage of the discharge by supervening impossibility arising between the date of breach and the due date of the performance and in such a case, the promisee shall lose his right to sue for damages.

Example: X, a farmer agreed to sell to Y his entire crop of wheat @ Rs.8000/- per ton to be delivered on 20th October. On 1st October, X informed Y that he was not gong to supply the goods. Y decided not to rescind the contract on 1st October and to wait till 20th October. On 19th October, the entire crop was destroyed by fire without the fault of either party. Since the contract had become void on the ground of impossibility of performance, Y had lost his right to sue X for damages.

Amount of Damages

The amount of damages in each of the options exercised by an aggrieved party will be calculated as under

Option Exercised	Amount of Damages
I. When the aggrieved party rescinds the contract at the date of breach.	The amount of damages will be equal to the difference between the price prevailing on the date of breach and the contract price.
II. When the aggrieved party does not rescind the contract at the date of breach.	The amount of damages will be 3equal to the difference between the price prevailing on the due date of performance and the contract price.

Example: X, a farmer, agreed to sell t Y his entire crop of 10 tons of wheat @ Rs.8000/- per ton to be delivered on 20th October. On 1st October X informed Y that he was not going to supply the goods. Calculate the amount of damages, which could be recovered by Y from X **(a)** If Y rescinded the contract on 1st October when the market price of wheat was Rs.10000/- per ton,

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(b) If Y did not rescind the contract on 1st October and waited till 20th October when the market price of wheat was Rs.12000/- per ton.

Solution:

Case	A Market price Per ton	B Contract price per ton	C = (A-B) Difference per ton	D Quantity in tons	E = (C*D) Amount of
1. If Y rescinded the Contract.	Rs.10000/-	Rs.8000/-	Rs.2000/-	**10**	Rs.20000/-
2. If Y did not rescinded the Contract.	Rs.12000/-	Rs.8000/-	Rs.4000/-	**10**	Rs.40000/-

ACTUAL BREACH OF CONTRACT

Meaning of Actual Breach of Contract

Actual breach of contract may take place in any of the following two ways:

(a) On Due Date of Performance: If any party to contract refuses or fails to perform his part of the contract at the time fixed for performance, it is called an actual breach of contract on due date of performance.

Example: X agreed to sell to Y 10 tons of wheat @ Rs.8000/- per ton to be delivered in two equal instalments on 20th October and 21st October. On 20th October, x refused to deliver the goods. It is an actual breach of contract on due date of performance.

(b) During the Course of Performance: If any arty has performed a part of the contract and then refuses or fails to perform the remaining part of the contract, it is called breach of contract during the course of performance.

Example: X agreed to sell to Y 10 tons of wheat @ Rs.8000/- per ton t be delivered in two equal instalments on 20th October and 21st October.

On 20th October, X delivered 5 tons and refused to deliver remaining 5 tons. It is an actual breach of contract during the course of performance.

Consequences of Actual Breach (Section – 55)

The consequences of actual breach depend upon whether the time was the essence of the contract or not. The consequences I both the cases may be summarised as under:

Case	Where time is the essence of a contract.	Where time is not the essence of a contract
I. Whether the contract becomes voidable at the option of the promisee?	**Yes**	**No**

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II.	Whether the promsee is entitled to claim compensation for any loss occasioned to him by the non-performance of the promise at the stipulated time?		
(i)	Where performance beyond the stipulated time is not accepted.	**Yes**	**Yes**
(ii)	Where performance beyond the stipulated time is accepted.	No Unless the promsee gives notice to the promisor of his intention to do so.	No Unless the promisee give notice to the promisor of his intention to do so.

Example: X, a singer, enters into a contact with Y, the manager of a theatre, to sign at his theatre two nights in every week for the next two months. Y agrees to pay her Rs.100/- for each performance. On the sixth night, X wilfully absents herself from the theatre. In this case, Y has the following two potions:

(a) Y may rescind the contract and claim compensation for the loss occasioned to him by Xs failure to sing on the sixth night.

(b) Y may permit X to sing on the seventh night and claim compensation for loss from X by giving a notice to X of his intention to do so.

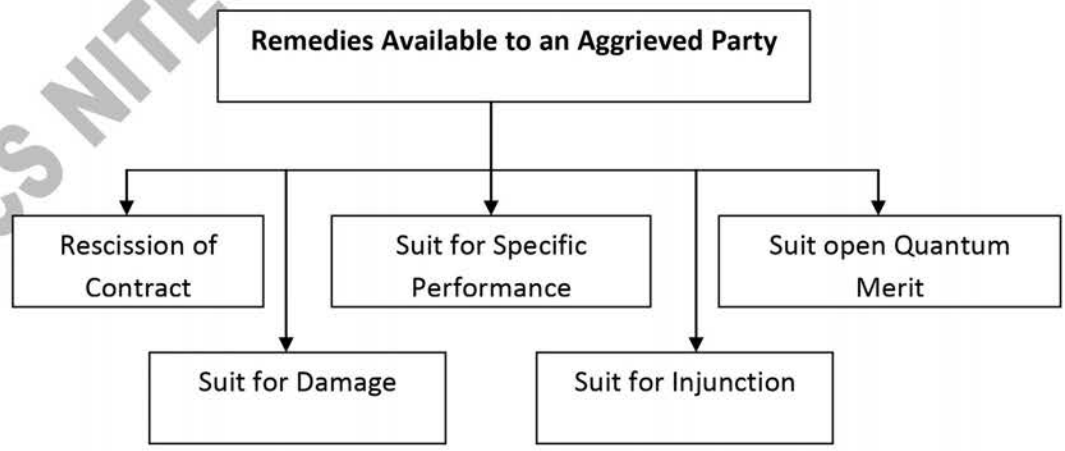
REMEDIES FOR BREACH OF CONTRACT

Meaning of Remedy

A remedy is the course of action available to an aggrieved party (i.e. the party not at default) for the enforcement of a right under a contract.

Remedies for Breach of Contract

The various remedies available to an aggrieved party are as shown below in the figure:



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Let us discuss them one by one:

1. **Rescission if contract (Section – 39):** In case of breach of a contract, the promise may put an end to the contract. In such a case, the aggrieved party is discharged from all the obligations under the contract and is entitled to claim compensation for the damage, which he has sustained because of the non-performance of the contract.

   Example: X agrees to supply 10 tons of wheat to Y on 20th October. Y promises to pay for the goods on its receipt. X does not supply the goods on the due date. Here, Y is discharged from the liability of paying the price. Y is entitled to rescind the contract and to claim compensation for the damage, which he has sustained because of non-supply of goods on the due date.

2. **Suit for Damages:** damages are monetary compensation allowed for loss suffered by the aggrieved party due to breach of a contract. The object of awarding damages is not to punish the party at fault but to make good the financial loss suffered by the aggrieved party due to the breach of contract.The types of Damages as follows

   (a) Ordinary Damages: Ordinary damages are those, which naturally arise, in the usual course of things from such breach. These damages can be recovered if the following two conditions are fulfilled:

   (i) The aggrieved party must suffer by breach of contract, and

   (ii) The damages must be proximate (i.e. direct) consequences ofthe breach of contract and no the indirect consequences.

   Measures of Ordinary Damages: In a contact for the sale of goods, the measure of ordinary damages is the difference between the contract price and the market price of such goods on the date of breach.

   Example: On 1st December, X contracted to sell and deliver 50 tons of wheat @ Rs,8000/- per ton to Y on 1st January. On 20th December Y, afterwards, contracted to sell those goods to Z at Rs.10000/- per tons. X failed to deliver goods on 1st January when the price of the wheat was Rs.9500/- per ton. Y is entitled to recover Rs.75000/- [Le (Rs.9500 – Rs.8000) x 50]. Y is not entitled to recover Rs.1,00,000/- as profit which would have arisen to Y from the sale to Z because the profit is the indirect consequences of the breach of contract.

   (b) Special Damages: Special damages are those, which may reasonably be supposed to have been in the contemplation of both parties as the probable result of the breach of contract. These damages can be recovered if the special circumstances, which would result in a special loss in case of breach of a contract, are communicated to the promisor, e.g. loss of profit on account of default by the other party to the contract can be claimed only when an advance notice of such damages has been given before.

   Example: A, a builder, contracts to erect and finish a house by the first of January, in order that B may give possession of it at that time to C, to whom B has contract to let it.

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A is informed of the contract between B and C. A builds the house so badly that, before the first of January it falls down, and has to re-built by B, who, in consequence, loses the rent which he was to have received from C, and is obliged to made compensation to C for the breach of his contact. A must make compensation to B for the cost of rebuilding the house, for the rent lost, and for the compensation made to C.

(c) **Exemplary or Punitive or Vindictive Damages:** Exemplary damages are those, which are in the nature of punishment. The court may award these damages in case of **(i)** a breach of promise to marry, where damages shall be calculated on the basis of mental injury sustained by the aggrieved party, and **(ii)** Wrongful dishonour of a cheque by a banker. In case of wrongful dishonour of a cheque, the rule is smaller the amount of the cheque, larger will be the amount of damages awarded. A trader may recover such damages as wrongful dishonour of cheque shall adversely affect his goodwill but a non-trader whose cheque is wrongfully dishonoured will have to prove the losses of goodwill before claiming such damages.

(d) **Nominal Damages:** Nominal damages are those, which are awarded where there is only a technical violation of a legal right but the aggrieved party has not in fact suffered any loss because of breach of contract. These damages are called nominal because they are very small, say, one rupee. The court may or may not award these nominal damages.

(e) **Damages for Inconvenience and Discomfort:** If a party have suffered physical inconvenience and discomfort due to breach of contract, that party can recover the damages for such inconvenience and discomfort.

Example: H with his wife and children booked a ticket for a midnight train, to be transported to a particular place where he lived. They were, however, transported to a wrong place and they had to walk several miles on a drizzling night and as a result, his wife caught cold and he had to incur some medical expenses. It was held that he could recover compensation for inconvenience and not for medical expenses for the sickness of his wife because it was very remote consequence.

(f) **Liquidated Damages and Penalty:** When the parties to a contract at the time for formation of contract, specify a sum which will become payable by the party responsible for breach, such specified sum is called:

(i) **Liquidated Damages:** If the specified sum represents a fair and genuine pre estimate of the damages likely to result due to breach;

(ii) **Penalty:** If the specified sum is disproportionate to the damages likely to result due to breach.

In India, there is no distinction between penalty and liquidated damages. The Courts in India allow only reasonable compensation not exceeding the specified sum **(Section – 74).But** under English law, liquidated damages are enforceable and not penalty.

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(g) **Forfeiture of Security deposit (or Earnest Money):** A clause in a contract, which provides for forfeiture of security deposit in the event of failure to perform is in the nature of a penalty. In such cases, the court may award reasonable compensation only.

3. **Suit for Specific Performance:** Suit for specific performance means demanding the court's direction to the defaulting party to carry out the promise according to the terms of the contract.

   Example: X agreed to sell an old painting to Y for Rs.50000/-. Subsequently, X refused to sell the painting. Here, Y may file a suit against X for the specific performance of the contract.

   Cases where suit for specific performance is not maintainable.

   - Where the damages are considered as an adequate remedy.
   - Where the contract is of personal nature, e.g. contract to marry.
   - Where a company beyond its powers makes the contract as lay down in its Memorandum of Association.
   - Where the court cannot supervise the performance of the contract.
   - Where one of the parties is a minor.
   - Where the contract is inequitable to either party.

4. **Suit for Injunction:** suit for injunction means demanding court's stay order. Injunction means an order of the court, which prohibits a person to do a particular act. Where a party to a contract does something, which he promised not to do, the court may issue an order prohibiting hi from doing so.

   Example: W agreed to sing at L's theatre only during the contract period. During the contract period, W made contact with Z to sing at another theatre and refused to perform the contract with L. It was held that W could be restrained by injunction from singing from Z **[Lumely v. Wagner].**

5. **Suit for Quantum Merit:** quantum Merit means a s much as is earned. Right to Quantum Merit means a right to claim the compensation for the work already done.

   Example: C an owner of a magazine engaged P to write a book to be published by instalments in his magazine. After a few instalments were published, the publication of the magazine was stopped. It was held that P could claim payment for the part already published **[Planche v. Calbum].**

Contracts of Indemnity & Guarantee

Contracts of Indemnity

- **Meaning and Definition**

  The term **'indemnity'** means to **make good** the loss suffered by a **party**. According to sec.124

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"**A contract** by which one party promises to **save** the other from **loss** caused to him **by** the conduct of the Promissory himself **or** by the conduct of any **other** person, is **called** a contract of indemnity." The **person**who promises to **compensate** for the loss is called the "**indemnifier" and** the person **to whom** this promise is made or whose loss is to be made good is known as **"indemnity-holder" or "indemnified".**

Example:' A' contracts to indemnify 'B' against the consequences of any proceedings which 'C' may take against 'B' in respect of a certain sum of money. This is a contract of indemnity.

ESSENTIALS OF VALID CONTRACT OF INDEMNITY

Under a contract of indemnity, **loss to promisee** is essential.

The law relating to indemnity is **not exhaustive** and hence Courts **in India** shall **follow the English Law** in this regard. In English Law, indemnity is **defined** as a "promise to save another harmless from the loss caused as a result of a transaction entered into at the instance of the Promisor". Thus, the contract of **indemnity** must **specify** that indemnity holder shall be protected from the **losscaused due to:**

1. Action of the **promissory** himself. Or
2. The action of any **other person**.or
3. **Any event** or accident which is **not** in the control of the parties.

A contract of **indemnity** like any other contract may be **express or implied.**

In a contract of indemnity, all the **essentials of a valid contract** must be present. Thus, if the object or consideration of an indemnity agreement is unlawful, it cannot be enforced.

Example

'A' asks 'B' to beat 'C' promising to indemnify him against the consequences. The promise of 'A' cannot be enforced. Suppose 'B' beats 'C' and is fined Rs.1000, 'B' cannot claim this amount from 'A' because the object of the agreement is unlawful.

- ***Rights of Indemnity-holder***

As per Section 125 of the Indian Contract Act, the indemnity-holder is entitled to recover from the Promisor:

1. All damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies.

All costs of suit which he has paid in bringing or defending the suit provided: (a) he acted under the authority of the indemnifier and; **(b)** he acted in such away as a prudent man would act in his own case.

All sums, which he may have paid under the terms of any compromise of any, such suit, if which it would have been prudent for the promisee to make.

- ***Rights of Indemnifier***

The Act makes no mention of the rights of am indemnifier. It has been held in Jaswant Singh v. Section of State that his rights, in such cases, are similar to the fights of a surety under

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Section 141, viz., he becomes entitled to the benefits of all the securities which the creditor has against the principal debtor whether he was aware of them or not.

- ***Commencement of Indemnifier's Liability***

An important question with respect to contracts of indemnity is as to when does the indemnifier become liable to pay, or, when is the indemnity-holder entitled to recover on his indemnity? The indemnity-holder is entitled to above-mentioned rights as soon as his liability has become certain although he has himself paid nothing. Indemnity is not necessarily repayment after payment. Indemnity-holder has incurred an absolute liability, he is entitled to ask the indemnifier to save him from that liability and pay it off. In simple words, the liability of indemnifier commences as soon as the liability of the indemnity-holder becomes absolute.

CONTRACTS OF GUARANTEE

- **Meaning and Definition**

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

Example

When 'A' requests 'B' to lend Rs.10, 000 to 'C' and guarantees that 'C' will repay the amount within the agreed time and that on 'C' failing to do so, he will himself pay to 'B', there is a contract of guarantee.

In the above example, 'B' is the creditor, 'C 'the principal debtor and 'A', the surety or guarantor.

In India a contract of guarantee may dither be oral or in writing, but under English Law it must be in writing.

From the above definition, it is clear that in a contract of guarantee there are, in effect, three contracts, a principal contract between the principal debtor and the creditor, and a secondary contract between the creditor and the surety.

Then, there is a third implied contract between the surety and the principal debtor where by principal debtor is under an obligation to indemnify the surety; if the surety is made to pay or perform.

- ***Essential Features of Guarantee***

Following are the requisites of a valid guarantee:

- **Existence of a debt**

The purpose of a guarantee being to secure a debt, the existence of a recoverable debt is necessary. It is of the essence of a guarantee that there should be someone liable as a

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principal debtor and the surety undertakes to be liable on his default. If there is no valid existing debt, there can be no valid guarantee.

Example

'A' gives the guarantee to 'B' for the payment of a time-barred debt due from 'C'. This is not a valid contract of guarantee because the primary liability between 'B' and 'C' is not enforceable by law. In case 'A' pays the amount, he cannot recover it from 'C'.

- **Consideration [Section 127]**

  Like every other contract, a contract of guarantee should also be supported by some consideration. But there need not be direct consideration between the surety and the creditor. Section 127 clearly says that anything don, or any promise made, for the benefit of a principal debtor, may be sufficient consideration to the surety for giving the guarantee.

  Examples

  'B' requests 'A' to sell and deliver to him goods on credit. 'A' agrees to do so provided 'C' will guarantee the payment of the price of the goods. 'C' guarantees the payment in consideration of 'A' s promises to delicate goods. This is a sufficient consideration for 'C's promise.

  'A' sells and delivers goods to 'B'. 'C' afterwards requests 'A' not to sue 'B' for the debt for a year, and premises that if he does so, 'C' will pay in default of payment by 'B'. 'A' agrees not to sue as requested. This is a sufficient consideration for 'C' s promise.

  'A' sells and delivers goods to 'B'. 'C' afterwards, without consideration, agrees to pay for them in default of 'B'. The agreement is void.

- There should be no misrepresentation or concealment [Section 142-143]

  A contract of guarantee is not a contract " uberrimae fidei" (requiring utmost good faith). Nevertheless, the suretyship relation is one of trust and confidence, and the validity of the contract depends upon good faith on the part of the creditor. A creditor must disclose all those facts, which, under the circumstances, the surety would expect not to exist. So where guarantee is given for goods conduct of an employee, will discharge the surety.

  Example

  'A' employs 'B' as clerk to collect money for him. 'B' fails to account for some of his receipts, and 'A' in consequence, calls upon him ('B') to furnish security for his duly accounting. 'C' gives the guarantee for 'B' s duly accounting. 'A' did not inform 'c' about 'B' s previous conduct. 'B', afterwards, makes default. Here the guarantee given by 'C' is invalid because it was obtained by concealment of facts by 'A'

- ***Writing not necessary [Section 126]***

  Section 126 expressly declares that a guarantee may be either oral or written. However, in England under the provisions of Section 4 of the Statute of frauds, a guarantee is not enforceable unless it is "in writing and signed by the party to be charged".

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- ***Distinction between Contract of Indemnity and Contract of Guarantee***

  L.C. Mather in his book "Securities Acceptable to the Lending Banker" has very briefly, but excellently, brought out the distinction between indemnity and guarantee by the following illustration. A contract in which 'A' says to 'B', 'If you lend Rs. 20,000 to 'C', I will see that your money comes back is an indemnity. On the other hand, an undertaking in these words, 'If you lend Rs. 20,000 to 'C', and he does not pay you, I will' is a guarantee.

  Following are the main points of difference between a contract of indemnity and a contract of guarantee:

  In a contract of indemnity there are only two parties, i.e., indemnifier and the indemnity-holder while in a contract of guarantee there are three parties, viz., principal debtor, creditor and the surety.

  In a contract of indemnity there is only one contract, where in a contract of guarantee, there are three contracts.

  In a contract of indemnity, the liability of indemnifier is primary and independent while in a contract of guarantee the liability of surety is secondary i.e., it arises only on the default of principal debtor. The primary liability is that of the principal debtor.

  In a contract of indemnity, indemnifier's liability arises only on the happening of a contingency, while in a contract of guarantee there is an existing duty or debt, the performance of which is guaranteed by the surety.

  In a contract of guarantee, if the principal debtor fails to pay and the surety discharges his debt, the surety can proceed against the principal debtor in his own right, while in a contract of indemnity, the indemnifier cannot sue the third party in his own name unless there is an assignment in indemnifier's favour. If there is no such assignment, the indemnifier must bring the suit in the name of the indemnity-holder.

- Extent of Surety's Liability (Section 128)

  Unless the contract provides otherwise, in liability of the surety is co-extensive with that of the principal debtor (Section 128). In other words, the surety is liable for all those amounts; the principal debtor is liable for.

  Example

  'A' guarantees to 'B' the payment of a bill of exchange by 'C', the acceptor. 'C' dishonors the bill. 'A' is liable not only for the amount of the bill but also for any interest and charges which may have become due thereon.

  The liability of a surety is called as secondary or contingent, as his liability arises only on default by the principal debtor. But as soon as the principal debtor defaults, the liability of the surety will be liable for all those sums for which the principal debtor is liable. The creditor may file a suit against the surety without suing the principal debtor. Further, where the creditor holds securities from the principal debtor for his debt, the creditor need first exhaust his remedies against the securities before suing the surety, unless the contract specifically so provides.

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The creditor is even not bound to give notice of the default to the surety, unless it is expressly provided for.

- ***Condition precedent to Liability***

  Where there is a condition precedent to the surety's liability, he will not be liable unless that condition is first fulfilled.

  Thus, where a person gives a guarantee upon a contract that creditor shall not ant upon it until another person has joined in it as co-surety, the guarantee is not valid if that other person does not join

- ***Surety's right to limit his liability***

  The above principal, viz., the liability of surety is co-extensive with that of principal debtor, applies only where the surety undertakes to be liable for the whole debt. But it is open to him to place a limit upon his liability. He may expressly declare his guarantee to be limited to a fixed amount, for example that "my liability under this guarantee shall not at any time exceed the sum of Rs. 5 laces. In such a case, wherever may be due against the principal debtor, the liability of the surety cannot go beyond the sum so specified.

- ***Position of Surety in case of a Minor Principal Debtor***

  According to the decision of the Bombay High Court in Kashiba v.Shripat (1927) the surety can be held liable, though a minor debtor is not liable. But, the later decisions of the Bombay High Court have taken a contrary view. In Manju Mahadeo v. Shivappa Manju and in Pestonji Mody v. Meherbai, it was held that as, under Section 128, the liability of the surety is co-extensive with that of the principal debtor; it can be no more than that of the principal debtor. The surety, therefore, cannot be held liable on a guarantee given for the default by a minor. If a minor cannot be held liable for any amount, the liability of the guarantor being secondary liability does not arise at all. The same view was endorsed by the Madras High Court in the case of E. Nambiar v. Moolaki Raman (1957). It was held that unless the contract otherwise provides, a guarantor for a minor cannot be held liable.

- ***Surety a Favoured Debtor***

  Surety has always been considered a 'Favoured Debtor'. Surety is liable only when principal debtor does not pay, i.e., liability is of secondary nature, the primary liability that of the principal debtor. Surety is considered with favour both in law and equally. This fact is brought out by the following provisions contained in law of indemnity and guarantee.

  Surety is liable only for the unpaid balance.

  Surety is not liable for fruitless litigation that the creditor may bring against the principal debtor the creditor has given a sufficient notice to this effect to the surety.

  Surety is not bound by admissions and acknowledgements made by the principal debtor before the creditor nor is he liable for judgements obtained against the principal debtor.

  The surety will not be liable where the creditor has obtained guarantee by misrepresenting a material fact relating to the contract or by keeping silent as to material circumstances, e.g.,

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obtaining a guarantee for the good conduct of an employee without disclosing to the surety his previous dishonestly.

The liability of a surety can in no case be more than that of the principal debtor. It may however, be restricted by a special term to that effect.

- ***Kinds of Guarantees***

Contract of guarantee may be classified into two types: (i) Specific guarantee; and (ii) Continuing guarantee.

- **Specific Guarantee**

When a guarantee is given in respect or a single debt or specific transaction and is to come to an end when the guaranteed debt is paid or the promise is duly performed, it is called a specific guarantee. A specific guarantee, once given, cannot be revoked. Even the death of the surety will not result in revocation of specific guarantee and the legal successor shall continue to remain liable, If corse, up to the net value of the assets inherited by him.

- **Continuing Guarantee (Section 129)**

A guarantee, which extends to a series of transactions, is called a continuing guarantee.

Examples

'A', in consideration that 'B' will employ 'C' in collecting the rents of 'B' s zamindari, promises 'B' to be responsible, to the amount of Rs.5, 000, for the due collection and payment to 'B' of those rents. This is a continuing guarantee/

'A' guarantees payment to 'B', a tea-dealer, to the amount of Rs. 50,000, for any tea he may from time to time supply to 'C'. 'B' supplies 'C' with tea to the value of Rs. 50,000, and 'C' pays 'B' for it. Afterwards, 'B' supplies 'C' with tea to the value of Rs. 1,00,000. 'C' fails to pay. The guarantee given by 'A' was a continuing guarantee, and he is accordingly liable to 'B' to the extent of Rs.50, 000.

- **Revocation of continuing guarantee [Section 130]**

A contract of guarantee may, at any time, be revoked by the surety as to future transactions, by notice to the creditor.

Examples

'A', in consideration of 'B' s discounting bills of exchange for 'C', guarantees to 'B', for twelve months, the due payment of all such bills to the extent of Rs. 50,000. 'B' discounts bills for 'C' to the extent of Rs. 20,000. Afterwards at the end of three months, 'A' revokes the guarantee. This revocation discharges 'A' from all liability to 'B' for any subsequent discount. But 'A' is liable to 'B' for Rs. 20,000, on default of 'C'.

'A' guarantees to 'B', to the except of Rs. 10,000, that 'C' shall pay all the bills that 'B' shall draw upon 'C' a bill for Rs.10, 000, 'C' accepts the bill. 'A' gives notice of revocation, 'C' dishonors the bill at maturity, 'A' is liable upon his guarantee.

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- ***Joint Debtor and Suretyship***

  Where two persons contract with third person to undertake a certain liability, and also contract with each other that one of them be liable only on the default of the other, the third person not being a party to such contract, the liability of each of such two persons to the third person under the first contract is not affected by the existence of the e second the third person under the first contract is not affected by the existence of the second contract (amongst themselves), although such third person may have been aware of its existence (Section 132).

  Example

  'A' and 'B' make a joint and several promissory note to 'C'. 'A' makes it, in fact, as surety for 'B'. 'C' knows this at time when the note is made. The fact that 'A', to the knowledge of 'C', made the note as surety for 'B', is no answer, to a suit by 'C' against 'A' upon the note.

- ***Guarantee When Invalid***

  A guarantee shall be invalid in the following cases:

  Guarantee obtained by misrepresentation (Section 142): Any guarantee which has bee n obtained by mains of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid.

  Guarantee obtained by concealment (Section 143): Any guarantee which the creditor has obtained by means of keeping silence as to a material circumstance, is invalid.

  Example

  'A' guarantees to 'C' payment for iron to be supplied by him to 'B' to the amount of 2,000 tonnes. 'B' and 'C' have privately agreed that 'B' should pay five rupees per ton beyond the market price, such excess to be applied in liquidation for an old debt. This agreement is concealed from 'A'. 'A' is not liable as a surety.

  Guarantee on contract that creditor shall not act on it until co-surety joins:

  Where a person gives a guarantee upon a contract that the creditor shall not act upon it until another person has joined in it as co-surety, the guarantee is not valid, if that other person does not join.

- ***Rights of a Surety***

  Rights of a surety may be classified under three heads:

  Rights against the creditor,

  Rights against the principal debtor, and

  Rights against co-sureties.

- ***Rights against the Principal debtor***

  The surety has the following two rights against the principal debtor:

  Right of subrogation: Section 140 lays down that Where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the fights

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which the creditor had against the principal debtor. This right of the surety is called 'subrogation'. It means that on payment of the guaranteed debt, or performance of the guaranteed duty, the surety steps into the shoes of the creditor.

- **Right of Indemnity:** Section 145 of the Act vest in the surety another right i.e., right of indemnity. It every contract of guarantee, there is an implied promise by the principal debtor to indemnify the surety, and the surety is entitled to recover from the principal debtor whatever sum he has rightfully paid under the guarantee. The surety is, however, not entitled to claim any sums, which he has paid wrongfully.

Example

'B' is indebted to 'C', and 'A' is surety for the debt. 'C' demands payment from 'A' and, on his refusal, sues him for the amount, 'A' defends the suit, having reasonable grounds for doing so, bur he is compelled to pay the amount of the debt with costs. He cam recover from 'B' the amount paid by him for costs, as well as the principal debt.

- ***Rights against the Creditor***

Against the creditor, surety has the following three rights:

- **Rights to securities:** When the surety has paid off the liabilities of principal debtor to the creditor, he becomes entitled to claim all the securities which were given by the principal debtor to the creditor at the time when the contract of suretyship was entered into (Section 141). It is immaterial whether the surety has knowledge of those securities or not. If the creditor loses, or without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security.

Examples

'C' advances to 'b', his tenant, Rs. 50,000 on the guarantee of 'A'. 'C' has also further security for the Rs. 50,000 by a mortgage of 'B' s furniture. 'C', cancels the mortgage 'B' becomes insolvent and 'C' sues 'A' on his guarantee. 'A' is discharged from liability to the amount of the value of the furniture.

'A', as surety for 'B', makes a bond jointly with 'B' to 'C', to secure a loan from 'C' to 'B'. Afterwards, 'C' obtains from 'B' a further security for the same debt. Subsequently, 'C' gives up the further security. 'A' is not discharged.

- **Right to set off:** When the creditor sues the surety for payment of principal debtor's liabilities, the surety can claim ser off, or counter claim, if any, which the principal debtor had against the creditor.

- **Right to seek dismissal of employee in case of fidelity Guarantee:** In case of fidelity guaranteed, the surety can direct creditor to dismiss the employee whose honesty he has guaranteed, in the event of proved dishonesty of the employee. The creditor's failure to do so will exonerate the surety from his liability.

- **Right to file Quia timet action:** At any time before the guaranteed debt has become due and before the surety is called upon to pay the amount he has guaranteed, he has the right to file

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a "Quia timet action" against the debtor. However, in such a case, the surety must undertake to indemnity the creditor for the risk, delay and expense, which he may incur in doing so.

- **Rights against co-sureties**

In case of joint guarantee, unless otherwise agreed, liability of co-sureties is joint as well as several. A co-surety has following right of contribution from the other sureties:

- ***Right of Contribution***

Section 146 provides for a right of contribution between co-sureties is joint as well as several. A co-surety has following rights against other co-sureties:

Examples

'A', 'B' and 'C' who are sureties to 'D', enter into three several bonds, each in a different penalty, namely, 'A' in the penalty of Rs. 10,000. 'B' in that of Rs 20,000.

If one of the sureties becomes insolvent, the solvent co-sureties shall have to contribute the whole amount equally.

- **Liability of co-sureties who have guaranteed different sums (Section 147):** Co-sureties who have guaranteed different sums are bound under Section 147 to contribute equally, subject to the limit fixed by their guarantee, and not proportionately to the liability undertaken.

Examples

'A', 'B' and 'C' who are sureties to 'D', enter into three several bonds, each in a different penalty namely, 'A' in the penalty of Rs. 10,000. 'B' in that of Rs. 20,000, 'C' in that of Rs. 40,000, conditioned for 'D' duly accounting to 'E'. 'D' makes default to the extent of Rs. 30,000. 'A', 'B; and 'C' are liable to pay Rs. 10,000 each.

In the above example, if 'D' makes default to the extent of Rs. 40,000, 'A' shall be liable to pay rs. 10,000 (the maximum amount guaranteed by him), and 'B' and 'C' Rs.15, 000 each.

- ***Discharge of Surety***

A surety is discharge from liability on a guarantee under the following circumstances:

- by revocation from liability on a guarantee,
- by the conduct of the creditor, or
- by the invalidation of the contract of guarantee.

- ***By Revocation of the Contract of guarantee***

Notice by Surety (Section 130): The liability of a surety under a contract of guarantee may at any time be revoked by the surety, as to the future transactions, by notice to the creditor.

Example

'A', in consideration of 'B' s discounting, at 'A' s request, bills of exchange for 'C, guarantees to 'B', for twelve months, the due payment of all such bills to the extent of rs. 50,000. 'B' discounts bills for 'C' to the extent of Rs. 20,000. Afterwards, at the end of three months. 'A' revokes the guarantee. The revocation discharges 'A' from liability to 'B' for any subsequent discount. But 'A' is liable to 'B' for Rs20, 000 on default of 'C'.

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However, where one of the co-sureties informs the creditor that the debtor is likely to wind-up his business and withdraws his guarantee and the other surety does not take such step, the Himachal Pradesh High Court in Anil Kr. And Others v. Central Bank of India (1997) has held that the other surety shall be liable along with principal debtor for the repayment of the loan.

- **Death of Surety (Section 131):** In the absence of a contract to the contrary, a continuing guarantee is revoked by the death of the surety as to the future transactions. The estate of deceased surety is, however, liable for those transactions which had already taken place during the lifetime of the deceased. Surety's estate will not be liable for the transactions talking place after the death of surety even if the creditor had no knowledge of surety's death.
- **Novation:** contract of guarantee is discharged by novation i.e., when a fresh contract is entered into, either between the same parties or between other parties, the consideration being the mutual discharge of the old contract. The original contract of guarantee comes to an end and so the surety stands discharged with regard to the old contract.
- ***By Conduct of the Creditor***

  By Variance in terms of Contract (Section 133): Any variance made without the surety's consent, in terms of the contract between the principal debtor and the creditor, discharges the surety as to transactions subsequent to the variance.

  Example

  'A' becomes surety to 'C' for 'B' s conduct as a manager in 'C' s bank. Afterwards 'B' and 'C' contract, without 'a' s consent that 'B' s salary shall be raised, and that he shall become liable for one-fourth of the losses on overdrafts. 'B' allows a customer to overdraw, and the bank loses a sum of money. 'A' is discharged from his suretyship by the variance made without his consent, and is not liable to make good this loss.
- **Release or discharge of the Principal debtor (Section 134):** The surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released, or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor.

  Example

  'A' contract with 'B' for a fixed price to build a house for 'A' within a stipulated time, 'B' supplying the necessary timber. 'C' guarantees 'A' s performance of the contract. 'B' omits to supply the timber. 'c' is discharged from his suretyship.
- ***By Invalidation of the Contract***

  A contract of guarantee, like any other contract, may be avoided if it becomes void or voidable at the option of the surety. A surety may be discharged from liability in the following cases:

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- **Guarantee obtained by misrepresentation:** When a misrepresentation is made by the creditor or with his knowledge or consent, relating to a material fact in the contract of guarantee, the contract is invalid (Section 142).
- **Guarantee obtained by concealment:** when a guarantee is obtained by the creditor by means of keeping silence regarding some material part of circumstances relating to the contracts, the contract is invalid (Section 143).
- **Failure of co-surety to join a surety:** When a contract of guarantee provides that a creditor shall not act on it until another person has joined I it as a co-surety, the guarantee is not valid if that other person does not join (Section 144).

Contracts of Indemnity and Guarantee

A contract by which one party promises to the other party from loss caused to him by the conduct of promiser or any other person is called a contract of indemnity. Such contract can be express or implied. The person who promises to indemnify is called indemnifier and the person to whom the promise is made is called indemnity-holder.

The indemnity-holder, when sued, is entitled to recover from the indemnifier: (i) all damages which he may be compelled to pay; (ii) all costs of suit which he may have to pay; and (iii) all sums which he may have paid under the terms of the compromise of any such suit. He can recover from the indemnifier

A contract of guarantee is a contract to perform the promise or discharge the liability of a third person in case of his default. The person who gives the guarantee is called the Surety, the person for whom the guarantee is given is called the Principal Debtor, and the person for whom the guarantee is given is called the Creditor.

A contract of guarantee can be specific or continuing. Specific guarantee relates to a single transaction while continuing guarantee extends to a series of transactions. A specific guarantee cannot be revoked but a continuing guarantee can be revoked: (i) by notice to the creditor, (ii) by death of the surety, and (iii) by variance in the terms of the contract between the principal debtor and the creditor.

BAILMENT & Pledge

Bailment implies a sort of relationship in which the personal property of one person temporarily goes into the possession of another. The ownership of the articles or goods is in one person and the possession with another. Delivering a watch or any other article for repair, or leaving a scooter or car at a parking lot, depositing luggage in a cloakroom, delivery of gold to a goldsmith for making ornaments or delivering cloth to a tailor for stitching, are familiar situations which create the relationship of bailment.

- ***Definition of Bailment***

Sec 146 According to sec-146 Bailment in "The **delivery** of goods by one to another person **for some purpose,** upon a contract that they shall, **when** the purpose is **accomplished,** be **returned** or otherwise **disposed** of **according** to the **directions** of the person delivering

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them." The **person delivering** the goods **is** called the **'Bailor'**, and the **person to whom** goods are **delivered** is called the **'Bailee'**. The explanation to Sec 146 clarifies that delivery of possession is not necessary where one person, already in possession of goods, contracts to hold them as bailee.

- **Essentials of valid Contract of Bailment:-**

For creating a relationship of bailment the following features must be present.

1. **Contract:-:** Contract between the bailor and bailee, may be **either** express or implied.
2. **Delivery of Goods:** The essence of bailment is delivery of goods by one person to another. Delivery of goods may, however, be actual of constructive. Handing over goods to the bailee may make actual delivery. Constructive delivery may be made by doing something, which has the effect of putting the goods in the possession of the intended bailee or any person authorized to hold them on his behalf (Sec- 149).

   Example

   'A', holding goods on behalf of 'B', agrees to hold them on behalf 'C', there is constructive transfer of possession

   'A', a seller of TVs, sells a Samsung TV to 'B' who leaves the in the possession of 'A' to be collected after sometime, 'A' becomes a bailee, although originally he was the owner.

   'A' keeps certain valuables in a locker with a bank. Arrangement is not bailment; since valuables remain in the possession of the owner because the key to the locker remains in his possession.

   It needs to be noted that bailment is concerned with only goods. Currency, i.e., the legal tender (and not old coins), is not goods. 'A' deposit of money', therefore, is not bailment.
3. **Purpose:** In a bailment, the goods are delivered for some purpose. The purpose for which the goods are delivered is usually in the contemplation of both the bailor and the bailee.
4. **Return or disposal of goods:-** It is important that the goods, which form the subject matter of the bailment, should be returned to the bailor or disposed of according to the directions of bailor, after the accomplishment of purpose or after the expiry of period of bailment.

- ***Kinds (Forms) of Bailment***

In Coggs v. Bernard (1703), Lord Holt, Chief Justice, classified bailment's into six kinds as follows

- **Deposit.** Delivery of goods by one man to another to keep for the use of the bailor.
- **Commodatum.** Goods lent to friend gratis to be used by him.
- **Hire.** Goods lent to the bailee for hire, i.e., in return for payment of money.
- **Pawn or Pledge.** Deposit of goods with another by way of security for money borrowed.
- Delivery of goods for being transported, or something to be done about them, by the bailee for reward.

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- Delivery of goods as in (5) above, but without reward.
- **Duties of Bailor**

  A bailor has the following duties:

  1. Duty to disclose faults in the goods (Section 150). The bailor is bound to disclose to the bailee faults in the goods bailed, of which the bailor is aware and which materially interfere with the use of them or expose the bailee to extraordinary risks. If the does not make such disclosure, he is responsible for damage arising to the bailee directly from such faults.

  Example

  'A' the owner of a motorcycle allows 'B', his friend, to take his motorcycle for a joy ride. 'A' knows that the brakes of the motorcycle were not working well. 'A' does not discloses this fact to 'B', consequently, 'B' meets with as accident. 'A' is liable to compensate 'B' for damages.

  'A' delivers to 'B', certain chemicals, to be carried to Mumbai. These chemicals have a tendency to burst, if not kept below a certain temperature. 'A' does not tell 'B', to take this precaution. While carrying the chemicals, the chemicals burst and injure 'B'. 'A' is liable for all the damages.

  In case of gratuitous bailment the bailor is responsible only for those defects, which he was aware of and did not disclose to the bailee.

  If the goods are bailed for hire, the bailor is responsible for such damage whether he was or was not aware of the existence of such faults in goods bailed. The logic behind holding the bailor liable even for defects not known to him is that since the bailment is for a price, it is the duty of the bailor to keep the goods in a fit and defect-free condition.

  Example

  A' hires a VCP from 'B'. VCP has developed short-circuit but 'B' is not aware of it. The moment 'A' plugs VCP, it explodes damaging his TV set as well as wiring. 'B' is liable for 'A' s loss.

- Duty to bear expenses (Section 158)

  In case of gratuitous bailment

  In the absence of contract to the contrary, the bailor must repay to the bailee all necessary expenses incurred by him for the purpose of the bailment.

  In case of non-gratuitous bailment, the bailor is liable for only extra-ordinary expenses.

  Examples

  'A' horse is taken on hire for a journey. The ordinary expenses like feeding the horse etc. shall be borne by the bailee but in case horse falls ill, the money spent in his treatment will be regarded as an extra-ordinary expenditure and borne by the bailor.

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'A' lends his car to a friend 'B'. The car runs out of petrol. 'B' has the right of recover the amount paid by him for petrol (ordinary expenses). In case, the car breaks down, he can also recover the repair charges paid by jim (extra-ordinary expenses).

- **Duty to indemnify the bailee (Section 164):** It is the duty of the bailor to indemnify the bailee, for any loss, which the bailee may suffer because of the bailer's title being defective. The reason for this is that the bailor was not entitled to make the bailment or to receive back the goods bailed or to give directions regarding the goods bailed.
- **Duty to bear risks:** It is the duty of bailor to bear the risk of loss, deterioration and destruction of the things bailed, provided the bailee has taken reasonable care to protect the goods from loss, etc.
- **Duty to receive back the goods:** It is the duty of the bailor that when the bailee, in accordance with the terms of bailment, returns the goods to him, the bailor should receive them. If the bailor without any reasonable reason, refuses to take the goods back, when they ate offered at a proper time and at a proper place, the bailee can claim compensation from the bailor for all necessary and incidental expenses, which the bailee might have incurred in keeping the goods safely.
- **To compensate bailee for loss for termination of bailment before time (Section 159):** The bailor must compensate the bailee for the loss or damage suffered by the bailee that is in excess of the benefit received, where he had lent the goods gratuitously and decides to terminate the bailment before the expiry of the period of bailment.
- ***Duties of Bailee***

Duties of a bailee include:

- **To take care of he goods bailed (Section 151).** In case of bailment the bailee is bound to take as such care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed.

In case, bailee has taken the amount of care as described above, he shall not be responsible, in the absence of any special contract, for the loss, destruction or deterioration of the thing bailed (Section 152).

Thus, where 'A' lends his car to 'B'. 'B' is under obligation to park the car at a parking place, if any, and to roll-up all the windows and lock all the doors. If inspite of such an amount of care, the car is stolen, 'B' shall not be liable for the loss.

However, the burden of proof that bailee had exercised reasonable care shall always on the bailee [R.C. Deboo v. M.V. Hindlaker (1995)]

- **Not to make unauthorized use of goods (Section 154).** In case the bailee makes unauthorized use of goods, i.e., uses them in a way not warranted by the terms of bailment, he is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them.

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Examples

'A' lends a horse to 'B' for his own riding only 'B' allows 'C', his wife, to ride the horse, 'c' rides with care, but the horse accidentally falls and is injured. 'A' is liable to make compensation to 'B' for the injury done to the horse.

'A; hires a horse in Calcutta from 'B' expressly to march to Banaras. 'A' rides with due care, but marches to Cuttack instead. The horse accidentally falls and is injured. 'B' is liable to make compensation to 'A' for the injury to the horse.

- **Not to mix bailer's goods with his own goods.** Bailee is under a duty to keep the goods of the bailor separate from his own. Sections 155 to 157 of the Act lays down this duty in the following ways:

  If the bailee, with the consent of the bailor, nixes the goods of the bailor w ith his own goofs the bailor and the bailee shall have an interest, in proportion to their respective shares, in the mixture thus produced (Section 155).

  If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, and the goods can be separated or divided, the property in the goods remains in the parties respectively; but the bailee is bound to bear the expenses of separation or division, and any damages arising from the mixture (section 156).

  If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own n goods, in such a manner that it is impossible to separate the goods bailed from the other goods and deliver them back, the bailor is entitled to be compensated by the bailee for the loss of the goods (section 157).

- **To return the goods bailed (section 160).** It is the duty of the bailee to return, or deliver, according to the bailer's directions, the goods bailed, without demand, as soon as the time for which they were bailed has expired, or the purpose, for which they were bailed, has been accomplished.

- **To return any accretion to the goods bailed (section 163).** In the absence of ay contract to the contrary, the bailee is bound to deliver to the bailor, or according to his directions any increase or profit, which may have accrued from the goods, bailed.

  Example

  'A' leaves a cow in the custody of 'B' to be taken care of. The cow gives birth to a calf. 'B' is bound to deliver the cow as well as the calf to 'A'.

- **Duty not to set up adverse title.**The bailee is duty not to do any act which is inconsistent which the title of the bailor. He should not set up his own title or the title of a third party on the goods bailed to him

- ***Right of Bailor***

  The rights if a bailor are;

- **Enforcement of bailee's duties:** Duties of the bailee, looked fron bailor's point of view, are the rights of a bailor. A bailor can thus enforce, by suit, all duties of the baliee.

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- **To claim damages:** it is an inherent right of the bailor to claim damages for any loss that might have been caused to the goods bailed, due to the bailee's negligence (Section 151).
- **To terminate the contract of bailment (section 153).** The bailor has a right terminate the contract of bailment if the bailee does any act with regard to the goods bailed, inconsistent with the conditions of the bailment.

  Example

  'A' lets to 'B', for hire, a horse for his own riding. 'B' drives the horse in his carriage. 'A' has a right to terminate the bailment.
- **To claim compensation:** If any damage is caused to the goods bailed because of the unauthorized use of the goods, the bailor has a right to claim compensation from the bailee. In the same way the bailor has a right to claim compensation, if some loss is caused to the goods bailed, due to unauthorized mixing by bailee, of bailee's own goods with the goods of the bailor (Section 154, 155 and 156).
- **To demand return of goods (Section 159).** In case of gratuitous (without reward bailment of goods, the bailor can demand back the goods at any time even though the goods were bailed for a specified time or purpose. But, if the bailee had acted in such a manner that the return of the goods before the stipulated time would cause loss exceeding the benefit which he has derived from using the goods, the bailor is duty bound to compensate the bailee.

  Example

  'A' lends a book to 'B', for examinations. Before 'B' has taken his examinations, 'A' seeks return of his book. 'A' must compensate 'B' for any loss occasioned to him.
- **To claim increase or profit from goods bailed.** In the absence of any contract to the contrary, the baliee is bound to deliver to the bailor, any increase or profit, which may have accrued from the goods bailed.

  Example

  'A' pledges certain shares with 'B', Company issues bonus shares against the same. 'B' must not only return original shares but also bonus shares.
- ***Rights of Bailee***
- **To enforce bailor's duties.** The duties of the bailor are, in face, if looked from the point of view of bailee, the bailee's the bailee's rights. Thus, bailee can sue bailor for (a) claming damages resulting from non-disclosure of faults in the goods, **(b)** seeking indemnity for loss because of defective title of the bailor, (c) for extraordinary expenses; etc.
- **To deliver goods to any one of the of joint bailors (Section 165):** If the goods are owned and bailed by more than one person, the bailee has a right, in the absence of a contrary contract, to delivery back the goods to any one of the joint owners, or may deliver the goods back according to the directions of, one joint owner, without the consent of all.

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- **Delivery of the goods to bailor even if his title is defective (Section 166):** If the title of bailor is defective and the bailee, in good faith, returns the goods to the bailor or according to the directions of bailor, the bailee is not liable to the true owner in respect of a such delivery.
- **Right of Lien (Section 170-171).** The bailee has a right to claim his lawful charges and if they are not paid, bailee is given the right to retain the goods until the charges due in respect of those goods are paid. This right is known as bailee's right of lien. Lien may be of two types:
- General Lien
- Particular Lien
- **General Lien** means the right to retain goods not only for demands arising out of the goods retained but for a general balance of account in favour of certain persons.
- **Particular lien**, on the other hand, means the right to retain the particular goods in respect of which the claim is due.

  Bailee's right of lien is particular in certain cases whereas general in other cases.
- **Particular lien** is conferred upon a bailee by virtue of the provisions of Section 170. It reads:

  Where the baliee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill in respect of the goods bailed, he has, in the absence of a contract to the contrary, a right to retain such goods until he receives the remuneration for the services he has rendered in respect of them."

  Example

  'A' delivers a rough diamond to 'B', a jeweler, to be cut and polished, which is accordingly done. 'B' is entitled to retain the stone till he is paid for the services he has rendered.
- **Bailee's General lien.** The peovisions of Section 171 empower certain categories of bailees to exercise a general lien. These include: bankers, factors, wharfingers, attorneys of High court and policy case brokers. These bailees can retain all goods of the bailor so ling as anything is due to them, unless there is contract to the contrary. Any other bailee can have general lien, only if expressly so authorized (Section 171).
- **Rights against wrongful deprivation or injury to goods (Section 180-81).** If a third person wrongfully deprives the bailee of the use or possession of the goods bailed, or causes them any injury, the bailee is entitled to use such remedies as the owner might have used in the like case if no bailment had been made, and dither the bailor or the bailee may bring a suit against a third person for such deprivation or injury. Now, whatever is obtained by way of relief or compensation in such a suit shall, as between the bailor and the bailee, be dealt with according to their respective interest.
- ***Finder of Goods***
- **Duties of a Finder**

  Finding is not keeping. A finder of lost goods is treated as the bailee of the goods found as such and is charged with the responsibilities of a bailee, besides the responsibility of exercising reasonable efforts in finding the real owner.

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Thus, the duties of a finder include:

- The finder should take reasonable care of the goods found.
- He should not put the goods for his personal use.
- He should not mix the goods found with his own goods.
- He should find the real owner of the goods and entrust the goods to him.

RIGHTS OF A FINDER

A finder enjoys certain rights also. His rights include:

- **Right of lien (Section 168):** A finder of goods has the right keep the goods in his possession till he is paid his expenses. This right to retain goods is available against the true owner until the finder receives compensation for expenses and trouble incurred by him in finding the true owner and in preserving the goods found. However, he has no right to sue owner for such compensation.
- **Right to sue for reward (Section 168):** If the true owner of goods has declared some reward for the return of lost goods, the finder can sue the owner for declared some. He will have the right of lien, over the goods till he receives the reward.
- **Right of sale:** A finder of goods has a right to sell the goods found by him under the following circumstances:
  - The goods found are commonly the subject of sale; and
  - The owner cannot, with reasonable diligence, be found and if found, refuses to pay the lawful charges to the finder; or
  - The thing is in danger of perishing or of losing the greater part of its value; or
  - When the lawful charges of the finder for preservation and finding out the owner, amount to two-third or more of the value of the thing.
- ***Termination of Bailment***

  A contract of bailment terminates or comes to an under the following circumstances:
- **On the expiry of the stipulated period.** Where bailment is for a specific period, it comes to an end on the expiry of the specified period.
- **On the accomplishment of the specified purposes.** In case, bailment is for a specific purpose it terminates as soon as the purpose is accomplished.

  Example

  'A' lets to 'B' certain tents and crockery on marriage of his daughter. The same must be returned as soon as marriage function is over
- **By bailee's act inconsistent with conditions.** If the bailee does any act, with regards to the goods bailed, inconsistent with the conditions of the bailment may be terminated any time (Section 159).

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Example

'A' lets to 'B' for hire, a horse for his own riding. 'B' drives the horse in his carriage 'A' shall have the option to terminate of the bailment.

- **Termination of Gratuitous Bailment.** A gratuitous bailment may be terminated any time (Section 159).

  However, the Section provides that if premature termination causes any loss to the bailee exceeding the benefit derived from the bailment, the bailor must indemnify.

- **By death.** A gratuitous bailment terminates by the death of either the bailor or the bailee (Section 162)

PLEDGE

- ***Meaning and Definition of Pledge***

  Pledge (or Pawn) is a special kind of bailment. Section 172 defines pledge as "the bailment of goods as security for payment of a debt or performance of promise". The bailor is, in this case called, the 'pawnor' and the bailee is called 'pawnee'.

- ***Right of Duties of a Pawnee***

- **Right of retainer (Section 173):** The pawnee may retain the goods pledged, not only for payment of the debt or the performance of the promise, but for the interest due on the debt, and all necessary expenses incurred by him with respect to the possession or for the preservation of the goods pledged.

- **Right of retention in regard to subsequent advances (Section 174):** Subject to a contract to the contrary, the pawnee would not be entitled to retain the goods with respect to subsequent advances made by the pawnee, provided this has not been expressly surrendered by a contract.

- **Right to extraordinary expenses incurred (Section 175):**The pawnee is entitled to receive from the pawner extraordinary expenses for the preservation of the goods of the pledged.

- **Rights where pawnor makes default (Section 176):** According to Section 176, in case the pawnor fails to pay his debt or complete the performance of obligation at the case the pawnor fails to pay his debt or complete the performance of obligation at the stipulated time, the pawnee can exercise any of the following rights:

- Bring suit against the pawnor upon the default in redemption of the debt or performance of promise; and retain possession of goods pledged as collateral security; or

- Sell the things pledged on giving the pawnor reasonable notice of sale.

  In case, the goods pledged when sold do not fully meet the amount of the debt, pawnee can proceed for the balance. If, on the other hand, there is any surplus that has to be accounted for to the pawnor.

  Before, sale can be executed, a reasonable notice must be given to pawnor so that:

  ➢ The pawnor may meet his obligation as a last chance;

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- He can supervise the sale to see that it fetches the right price.
- In Prabhat Bank Ltd. v. Babu Ram (1966), the learned judge observes that – "What is contemplated by Section 176 is not merely a notice but a 'reasonable notice', meaning there by a notice of intended sale of the security by the creditor within a certain date so as to afford an opportunity to the debtor to pay the amount with the mentioned in the notice."

- **Notice of sale is essential even where the agreement specifically excludes it.** In the above case, the Allahabad High Court held that such a clause I the agreement would be inconsistent with the provisions of the Act and as such void and unenforceable.
- **Effect on validity of sale where reasonable notice is not given. The sale made by the aside.** The pawnee without giving a reasonable notice to he pawnor is not void, i.e., cannot be set aside. The pawnee will be liable to the pawnor for the damages.
- **Right against the true owner of goods (Section 178A):** When a Pawnor has acquired possession of pledged goods, under a void able contract, but the contract has not been rescinded, at the time of pledge, the pawnee acquires a good tit6le to the goods, even against the true owner, provided the pawnee had no notice of the pawnor's defect in title and he acts in good faith [See Philips v. Brooks (Page31-32)]
- Duties
- A pawnee has the following duties:
- Duty to take reasonable care of the pledged goods.
- Duty not to make unauthorized use of goods pledged.
- Duty to return the goods when the debt has been repaid or the promise has been performed.
- Duty not to mix his own goods with the goods pledged.
- Duty not to do any act, which is inconsistent with the terms of pledge.
- Duty to deliver increase (if any), to the goods pledged.

RIGHTS AND DUTIES OF PAWNOR

Rights

- **Right to redeem goods**. The pawnor has a right to claim back the security pledged on repayment of the debt with interest and other charges (Section 177). The period for a suit against a pawnee the recover the things pledged is 3 years from the date of pawnee's refusal to do so after demand.(The Limitation Act, 1963).
- **Right to reasonable notice.** The pawnor has a right to receive a reasonable notice in case the pawnee intends to sell the goods and in case he does not receive the notice, he shall have a right to claim any loss that may result on such sale.

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- **Right to surplus.** In case of sale, the pawnor is entitled to receive from the pawnee any surplus that may remain with him after the debt is completely paid-off.
- **Right to accretion.** The pawnor has a right to claim any accruals to the goods pledged.
- **Right to compensation.** If any loss is caused to the goods because of mishandling or negligence on the part of the pawnee, the pawnor has a right to claim the same.

Duties

- To disclose faults. A panor must disclose to the pawnee ay material faults or expenditure incurred by the pawnee for the preservation of the goods.
- To pay extraordinary expenses. A pawnor is responsible to meet any extraordinary expenditure incurred by the pawnee for the preservation of the goods.
- To bear deficiency on sale. Where the pawnee has exercised his right of sale of goods, any shortfall has to be made good by the pawanor.
- To indemnify. The pawnor is liable for any loss caused to the pawnee because of defects in his (pawnor's) title to the goods.

PLEDGE BY NON-OWNERS

Normally, only the owner of goods can effect a valid pledge. However, the Indian Contract Act recognizes pledge by the following also as valid:

- **Pledge by a mercantile agent:** Where a mercantile agent is with the consent of the owner, in possession of goods or, the documents of title to goods, any pledge made by him, when acting in the ordinary course of business of a mercantile agent, shall be valid, provided that the pawnee acts in good faith and has at the time of pledge, no notice of the fact that the agent has no authority to pledge. The necessary conditions of validity under the Section are as follows:
  - The person pledging the goods must be a mercantile agent.
  - Mercantile agent must be in possession either of the goods or the documents of title to goods,
  - Such possession must be with the consent of the owner.
  - Pledge must have been made by the mercantile agent in the ordinary course of business.
  - The pawnor must act in good faith; and
  - The pawnee should have no notice of the pawnor's defect of tile, if any.
- **Pledge by person in possession under a voidable contract (Section 178-A).** Where a person obtains possession of goods under a voidable contract the pledge created by him is valid* provided:
  - The contract has not been rescinded before the contract of pledge, and
  - The pawnee acts in good faith and without notice of the pawnor's defect of title.

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- Pledge by co-owner in possession. One of several joint owners of goods in sole possession there of with the consent of the test may make a valid pledge of the goods [Shadi Ram v. Mehtab Chand 1895]
- Pledge by a person having limited interest (Section 179). Where a person pledges goods in which he has only a limited interest, the pledge goods to the extent of the amount advanced thereupon.

Example

'X' pledges certain gold ornaments worth Rs. 1,00,000 with 'Y' against an advance or Rs.60,000. 'Y' pledges the same for Rs.90,000 with 'Z'. The pledge by 'Y' with 'Z' is valid only to the extent or Rs.60,000 plus interest due thereon.

- **Pledge by seller or buyer in possession.** A seller, in whose possession, the goods have been left after sale or a buyer who with the consent of the seller, obtains possession of the goods, before sale, cam make a valid pledge, provided the pawnee acts in goods faith and he has no knowledge of the defect in title of the pawnor.

Example

'A' buys a TV from 'B', but leaves the TV with the seller. 'B' then pledges the TV with 'C', who does not know of sale to 'A'. This is a valid pledge.

CONTRACT OF AGENCY

Contract of Agency. According to Section 182 of the Contract Act "An 'agent' is a person employed to do any act for another or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the 'principal'." Thus, an agent is a connecting link between his principal and third parties.

Who can appoint an Agent

Section 183, in this regard, provides "Any person who is of the age of majority according to law to which he is subject, and whop is of sound mind, may employ an agent." Thus a minor, or a person of unsound mind cannot appoint an agent.

Who may be an Agent

Since agent is a mere connecting link or a conduit between the principal and the third party, it is immaterial whether or not the agent is legally competent to contract. Thus, there is no bar to the appointment of a minor as an agent. However, in considering the contract of agency itself (i.e., the relation between principal and agent), the contractual capacity of the agent becomes important. Section 184 reads, "As between the principal and third persons any person may become an agent, but no person who is not of the age of majority persons any person may become an agent, so as to be responsible to his principal according to the provisions in that behalf." Thus, if the agent happens to be a person incapable of contracting, then the principal cannot hold the agent liable, in case he misconducts or has been negligent in performance of his duties.

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Example

'X' appoints 'Y', a minor, to sell his car for not less than Rs. 50,000. 'Y' sells it for Rs. 40,000. 'X' will be held bound by the transaction and further shall have no right against 'Y' for claiming the compensation for having not obeyed the instructions, since 'Y' is a minor and a contract with a minor is 'void – ab – initio.

Distinction between Agent and Servant

There is similarity between an agent and a servant in as much as both are employed to act for and on behalf of principal. However, there is a lot of difference between the two. An agent has the authority to create contractual relationship between the principal and third party, but a servant ordinarily has no such authority. A servant usually serves only one master but an agent may work for several principals at the same time. A servant is generally paid salary or wages, whereas an agent may be paid on commission basic. Thus we find that an agent is not a servant though a servant may be authorised to serve as an agent.

Modes of Creation of Agency

- Express agreement,
- Implied agreement,
- Ratification, and
- Operation of Law

Express Agreement (Section 186 and 187). As per Section 186, a contract of agency may be express or implied. As per section 187, an authority is express when it is given by words, spoken or written. A person may be appointed agent, either by words of mouth or by writing. No particulars form is required for appointing an agent. The usual form of a written contract of agency is the power of attorney on a stamped paper.

Example

'A' is residing in Delhi and he has a house in Kolkata. 'A' appoints 'B', by a deed called the power of attorney, as caretaker of his house. Agency is created by express agreement.

Implied Agency (Section 187). An authority is said to be implied when it is to be inferred from the circumstances of the case; and things spoken or written, or the ordinary course of dealings.

Example

'A' owns a shop in Noida, living himself in Delhi, and visiting the shop occasionally. The shop is managed by 'B', and he is in the habit of ordering goods from 'C' in the name of 'A' for the purposes of the shop, and of paying for them out of 'A' s funds with 'A' s knowledge. 'B' has an implied authority from 'A' to order goods from 'C' in the name of 'A' for the purpose of the shop.

Implied agency included:

- Agency by estoppel
- Agency by holding out, and
- Agency by necessity

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Agency by Estoppel (Section 237). When a person has, by his conduct or statement, induced others to believe that a certain person is his agent, he is estopped from subsequently denying it, Lord Halsbury says, "Estoppel arises when you precluded from denying the truth of anything which you have represented as fact, although it is not a fact."

Example

'P' allows 'A' telling 'C' that 'A' is 'P's agent. Later on, 'C' supplies certain goods to 'A' thinking him to be 'P' agent. 'P' shall be held liable to pay the price to 'C' By allowing 'A' to represent himself as his agent, 'P' leads 'C' to believe that 'A' is really his agent.

Agency by Holding Out. Though part of the law of estoppel, some affirmative conduct by the principal is necessary in creation of agency by holding out.

Example

'P' allows his servant 'A' to buy goods for him on credit from 'C' and pays for them regularly. On one occasion, 'P' pays his servant cash to purchase the goods on credit pocketing the money, 'C' can recover the price from 'P' since through previous dealings 'P' has held out his servant 'A' as his agent.

Agency of Necessity (Section 189). An agent has authority, in an emergency, to do all such acts, for the purpose of protecting the principal from loss, that would be done by a person of ordinary prudence, in his own case, under similar circumstances.

Example

A horse was sent by rail and at the destination it was not taken delivery of by the owner. The station master had to feed the horse. Held, the station master became the agent by necessity and hence the owner must compensate him. [Great Northern Railway V. Swafield].

To constitute a valid agency of necessity, following condition must be satisfied:

- Agent should not be in a position or have any opportunity to communicate with his principal within the time available.
- There should have been actual and definite commercial necessity for the agent to act promptly.
- The agent should have acted bonafide and for the benefit of the principal.
- The agent should have adopted the most reasonable and practicable course under the circumstances, and
- The agent must have been in possession of the goods belonging to his principal and which are the subject of contract.

Agency by Ratification (Section 196 – 200). Section 196 recognizes the creation of agency by subsequent ratification by the principal of the contracts entered into by the agent on his behalf but without his authority. Where a person acts for someone but without his knowledge or authority and the other person subsequently accepts or ratifies the act, agency by ratification arises and the ratifier is bound by the act on his behalf. Thus, agency by ratification tantamounts to prior authority.

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Example

The case of Bolton Partners v. Lambert is a good illustration on the point. In this case, 'L' made an offer to 'X' managing director of a company. 'X' accepted the offer through he had no authority to do so. 'L' subsequently withdrew the offer, but the company ratified 'X' s acceptance. Held, 'L' was bound. The ratification related back to the time 'X' accepted the offer, thus rendering the revocation of the offer inoperative. An offer once accepted cannot be withdrawn.

Ratification may be expressed or implied (Section 197).

Also called Agency by Ostensible Authority. Another situation for agency by ostensible authority is that of agency by legal presumption. For instance, where a married woman is cohabiting with her husband, there is a presumption of the fact that she has authority to pledge his credit for necessaries.

Example

'A' without authority, buys goods, for 'B' Afterwards 'B' sells them to 'C' on his own account; 'B's conduct implies a ratification of the purchase made for him by 'A'.

'A' without 'B's authority, lends 'B' s money's to 'C'. Afterwards 'B' accepts interest on the money from 'C'. 'B' s conduct implies a ratification of the loan.

Requisites of a valid ratification

- The agent must be contract as agent; he must not allow the third party to believe that he is the principal. A man cannot enter into a contract at his own and later shift it to another.
- The principal must have been in existence at the time the agent originally acted. This condition is significant in case of joint stock companies.
- The principal must not only be in existence but must also have contractual capacity at the time of the contract as well as at the time of ratification. Thus, a minor on whose behalf a contract is made cannot ratify it on attaining majority.
- Ratification must be made within a reasonable. What is reasonable time shall very from case to case?
- The act to be ratified must be a lawful one. There can be no ratification of an illegal act or an act, which is void – ab – initio.
- The principal should have full knowledge of the facts. Section 198 states " No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective".
- Ratification, if made, shall be of the contract as a whole (Section 199). The principal cannot reject the burdens and accept only the benefits.
- Ratification of a contract not within the principal's authority is ineffective. This again basically is relevant in case of companies. Acts of directors which are ultra virus the power of a company cannot be ratified by the company.
- Ratification cannot be made so as to subject a third party to damages or terminate any right or interest of a third person (Section 200).

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Examples

'A' not being authorized thereto by 'B', demand on behalf of 'B', the delivery of some property of 'B', from 'C' who is in possession of it. This demand cannot be ratified by 'B', so as to be binding on 'A'.

'A' holds a lease from 'B', terminable on three months notice. 'C', an unauthorized person, gives notice of termination to 'A'. The notice cannot be ratified by 'B', so as to be binding on 'A'.

Agency by Operation of Law

A pretended agent is one who represents to be an agent of another. For example, in case of partnership, every partner, as per the provisions of the partnership Act, automatically becomes the agent of other partners.

Pretended Agent

A pretended agent is one who represents to be an agent of another when in reality he has no such authority from him at all. Section 235 provides that a person untruly representing himself to be an authorized agent of another, and thereby inducing a third person to deal with him as such agent, is liable, it his alleged employer does not ratify his acts, to make compensation to the other, in respect of any loss or damage which he has incurred by so dealing. The agent has, however, no right to proceed against that person for the performance of the contract.

Agency Relationship between Husband and Wife

Marriage does not of itself create the relation of agent and principal. A wife, in order to bind her husband by her dealing, must receive authority from the husband either expressly or implication from his conduct. The following principles may be noted in this connection

- If husband and wife are living together, and the wife is charged with the duty of looking after the household, presumption is raised that she has got the authority to pledge her husband's credit for necessaries (Dagenham v. Mellon). Authority of a wife in such cases is called ostensible authority. However, a wife shall not have the ostensible authority to bind her husband.
- Where the wife is forbidden from purchasing anything on credit or from contracting debts.
- Where the goods purchased on credit are not necessaries.
- Where the wife is given sufficient money for purchasing necessaries, or she has means of her own, either in money or in earning capacity;
- Where the trader has been expressly warned by the husband not to give credit to his wife.
- When the wife live apart from the husband under justifiable circumstances, the husband would, in law, be liable to maintain her, and he would be bound to pay her bills for maintenance during that period. But, if she is living separately without any valid reasons, then she cannot pledge her husband's credit even for necessaries.

Scope and Extent of Agent's Authority

Scope and extent of an agent's authority is determined by:

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- Actual authority
- Apparent or Ostensible authority

Actual authority is created by agreement between principal and the agent. The agreement may be expressed or implied.

Apparent or Ostensible Authority. Section 188 that an agent having an authority to do an act has authority to do every lawful thing which is necessary in order to do such act. An agent having an authority to carry on a business has authority to do every lawful thing necessary for the purpose, or usually done in the course of conducting such business?

Example

'A' employs 'B' as his agent to carry on his business of a ship builder. 'B' may purchase timber and other materials, and hire workmen for the purpose of carrying on the business.

Again, Section 237 provides that " When an agent has, without authority, done acts or incurred obligations to third person on behalf of his principal, the principal is bound by such acts or obligations, if he has by his words or conduct induced such third persons to believe that such acts and obligations were within the scope of the agent's authority".

Example

'A' consigns goods to 'B' for sale, and gives him instructions not to sell below a fixed price. 'C', being ignorant of 'B' s instructions enters into a contract with 'B' to buy the goods at a price below the reserved price. 'A' is bound by the contract.

Though the scope of authority of an agent under normal circumstances is defined in Section 188, still, in cases of emergency he would have larger powers. Section 189, in this regard, enacts as follows; " An agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances". In such cases the authority is deemed to be conferred by what has been described above as agency by necessity.

Sub – Agent and Substituted Agent

The general rule is that an agent cannot appoint an agent. ' Delegatus no potest delegare' is the governing rule. It means a delegate cannot further delegate. An agent being a delegate cannot transfer his duties to another. The principle underlying the rule is that the principle engages an agent ordinarily on personal consideration and thus may not have the same confidence in the person appointed by the agent. Hence, sub – agency is not generally recognized. However, Section 190 deals with the circumstances as to when and how far an agent can delegate his duties. An agent may appoint an agent in the following circumstances:

- Where expressly permitted by the principal; Where the ordinary custom of trade permits delegation : The nature of agency is such that it cannot be accomplished without the appointment of a sub – agent: Where the nature of the job assigned to the agent is purely clerical and does not involve the exercise of discretion; In an unforeseen emergency

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- Under the above mentioned circumstances, if an agent appoints another person in the matter of the agency, that other person may assume the position of either a sub – agent or a substituted agent.

Sub – Agent

Section 191 states that a 'sub – agent' is a person employed by, and acting under the control of the original agent in the business of the egency.

Since the sub – agent is appointed by the act and under the control of the agent, there is no privities of contract between the sub- agent and the principal. The sub – agent therefore, cannot sue the principal for remuneration and similarly, the principal cannot sue the sub – agent for any moneys due from him. Each of them can proceed only against his immediate contract party, viz., the agent except. Where the sub – agent

A sub – agent properly appointed can, however, represent the principal and bind him for his acts as if he were an agent originally appointed by the principal. But where an agent, without having authority to do so, has appointed a sub – agent, the principal is not represented by or responsible for the acts of such a sub – agent. He (the sub –agent) can only bind the agent by contracts entered into with third parties.

Termination of sub – agent's authority (Section 210). The termination of the authority of an agent causes the termination of the authority of all sub – agents appointed by him.

Substituted Agent

Where an agent appoints or names another person for being appointed as an agent in his place, such person is called a substituted agent. According Section 194, " where an agent, holding an express or implied authority to name another persons has named another person accordingly, such person is not a sub – agent but an agent of the principal for such part of the business of the agency as is entrusted to him."

Examples

'A' directs 'B', his seller, to sell his estate by auction, and to employ an auctioneer for the purpose. 'B' names 'C', an auctioneer, to conduct the sale. 'C' is not a sub – agent, but is 'A' s agent for the conduct of the sale.

'A' authorizes 'B', a merchant in Kolkata to recover the moneys due to 'A' from 'C & Co.'. 'B' instructs 'D', a solicitor to take proceedings against 'C & Co.', for the recovery of the money. 'D' is not a sub – agent but is solicitor for 'A'.

DUTIES OF AN AGENT

The duties of an agent towards his principal are:

- To conduct the business of agency according to the principal's directions (Section 211). **This duty of the agent has to be literally compiled with i.e., the agent is not supposed to deviate from the directions of the principal event for the principal's benefit. If he does so, any loss occasioned thereby shall have to be borne by the agent, whereas, any surplus must be accounted for to the principal.**

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Examples

In lilley v. Doubleday (1881), 'A' was directed by his principal to warehouse the goods at a particular warehouse. 'A' warehoused a portion of the goods at another place, equally good but cheaper. These goods were destroyed by fire. Held, the agent 'A' was liable to make good the loss.

The principal instructed his agents to deliver goods only against cash but the agent delivered them on credit, he was held liable for the price which the purchaser failed to pay [Paul Bier v. Chottalal].

In the absence of instructions from the principal, however, the agent should follow the custom of the business at the place where it is conducted (Section 211).

Example

'A' an agent engaged in carrying on for 'B' a business in which it is custom to invest from time to time, at interest, the moneys which may be in hand, omits to make such investment. 'A' must make good to 'B' the interest usually obtained by such investment.

- The agent should conduct the business with the skill and diligence that is generally possessed by person engaged in similar business**, except where the principal knows that agent is wanting in skill (Section 212).**

  Example

  'A', an agent for the sale of goods, having authority to sell on credit, sells to 'B' on credit, without making the proper and usual enquiries as to the solvency of 'B'. 'B' at the time of such sale, is insolvent. 'A' must make compensation to his principal in respect of any loss thereby sustained.

  'A' an insurance broker, employed by 'B' to effect an insurance on a ship, omits to see that the usual clauses are inserted in the policy. The ship is afterwards lost. In consequences of the omission of the clauses nothing can be recovered from the underwriters. 'B' is bound to make good the loss to 'A'.

- **To render proper accounts (Section 213).** Rendering accounts does not mean showing the accounts but the accounts supported by vouchers – (Anandprasad V. Dwarkanath).
- **In case of difficulty to communicate with the principal (Section 214).** It is the duty of an agent, in case of difficulty, to use all reasonable diligence, in communicating with his principal, and in seeking to obtain his instructions. In case of emergency, however the agent can do all that reasonable man would under similar circumstances do with regard to his own goods, he becomes an agent by necessity.
- **Not to make any secret profits.** An agent, except the lawful deduction towards his remuneration and expenses, should deliver to the principal all moneys including secret commission received by him.

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- **Not to deal on his own account.** An agent should not deal on his own account without first obtaining the consent of his principal. If he does so,the principal can claim from the agent any benefit which he might have obtained [H. Wilson & Co. v. Bata (1927)].

  Further, in case an agent deals on his own account, he shall cease to be entitled for his remuneration.

- **Agent not entitled to remuneration for business misconducted.** An agent who is guilty of misconduct in the business of the agency is not entitled to any remuneration in respect of that part of the business which has been misconducted (section 220).

  Examples

  'A' employs 'B' to recover Rs. 1,00,000 from 'C' and to lay it out on good security. 'B' recovers Rs. 1,00,000 and lays out Rs.90.000 on good security, but lay out Rs. 10,000 on security which he ought to have known to be bad whereby 'A' loses Rs.2,000. 'B' is entitled to remuneration for recovering the Rs.1,00,000 and for investing the Rs.90,000. he is not entitled to any remuneration for recovering Rs.10,000 and he must make good the Rs.2,000 to 'A'

  'A' employs 'B' to recover Rs.1,00,000 from 'C'. Through 'B's misconduct the money is not recovered. 'B' is entitled to no remuneration for his services, and must make good the loss.

- **An agent should not disclose confidential information supplied to him by the** principal [Weld Blundell V. Stephens (1920)].

  When the principal dying or becoming of unsound mind terminates an agency.the agent is bound to take on behalf of the representatives of his late principal, all reasonable steps for the protection and preservation of the interests entrusted to him (Section 209)

RIGHTS OF AN AGENT

An agent has the following rights

- **Right to remuneration (Section 219).** An agent is entitled to his agreed commission or remuneration and if there is no agreement, to a reasonable remuneration.

  But, the remuneration does not become payable unless he has carried out the object of agency, except where there is a contract to the contrary. Now, when shall the object of agency be deemed to have been carried out or the act assigned to the agent completed, shall depends on the terms of the contract. Thus, commission becomes payable to the broker, when he has procured a party who is willing to negotiate on reasonable terms and is desirous of entering into a contract with the principal [Sheikh Farid Baksh V. Hasgulal Singh(1937)].

  However, an agent who is guilty of misconduct in the business of agency is not entitled to any remuneration in respect of that part of the business which he has misconducted (Section 220).

- **Right of Retainer (Section 217).** Section 217 of the Contract Act empowers the agent to retain, out of any sums received on account of the principal in the business of the agency for the following payments:

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- All money due to himself in respect of advances made,
- In respect of expenses properly incurred by him in conducting such business, and
- Such remuneration as may be payable to him for acting as agent.

- **Right of Lien (Section 221).** Besides, the right of retainer, agent has another right, i.e., right to retain his principals goods, papers and other movable or immovable properties service charges. This lien of the agent is the particular lien. Since the lien is a possessory right, it cannot be exercised once the possession is lost.

- **Right of Indemnification.** Section 222 provides that the employer of an agent is bound to indemnify him against the consequences of all lawful acts done by such agent in exercise of the authority conferred upon him.

  Example

  'B' at Indonesia, under instructions from 'A' of Kolkata contracts with 'C' to deliver certain goods to him. 'A' does not send the goods to 'B', and 'C' sues 'B' for breach of contract. 'B' informs 'A' of the suit, and 'A' authorizes him to defend the suit. 'B' defends the suit, and is compelled to pay damages and costs, 'A' is liable to 'B' for such damages, costs and expenses.

  Agent's right to be indemnified extends even for those acts which are apparently lawful but are injurious to a third person (Section 223). However, the right to indemnify is not available against those acts which on the face of it are unlawful or are criminal in nature.

- **Right to Compensation.** The agent has the right to receive compensation for the injuries or losses suffered due to the principals neglect or want of skill (Section 225).

  Example

  'A' employs 'B' as a brick layer in building a house, and puts up the scaffolding himself. The scaffolding is unskillfully put and 'B' is, consequence, hurt, 'A' must pay compensation to 'B'.

  It should, however, be noted that if the injury is caused by negligence of the agent himself, then he cannot claim any compensation.

LIABILITY OF PRINCIPAL TO THIRD PARTIES

- **Agent acting within authority.** An agent being a mere connecting links binds the principal for all his acts done within the scope of his authority. Section 226 provides that "Contracts entered into through an agent, and obligations arising from acts done by an agent, may be enforced in the same manner and will have the same legal consequences, as if the contracts had been entered into and the acts done by the principal in person."
- **Agent acting within ostensible authority.** The principal is liable for the acts of the agent falling not only within the actual authority but also with the scope of his apparent or ostensible authority.
- **Where an agent exceeds his authority** and the part of what he does, which is within is authority, can be separated from the part which is beyond his authority, so much only of what he does as is within his authority, is binding as between him and the principal(Section 227).

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- **Where an agent** does more than he is authorized to do and what he does beyond the scope of his authority cannot be separated from what is within it, the principal is not bound by the transaction (Section 228).
- **Misrepresentation by the agent.** The principal will be liable even for misrepresentations made or frauds committed, by an agent in matters beyond his authority, do not effect the principal (Section 238).
- **Undisclosed Principal.** The principal remains liable to the third parties even where his name was not disclosed. The third parties can, on discovering his name, proceed against him on the contract.
- **The principal is bound** by any notice or information given to the agent in the course of business transacted by him.
- **The liability of the principal** continues even in cases where agent is held personally liable. Section 233 provides an option to the third parties to either sue the principal or agent or both.

Personal Liability of an Agent

An agent is held personally liable to the third parties in the following cases:

- **Foreign principal.** Where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad (Section 230).
- **Undisclosed Principal.** Where the agent does not disclose the name of his principal (Section 230).
- **Principal cannot be sue.** Where the principal, though disclosed, cannot be sued (Section 230). For instance, where principal is minor.
- **Exceeds authority.** Where an agent acts either without any authority or exceeds his authority, he will be held personally liable if his acts are not ratified by the alleged principal.
- **Where an agent expressly agrees to be personally bound.**
- Where an agent signs a negotiable instrument in his own name. In case an agent signs a negotiable instrument without making it clear that he is signing it as an agent only, he may be held personally liable on the same. He would be personally liable as the maker of the note, even though he may be described in the body of the note as the agent.
- Agent with special interest. An agent with special interest or with a beneficial interest, e.g., a factor or auctioneer, can sue and be sued personally (Subramanaya v.Narayana)
- Guilty of fraud. When an agent is guilty of fraud or misrepresentation in matters which so not fall within his authority (Section 138).
- Trade usage. Where trade usage or custom makes an agent personally liable.
- Agency coupled with interest. Where the agency is one coupled with interest (Section 202).

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AGENCY COUPLED WITH INTEREST

Agency is said to be coupled with interest where the agent has himself an interest in the subject-matter of the agency (Section 202).

Example

Where an agent is appointed to sell properties of the principal and to pay himself out of such sale proceeds the debt due to the agent.

TERMINATION OF AGENCY (SECTION 201)

- **By revocation by the Principal.** The principal may, by notice, revoke the authority of the agent at ay time. Where the agent is appointed to do a single act, agency may be revoked any time before the commencement of the act. In case of a continuous agency, notice of revocation is essential to the agent as well as to the third parties who have acted on the agency with the knowledge of the principal.

  However, where an agency is for a fixed period of time, and contact of agency is revoked without sufficient cause, compensation must be paid to the agent (Section 205).

  The Agency is irrevocable in the following two cases:

- Where the authority of the agent is one coupled with interest; i.e., the agent has an interest in the subject-matter of the contract.
- After the authority has been partly exercised, so far as regards such acts and obligations already done in the agency (Section 204).

  Examples

  'A' authorizes 'B' to buy 1,000 bales of cotton on account of 'A', and to pay for it out of 'A' s money remaining in 'B' s hands. 'B' buys 1,000 bales of cotton in his own name, so as to make himself personally liable for the price. 'A' cannot revoke 'B' s authority to pay for the cotton.

  'A' authorizes 'B' to guy 1,000 bags of cottons on account of 'A' and to pay for it our of 'A' s money remaining in 'B' s hands. 'B' buys 1,000 bales of cotton in 'A' s name, so as not to make himself personally liable for the price. 'A' can revoke 'B' s authority to pay for the cotton.

- On the expiry of fixed period of time. When the agency is for a fixed period of time, it comes to an end on the expiry of that time.
- On the performance of the specific purpose. Where an agent is appointed to do a particular act, it terminates when that act is done or when the performance becomes impossible.
- Insanity or Death of the principal or agent. Death or insanity of the principal or the agent, terminates the agency. But an agent, in such a case, should take all reasonable steps for the preservation of property, on behalf of the principal or the legal representatives of the principal, as the case may be (Section 209).

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- An agency shall also terminate in case subject-matter is either destroyed or rendered unlawful.
- Insolvency of the Principal. Insolvency of the principal, not of the agent, terminates the agency.
- By renunciation of agency by the Agent. If principal, can cause termination of agency by revocation, an agent may renounce his agency by giving a sufficient notice to that effect. Where, however, an agency is for affixed period and the agency is renounced without a sufficient cause, the principal must be compensated (Section 205).
- ***When Termination of agency takes effect***
- **As regards the agent.** The termination of the authority of an agent does not, so far as regard the agent take effect before it becomes known to him (Section 208).
- **As regards third parties.** As regards third parties, they can continue to deal with the agent till they come to know of the termination of the authority (Section 208).

  Examples

  'A' directs 'B' to sell goods for him, and agrees to give 'B' five 'B' percent (5%) commission on the price fetched against the goods. 'A' afterwards, by letter revokes 'B' s authority. 'B' after the letter is sent, but before he receives it, sells the goods for Rs.10,000. The sale is binding on 'A', and 'B' is entitled to Rs.500 as his commission.

  'A' at Chennai, by letter directs 'B' to sell for him some cotton lying in a warehouse in Mumbai, and afterwards, by letter, revokes his authority to sell, and directs 'B' to send the cotton to Chennai. 'B', after receiving the second letter, enters into a contract with 'C' who knows of the first letter, but not of the second. For the sale to him of the cotton 'C' pays 'B' the money, with which 'B' absconds, 'C' s payment is good as against 'A'.

  'A' directs 'B', his agent, to pay certain money to 'C'. 'a' dies and 'D' takes out probate (confirmation by the court) to his will. 'B' after 'A' s death, but before hearing of it, pays the money to 'C'. The payment is good as against 'D', the executor.

UNNAMED AND UNDISCLOSED PRINCIPAL

- **UNNAMED PRINCIPAL**

  Where an agent, though discloses the fact that he is an agent working for some principal conceals the name of the principal, such a principal may be called an unnamed principal.

  The liability of an unnamed principal is similar to that of a disclosed principal must exists and must also be the principal at the time the contract is made. He cannot be into existence as a principal after the contract has been concluded.

- ***UNDISCLOSED PRINCIPAL***

  Where an agent not only conceals the name of the principal but the very fact that there is a principal, the principal is called as an undisclosed principal. In such a case the third parties are not aware of the existence of the principal and regard the agent as the person

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contracting for himself. The third parties, thus, must look to the agent for repayment or performance and the agent may sue or be sued on the contract legal position in this regard may be noted as follows

If the principal wishes to intervene he may repuire the performanse of the contract but the other party has as against him (principal) the same rights as he would have had as against the agent if the agent had been pricipal (section 231)

Para II of section 231 provides that in such a case if the principal discloses himself before the contract is completed the other contracting party may refuse to fulfil the contract if he can show that if he had known who was the principal in the contract, or if he had known that the agent was not the principal, he would not have entered into the contract.

The principal, if he requires performance of the contract, can only obtain such performance subjects to the rights and obligations subsisting between the agent and the other party to the contract (Section 232).

Example

'A' who owes Rs. 10,000 to 'B' sells Rs.20,000 worth of wheat to 'B'. 'A' is acting as agent for 'C' in the transaction, but 'B' has no knowledge nor reasonable ground of suspicion that such is the case. 'C' cannot compel 'B' to take the wheat without allowing him to set off 'A's debt.

In contracts with a concealed principal, the agent is, in the absence of a contract to the contrary, personally liable to the third party. The third party may hold either the agent or principal or both liable (Section 233).

Example

'A' enters into a contract with 'B' to sell him 100 bales of cotton and afterwards discovers that 'B' was acting as agent for 'C'. 'A' may sue either 'B' or 'C' or both, for the price of the cotton.

PERFORMANCE OF A CONTRACT

Performance of a contract takes place when the parties to the contract fulfill their obligations arising under the contract within the time and in the manner prescribed. Section 37 provides that the parties to the contract **must either perform or offer to perform** their respective promises unless such performance is dispensed with or excused under the provisions of the Contract Act or of any other law.

TYPES OF PERFORMANCES: According to Section 37, there can be two types of performances:

1. **Actual performance:** When a party to the contract has done what he had undertaken to do and there remains nothing to be done by him, the promise is said to have been actually performed and the liability of such a party comes to an end.
2. **Attempted performance:** Sometimes, when the performance of the contract becomes due, the promisor is ready and willing to perform his promise, and offers to perform the same, but the promisee refuses to accept the performance. This is known as **attempted performance** or **tender.**

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TYPES OF TENDERS:

1. **Tender of goods and services:** In case of tender of goods and services the promisor is discharged from his obligation and is not required to offer again. The promisor is not responsible for non performance of the contract and can sue the other party for non performance.
2. **Tender of money:** In case of tender of money, the debtor is not discharged from his obligation and is liable to pay the debt. However, the debtor is not liable to pay any interest from the date of tender.

WHO CAN DEMAND PERFORMANCE?

The following persons can make a valid demand for performance:

1. **Promisee:** Normally, promisee is the only person who can demand performance of the promise under a contract. A third party, being stranger to the contract, cannot demand performance of the contract.
2. **Legal representative:** In case of death of the promisee, his legal representative can demand performance, unless a contrary intention appears from the contract or the contract is of personal nature.
3. **Third party:** In some exceptional cases, the third party can also demand performance of the contract even though he is not a party to the contract.

WHO MUST PERFORM?

1. **Promisor himself:** Section 40 of Indian Contract Act, 1872, provides that, "If it appears from the nature of the contract that it was the intention of the parties that the promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor. In such cases, death of the promisor puts an end to the contract.
2. **Agent:** Where the contract does not involve personal skill of promisor, the promisor or his representative may employ a competent person to perform it.
3. **Legal representative:** The contracts which do not involve any personal skill may be performed by his legal representative after the death of the promisor.
4. **Third persons:** A contract may be performed by a third person provided the promisee accepts the arrangement. According to Section 41, if the promisee accepts performance of the promise from a third party, he cannot afterwards compel the promisor to perform the contract again.
5. **Joint promisors:** When there are joint promisors to a contract, the promisee may, if not contrary provided in the contract, compel any one of them to perform the promise.

PERFORMANCE OF JOINT PROMISES:

When two or more persons have made a joint promise, they are known as joint promisors. Unless a contrary intention appears from the contract, all joint promisors must jointly fulfill the promise. If anyone of them dies, his legal representative must, jointly with the surviving promisors, fulfill the promise. If all of them die, the legal representatives of all of them must fulfill the promise jointly.

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If joint promisor doesn't discharge their obligation as per section 42 then provisions of Section 43 will apply. Section 43 lays down three rules as regards performance of joint promise:

(i) **Any one of the joint promisors may be compelled to perform:** When there is no express agreement to the contrary, the promisee **may compel any one or more** of such joint promisors to **perform the whole** of the promise.

(ii) **A joint promisor compelled to perform may claim compensation:** When one of the joint promisors has been compelled to perform the whole of the promise, he may compel every other joint promisor to **contribute equally** with himself to the performance of the promise, unless a contrary intention appears from the contract.

(iii) **Sharing of loss arising from default of joint promisors:** If any one of the joint promisor makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.

RELEASE OF JOINT PROMISOR (Section 44):

Where two or more persons have made a joint promise, a release of one of such joint promisors by the promisee does not discharge the other joint promisor or joint promisors neither does it free the joint promisors so released from responsibility to the other joint promisor or promisors.

RIGHT OF JOINT PROMISEES (SECTION 45):

"When a person has made a promise to two or more persons jointly, then unless a contrary intention appears from the contract, the right to claim performance rests with them during their joint lives, and after the death of any of them with the representatives of such deceased person jointly with the survivor or survivors, and after the death of the last survivor, with the representatives of all jointly.

TIME AND PLACE FOR PERFORMANCE OF THE PROMISE (SECTION 46 TO 50):

(i) **Where no time of performance is specified:** If no time is specified in a contract for the performance of the promise, the promise must be performed within a reasonable time. (Section 46)

(ii) **Where time of performance is specified:** If a promise is to be performed on a specified date, the promisor must perform the promise on the day fixed during the usual business hours and at the place at which the promise ought to be performed. (Section 47)

(iii) **Where no place of performance is fixed:** When no place is fixed for the performance of a promise, it is the duty of the promisor to ask the promisee to fix a reasonable place for the performance of the promise and perform it at such place. (Section 49)

(iv) **Where performance on application by the promisee:** Where the promisor has not undertaken to perform the promise without an application by the promise, and the promise is to be performed on a certain day it is the duty of the promisee to apply for performance at a proper place and within the usual hours of business. (Section 48)

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DISTINCTION BETWEEN SUCCESSION AND ASSIGNMENT:

Succession:When the benefits of a contract are given by succession then both burden and benefits attaching to the contract are passed to the successor. However, the liability of the successor will be limited to the extent of the property inherited by him and no further.

Assignment:When the benefits are given by assignment only benefits are passed and not the burdens. Also burdens of a contract cannot be assigned to anyone.

EFFECT OF REFUSAL TO ACCEPT OFFER OF PERFORMANCE (SECTION 38):

Where a promisor has made an offer of performance to the promisee and the offer is not accepted, then the promisor is not responsible for non performance; nor does he lose his rights under the contract. Such offer must fulfill certain conditions:

(i) It must be unconditional

(ii) It must be made at a proper time and place under such circumstances that the persons to whom it is made, may have a reasonable opportunity of ascertaining that the person by whom it is made is able of and willing, there and then to do the whole of what he is bound by his promise to do.

(iii) If an offer is an offer to deliver any thing to the promisee, then the promisee must have a reasonable opportunity of seeing that the thing offered is the thing which the promisor is bound by his promise to deliver.

An offer to one of several joint promises has the same legal consequences as an offer to all of them.

EFFECT OF A REFUSAL OF PARTY TO PERFORM PROMISE:

When a party to a contract has refused to perform or has disabled himself from performing his promise in entirety, the following two rights accrue to the aggrieved party:

(a) Right to terminate the contract;

(b) Right to indicate by words or by conduct that he is interested in its continuance.

If he chooses to terminate then the loss suffered by him will have to be made good by the promisor. If he chooses to continue then he would be entitled to claim damages which accrue on the date the contract is due to be performed.

If contract is rescinded then aggrieved party is to give back all the benefit he may have received, but is entitled to receive compensation for all damages that he has sustained by the breach.

RECIPROCAL PROMISES:

Promises which form the consideration or part of consideration for each other are called **reciprocal promises**. Thus, where a contract consists of promise by one party in consideration of a promise by other party, the promises are called reciprocal promises.

Types of reciprocal promises:

1. **Mutual and independent:** When each party must perform his part of the promise independently without waiting for the performance or readiness to perform by the other party, the promises are called mutual and independent.

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2. **Conditional and dependent:** When the performance of one depends on the prior performance of the other party, the promises are called conditional and dependent.
3. **Mutual and concurrent:** When the parties have to perform their promises simultaneously, they are said to be mutual and concurrent.

Rules for performance of reciprocal promises:

1. **Mutual and concurrent:** Where reciprocal promises are to be performed simultaneously, the promisor need not perform his promise unless the promisee is ready and willing to perform his promise.
2. **Mutual and dependent:** Where the performance of promise by one party depends upon the prior performance of the promise by the other party, if the party who is liable to perform first, fails to perform, then he cannot claim performance from the other party. Also the defaulter becomes liable to pay compensation to the other party for any loss sustained by the non performance of the contract.
3. **Mutual and Independent:** In this case, if a party fails to keep his promise, the other party cannot excuse himself from performance on the ground of non-performance by the defaulting party. However, the aggrieved party can claim damages from the defaulting party.
4. **Order of performance of reciprocal promises:**Where the order in which the reciprocal promises are to be performed is not expressly fixed by the contract, they must be performed in the order which the nature of the transaction requires.
5. **Effect of one party preventing another from performing promise:** When the contract contains reciprocal promises, one party may prevents the other from performing his promise, then the contract becomes voidable at the option of the party so prevented. Also, he can claim compensation from the other party for any loss sustained due to non-performance of the contract.

Reciprocal promises to do certain things that are legal, and also some other things that are illegal:

When persons reciprocally promise, first to do certain things which are legal and secondly, under specified circumstances, to do certain other things which are illegal, the first set of promises is a contract, but the second is a void agreement.

TIME AS THE ESSENCE OF THE CONTRACT (SECTION 55):

"Time is the essence of the contract" means that the time is an essential factor and the concerned parties must perform their respective promises within the specified time.

1. **Time is essence:** In a contract, in which time is of the essence of the contract, if there is a failure on the part of the promisor to perform the obligation within the fixed time, the contract becomes voidable at the option of the promisee. If, in such case, the promisee accepts the offer after the fixed time, he cannot claim any compensation for the loss sustained due to non-performance of the promise at the agreed time. However, where at the time of accepting the delayed performance he gives notice to the promisor of his intention to claim compensation, he can do so.

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2. **Time is not of essence:** In a contract, in which time is not of the essence, failure on part of the promisor to perform his obligation within the fixed time does not make the contract voidable, but the promisee is entitled to compensation for any loss sustained to him by such failure.

APPROPRIATION OF PAYMENTS:

(i) ***Application of Payment where debt to be discharged is indicated (Section 59):***

Quicquid soivitur, sovitur secundum modum solventis". It means that whatever is paid; is paid according to the intention or manner of the party paying.

(ii) ***Application of payment where debt to be discharged is not indicated****:*

f the debtor owing several debts to the creditor has not intimated, which debt is to be adjusted, at the time of payment, the creditor is entitled to appropriate it to the debt first in time.

(iii) ***Application of payment where neither party appropriates****:*

here neither party makes any appropriation, the payment shall be applied in discharge of the debts in order of time; whether they are or not barred by the law in force. If the debts are of equal standing, the payment shall be applied in discharge of each proportionately.

***Effects of neglect of promisee (Section* 67):** If any promisee neglects or refuses to afford the promisor facilities for the performance of a promise, the promisor is discharged from the performance of his promise. The promisor cannot be held liable for the non-performance.

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MCQ

1. **P agrees to pay a certain sum to Q, if Q brings on earth a star from sky. This is a:**

   (a) Valid contract
   (b) Void contract
   (c) Voidable contract
   (d) Enforceable contract

2. **Indian Contract Act, 1872 is passed by:**

   (a) Indian Parliament
   (b) British Parliament
   (c) U.S. Congress
   (d) None of these

3. **In an auction sale, 'X' is the highest bidder. The auctioneer accepts the offer by not speaking but striking the hammer on the table this amounts to:**

   (a) Express acceptance
   (b) Implied acceptance
   (c) Future acceptance
   (d) No acceptance

4. **A enquires form B, "will you purchase my cow for $ 100?" B replies, "I shall purchase your cow for $ 100 provided you purchase my parrot for $ 120." In this case:**

   (a) B has accepted the offer of A
   (b) B has made a counter offer to A
   (c) A is bound by the actions of B
   (d) B cannot make such an offer

5. **Which one of the following promises is enforceable?**

   (a) X promises to pay Rs.5,000/- to Y who saved him form drowning
   (b) X promises to pay Rs.5,000/-to his son
   (c) X promises to donate Rs.5,000/-to an Officer's Club
   (d) X promises to pay Rs.5,000/-as additional fees to his advocate for winning a suit

6. **Which of the following is false? An offer to be valid must:**

   (a) Contain a term the non- compliance of which would amount to acceptance
   (b) Intend to create legal relations
   (c) Have certain and unambiguous terms
   (d) Be communicated to the person to whom it is made

7. **A agrees to sell to B a horse for Rs. 25,000 if it wins a race and for Rs.15,000 if does not. The horse wins the race. The agreement is :**

   (a) Valid and enforceable
   (b) Void and enforceable
   (c) Void and wagering
   (d) Voidable and wagering

8. **The Indian Contract Act, 1872 extends to:**

   (a) Whole of India
   (b) Whole of India except Jammu and Kashmir
   (c) North India only
   (d) South India only

9. **On the 5th of a month X makes an offer to Y, by a latter, which reaches Y on 6th.**

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On the 7th, Y posts his letter of acceptance.

Meanwhile, on the 6th X posts a letter to Y revoking the offer, On seeing it Y sends a telegram to X on 8th confirming the acceptance given through his letter of the 7th. Discuss the legal effects of three letters and the telegram:

(a) There is no contract between X and Y
(b) The contract is concluded between X and Y on 7th when B posts the letter of acceptance
(c) Either (a) or **(b)**
(d) None of the above

10. **———— Contract is good in substance but suffers from some technical defect:**

(a) Valid contract
(b) Illegal contract
(c) Voidable contract
(d) Unenforceable contract

11. **X Promise to Pay Z Rs.5,00,000 if Z can make his dead wife alive. Such a contract is:**

(a) Valid
(b) Void
(c) Impossible to perform
(d) Unenforceable

12. **Agreement is defined in section —— of the Indian Contract Act, 1872:**

(a) 2 (e)
(b) 2 (c)
(c) 2 (g)
(d) 2 (i)

13. **X makes a proposal to Y, which Y accepts. But before the acceptance came to the knowiedge of X, Y revokes his acceptance by telegram:**

When is the revocation complete?
(a) When the telegram is received by X
(b) When X accepts the revocation
(c) When the telegram is dispatched
(d) When the contents of the telegram come to the knowledge of X

14. **When two parties exchange identical offers in ignorance at the time of each other's offer's** offer, the offer's are called:

(a) Counter offer
(b) Cross offer
(c) General offer
(d) Special offer

15. **An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other, is a :**

(a) Valid contract
(b) Unenforceable contract
(c) Voidable contract
(d) Void agreement

16. **A invites B for his son's wedding. B accepts the invitation. In this case there is an agreement but no contact, since:**

(a) There is no consideration
(b) There is no intention to create legal relationship
(c) There is no written document
(d) There is no formal acceptance of the offer

17. **X offers to sell his house to Y for Rs.10 Lacs and states in his letter that the offer would be considered as accepted if acceptance is not communicated**

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within a certain time. Here, the letter of X would:

(a) Amount to a proposal
(b) Amount to a promise
(c) Not amount to a proposal
(d) Amount to acceptance

18. L says to J, "I shall sell my house: will you buy? A says " yes, I shall buy". The agreement is void due to:

(a) Uncertainty of meaning
(b) Uncertainty of price
(c) Uncertainty of existence of subject matter
(d) Uncertainty of quality of subject matter

19. An Executed Consideration is:

(a) An act of mutual exchange of promises
(b) An act done in the expectation of a proposal
(c) An act done in response to a positive promise
(d) All of the above

20. Which one of the following constitutes an offer in a self – service store?

(a) Picking up an article and approaching the cashier's desk for payment
(b) Display of goods at the shop window
(c) There is no offer in such cases
(d) When the customer asks for some goods

21. In case of illegal agreements, the collateral agreements are:

(a) Valid
(b) Voidable
(c) Void
(d) None

22. S agrees to sell his DVD Player to R Promising to deliver it on the date of payment. R promises to pay the amount, one month hence, this is an example of :

(a) Void contract
(b) Illegal contract
(c) Unilateral contract
(d) Bilateral contract

23. Goods displayed in a shop window with a price label will amount to:

(a) Offer
(b) Acceptance of offer
(c) Invitation to offer
(d) Counter offer

24. The communication of an acceptance is complete as against the acceptor:

(a) When it is put in course transmission to him so as to be out of reach of the acceptor
(b) When it comes to the knowledge o the proposer
(c) When both the proposer and the acceptor the declare the acceptance
(d) When the acceptor accepts his acceptance in a court of law

25. The juristic concept of contract consists of:

(a) Agreement & Obligation
(b) Free Consent & Capacity
(c) Offer and Acceptance
(d) Consideration & Coercion

26. All innocent promises collateral to the main illegal promise contained in a contract will be regarded as:

(a) Valid
(b) Void
(c) Illegal
(d) Voidable

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27. S offered a reward to anyone who returns his lost dog. F Bought the dog to S Without having heard of the offer. Which of the following is correct?

(a) F is entitled to the reward
(b) F was not entitled to the reward
(c) S has to find the dog himself
(d) No reward can be given or the return of lost dog

28. A, by a letter dated 10th January 2008, offers to sell his house to B for Rs.40 Lacs. The letter reaches B on 17th January 2008, who posts his acceptance on 18th January 2008 which reaches A on 30th January 2008. Here, the communication of offer is complete on:

(a) 18.01.2008
(b) 30.01.2008
(c) 17.01.2008
(d) 10.01.2008

29. In the above question, the communication of acceptance is complete against A on 18th January 2008 and against B on:

(a) 18.01.2008
(b) 30.01.2008
(c) 17.01.2008
(d) 10.01.2008

30. Agreement without consideration is invalid when made?

(a) Out of love and affection due to near relationship?
(b) To pay a time barred debt
(c) To compensate a person who has already done something Voluntarily
(d) All of these

31. Consideration must move at the desire of :

(a) The promisor
(b) The promisee
(c) The promisor or any third party
(d) Both the promisor and the promisee

32. Which of the following is not an example to the rule, " No consideration, No contract":

(a) Nature love and affection
(b) Compensation for involuntary services
(c) Completed gift
(d) Agency

33. Past consideration is valid in:

(a) England only
(b) India only
(c) Both
(d) None

34. A is indebted to B. He sells trolley to C. C promises to pay all debts of A to B. If C fails to pay, B has no right to sue C because:

(a) C is stranger to consideration
(b) C is stranger to contract
(c) Both
(d) None

35. Consideration is defined in the Indian Contract Act, 1872 in:

(a) Section 2 (f)
(b) Section 2 (e)
(c) Section 2 (g)
(d) Section 2 **(d)**

36. The inadequacy of consideration will be taken into account by a court of law:

(a) Always at t he discretion of the court
(b) When the promisor performs his promise

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(c) When absence of free consent is pleaded in the formation of the contract

(d) When the promisor expresses his desire to get maximum return for his promise

37. Rohan promises to make a gift of Rs.10,000 towards the repairs of a temple. The trustees of the temple on the faith of his promise incurs liabilities. Rohan does not pay. Can the trustees recover the promised amount from Rohan?

(a) The trustee cannot recover anything from Rohan

(b) The trustee can recover to the extent of liabilities from Rohan

(c) The trustee can recover Rs.10,000 from Rohan

(d) None

38. A who was badly in need of money offered to sell his piano worth Rs. 8500 to B for Rs.5000. B refused to buy. A gradually lowered his price until Rs. 2500 was reached, which B accepted. Before the piano was delivered A received an offer of a larger sum form X and he refused to carry out the contract with B claiming that the consideration was inadequate. Is A liable to pay damages to B for failure to carry out his part of contract?

(a) No, as the consideration was inadequate A cancelled the contract

(b) Yes, A is liable to pay damages to B for failure to carry out his part of the contract

(c) No, as the contract was made due to Undue Influence

(d) Any of the above

39. 'Privity of Contract' is subject to the exception:

(a) Where a trust or charge is created

(b) Where payment is made to a third party

(c) Where payment is made by a third party

(d) None of these

40. Which of the following statement is true:

(a) Consideration must be adequate

(b) Consideration must result in a benefit to both the parties

(c) Consideration must be something, which a promisor is not already bound to do

(d) Past consideration is no consideration in India

41. A consideration is:

(a) A reason behind making a proposal

(b) A condition of the fulfillment of the other's promise

(c) Doing or abstaining from doing something at the desire of the promisor

(d) Reward for something which one has done for another

42. Which of the following are void contracts?

(a) Agreement the meaning of which is certain

(b) Agreement with unlawful consideration

(c) Agreements with minor

(d) Agreement with inadequate consideration, if inadequacy is not supported by free consent

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(a) No, as the consideration was inadequate A cancelled the contract
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(d) Reward for something which one has done for another

55. Which of the following are void contracts?

(a) Agreement the meaning of which is certain
(b) Agreement with unlawful consideration
(c) Agreements with minor
(d) Agreement with inadequate consideration, if inadequacy is not supported by free consent

56. S, a seller of imitation jewellery, sells his business to B and promises, not to carry on business in imitation jewellery and real jewellery. The agreement is:

(a) Fully valid
(b) Valid with regard to imitation jewellery, and void as regards real jewellery
(c) Void with regard to imitation jewellery, and valid as regards real jewellery
(d) Wholly void

57. S, a minor by fraudulently representing himself to be a major, induced L to lend him Rs. 4 Lakhs. He refused to repay it and L sued him for the money. The contract is:

(a) Voidable at the option of the minor
(b) Voidable at the option of L
(c) Wholly valid, S is liable to repay the amount
(d) Totally void and S is not liable to repay the amount due

58. Mistake as to foreign law is treated in the same manner as:

(a) Mistake of Indian law
(b) Mistake of fact
(c) Misrepresentation
(d) Fraud

59. Atual contracted to make and deliver 350 pairs of shoes to Bansi by 1st January. A strike of Atual's employees prevented him from fulfilling his

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contract. In a suit by Bansi for breach of contract, Atual claimed that the contract was terminated by impossibility of performance. Was his defence good?

(a) No, Atual is liable to Bansi for damages
(b) Yes, doctrine of supervening impossibility applies
(c) Yes, doctrine of frustration will apply
(d) Option **(b)** but not (c)

60. An agreement is void if it is opposed to public. Which of the following does not cover this head?

(a) Trading with an enemy
(b) Trafficking in public offices
(c) Marriage brokerage contracts
(d) Contracts to do impossible acts

61. "Consensus – ad-idem" means:

(a) General consensus
(b) Reaching of contract
(c) Reaching an agreement
(d) Meeting of minds upon the same thing in same sense.

62. Parents or guardians shall ———— for breach of contract by minor:

(a) Be held liable
(b) Not be held liable
(c) Be imprisoned
(d) Not be questioned

63. The concept of "Duress" under English Contract Law is similar to:

(a) Undue Influence
(b) Misrepresentation
(c) Coercion
(d) Fraud

64. X offers to sell a painting to Z which X knows is the copy of a well-known master piece. Z thinking that the painting is original decides to buy it at a very high price. Is this a valid contract?

(a) Yes, price is not the criteria for setting aside the contract
(b) No, X is guilty of fraud.
(c) Yes, Z has an erroneous belief as to the value of the painting
(d) No X is guilty of misrepresentation

65. X agrees to pay 'Y' Rs.5,000 if Y delivers a judgement in his favour in a suit. 'Y' does so but X refuses to pay any money. In this context which one of these gives the correct legal position of the agreement?

(a) The agreement is void being opposed to public policy
(b) The agreement is valid and enforceable
(c) The agreement is voidable at the option of 'Y'
(d) The agreement is void because the object is unlawful, forbidden by law

66. In case, through the husband was a divorcee, he did not disclose the fact of his previous marriage to his wife and in-laws. It was held that the consent was obtained by:

(a) Mistake
(b) Misrepresentation
(c) Fraud
(d) Undue influence

67. A man, by the name of Sohan, called at a Jeweller shop and chose a costly ring. He tendered in payment a cheque, which he signed in the name of Garish, a person of credit. He took the ring and pledged it to Bola Nath, who had no

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notice of fraud. Can the Jeweller recover the ring from Bola Nath?

(a) Yes the jewller can recover from Bola Nath
(b) The jeweler can recover either from Sohan or Bola Nath
(c) No, the Jeweller can not recovers from Bola Nath
(d) Can't say

68. A mortgage was executed in favour of a minor. Can the minor get a Decree for the enforcement of t he mortgage?

(a) Yes
(b) No
(c) Can't say
(d) Mortgage is invalid

69. Where an agreement consists of two parts one legal and other illegal, and the legal part is separable from the illegal one, such legal part is:

(a) Void
(b) Valid
(c) Voidable
(d) Illegal

70. An agreement entered into with free consent & lawful but inadequate consideration is :

(a) Void
(b) Voidable
(c) Illegal
(d) Valid

71. An illiterate old woman made a gift deed for practically her entire property to her nephew who managed her affairs. The gift can be set aside on the grounds of:

(a) Mistake
(b) Coercion
(c) Fraud
(d) Undue Influence

72. A sum of money was agreed to be paid to the father in consideration of his giving his daughter in marriage. The agreement is void on ground's of being:

(a) Restraint of marriage
(b) Marriage brokerage contract
(c) Restraint of personal liberty
(d) Restraint of legal proceedings

73. As a general rule minor's agreements are:

(a) Void ab initio
(b) Voidable
(c) Valid
(d) Unlawful

74. W, a singer enters into a contract with M, the manager of a theatre, to sing at his theatre for two nights in every week during the next two moths and M engages to pay her Rs.5 Lacs for each night's performance. On the 7th night, W willfully absents herself from the theatre:

(a) M cannot put an end to the contract
(b) The contract is unlawful
(c) M is at liberty to put an end to the contract
(d) The contract is left at the liberty of W

75. N threatens L's wife that their son M would be abducted if L did not lease but their land to him (N). This is a case of:

(a) Undue influence
(b) Coercion
(c) Fraud
(d) Misrepresentation

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76. A fraudulently informs B that his house is free from encumbrances. B thereupon, buys the house. The house is subject to a mortgage. What are the rights of B?

(a) The contract is voidable at the option of B
(b) He may avoid the contract and get back his money
(c) Both (a) and **(b)**
(d) Either (a) or **(b)**

77. The leading case, on the point that minor's agreement is void ab initio, is:

(a) Carlill v. Carbolic Smoke Ball Co.
(b) Mohoribibi v. Dharmodas Ghose
(c) Nash v. Inman
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78. Which of the following agreements are expressly declared void by the Indian Contract Act?

(a) Agreement made without consideration
(b) Agreement by a minor or a person of unsound mind
(c) Agreement in restraint of marriage
(d) Agreement of which the consideration and object are unlawful

79. Which contracts are not Wagering Contracts?

(a) Bull & Bear Activities
(b) Lottery
(c) Speculative Activities
(d) All of these

80. Which of the following statement is false?

(a) A contract is not voidable if fraud or misrepresentation does not induce the other party to enter into a contract
(b) A Party cannot complain of fraudulent silence or is representation if he had the means of discovering the truth with ordinary means
(c) In case of fraud or misrepresentation, aggrieved party can either rescind or affirm the contract
(d) A party who affirms the contract, can also change his option afterwards if he so decides.

81. An agreement in restraint of legal proceedings is void. It does not cover an agreement which:

(a) Cuts short the period of limitation
(b) Restricts absolutely the parties from enforcing their legal rights
(c) Discharges a party from liability or extinguishes the rights of a party
(d) Provides for a reference to arbitration instead of court of law

82. A minor can do which of the following things?

(a) Plead minority
(b) Can act as an agent
(c) Enter contract of apprenticeship
(d) All of the above

83. A contract made by mistake about the Indian Law, is:

(a) Valid
(b) Void
(c) Voidable
(d) Illegal

CS NITESH KR. JAISWAL CS CLASSES

84. The Contract of "Uberrimae Fidei" means a contract:

(a) Of Good Faith
(b) Of Goodwill
(c) Guaranteed by a surety
(d) Of Utmost Good Faith

85. Which of the following statement is not correct?

(i) A threat to commit suicide does not amount to coercion
(ii) Undue influence involves use of physical pressure
(iii) Ignorance of law is no excuse
(iv) Silence always amounts to fraud
(a) (i) and (ii)
(b) (i), (ii) and (iii)
(c) (i), (ii) and (iv)
(d) (ii), (iii) and (iv)

86. Can a person who is usually of unsound mind, but occasionally of sound mind, make a contract?

(a) Yes, but only when he is of sound mind
(b) Yes, he can always make a contract
(c) No, he cannot make a contract
(d) Can't be determined

87. Where the pre – assumption of "Undue Influence" does not exists:

(a) Husband & Wife
(b) Father & Son
(c) Teacher & Student
(d) Doctor & Patient

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(a) Luxuries
(b) Necessities
(c) Necessaries
(d) All the things

89. In which of the following agreements, restraint of trade is valid?

(a) Agreement with buyer of goodwill
(b) Trade combinations, to the extent they do not create monopoly or opposed to public policy
(c) Agreements under the Partnership Act, 1932
(d) All of the above

90. S, a seller of imitation jewellery, sells his business to B and promises, not to carry on business in imitation jewellery and real jewellery. The agreement is:

(a) Fully valid
(b) Valid with regard to imitation jewellery, and void as regards real jewellery
(c) Void with regard to imitation jewellery, and valid as regards real jewellery
(d) Wholly void

91. S, a minor by fraudulently representing himself to be a major, induced L to lend him Rs. 4 Lakhs. He refused to repay it and L sued him for the money. The contract is:

(a) Voidable at the option of the minor
(b) Voidable at the option of L
(c) Wholly valid, S is liable to repay the amount
(d) Totally void and S is not liable to repay the amount due

92. Mistake as to foreign law is treated in the same manner as:

(a) Mistake of Indian law
(b) Mistake of fact
(c) Misrepresentation
(d) Fraud

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93. Atual contracted to make and deliver 350 pairs of shoes to Bansi by 1st January. A strike of Atual's employees prevented him from fulfilling his contract. In a suit by Bansi for breach of contract, Atual claimed that the contract was terminated by impossibility of performance. Was his defence good?

(a) No, Atual is liable to Bansi for damages
(b) Yes, doctrine of supervening impossibility applies
(c) Yes, doctrine of frustration will apply
(d) Option **(b)** but not (c)

94. An agreement is void if it is opposed to public. Which of the following does not cover this head?

(a) Trading with an enemy
(b) Trafficking in public offices
(c) Marriage brokerage contracts
(d) Contracts to do impossible acts

95. "Consensus – ad-idem" means:

(a) General consensus
(b) Reaching of contract
(c) Reaching an agreement
(d) Meeting of minds upon the same thing in same sense.

96. Parents or guardians shall ———— for breach of contract by minor:

(a) Be held liable
(b) Not be held liable
(c) Be imprisoned
(d) Not be questioned

97. The concept of "Duress" under English Contract Law is similar to:

(a) Undue Influence
(b) Misrepresentation
(c) Coercion
(d) Fraud

98. X offers to sell a painting to Z which X knows is the copy of a well-known master piece. Z thinking that the painting is original decides to buy it at a very high price. Is this a valid contract?

(a) Yes, price is not the criteria for setting aside the contract
(b) No, X is guilty of fraud.
(c) Yes, Z has an erroneous belief as to the value of the painting
(d) No X is guilty of misrepresentation

99. X agrees to pay 'Y' Rs.5,000 if Y delivers a judgement in his favour in a suit. 'Y' does so but X refuses to pay any money. In this context which one of these gives the correct legal position of the agreement?

(a) The agreement is void being opposed to public policy
(b) The agreement is valid and enforceable
(c) The agreement is voidable at the option of 'Y'
(d) The agreement is void because the object is unlawful, forbidden by law

100. In case, through the husband was a divorcee, he did not disclose the fact of his previous marriage to his wife and in-laws. It was held that the consent was obtained by:

(a) Mistake
(b) Misrepresentation
(c) Fraud
(d) Undue influence

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101. A man, by the name of Sohan, called at a Jeweller shop and chose a costly ring. He tendered in payment a cheque, which he signed in the name of Garish, a person of credit. He took the ring and pledged it to Bola Nath, who had no notice of fraud. Can the Jeweller recover the ring from Bola Nath?

(a) Yes the jewller can recover from Bola Nath
(b) The jeweler can recover either from Sohan or Bola Nath
(c) No, the Jeweller can not recovers from Bola Nath
(d) Can't say

102. A mortgage was executed in favour of a minor. Can the minor get a Decree for the enforcement of t he mortgage?

(a) Yes
(b) No
(c) Can't say
(d) Mortgage is invalid

103. Where an agreement consists of two parts one legal and other illegal, and the legal part is separable from the illegal one, such legal part is:

(a) Void
(b) Valid
(c) Voidable
(d) Illegal

104. An agreement entered into with free consent & lawful but inadequate consideration is :

(a) Void
(b) Voidable
(c) Illegal
(d) Valid

105. An illiterate old woman made a gift deed for practically her entire property to her nephew who managed her affairs. The gift can be set aside on the grounds of:

(a) Mistake
(b) Coercion
(c) Fraud
(d) Undue Influence

106. A sum of money was agreed to be paid to the father in consideration of his giving his daughter in marriage. The agreement is void on ground's of being:

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(b) Marriage brokerage contract
(c) Restraint of personal liberty
(d) Restraint of legal proceedings

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108. In contracts of sale of movable properties, time is :

(a) Presumed to be the essence of the contract
(b) No presumption as to time can be raised
(c) Not presumed to be the essence of the contract
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124. S instructs T to enter on his behalf into a wagering transaction. T loses in the transaction and pays from his pocket. He thereafter sues S for reimbursement. Can S raise plea of wager?

(a) Yes, S can raise the plea of wager?
(b) No, as the agent's transaction, which is collateral to the main transaction, which is void is not affected
(c) Yes, S can raise the plea of wager but only in the states of Maharashtra & Gujarat
(d) Option **(b)** is correct whereas (c) is an exception

125. Which one of the following is relevant in normal circumstances in determining the amount of damages from breach of contract?

(a) Normally expected loss
(b) Difference between market price and contract price
(c) Sudden closure price of production
(d) Additional expenses for procuring the goods

126. A party who does not suffer any loss in case of breach of contract is entitled to:

(a) Statutory damages
(b) Liquidated damages

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(c) Exemplary damages
(d) Nominal damages

127. Specific Performance may be ordered by the court when:

(a) Damages are an adequate remedy
(b) Damages are not an adequate remedy
(c) Defaulting party is not ready to pay damages
(d) Contract is not voidable

128. Damages which an aggrieved party claim besides general damages for any loss he has suffered owing to special circumstances known to both the parties at the time of signing the contract are known as:

(a) General damages
(b) Liquidated damages
(c) Nominal damages
(d) Vindictive damages

129. The remedies open to a person, suffering from breach of contract are:

(a) Suit for Damages
(b) Suit for Injunction
(c) Suit upon Quantum Meruit
(d) All of these

130. ———— damages are measured on the basis of extent of shock to the sentiments of promise:

(a) Vindictive
(b) Nominal
(c) Loss of reputation
(d) Discomfort

131. In case of anticipatory breach, where the promisee elects to keep the contract alive, if during the time the contract remains open, some event happens discharging the promisor from his liability, the contract becomes:

(a) Voidable
(b) Illegal
(c) Contingent
(d) Void

132. P contracts with Q to deliver possession of a house under construction within a period of six months; failing which he would pay the monthly rental of Q. The monthly rental payable by P for Q is in the nature of :

(a) Penalty
(b) Liquidated Damages
(c) Exemplary Damages
(d) Special Damages

133. N chartered M's ship and agreed to load it with a cargo in Orissa within 50 days. N was unable to supply the cargo but M continued to demand it. Meanwhile war broke out, rendering the performance impossible. In such a case:

(a) M cannot sue for damages
(b) Contract is discharged
(c) Neither (a) nor **(b)**
(d) Both (a) and **(b)**

134. In which of the following cases a claim is not enforceable on the ground of quantum meruit?

(a) A is engaged by B to write a book to be published in instalments in weekly magazine. The magazine is abandoned after a few issues
(b) A is employed as a managing director in a company. After he renders service for sometime it is

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found that the directors were not qualified to appoint him as such

(c) A undertakes to build a house for B for Rs. 25,000, but after having done half the work he abandons the contract. B afterwards completes the house

(d) A decorates B's flat and fits a wardrobe and a book –case for a lump sum of Rs. 15,000. The work is done But B complaints of faulty workmanship

135. G, a film star agreed to act exclusively for y, a film producer, for one year. During the year, she contracted to act for some other producer. In this case, Y:

(a) Can restrain G by an injunction
(b) Cannot sue G at all
(c) Has to produce the film with other actors only
(d) Cannot restrain G by an injunction

136. E contracts to marry F. Before the agreed date of marriage, E marries K. Here, F is entitled to sue E for:

(a) Anticipatory Breach in an express manner
(b) Actual Breach in an express manner
(c) Anticipatory Breach in an implied manner
(d) Actual Breach in an implied manner

137. In case of illegal agreements, the collateral agreements are:

(a) Valid
(b) Voidable
(c) Void
(d) None

138. Consideration must move at the desire of:

(a) The promisor
(b) The promise
(c) The promisor or any third party
(d) Both the promisor and the promise

139. Sale is an

(a) Executed contract
(b) Executor contract
(c) Both of the above
(d) None of the above

140. Conditions and warranties _____.

(a) Must be expressed
(b) Must be implied if not expressed
(c) May either be expressed or implied
(d) None of the above

141. Consideration in simple terms means

(a) Anything in return
(b) Something in return
(c) Everything in return
(d) Nothing in return

142. Buyer means a person who:

(a) Buys Goods
(b) Agrees to buys Goods
(c) Has bought goods
(d) Buy or agrees to buy goods

143. Delivered by acknowledgement is

(a) Actual Delivery
(b) Constructive Delivery
(c) Symbolic Delivery
(d) None of the above

144. Consent is not said to be free when it is caused by _____.

(a) Delivery of goods
(b) Payment of price
(c) Fall of hammer
(d) None of the above

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145. A let out a theatre to B for a series of drama for certain days. The theatre was completely destroyed by fire before the scheduled dates. In the case:

(a) The contract is discharged by impossibility of performance
(b) The contract is void ab initio
(c) The contract is voidable at the option of B
(d) A cannot be discharged of the contract

146. A, B and C jointly promise to pay D a sum of Rs. 90,000. C is compelled to pay the whole of the amount to D. Can he recovers anything form A and B when both A and B were solvent?

(a) Yes, C can recover Rs. 60,000 from A
(b) Yes, C can recover Rs. 90,000 from A
(c) Yes, C can recover Rs.30,000 each from A and B
(d) No C cant recover anything from A and B

147. A servant is employed for one year on a monthly salary of Rs.1800, the whole salary to be paid at the end of the year. The servant wrongfully leaves the service after six months. Is he entitled to any salary?

(a) He is entitled to the whole salary
(b) He is entitled to the salary of six months.
(c) He is entitled to the salary which his master thinks suitable
(d) He is not entitled to any salary

148. R contracts to sell his car to S for Rs.7 Lacs and S agrees to pay on delivery. Once the car is delivered to S and S pays Rs.7 Lacs, Contract comes to an end. This is called:

(a) Breach of a contract
(b) Discharge of a contract
(c) Rescission of a contract
(d) Waiver of a contract

149. If a new contract is substituted in place of an existing contract it is called:

(a) Alteration
(b) Rescission
(c) Novation
(d) Waiver

150. In case of default by joint promisors, the promisee:

(a) Cannot sue any single promisee
(b) Can sue any one of them to the extent of his share in the joint promise
(c) Can sue any one of them for the entire promise
(d) Both (a) and (b)

151. A contract of personal volition is not performed by:

(a) The agent
(b) The promises
(c) The legal representative
(d) All of these

152. A enters into a contract with B for dancing at his theatre for three nights for a fee of Rs. 2,00,000. A dances for two nights and is taken ill. What remedy is available to B?

(a) B can repudiate the contract
(b) B can claim damages from A
(c) B is not bound to pay fees
(d) B cannot claim damages from A

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153. The original contract need not be performed I there is:

(a) Alteration of contract
(b) Recession of contract
(c) Novation
(d) All of these

154. Reasonable time for performance of a contract is a:

(a) Question of Fact
(b) Question of Law
(c) Mixed Question of Fact & Law
(d) Question of Prudence

155. X sold to Y by sample and Y thinking that they were old rice purchased them, but the rice was new. In this case:

(a) Y is not bound by the contract
(b) Y is not bound by the contract
(c) Y can recover damages from X
(d) Y can sue for replacement of new rice with old rice

156. The right of Joint promises to demand performance is:

(a) Joint
(b) Several
(c) Joint or several
(d) Joint and several

157. X and Y contract that Y shall build a house for X for Rs.20 Lacs. Y's ready and willing to construct the house but X prevents him from doing so, In such case:

(a) Y is entitled to recovers compensation for any loss suffered by him
(b) Y can opt to rescind the contract
(c) (a) or (b)
(d) (a) and **(b)**

158. Rescission of a voidable contract is communicated and revoked in the same manner as the communication of revocation of:

(a) Proposal
(b) Acceptance
(c) Breach
(d) Impossibility

159. Suppose the time fixed for performance of the contract has expired but the time is not essential. What is the remedy of the promisee in this case:

(a) Can rescind the contract
(b) To claim compensation
(c) No remedy available
(d) Can't be determined

160. Discharge by mutual agreement may involve ————————:

(a) Innovation
(b) Rescission
(c) Alteration
(d) All of these

161. A mother owes Rs. 10,000 to her daughter. But this debt has become barred by the Limitation Act. The mother sings a written promise to pay Rs. 3,000 on account of the debt. In such a case which one is correct:

(a) There is no contract as the debt is already barred by Limitation and so it cannot be revived by as subsequent promise
(b) There is no contract because the mother has promised to give only a part of time debt
(c) This is enforceable against the mother because such a promise is

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valid and binding under the Indian Contract Act

(d) None

162. If time is the essence of a contract and the promisor fails to performs the contract by the specified time, the contract:

(a) Remains Valid
(b) Becomes Void
(c) Becomes Unenforceable
(d) Becomes Voidable at the instance of the promisee

163. A contract can be discharged by:

(a) Mutual agreement and performance
(b) Laps of time and operation of law
(c) Breach of contract
(d) All of these

164. Whether time is the essence of the contract depends on the:

(a) Provisions of law
(b) Intention of the parties
(c) Facts and circumstances of each separate case
(d) All of the above

165. In case of death of a joint promisor (s), the promise can:

(a) Not enforce the contract against the survivor (s) of the said joint promisor (s)
(b) Enforce the contract against the survivor (s) of the said joint promisor (s)
(c) Not enforce the contract at all
(d) Both (a) & (b)

166. X owes Y two sums, one for Rs. 2,000 which is barred by Limitation and another for Rs.2,500 which is not barred. X pays Y Rs. 1,000 on account generally, Later Y sues for Rs.2500. X pleads:

(ii) As to Rs.2,000 that it was time barred, and
(iii) As to Rs.2,500 a part payment of Rs.1,000

(a) Y can appropriate the payment of Rs.1,000 to wards the first debt & X is bound to pay Rs.2,500 which is not yet barred by limitation
(b) Both the contentions of X are wrong
(c) Either (a) or (b)
(d) Both (a) and (b)

167. Where the performance of a promise by one party depends on the prior performance of promise by the other party, such reciprocal promises fall under the category of :

(a) Mutual and Concurrent
(b) Conditional and Dependent
(c) Mutual and independent
(d) Both (a) and (b)

168. When an inferior right accruing to a party in a contract merges into a superior right accruing to the same party, then:

(a) The contract conferring the superior right is discharged
(b) The contract conferring the inferior right is discharged
(c) Both contracts are not discharged
(d) Both contracts are discharged

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169. March list I - with list II and select the correct answer from the code given below the lists:

	LIST I		LIST II
A.	Contract opposed to public policy	1.	Contracts of insurance
B.	Agreement where object is uncertain	2.	Agreements hostile to friendly states
C.	Intention to create legal obligation	3.	Void and Unenforceable
D.	Contracts of utmost good faith	4.	Essential element for valid contract

CODES:

	A	B	C	D
(a)	1	4	3	2
(b)	4	2	1	3
(c)	2	1	3	4
(d)	2	3	4	1

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ANSWERS

1	(b)	2	(a)	3	(b)	4	(b)	5	(a)	6	(a)	7	(c)
8	(b)	9	(a)	10	(d)	11	(b)	12	(a)	13	(a)	14	(b)
15	(c)	16	(b)	17	(c)	18	(b)	19	(c)	20	(a)	21	(c)
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43	(d)	44	(a)	45	(b)	46	(b)	47	(b)	48	(d)	49	(c)
50	(b)	51	(b)	52	(a)	53	(c)	54	(c)	55	(b)	56	(b)
57	(d)	58	(b)	59	(a)	60	(d)	61	(d)	62	(b)	63	(c)
64	(c)	65	(a)	66	(c)	67	(c)	68	(a)	69	(b)	70	(d)
71	(d)	72	(b)	73	(a)	74	(c)	75	(b)	76	(c)	77	(b)
78	(c)	79	(c)	80	(a)	81	(d)	82	(a)	83	(d)	84	(c)
85	(a)	86	(a)	87	(c)	88	(d)	89	(d)	90	(b)	91	(d)
92	(b)	93	(a)	94	(d)	95	(d)	96	(b)	97	(c)	98	(c)
99	(a)	100	(c)	101	(c)	102	(a)	103	(b)	104	(d)	105	(b)
106	(b)	107	(a)	108	(a)	109	(b)	110	(c)	111	(b)	112	(c)
113	(c)	114	(a)	115	(d)	116	(d)	117	(a)	118	(d)	119	(c)
120	(a)	121	(a)	122	(c)	123	(d)	124	(d)	125	(b)	126	(d)
127	(b)	128	(b)	129	(d)	130	(a)	131	(d)	132	(b)	133	(d)
134	(c)	135	(a)	136	(c)	137	(b)	138	(a)	139	(a)	140	(c)
141	(b)	142	(d)	143	(b)	144	(c)	145	(a)	146	(c)	147	(d)
148	(b)	149	(c)	150	(c)	151	(d)	152	(d)	153	(d)	154	(a)
155	(b)	156	(d)	157	(d)	158	(a)	159	(b)	160	(d)	161	(c)
162	(d)	163	(d)	164	(d)	165	(b)	166	(d)	167	(b)	168	(b)
169	(d)	170	(d)										

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TIME FOR NKJ-CLASS TEST !



Dear NKJ Student !

Please Request your Faculty to Conduct Test of Past Chapter and ensure that the test is surely conducted.

Its mandatory !

"Practice makes a man perfect"

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CHAPTER 10 THE SALE OF GOODS ACT, 1930

INTRODUCTION: Till 1930, transactions relating to sale and purchase of goods were regulated by the Indian Contract Act, 1872. In 1930, Sections 76 to 123 of the Indian Contract Act, 1872 were repealed and a separate Act called **"The Indian Sale of goods Act, 1930"** was passed. It came into force on **1st July 1930**. With effect from 22nd September, 1963, the word "Indian" was also removed to make the present Act, "The Sale of Goods Act, 1930". This Act extends to **whole of India except the State of Jammu and Kashmir**. This Act deals with goods and not other movable property. It covers both a sale as well as agreement to sell goods.

DEFINITIONS:

Section 2 of The Sale of Goods Act, 1930, defines the following terms:

- **Buyer and Seller: "Buyer"** means 'a **person who buys** or agrees to buy goods. The **"Seller"** means 'a **person who sells** or agrees to sell goods'.

- **Mercantile agent:** Mercantile agent means 'an agent having in the customary course of business **an authority either to sell goods or to consign goods** for the purpose of the sale or to buy goods or to raise money on the security of the goods.

- **Property:** It means 'the **general property right** of ownership in goods and not merely a special property.

- **Insolvent:** A person is said to be insolvent when he **ceases to pay his debts** in the ordinary course of business, or **cannot pay his debts** as they become due.

GOODS:

"Goods" means 'every kind of **movable property.** Sale and purchase of immovable property is not covered by this Act.

IT INCLUDES	IT EXCLUDES
• Stock and shares • Growing crops • Grass and things attached to or forming part of land, which are agreed to be severed before sale. • Rare, old and antique coins • Goods like patents, copyright, trademark, goodwill, license, water, gas, electricity.	• Actionable claims • Money • Immovable property

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TYPES OF GOODS:

Existing goods	These are goods which are in existence at the time of contract of sale. Such goods are in the ownership and in possession of the seller at the time he makes sale.	
	Specific Goods	Goodswhich areidentified and agreed by the parties at the time of the contract of sale are specific goods. Thus, the goods have been separated from the lot.
	Generic or Unascertained Goods	Generic or unascertained goods are 'goods defined only by description or sample and not specifically identified and separated at the time of the formation of contract.
	Ascertained Goods	Goods which are ascertained and identified in accordance with the agreement after the formation of the contract are called ascertained goods.
Future Goods	"Future Goods" means 'goods which are not in existence at the time of contract. These goods are to be manufactured or acquired by the seller after the contract of sale is made'. Since, these goods are not in ownership and possession of the seller, the seller cannot make sale of these goods. Rather, agreement to sell is made for these goods.	
Contingent Goods	These are goods which are also not in existence at the time of contract like future goods. The acquisition of contingent goods by the seller depends upon happening or non-happening of an uncertain event which may or may not happen.	

CONTRACT OF SALE (SECTION 4):

Section 4 defines contract of sale as "a contract whereby the seller **transfers** or **agrees to transfer** the **property in goods** to the buyer for a **price**".

Essentials of contract of sale:

The following essentials must co-exist so as to constitute a contract of sale under the Sale of Goods Act, 1930:

Two parties	There must be atleast two parties, one seller and the other buyer.
Subject matter	Subject matter of a contract of sale must necessarily be goods.
Transfer of property	In every contract of sale, the ownership of goods must be transferred by the seller to the buyer. Property means the general property in goods and not merely special property.
Price	Price means the money consideration for sale of goods paid by the buyer to the seller. The consideration in a contract of sale must be money. However, it may be partly in cash and partly in kind.
Essentials of a valid contract	The contract of sale must possess all essential elements of a valid contract.

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SALE AND AGREEMENT TO SELL:

Sale: Where under a contract of sale, the property in the goods is transferred from the seller to the buyer **immediately** at the time of making the contract, it is called sale.

Agreement to sell: Where under a contract of sale the transfer of the property in the goods is to take place at a **future time** or subject to fulfillment of some conditions, it is called an agreement to sell.

DISTINCTION BETWEEN SALE AND AGREEMENT TO SELL:

BASIS OF DISTINCTION	SALE	AGREEMENT TO SELL
Transfer of ownership	Transfer of ownership of goods take place immediately at the time of making the contract.	Transfer of ownership take place at a future time or subject to fulfillment of certain conditions.
Type of contract	Executed contract	Executory contract
Nature of right	Jus in rem	Jus in personam
Risk of loss	Risk of loss or damage of goods is transferred to the buyer immediately.	Risk of loss or damage of goods is not transferred to the buyer immediately as ownership has not transferred.
Right of seller against buyer's breach	Seller can sue the buyer for the price of goods even though the goods are in his possession.	Seller can sue the buyer for damages only.
Right of buyer against seller's breach	Buyer can sue the seller for damages and also the third party who bought the goods.	Buyer can sue the seller for damages only.
Effect of insolvency of seller	Buyer can claim the possession of goods from the official assignee as the ownership in goods has transferred to him.	Buyer cannot claim goods even though he has paid the price. He can claim the rateable dividend for the price paid by him.
Effect of insolvency of buyer	Seller must deliver the goods to the official assignee as the ownership has transferred to the buyer. He can claim only rateable dividend for the unpaid price.	Seller is not required to deliver the goods to official assignee even if the buyer has paid the full price for the goods.

DISTINCTION BETWEEN SALE AND BAILMENT:

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

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BASIS OF DISTINCTION	SALE	BAILMENT
Parties	Parties involved in a sale contract are called **seller** and **buyer.**	Parties involved in a bailment agreement are called **bailor** and **bailee.**
Transfer of ownership	The ownership of the goods is transferred from the seller to the buyer.	Only possession of the goods is transferred from the bailor to the bailee and not ownership.
Transfer of possession	Possession of goods may or may not be transferred immediately at the time of contract.	Possession of the goods is immediately given to the bailee at the time of the contract.
Return of goods	Goods are not returned to the seller in sale.	When the purpose of bailment is over, the goods must be returned by the bailee to the bailor.
Consideration	Consideration is price in terms of money.	Bailment may be gratuitous or non-gratuitous.
Use of goods	Buyer may use the goods according to his own choice.	Bailee must use the goods in accordance with the terms and conditions of bailment.

Sale And Contract For Work And Labour:

In a contract of work and labor, the rendering of the service and the exercise of skill is the essence of the contract even though there may be delivery of goods.

In a contract of sale, the essence is transfer of ownership as well as possession of goods from the seller to the buyer. The Sale of Goods Act, 1930 does not apply to contracts for skill and labor.

DISTINCTION BETWEEN SALE AND HIRE PURCHASE AGREEMENT:

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

A "**hire purchase agreement**" is basically a **contract of hire**, but in addition, it gives the **hirer an option** to **purchase the goods** at the end of the hiring period. Consequently, until the final payment, the hirer is merely a bailee of goods and ownership remains vested in the bailor. Under such a contract, the owner of goods delivers the goods to person who agrees to pay certain stipulated periodical payments as hire charges. Through the possession is with the hirer, the ownership of the goods remains with the original owner.

BASIS OF DIFFERENCE	SALE	HIRE-PURCHASE AGREEMENT
Governing law	Governed by The Sale of Goods Act, 1930	Governed by Hire Purchase Act, 1972
Transfer of ownership	Ownership is transferred immediately.	Ownership is transferred on the payment of the last installment.

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Nature	Executed contract	Executory contract
Possession of the goods	Possession of the goods need not be transferred immediately.	Possession of the goods is transferred immediately.
Right to terminate	The buyer has no right to terminate the contract of sale by returning the goods.	The hirer has right to terminate the agreement at any time by returning the goods.
Right to repossess the goods	The seller has no right to repossess the goods on breach. He can sue for the price only.	The hire-vendor has a right to repossess the goods if the hirer defaults in the payment.
Resale	The buyer can resale the goods as he is the owner of goods.	Hirer cannot resale goods before the payment of last installment.
Formalities	A contract of sale need not necessarily be in writing.	The hire-purchase agreement must be in writing.
Payment made by installment	The payment made by the buyer in installment is treated as payment of price of the goods.	Installment paid by the hirer is treated as hire charges for use of goods.

DESTRUCTION OF SUBJECT MATTER OF A CONTRACT:

1. **Goods perishing before the contract are made:** Where the contract for sale is made for **specific goods**, if the goods have without the knowledge of the seller, destroyed or so damaged as no longer answer to the description in the contract, then the contract of sale is **void**.
2. **Goods' perishing after the contract is made:** Where there is an **agreement to sell specific goods**, the goods without any fault of the seller or the buyer perish or suffer such damages as not to answer the description in the agreement before the risk passes to the buyer, the **agreement becomes void**. When the property in the goods has passed to the buyer, the buyer bears the risk of subsequent destruction of or damage of goods.

ASCERTAINMENT OF PRICE:

Pricemeans the money consideration for sale of goods. No sale can take place without a price. Price of the goods has to be paid in money. The price may be paid by the buyer to the seller either at the time of making the contract or at some future date.

Modes of Fixing Price(Section 9 and 10)

The price may be:

a) Fixed at the time of contract by the parties themselves
b) Fixed in a manner provided in the contract of sale
c) Fixed by usage
d) Fixation of reasonable price(Usually the price prevailing in the market on the date of sale).
e) Fixed by some third-party

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Price fixed by third party:

- Where the third party is not willing or unable to fix the price of the goods and the goods have not been delivered to the buyer, the contract will become void.
- Where the third party is not willing or unable to fix the price but the goods have already been delivered to the buyer and he has has already taken the benefit of the goods, he must pay a reasonable price for them.
- Where the third party is prevented from valuing the price as a result of the fault of seller or the buyer, then the party in fault is liable to pay damages to the other party.

STIPULATION AS TO TIME:

Unless a different intention appears from the terms of the contract:

- Stipulation of the time for the payment of price is not deemed to be of essence of a contract of sale.
- The time stipulated for the delivery of goods is considered to be of essence of the contract. non performance at the stipulated time will render the contract voidable at the option of the buyer.

EARNEST MONEY OR SECURITY DEPOSIT:

Sometimes, the buyer pays some money to the seller in advance. Such payment may be earnest money or security deposit.

- When such payment is made as a part of price in advance, then if the contract is not performed it is to be refunded to the buyer. However, if the contract is performed, it will be adjusted in the total price of the goods purchased.
- When such payment is made as a guarantee for the performance of a contract by the buyer, then on his failure to perform the contract the seller can forfeit the amount.

DOCUMENT OF TITLE OF GOODS:

A document of title is any written document that is treated in the regular course of business as adequate evidence that the person in possession of the document is entitled to receive, hold and dispose of the document and a right to transfer or receive goods thereby represented'. Bill of Lading, railway receipt, warehouse receipts are types of document of title of goods.

CONDITIONS AND WARRANTIES (SECTIONS 10-17)

The parties are at liberty to enter into a contract with any terms and conditions they please. During sale, the seller makes various claims regarding the goods to be sold. These cliams may amount to a condition, forming part of the contract or a mere expression of opinion, which is not part of the contract. If it is a statement by the seller on the reliance of which the buyer makes the contract, it will amount to a stipulation. If it is a mere recommendation by the seller of his goods it does not amount to a stipulation and does not give the right of action.

The stipulation may either be a condition or a warranty. Section 12 draws a clear distinction between a condition and a warranty. Whether a stipulation is a condition or only a warranty is a matter of substance rather than the form of the words used. A stipulation may be a condition through called a warranty and *vice versa.*

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CONDITIONS

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

WARRANTIES

If the **stipulation is collateral to the main purpose of the contract,** i.e., is a subsidiary promise, it is a warranty. The breach of a warranty gives the aggrieved party a right to claim damages but not the right to reject goods or to terminate the contract. Thus, if the seller does not fulfill a warranty, the buyer must accept the goods and claim damages for breach of warranty.

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

DISTINCTION BETWEEN CONDITION AND WARRANTY:

BASIS OF DIFFERENCE	**CONDITION**	**WARRANTY**
1. Nature	Essential to the main purpose of the contract.	Collateral to the main purpose of the contract.
2. Right in case of breach	The aggrieved party can terminate the contract.	The aggrieved party can claim damages only.
3. Treatment	A breach of condition can be treated as a breach of warranty	A breach of warranty cannot be treated as breach of condition.

WHEN A CONDITION MAY BE TREATED AS WARRANTY:

In the following three cases, a breach of a condition is treated as a breach of a warranty:

Waiver by the buyer	The buyer may waive a condition. Once the buyer waives a condition, he cannot insist on its fulfillment.
Treatment by buyer	The buyer may elect to treat breach of the condition as a breach of warranty. Thus, he may claim damages instead of repudiating the contract.
Compulsory treatment by buyer	Where the contract is indivisible and the buyer has accepted the goods or part thereof, the breach of condition can only be treated as breach of warranty. Thus, the buyer cannot terminate the contract but can only claim damages from the seller.

In a contract of sale of goods, conditions and warranties may be express or implied:

- ***Express conditions and warranties:*** These are stipulations which are agreed upon between the parties at the time of contract and are expressly provided in the contract.

- ***Implied conditions and warranties:*** These are implied by law in every contract of sale of goods unless a contrary intention appears from the terms of the contract. These implied conditions or warranties can be altered or negated by an express agreement between the seller and the buyer.

IMPLIED CONDITIONS

The implied conditions are those which are presumed by law to present in the contract. However, an implied condition may be negated or waived by an express agreement. The following conditions are implied in a contract of sale of goods unless the circumstances of the contract show a different intention:

Condition as to title	In every contract of sale, there is an implied condition on part of the seller that: a. In case of sale, he has ownership and **right to sell** the goods, and b. In an agreement to sell, he **will have a right to sell** the goods at the time when the property is to pass.
Sale by description	Where there is a contract of sale of goods by description, there is an implied condition that goods delivered by seller shall **correspond with such description**. If the goods does not correspond with the description, the buyer is not bound to accept and pay for the goods.
Sale by sample	In a contract of sale by sample, there is an implied condition that: • The bulk should **correspond with the sample** in quality; • The buyer shall have **reasonable opportunity of comparing the bulk** with the sample; and • The goods shall be **free from any defect** rendering them un-merchantable, which would not be apparent on reasonable examination of the sample.
Sale by sample as well as by description	Where the goods are sold by sample as well as by description the implied condition is that the bulk of the goods supplied must **correspond both with the sample and the description**. In case the goods correspond with the sample but do not tally with the description or vice versa, the buyer can repudiate the contract.
Condition as to quality or fitness	There is **no implied condition** as to the quality or fitness for any particular purpose of goods supplied under a contract of sale. There is an implied condition as to the reasonable quality or fitness of goods if: a) The particular **purpose** for which goods are required must have been **disclosed** by the buyer to the seller. b) The buyer must have **relied upon the seller's skill** or judgment of the seller to select the best goods and c) The seller has **ordinarily** been **dealing** in those goods. However, there is no implied condition where: a) The buyer has **not disclosed** to the seller any abnormal circumstances or

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	b) The buyer buys a specified article under its **patent** or other **trade name** and c) Buyer has **not relied upon the skill** and judgment of seller.
Condition as to merchantable quality	*Merchantable quality* means that the goods should be resalable in the market under the particular description by which they are known. They are not merchantable if they have defects which make them **unfit for ordinary use**, or are such that a reasonable person knowing of their condition **would not buy them**. Where the goods are bought be description from a seller who deals in that type of goods, there is an implied condition that the goods shall be merchantable quality.
Condition as to wholesomeness	In a contract of sale of provisions and eatables, there is an implied condition that the goods shall be wholesome or sound, i.e. goods should be fit for human consumption.

IMPLIED WARRANTIES

Implied warranties are those which **the law presumes** to have been incorporated in the contract of sale inspite of the fact that the **parties havenot expressly included** them in a contract of sale. Subject to the contract to the contrary, the following are the implied warranties in the contract of sale:

Warranty as to undisturbed possession	There is an implied warranty that the buyer shall have and **enjoy quiet possession** of the goods'. If the buyer's possession is disturbed by anyone having superior title than that of the seller, the buyer may sue the seller for the breach of warranty.
Warranty as to freedom from encumbrances	There is an implied warranty that the goods shall be so **free from any charge or encumbrances** in favor of any third party. If the goods are found subject to some charge in favor of third party, the buyer may sue the seller for damages. However, this warranty is not applicable where the buyer has been informed of such charge or has notice of the same.
Warranty to disclose dangerous nature of goods	If the goods are inherently **dangerous** or likely to be dangerous to the buyer, it is the duty of the seller to **warn the buyer** of the probable danger which may arise out of its use.
Warranty as to quality or fitness by usage of trade	There is an implied warranty as to **quality of fitness** for a particular purpose may be annexed by the **usage of trade.**

Doctrine of Caveat Emptor

The term *caveat emptor* is a Latin word which means "**let the buyer beware**". It implies that while purchasing the goods, the buyer must be cautious. This principle states that, at the time of buying goods, the buyer must make reasonable examination of the goods to satisfy himself that the goods are suitable for his purpose. Section 6 provides that "subject to the provisions of the

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Act and of any other law for the time being in force, **there is no implied warranty or condition as to the quality or fitness for any particular purpose** for which the goods are supplied under a contract of sale". In simple words, it is not the seller's duty to give to the buyer the goods which are fit for a suitable purpose of the buyer. It is up to the buyer to make proper selection of goods according to his needs. If he makes a wrong selection, he cannot blame the seller if the goods turn out to be defective or do not serve his purpose.

Exceptions to the doctrine of *Caveat Emptor:*

Misrepresentation by seller	Where the seller makes a false representationand the buyer relies on it and makes the contract, the rule of caveat emptor will not apply and the contract will become voidable in the hands of buyer.
Concealment of defects	When the seller actively conceals a defect in the goods which is not visible on a reasonable examination, it will amount to fraud and the above rule will not apply.
Condition as to fitness for purpose	Where the seller is a dealer of the type of goods sold by him and the buyer has disclosed the purpose for which goods are required and relied upon the seller's skill or judgment, the above rule will not apply.
Sale by description	Where goods are sold by description and the goods supplied by the seller do not correspond to the description.
Sale by sample	Where the goods are sold by sample and the goods supplied by the seller do not correspond with the sample.
Sale by sample and description	Where the goods are sold by sample as well as description and the goods supplied do not correspond with the sample as well as description.
Merchantability	Where the goods are bought by description from a seller who deals in goods of that description and the goods are not of **merchantable quality**, the rule of caveat emptor does not apply.

UNIT-2 TRANSFER OF OWNERSHIP AND DELIVERY OF GOODS

PASSING OF PROPERTY:

Passing of property means transfer of ownership and not the physical possession of goods. Transfer of ownership is different from transfer of possession. On sale, the ownership of the goods transfer from the seller to the buyer but the goods may remain in the possession of the seller. If the ownership has passed to the buyer, the risk in the goods sold is that of buyer and not of seller, though the goods may be in the seller's possession.

Significance of Passing of Property:

The time of transfer of ownership of goods decides various rights and liabilities of the seller and the buyer. Thus, it becomes very important to know the exact time of transfer of ownership of goods from seller to buyer to answer the following questions:

1. Who shall bear the risk?

2. Who can take action against the third party?
3. Whether a seller can sue for price?
4. In case of insolvency of a buyer whether the official receiver or assignee can take the possession of the goods from the seller?
5. In case of insolvency of a seller whether the official receiver or assignee can take the possession of the goods from the buyer?

Transfer of Ownership of Specific or Ascertained goods:

No property in the goods is transferred to the buyer, unless and until the goods are **ascertained**. Where there is a contract of sale of specific or ascertained goods, property passes to the buyer at the time when parties intend to pass it. For the purpose of ascertaining intention of the parties regard shall be had to the terms of the contract, conduct of parties and circumstances of the case.Unless a contrary intention appears, the following rules are applicable for ascertaining the intention of the parties:

SITUATION	TIME WHEN OWNERSHIP IS TRANSFERRED
1. Where there is an **unconditional** contract for the sale of specific goods in a **deliverable state**	At the time of making the contract
2. Where there is a contract for the sale of specific goods **not in a deliverable state**	When the goods are put into deliverable state and the buyer has notice of it.
3. Where there is a sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test or do something with reference to the goods for the purpose of **ascertaining the price**	Where the seller has done the act to ascertain the price and the buyer has notice thereof.

Transfer of Ownership of Unascertained goods and Future goods:

Unascertained goods mean goods which have not been identified and agreed upon at the time when contract of sale is made. Future goods mean 'goods to be manufactured or produced or acquired by the seller after the making of the contract of sale.The property in unascertained or future goods does not pass until the goods are ascertained.

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

(a) The property in unascertained or future goods sold by description passes to the buyer when goods of that description and the deliverable state are unconditionally appropriated to the contract, either by the seller with the consent of the buyer or by the buyer with the consent of the seller. Such consent may be expressed or implied and may be given either before or after the appropriation is made.

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

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

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(i) Where goods are shipped and by the bill of lading of the goods are deliverable to the order or the seller or his agent.
(ii) When the seller sends the bill of exchange for the price of the goods to the buyer for this acceptance, together with the bill of lading, the property in the goods does not pass to the buyer unless he accepts the bill of exchange.

Appropriation of goods:

Appropriation of goods involves selection of goods with the intention of using them in performance of the contract and with the mutual consent of the seller and the buyer. The essentials of appropriation are:

(i) The goods should conform to the description and quality stated in the contract.
(ii) The goods must be in a deliverable state.
(iii) The goods must be unconditionally appropriated to the contract either by delivery to the buyer or his agent or the carrier.
(iv) The appropriation must be made by:
   i. The seller with the assent of the buyer; or
   ii. The buyer with the assent of the seller.
(v) The assent may be express or implied.
(vi) The assent may be given either before or after the appropriation.

Rules relating to the transfer of ownership of goods sent 'on approval' or 'on sale or return' basis:

Goods sent 'on approval' or 'on sale or return' basis means those goods in respect of which the buyer has the option either to return or retain the goods. The various rules relating to transfer of ownership of such goods are:

SITUATION	TIME WHEN THE OWNERSHIP IS TRANSFERRED
When the buyer signifies his approval	When the approval is communicated to the seller.
When the buyer does not actually communicates his acceptance but does some act adopting the transaction	When the act representing the adoption has been done.
When the buyer fails to return the goods **a) If the time has been expired for return of goods** **b) If no time has been fixed for the return**	 On the expiry of the fixed time. On the expiry of the reasonable time period.

Reservation of Right of Disposal:

Where there is a contract for the sale of specific goods or where goods are subsequently appropriated to the contract, the seller may reserve the right of disposal of the goods until certain conditions are fulfilled. In such a case, the ownership of goods will not be transferred to the buyer until the conditions imposed by the seller are fulfilled even if the goods have already been delivered to the buyer or to a carrier or other bailee for the purpose of transmitting the

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same to the buyer. The seller may reserve the right of disposal of goods either expressly or by implication. The seller is deemed to have reserved the right of disposal to himself in the following two cases:

(i) **In case of goods deliverable to the order of seller or his agent:** Where the goods are shipped or delivered to a railway administration for carriage and by the bill of lading or the railway receipt, they are deliverable to the order of the seller or his agent.

(ii) In case of drawing a Bill of Exchange: Where the seller draws a bill of exchange on the buyer for the price of the goods and sends the bill of exchange together with the bill of lading or railway receipt, the ownership of the goods will not be transferred to the buyer until the buyer honors the bill of exchange. The buyer must return the bill of lading or the railway receipt if it does not honor the bill of exchange, and if he wrongfully retains the bill of lading or the railway receipt, the ownership of goods will not be transferred.

Passing of Risk:

Risk means the **liability to bear the loss** if the goods are lost or damaged. The general rule is that the risk follows the ownership. Unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer's risk whether the delivery has been made or not. However, Section 26 provides that where delivery of the goods has been delayed through the fault of either the buyer or the seller, the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault. Also, the duties and liabilities of the seller or the buyer as bailee of goods for the other party remain unaffected even when the risk has passed generally.

Transfer of the Title:

The general rule is that only the owner of goods can sell the goods. The rule is expressed by the maxim; "Nemo dot quod non habet" i.e. no one can pass a better title than what he himself has. It means that a seller of goods cannot give a better title to the buyer than he himself possess. Thus, even *bona fide* buyer who buys stolen goods from a thief or from a transferee from such a thief cannot get a valid title to them, since the thief has no title, nor could he give one to any transferee.

Exception of the General Rule:

In the following cases, a non-owner can convey better title to the bona fide purchaser of goods for value:

(a) ***Sale by a mercantile agent:*** In a sale by a mercantile agent, the agent can pass a good title to the buyer in the following circumstances:

(i) The seller must be in the **possession of either the goods or documents of title of goods** with the consent of the owner;

(ii) The sale was made by him in the **ordinary course of his business**.

(iii) The **buyer must have acted in good faith.**

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(iv) The buyer must have **no notice of the fact that the seller has no authority** to sell the goods.

(b) ***Sale by a co-owner****:* In a sale by a co-owner, the co-owner can pass a good title to the buyer in the following circumstances:

(i) The joint owner must be in the **sole possession of the goods with the permission of other co-owners;**

(ii) The **buyer must have bought the goods in good faith.**

(iii) The buyer must have **no notice of the fact that the seller has no authority** to sell the goods.

(c) ***Sale by a person in possession under a voidable contract:***A good title to the buyer in the following circumstances:

(i) The seller must have obtained the possession of goods under a contract which is voidable on the ground of **coercion, fraud, undue influence or misrepresentation.**

(ii) The goods must have been sold **before the contract is rescinded.**

(iii) The **buyer must have bought the goods in good faith.**

(iv) The buyer must have **no notice of the fact that the seller's title is defective.**

(d) ***Sale by seller who has already sold the goods but is still in possession of them:***Where a seller, after having sold the goods, sells them again to a new buyer, he can transfer a good title if the following conditions are fulfilled;

(i) The seller must be in the **possession of goods or of documents of title** to the goods, in the capacity of a seller and not in any other capacity.

(ii) The buyer must have bought the goods in **good faith.**

(iii) The buyer must have **no notice of the previous sale**.

(e) ***Sale by buyer in possessionbefore the property in the goods has vested in him****:* A good title is passed to the buyer if the following conditions are fulfilled:

(i) The buyer must be in the **possession of the goods or a document of title** to the goods, with the consent of the original seller and must have bought or agreed to buy the goods.

(ii) The buyer must have bought the goods in **good faith**.

(iii) The new buyer must have no notice of the lien or other right of the original seller in respect of the goods.

(f) ***Estoppel:***Where the owner of the goods by his statement or conduct have lead the buyer to believe that the seller has the authority to sell, then the buyer will get a good title of the goods against the true owner.

(g) ***Sale by an unpaid seller:***Where an unpaid seller who has exercised his right of lien or stoppage in transit and is in possession of the goods, resells them, the second buyer will acquire good title to the goods as against the original buyer.

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

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Rules regarding Delivery of the Goods:

Delivery is the voluntary transfer of possession from one person to another. Delivery may be actual, constructive or symbolic.

(i) ***Actual or physical delivery:*** Actual deliverytakes place where the goods are physically handed over by the seller to the buyer or his authorized agent.

(ii) ***Constructive*** **delivery**: Constructive delivery takes place when the person in possession of the goods acknowledges that he holds the goods on behalf of and at the disposal of the buyer.

(iii) ***Symbolic*** **delivery:** Symbolic delivery takes place where some symbol of the real possession or control over the goods is handed over to the buyer. e.g, by delivering the key of the warehouse where the goods are stored or bill of lading which will entitle the holder to receive the goods on the arrival of the ship.

RULES AS TO DELIVERY

The following rules apply regarding delivery of goods:

(a)**Effect of part delivery:** A delivery of part of goods, taking place in the course of the delivery of the whole, has the same effect for the purpose of passing the property in such goods as delivery of the whole.

(b) Buyer to apply for the delivery: The seller of the goods is not obliged to deliver them until the buyer has applied for delivery, unless otherwise agreed.

(c) **Goods in possession of a third party:** Where the goods at the time of the sale are in the possession of a third person, there is no delivery unless and until such third person acknowledges to the buyer that he holds the goods on his behalf.

(d) Time of delivery: When the time of sending the goods has not been fixed by the parties, the seller must send them within a reasonable time.

(e) **Time for tender of delivery:** The demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour.

(f) **Place of delivery:** The place of delivery is usually stated in the contract. Where it is so stated, the goods must be delivered at the specified place during working hours on a working day. Where no place is mentioned, the goods are to be delivered at a place where they were at the time of the sale, and if not then in existence, at the place where they would be manufactured or produced.

(g) **Expenses for delivery:** The seller has to bear the cost of delivery unless the contract otherwise provides. While the cost of obtaining delivery is said to be of the buyer, the cost of the putting the goods into deliverable state must be borne by the seller.

(h) **Delivery of wrong quantity:** In case of delivery of wrong quantity of goods, the following rules are observed:

(i) In case of delivery of **lesser quantity** of goods: The buyer may either accept the goods and pay for it at the contract price or reject it.

(ii) In case of delivery of **larger quantity** of goods: The buyer may either accept the goods and pay for it at the contract price or reject it.

(iii) In case of delivery of goods **contracted mixed with goods of different description**: The buyer may accept the relevant goods and reject the rest or reject the whole.

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However, mixing of goods of inferior quality does not amount to mixing of goods of different description.

(i) **Installment deliveries:** Unless otherwise agreed, the buyer is not bound to accept delivery in installments. The rights and liabilities in case of delivery in installments and payment thereon may be determined by the parties to the contract.

(j) **Delivery to carrier:** Subject to the terms of the contract, the delivery of the goods to the carrier for transmission to the buyer is prime facie deemed to delivery to the buyer.

i. **Deterioration during transit:** Where goods are delivered at a distant place, the liability for deterioration necessarily incidental to the course of the transit will fall on the buyer.

ii. **Buyer' right to examine the goods:** Where goods are delivered to the buyer, who has not previously examined them, is entitled to a reasonable opportunity of examining them in order to ascertain whether they are in conformity with the contract.

Acceptance of the Delivery of Goods:

Acceptance of the goods by the buyer is deemed to take place when the buyer:

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

(b) Retains the goods, after the lapse of a reasonable time without intimating to the seller that he has rejected them; or

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

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

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

UNIT-3 UNPAID SELLER AND HIS RIGHTS

UNPAID SELLER: The unpaid seller is the seller to whom the full price of the goods sold has not been paid. Thus, a seller is an unpaid seller if:

a) The whole price has not been paid or tendered,

b) If a bill of exchange or other negotiable instrument is received, which has been dishonored.

Rights of an Unpaid Seller:

1) Rights against the goods:

a) Where the ownership of the goods has transferred to the buyer:

i) Rights of lien

ii) Right of stoppage the goods

iii) Right of resale

b) Where the ownership of the goods has not been transferred to the buyer: In this case, the unpaid seller has the right of withholding the delivery of goods sold. Thus, the seller

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is under no obligation to deliver the goods to the buyer and he will not be liable for non-delivery until the price of the goods is tendered to him by the buyer.

2) **Right against the buyer**
   - **a)** Suit for price
   - **b)** Suit for damages
   - **c)** Suit for interest
   - **d)** Suit for repudiation of contract

RIGHT OF LIEN:

The right of lien is the right to retain possession of the goods. An unpaid seller of the goods who is in possession of them, has a right to retain goods in his possession until the full payment of the price is made or tendered to him in the following cases:

a) Where the goods have been **sold without any stipulation as to credit,**
b) Where the goods have been sold on credit, but the **term of credit has expired**, and
c) Where the **buyer becomes insolvent**

An unpaid seller can exercise his right of lien if:

a) He is in **actual possession** of the goods sold. However, it is not necessary that he should possess the goods as owner. An unpaid seller can exercise the right of lien, even if he possesses the goods as agent or bailee for the buyer.
b) He can retain goods only if the **price of goods** is unpaid and **not other expenses** i.e., maintenance charges, repair charges etc.

The right of lien is indivisible in nature. An unpaid seller can exercise the right of line on the whole goods in possession of him, even if part payment for the same has been made by the buyer. Thus, a buyer cannot demand proportionate delivery of goods for the part payment made by him.

Termination of the right of lien:

Unpaid seller losses his right of lien in the following cases:

a) Where the goods are delivered to the carrier or other bailee by the seller for the purpose of transmission to the buyer, without reserving the right of disposal of the goods.
b) Where the buyer or his agent lawfully obtains possession of the goods.
c) Where the seller waives off his right of lien. Waiver may be express or implied.

RIGHT OF STOPPAGE IN TRANSIT:

'Stoppage in transit' means stopping the goods while they are in the course of transmission to the buyer. Where the **buyer has become insolvent** and the **unpaid seller** has **parted with the possession of the goods**, the seller can stop the goods in transit **until the price is paid or tendered** (offered) to him.

Thus, the right of stoppage in transit can be used only if the following conditions are fulfilled:

a) The seller must be unpaid.
b) The buyer must be insolvent.
c) The property in goods has already passed to the buyer.

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d) The goods must be in transit.

To exercise the right of stoppage in transit, the goods must neither be with the seller nor with the buyer or with their agent. They should be in custody of a carrier who must hold the goods in his own name, i.e. as independent middlemen. However, transit does not mean that the goods should be actually moving.

Duration of transit:

The duration of transit is the period between the commencement and end of transit. The transit commences from the time when the goods are delivered to the middlemen (carrier or other bailee) and it continues till the buyer or his agent takes the delivery of the goods.

Transit comes to an end in the following cases:

a) Where the buyer or his agent obtains delivery of the goods before they arrive at the appointed destination.
b) Where after the arrival of the goods at the appointed destination, the carrier or the other bailee acknowledges to the buyer or his agent that he holds the goods on his behalf.
c) Where the carrier or other bailee wrongfully refuses to deliver the goods to the buyer or his agent.
d) Where after the arrival of the goods at the appointed destination, the buyer further directs the carrier to take the goods somewhere on behalf of the buyer.
e) Where the goods are delivered to a ship chartered by the buyer and the ship's acting as an agent of the buyer.

The unpaid seller may exercise his right of stoppage in transit either:

a) By taking actual possession of the goods.
b) By giving notice of his claim to the carrier or the other bailee in whose possession the goods are.

RIGHT OF RE-SALE:

Where the buyer fails to pay or offer the price to the seller within the reasonable time, an unpaid seller can exercise his right to resell the goods in the following circumstances:

a) Where the goods are of perishable nature.
b) Where the seller has expressly reserved his right of resale. In such case, the seller is not required to give any notice of resale to the buyer. Any loss on resale can be recovered form the original buyer even if notice of resale is not given to him.
c) Where the seller has exercised his right of lien or right of stoppage in transit and gives a notice to the buyer of his intention to resell the goods.

Where the seller gives notice to the buyer of his intention to resell the goods in case of non-payment of price within the reasonable time and even after the receipt of such notice, the buyer does not pay or offer to pay the price within the reasonable time, the seller may resell the goods. In such case, the seller is entitled to:

a) Recover any shortage between the contract price and resale price from the original buyer.

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b) Retain the profits if the resale price is higher than the contract price.

However, if the goods are resold by the seller without giving any notice to the buyer, the seller:

a) Cannot recover any loss suffered on resale from the original price.
b) Must return the profits, if any, on resale to the original buyer.

RIGHTS AGAINST THE BUYER:

An unpaid seller has the following rights against the buyer:

a) Suit for price: The seller can sue the buyer for the price in the following cases:

(i) Where property in the goods has passed: Where under a contract of sale, the property in the goods has passed to the buyer and the buyer wrongfully neglects or refuses to pay the price.

(ii) Where property in the goods has not passed: Where under a contract of sale, the property in the goods has not passed to the buyer but according to the contract the buyer is to pay the price at a certain date irrespective of the day of delivery and the buyer wrongfully neglects or refuses to pay the price.

b) Suit for damages for non-acceptance of the goods: Where the seller is ready and willing to deliver the goods to the buyer, but the buyer wrongfully neglects or refuses to accept the goods and pay for them, the seller may sue the buyer for the recovery of damages suffered due to non acceptance of the goods.

c) Suit for damages for repudiation of the contract before the due date: Where the buyer repudiates the contract before the due date of delivery of goods, the seller has the following options:

(i) He may immediately treat the contract as repudiated and sue the buyer for the recovery of damages.

(ii) He may not immediately treat the contract as repudiated but wait till the due date and sue the buyer for the recovery of the price on the due date.

d) Suit for special damages and interest: In the absence of the contract to the contrary, the seller can claim special damages and reasonable interest from the buyer in case of repudiation of contract by the buyer.

REMEDIES TO THE BUYER IN CASE OF SELLER'S BREACH:

The buyer has the following remedies against the seller for breach of contract by the seller:

a) Suit for breach of condition: Where there is a breach of condition by the seller, the buyer can treat the contract as repudiated and sue the seller for the recovery of price paid by the buyer.

b) Suit for breach of warranty: Where there is a breach of warranty by the seller, the buyer can sue the seller for the recovery of damages sustained by the buyer.

c) Suit for damages of non-delivery: Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages of non-delivery.

d) Suit for special damages and interest: The buyer can recover the special damages form the seller provided the seller knew about the special circumstances at the time of the

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contract. Where the buyer has already paid price to the seller, he claim interest form the seller on the price so paid. The rate of interest is at the discretion of the court and is to be calculated from the date on which the payment is made by the buyer.

e) **Suit for specific performance:** Where the monetary compensation is not an adequate remedy, the buyer may sue for specific performance of the contract.

AUCTION SALE:

An auction sale is a special mode of sale in which the sale is made in public and different intending buyers try to outbid each other. The goods are sold to the higher bidder. The auctioneer who sells the goods by auction is an agent of the seller. The auctioneer makes wide publicity of auction by way of advertisement. On the appointed day and time, the intending buyers assemble and the auctioneer puts the different goods to auction and invites bids from the intending buyers. The auction goes in favor of highest bidder. The highest bid is accepted by the auctioneer by the fall of the hammer or in some other customary method.

Rules regarding auction sale:

1. **Completion of sale:** The sale is completed when the auctioneer announces it by the fall of hammer or in other customary manner. Till such completion any bidder can revoke his bid.
2. **Seller's right to bid:** Where a seller expressly reserves his right to bid, he may do so either by himself or by appointing a person to bid on his behalf. Where a seller does not expressly reserve his right to bid, the buyer has an option to treat the sale as fraudulent. Further, he can appoint only one agent to bid on his behalf.
3. **Reserve price:** The seller may notify that the sale be subject to reserve price or upset price below which the goods will not be sold even to the highest bidder.
4. **Pretended bidding:** If the seller appoints puffers (people who do not intend to purchase the goods but make bids in order to raise the bid in the auction) to bid in the sale, the sale is voidable at the option of the buyer.
5. **Knock out agreement:** It is an agreement between the bidders not to bid against each other. Such agreements are made by the bidders with a view to prevent competition among them. There is an arrangement that only one of them will bid and the goods so purchased will be disposed off privately among themselves. Such agreement is valid and not illegal.
6. **Damping:** It is an unlawful act by which an intending buyer is prevented from bidding. This is done in any of the following ways:
    a. By pointing out defects in the goods put up in the auction.
    b. By taking or scaring the intending buyers away from the place of auction by some other devise.

    Damping is illegal and the auctioneer has a right to withdraw goods from the auction sale in case where damping is observed.

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MCQ

1. **The Sale of Goods Act, 1930 came into force on**

   (a) 15th March, 1930
   (b) 1st July, 1930
   (c) 30th July, 1930
   (d) 30th June 1930

2. **The Sale of Goods Act, 1930 deals with:**

   (a) Sale
   (b) Mortgage
   (c) Pledge
   (d) all of these

3. **The main object of a contract of sale is**

   (a) Transfer of possession of goods
   (b) Transfer of property in goods from seller to buyer
   (c) Delivery of goods
   (d) Payment of price

4. **Which one of the following is true?**

   (a) The provisions of the Sale of Goods Act were originally with the Indian contract Act, 1872.
   (b) The Sale of Goods Act, 1930 deals with mortgage
   (c) The Sale of Goods Act restricts the parties to modify the provisions of law
   (d) None of the above

5. **The Sale of Goods Act, 1930 deals with:**

   (a) All movable properties
   (b) All immovable properties
   (c) Both Movable and Immovable properties
   (d) None of these

6. **The Sale of Goods Act, 1930 deals with the**

   (a) Movable goods only
   (b) Immovable goods only
   (c) Both movable and immovable goods
   (d) All goods except ornaments

7. **Under Sale of Goods act, 1930 the terms "Goods" means every kind of movable property and it includes**

   (a) Stock and share
   (b) Growing crops, grass
   (c) Both **(a)** and **(b)**
   (d) None of the above

8. **The term 'goods' for the purpose of Sale of Gods Act, does not include**

   1. Money
   2. Actionable claims
   3. Stocks & Shares
   4. Growing crops, grass

   (a) 1 & 2
   (b) 1 & 3
   (c) 2 & 4
   (d) 3 & 4

9. **The term "goods" under Sale of Goods Act, 1930 does not include**

   (a) Goodwill
   (b) Actionable claims
   (c) Stocks and shares
   (d) Harvested crops

10. **The following are goods as per Section 2 (7) of the Sale of Goods Act, 1930:**

    (a) Trademark.
    (b) Goodwill.
    (c) Patent.
    (d) All of the above

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11. 'Buyer' means a person who ———— ————.

(a) Buys goods
(b) agrees to buy goods
(c) Has bought goods
(d) Buys or agrees to buy goods

12. 'Seller' means a person who————.

(a) Sells goods
(b) Agrees to sell goods
(c) Sells or agrees to sell goods
(d) has sold goods

13. A sale implies an agreement

(a) Plus conveyance of property and creates jus in personam.
(b) Plus conveyance of property and creates jus in rem.
(c) No conveyance of property and creates jus in rem.
(d) No conveyance of property and creates jus in personam.

14. In case of a sale the position of a buyer is that of ————.

(a) Owner of the goods
(b) Bailee of the goods
(c) Hirer of the goods
(d) None of the above

15. A contract of sale of goods includes:

(a) Sale only
(b) Agreement to sell only
(c) Both sale and agreement to sell only
(d) Barter

16. In a contract of sale, unless goods are ascertained, there is :

(a) A Sale
(b) an agreement to sell
(c) A void agreement
(d) an unenforceable agreement

17. Contract of Sale may be:

(a) Executory Contract
(b) Executed Contract.
(c) Both **(a)** & **(b)**
(d) None of the above

18. Which is not considered a sale

(a) A sale of goods by a partner of a firm to his firm
(b) A sale of goods by a firm to a partner
(c) Distribution of goods among partners on account of dissolution of a firm
(d) None of these

19. Under the Sale of Goods Act, 1930, property means

(a) General Property in Goods
(b) Special Property in Goods
(c) Both General and Special Property in Goods
(d) None of these

20. The term 'Property' as used in the Sale of Goods Act means

(a) Possession
(b) Ownership
(c) Ownership and possession both
(d) The subject-matter of contract of sale

21. In a contract of sale, there must be:

(a) A transfer of ownership of goods immediately
(b) An agreement to transfer the ownership of goods in future
(c) Either an immediate transfer of goods or an agreement to transfer the ownership of goods in future
(d) None of the above.

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22. **'Price' under Section 2 (10) of The Sale of Goods Act, 1930 means**

(a) Money or money's worth.
(b) Monetary consideration for the sale of goods.
(c) Any consideration that can be expressed in terms of money.
(d) None of the above

23. **The consideration for the contract of sale can be:**

(a) In goods
(b) In services
(c) Partly in money and partly in goods
(d) None of these

24. **Person taking the goods has an option to terminate the agreement at any time before the transfer of ownership of goods under:**

(a) A contract sale
(b) An agreement of hire purchase
(c) A contracts for skill and labour
(d) None of these

25. **In case of a hire – purchase, the hirer**

(a) Can pass a goods title to a bonafide purchaser.
(b) Cannot pass a goods title to a bonafide purchaser.
(c) Can choose whether to pass or not to pass the goods title to a bonafide purchaser.
(d) All of the above.

26. **The option available to the Hirer in case of Hire Purchase Agreements?**

(a) He may purchase the goods before paying all the agreed installments
(b) He may purchase the goods without paying all the agreed installments
(c) Return the goods at any time and stop further payment of installments
(d) Return the goods at any time and remain paying the installments

27. **A contract for the sale of goods which provide that the property would pass to the buyer on full payment of price and execution of sale deed, is known as**

(a) Sale
(b) Agreement to sell
(c) Hire-purchase Agreement
(d) Sale of approval

28. **If A agrees to deliver 200 kg of sugar to B in exchange of 25 mts of cloth, then it is**

(a) Contract of sale
(b) Agreement to sell
(c) Sale on Approval
(d) Barter

29. **If X commissioned Y, an artist, to paint a portrait of X for 1000 US dollars & Y uses his own canvas & paid then it is**

(a) Contract of sale
(b) Contract of work & materials
(c) Sale on approval
(d) Hire-Purchase agreement

30. **Which of the following is a sale?**

(a) Hire purchase
(b) Hypothecation of goods
(c) Bailment of goods
(d) None of the above

31. **Which of the following is the requirement of a valid contract for sale?**

(a) There must atleast three parties
(b) The subject matter must be goods
(c) Property in the goods may not be transferred

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(d) None of these

32. Which of the following is / are necessary constituents (s) of a contract of sale?

1. **Three distinct parties – seller, buyer and a mediator**
2. **Movable goods for a price**
3. **Transfer of general property**
4. **Exchanging of goods without money**

(a) 1 & 2
(b) 2 & 3
(c) 2 & 4
(d) 3 & 4

33. Which of the following is a mode of contract of sale?

(a) Immediate delivery of goods, but price to be paid at some future date
(b) No delivery of goods and price to be paid at some future date
(c) No price paid at all for the delivery of goods
(d) None of these

34. Which can be subject matter of sale:

(a) Existing Goods
(b) Future Goods
(c) Contingent Goods
(d) None of these

35. Specific goods are those which are identified

(a) At the time of contract of sale by the buyer
(b) Subsequent to the formation of contract of sale
(c) By an expert
(d) At the time of contract by the seller

36. A contract for the sale of " future goods" is ————

(a) Sale
(b) agreement to sell
(c) Void
(d) hire-purchase contract

37. Goods which are in existence at the time of Contract of Sale is known as ——

(a) Present Goods
(b) existing Goods
(b) Specific Goods
(d) none of the above

38. Which of the following goods is not in existence at the time of contract of sale?

(a) Specific goods
(b) Future & Contingent
(c) Ascertained goods
(d) None of these

39. Goods that are defined only by description and not identified and agreed upon at the time of contract of sale are known as————.

(a) Specific Goods
(b) Existing Goods
(c) Future Goods
(d) Unascertained Goods

40. The contract becomes void in case of destruction of:

(a) Specific Goods
(b) Unascertained Goods
(c) None of these

41. In a concluded sale, if the goods are destroyed, the loss is to be borne by

(a) The seller
(b) The buyer
(c) Both seller and buyer in agreed proportions

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(d) The party who is in possession of goods

42. In a sale, if the goods are destroyed, the loss falls on

(a) The buyer
(b) The seller
(c) Partly on the buyer and partly on the seller
(d) The seller if price has not been paid
(e) The party who is in possession of goods

43. Risk follows ownership

(a) Only when goods have been delivered
(b) Only when price has been paid
(c) Whether delivery has been made or not or even when price has not been paid
(d) None of these

44. Under an agreement to sell, in case of destruction of goods in buyer's possession, the loss shall be borne by:

(a) The buyer
(b) The seller
(c) Both the buyer and seller equally
(d) None of these

45. The goods are at the risk of a party who has the

(a) Ownership of goods
(b) Possession of goods
(c) Custody of goods
(d) Both **(b)** and **(c)**

46. In case of contract of sale of goods, the price of goods:

(a) Must be fixed at the time of sale
(b) May be fixed by a third party
(c) Always will be the market price.
(d) None of these

47. Where the price is not determined in any manner, the buyer:

(a) Need not pay anything
(b) Must pay the market price of the goods
(c) Must pay the reasonable price of the goods
(d) Must pay the price demanded by the seller

48. A agrees to deliver his old car valued at Rs.1,00,000 to B, a car dealer, in exchange for a new car, and agrees to pay the difference in cash it is

(a) Contract of sale
(b) Agreement to sell
(c) Exchange
(d) Barter

49. A buyer may make some payment in advance to the seller as a guarantee for performance of contract. This money is know as

(a) Earnest money
(b) Security deposit
(c) Fixed deposit
(d) Deposit

50. Which of the following statement is not true?

(a) A contract of sale can be validity made for the sale of future goods
(b) Actionable claims is a subject matter of contract of sale
(c) A contract for the sale of future goods is always an agreement to sell
(d) In an agreement to sell, the ownership of the goods passes to the buyer some future date

51. In which form of the contract, the property in the goods passes to the buyer immediately:

(a) Executory Contract

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(b) hire purchase
(c) Sale
(d) installment to sell

52. Stipulation as to time of payment is:

(a) Always deemed to be an essence of a contract of sale
(b) Deemed to be an essence of a contract of sale unless otherwise agreed
(c) Not deemed to be an essence of a contract of sale unless otherwise agreed
(d) None of these

53. A stipulation which is collateral to the main purpose of the contract, and if proves false, gives the buyer only a right to claim damages, is known as

(a) Conditions
(b) guarantee
(c) Warranty
(d) none of these

54. Stipulation the breach of which gives the aggrieved party a right to terminate the contract is called:

(a) Warranty
(b) Condition
(c) Condition or warranty
(d) Guarantee

55. A condition is a stipulation which is

(a) Essential to the main purpose of contract of sale
(b) Not essential to the main purpose of contract of sale
(c) Collateral to the main purpose of contract of sale
(d) None of the above

56. The conditions and warranties may be in the form of

(a) Express
(b) implied
(c) Either (a) or (b)
(d) none of the above

57. Expressed conditions are those ——— ———.

(a) Which are agreed upon between the parties at the time of the contract
(b) Which are presumed by law be present in the contract
(c) Both of the above
(d) None of the above

58. Breach of condition is treated as a breach of a warranty where the contract is:

(a) Severable and the buyer has accepted the goods or part there of
(b) Not severable and the buyer has accepted the goods or part there of
(c) Both of these
(d) None of these

59. Which one is correct:

(a) A breach of condition can be treated as a breach of warranty
(b) A breach of warranty can be treated as a breach of condition
(c) Both of these
(d) None of these

60. In a sale, there is an implied condition on the part of the seller that he

(a) Has a right to sell the goods
(b) Is in possession of the goods
(c) Will have the right to sell
(d) Will acquire the goods

61. In case of breach of a condition, the buyer can:

(a) Claim damages only
(b) Repudiate the contract
(c) Cannot return the goods
(d) Refuse to take delivery of the goods

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62. In case of breach of a warranty, the buyer can

(a) Repudiate the contract
(b) Claim damages only
(c) Return the goods
(d) Refuse to take delivery of the goods

63. In a contract of sale by sample, the bulk of goods must correspond to:

(a) Sample only
(b) Merchantability only
(c) Either Sample or Merchantability
(d) Both Sample and Merchantability

64. In case of goods sold by sample, the goods should correspond with the sample other wise

(a) Buyer can reject the goods
(b) Buyer cannot reject the goods
(c) Contract is automatically terminated
(d) Seller is liable to punishment

65. In a contract of sale by description and by sample the bulk of goods must correspond to:

(a) Description only
(b) Sample only
(c) Either description or sample
(d) Both description and sample

66. In a contract of sale of goods, there is no implied condition as to:

(a) The quality of goods or their fitness for any particular purpose
(b) Merchantable Quality
(c) Wholesomeness
(d) None of these

67. In a contract of sale of goods, the condition as to quality or fitness applies:

(a) Even if seller is a casual seller
(b) Whether or not buyer has examined the goods before buying
(c) Where the buyer fails to disclose to the seller any abnormal circumstances
(d) Where the buyer buys a specified article under its patent or other trade name and does not rely upon the skill and judgment of the seller.

68. In a contract of sale of goods, the condition as to merchantable quality does not apply:

(a) Whether or not the goods are sold under a patent or trade name
(b) Whether or not the buyer relies on the skill and judgement of the seller
(c) To those defects which the buyer could have discovered if the buyer would have examined the goods
(d) None of these

69. M, a shopkeeper, sold a Television set to N, who purchased it in good faith. The set had some manufacturing defect and it did not work after a few days in spite of repairs. In this case, the television was not merchantable as it was not fit for ordinary purpose

(a) The buyer has no right to reject the television
(b) The buyer has the right to reject the television and to have refund of the price
(c) Both of the above
(d) None of the above [**(a)** & **(b)**]

70. Goods must be the same as wanted by the seller. This is

(a) Condition as to description
(b) Condition as to sample
(c) Condition as to wholesomeness
(d) Condition as to title

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71. Following conditions are implied in a contract of sale of goods unless the circumstances of the contract show a different intention:

(a) Condition as to non – existence of encumbrances.
(b) Condition as to undisturbed possession.
(c) All of the above.
(d) None of the above.

72. The expression 'Caveat Emptor' means:

(a) Let the Vender beware
(b) Let the Buyer beware
(c) Let the Govt. beware
(d) Let the creditor beware

73. The doctrine of caveat emptor applies

(a) In case of implied conditions and warranties
(b) When the buyer does not intimate the purpose to the seller and depends upon his own skill and judgment
(c) When goods are sold by sample
(d) When goods are sold by description

74. Under the doctrine of Caveat Emptor the seller is

(a) Responsible for the bad selection of goods by the buyer
(b) Not responsible for the bad selection of goods by the buyer
(c) Both **(a)** and **(b)**
(d) None of the above

75. Which is not considered an exception to the doctrine of caveat emptor

(a) Where the seller knowingly conceals a defect which could be discovered on a reasonable examination
(b) Where sale by description and sample.
(c) Where buyer disclosed the purpose
(d) Where goods are bought by description from a seller dealing in goods of that description

76. The doctrine of Caveat Emptor does not apply, when

(a) The goods are bought by sample
(b) The goods are bought by sample as well as description
(c) The goods are purchased under its brand name
(d) Both **(a)** and **(b)**

77. The rule of caveat emptor does not apply in the case of ———.

(a) Fitness for buyer's purpose
(b) Sale under a patent or trade name
(c) Usage of trade or consent by fraud
(d) All of the above

78. Which of the following is not an implied condition is a contract of sale?

(a) Condition as to title
(b) Condition as to description
(c) Condition as to free from encumbrance
(d) Condition as to sample

79. In an auction sale:

(a) A sale cannot be subject to reserve price
(b) The seller can appoint any number of puffers for the purpose of raising the bid
(c) An agreement among the bidders not to bid against each other is not lawful
(d) A seller can reserve a right to bid at an auction

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80. Under the Sale of Goods Act, 1930, which of the following is / are the implied warranty (ies)?

1. **Warranty of quiet possession**
2. **Warranty of freedom from encumbrances**
3. **Warranty of title**
4. **Warranty as to wholesomeness**

(a) 1 & 2
(b) 1 & 3
(c) 2 & 4
(d) 3 & 4

81. Which one of the following is not an implied warranty

(a) Warranty as to undisturbed possession
(b) Warranty as to existence of encumbrance
(c) Disclosure of dangerous nature of goods
(d) Warranty as to quality or fitness by usage of trade

82. The implied condition that goods shall be fit to buyer's specific purpose, is applicable only where the buyer tells his purpose to the seller and relies upon seller's skill and judgment as

(a) It is the requirement of law
(b) It is buyer's duty to select goods, which serve his purpose
(c) Seller can be silent
(d) All of the above

83. In case, a condition is changed to the status of a warranty, then the buyer

(a) May recover the price for breach of the condition as to title
(b) Can not recover the price for breach of the condition as to title
(c) Either **(a)** or **(b)**
(d) None of the above

84. Passing of property means:

(a) Transfer of ownership
(b) Transfer of physical possession
(c) None of these

85. The property in goods can pass only in case of:

(a) Ascertained Goods
(b) Unascertained Goods
(c) Future Goods
(d) Goods sent on approval or on sale or return basis

86. Where there is a contract for sale of specific goods not in a deliverable state, the property in goods passes when:

(a) The contract is made
(b) The goods are actually delivered
(c) The goods are put into a deliverable state
(d) The goods are put into a deliverable state and the buyer has notice thereof

87. In a contract for the sale of Unascertained goods, the property in goods passes;

(a) When the contract is made
(b) When the goods are actually delivered
(c) When the goods have been unconditionally appropriated by the seller or buyer with the consent of the other
(d) None of these

88. In case of sale of unascertained goods, the ownership is transferred to the buyer when the goods are

(a) Ascertained

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(b) Appropriate to the contract
(c) Weighed and measured
(d) both (a) and (b)

89. **The consent of the seller or buyer as to appropriation of unascertained goods:**

(a) Need not be obtained
(b) Must be given before the appropriation is made
(c) Must be given after the appropriation is made
(d) May be given before or after the appropriation is made

90. **In case of unconditional contract of sale, the property passes to the buyer at the time of making the contract. For this rule to apply, the goods must be**

(a) Specific
(b) in a deliverable state
(c) Physically transferred to buyer
(d) both (a) and (b)

91. **In case of sale of standing trees, the property passes to the buyer when trees are**

(a) Felled and ascertained
(b) not felled but earmarked
(c) Counted and ascertained
(d) both (b) and (c)

92. **The seller is deemed to have unconditionally appropriated the goods to the contract where he delivers the goods to the buyer or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to the buyer and:**

(a) Does not reserve the right of disposal
(b) Reserves the right of disposal
(c) None of these
(d) Both of these

93. **Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when:**

(a) The goods are delivered to the buyer
(b) The price is paid by the buyer
(c) The contract is made
(d) The buyer accepts the goods

94. **Where there is a contract for the sale of unascertained goods, the property in goods:**

(a) Passes when the buyer pays the price
(b) Does not pass until the goods are ascertained
(c) When the contract is entered into
(d) When the buyer accepts the goods

95. **If the contract is silent as to the party who is to appropriate the goods**

(a) The buyer is to appropriate
(b) The seller is to appropriate
(c) The party who under the contract is first to act is to appropriate
(d) Any party may appropriate

96. **In a C.I.F. contract the property in the goods passes from the seller to the buyer when the**

(a) Goods are shipped
(b) Goods are received by the buyer
(c) Contract is entered into
(d) Price is paid

97. **The appropriation must be made by —**

(a) The seller with the assent of the buyer
(b) The buyer with the assent of the seller

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(c) The buyer or the seller with or without the assent of the other
(d) Either **(a)** & **(b)**

98. Essentials involved in appropriation of the goods are

(a) The goods should conform to the description and the quality stated in the contract.
(b) The goods must be in a deliverable state.
(c) The goods must be unconditionally appropriated to the contract either by delivery to the buyer or to is agent or the carrier.
(d) All of the above.

99. In case of an agreement to sell, the ownership in the goods remains with:

(a) The buyer
(b) The seller
(c) Both the buyer and the seller
(d) The Central Government or the State Government, as the case may be

100. In case of sale

(a) Property in goods does not pass to the buyer.
(b) Risk in the goods does not pass to the buyer.
(c) Both of the above.
(d) None of the above.

101. Acceptance is deemed to take place when the buyer

(a) Intimates to the seller that he had accepted the goods.
(b) Does any act to the goods, which is inconsistent with the ownership of the seller.
(c) Retains the goods after the lapse of a reasonable time, without intimating to the seller that he has rejected them.
(d) Either **(a)** or **(b)** or **(c)**.

102. When the goods are sent on sale or return basis, the property in goods does not pass:

(a) When the buyer fails to return the goods and the time fixed for the return of goods has not yet expired
(b) When such goods are pledged
(c) When such goods are delivered to a third person on the same basis
(d) None of these

103. In case of sale on approval, the ownership is transferred to the buyer when the buyer:

(a) Accepts the goods
(b) Adopts the transaction
(c) Fails to return goods
(d) In all the above cases

104. Selection of goods with the intention of using them in performance of the contract and with the mutual consent of the seller and the buyer is known as

(a) Distribution
(b) Appropriation
(c) Amortization
(d) Storage

105. Mercantile Agent is having an authority to

(a) Sell or consign goods
(b) Raise money on the security of goods
(c) Sell or buy goods
(d) All of the above

A delivers bags of cement to B on 'Sale on approval basis' for 15 days. The cement became stone due to heavy rainfall (without any fault of B) on the 10th day itself.

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106. The loss is to be borne by

(a) A, because the ownership his not passed to B
(b) A, if B refuses to bear the loss
(c) B, if A refuses to bear the loss
(d) B, because the ownership has passed to B.

107. If the cement became stone, after being accepted by B, the loss is to be borne by:

(a) A, if B refuses to bear the loss
(b) B, if A refuses to bear the loss
(c) A, because the ownership has not passed to B
(d) B, because the ownership has passed to B

108. If B retains the goods and gives notice of rejection on the fourth day, the loss is to be borne by:

(a) A, because the ownership has not passed to B
(b) B, because the bags for more than three days
(c) B, because B has retained the bags for more than three days
(d) B, because the ownership has passed to B.

109. If B neither returns nor reject the bags till the 15th day and eventually the damage occurs on the 10th day. The loss shall be borne by:

(a) A, because the ownership has not passed to B
(b) A, because 10 days has elapsed
(c) A, because the agreement has become void
(d) B, because the ownership has passed to B

110. Where the seller has reserved the right of disposal of goods, the ownership of goods will be transferred to the buyer if:

(a) The goods have already been delivered to the buyer
(b) The goods have already been transferred to a carrier or other bailee for the purpose of transmitting the same to the buyer
(c) The conditions imposed by the seller are fulfilled
(d) None of these

111. X sold goods to Y and sent the goods by Railway X is said to have reserved the right of disposal if:

(a) Railway receipt is taken in the name of Y but is sent through Bank
(b) Railway receipt is taken in the name of Y and is sent to him directly
(c) None of these
(d) Either **(a)** or **(b)**

112. When a bill of exchange in sent together with documents of title, the property in goods passes when the buyer

(a) Receives the Bill of Exchange
(b) Returns the Bill of Exchange
(c) Honors the Bill of Exchange
(d) None of these

113. Which of the following is a not document of title to goods?

(a) Bill of Lading.
(b) Railway Receipt
(c) Dock Warrant.
(d) Performa invoice.

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114. ———— is/are the 'document of title to goods'

(a) Railway receipt or Multimodal transport document
(b) Warrant or order for delivery of goods
(c) Warehouse keeper's certificate
(d) All the above

115. A mate's receipt

(a) Is a document of title to goods.
(b) Is an acknowledgement for the receipt of goods.
(c) Both the above.
(d) None of the above.

116. Risk passes when:

(a) The goods are delivered
(b) The price has been paid
(c) The property passes
(d) None of these

117. Which of the following statement is / are correct?

(a) The general rule is " unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not".
(b) Where the delivery of the goods has been delayed through the fault of either the buyer or the seller, the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault.
(c) In ordinary circumstances, risk is borne by the buyer only when the property in the goods passes over to him. However, the parties may by special agreement stipulate that risk will pass sometime after or before the property has passed.
(d) All of the above.

118. In case of a sale the risk of loss resulting from the insolvency of the buyer is borne by ————.

(a) The seller
(b) The buyer
(c) Both of the above
(d) General Insurance Company

119. The latin maxim "Nemo dat quod non habet" means ————.

(a) An eye for an eye and a tooth for a tooth
(b) Never dare to quarrel with a good seller
(c) No one can give what he has not got
(d) Let the buyer beware.

120. In case of a sale the buyer

(a) Can pass a goods title to a bonafide purchaser.
(b) Cannot pass a goods title to a bonafide purchaser.
(c) Both of the above.
(d) None of the above.

121. A Seller cannot give a better title to the buyer than he himself has in case of:

(a) Sale by a mercantile agent to a bonafide buyer
(b) Sale by one of the joint owners who is in the sole possession of goods with the consent of majority of other joint owners to a bonafide buyer
(c) Sale by a seller who is in possession of goods under a voidable contract to a bonafide buyer
(d) None of these

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122. In an agreement to sell, the seller can sue for price if:

(a) The goods have been delivered to the buyer
(b) The goods have not been delivered to the buyer
(c) There is a specific agreement
(d) None of the above

123. Delivery means:

(a) The voluntary transfer of possession from one person to another
(b) The compulsory transfer of possession from on person to another
(c) Both of these
(d) None of these

124. Voluntary transfer of possession by one person to another is known as:

(a) Transfer
(b) Possession
(c) Delivery
(d) None of the above

125. Delivery of the key of a warehouse where goods are lying amounts to:

(a) Actual Delivery
(b) Symbolic Delivery
(c) Constructive Delivery
(d) None of these

126. Delivery by acknowledgment is ——-.

(a) Actual Delivery
(b) Constructive Delivery
(c) Symbolic Delivery
(d) None of the above

127. Delivery which is effected without any change in the custody or actual possession of the thing is known as:

(a) Actual Delivery
(b) Symbolic Delivery.
(c) Constructive Delivery
(d) None of the above.

128. Delivery of goods in case of transit made by handing over documents of title to goods is

(a) Actual Delivery
(b) Constructive Delivery
(c) Symbolic Delivery
(d) All of the above.

129. Delivery by attornment is ——————

(a) Actual Delivery
(b) Constructive Delivery
(c) Symbolic Delivery
(d) Physical Delivery

130. There are ——— kinds of delivery

(a) Three
(b) Four
(c) Five
(d) Two

131. Unless otherwise agreed, there must be:

(a) First delivery of goods and then payment of price
(b) First payment of price and then delivery of goods
(c) Simultaneous payment of price and delivery of goods
(d) None of these

132. Unless otherwise agreed, the buyer:

(a) Must apply for delivery at a reasonable hour
(b) Need not apply for delivery
(c) May apply for delivery even at unreasonable hour.
(d) None of these

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133. Where there is no contract as to the place of delivery, the goods are to be delivered at the place:

(a) Where the buyer so directs
(b) At which the goods are at the time of sale
(c) At which the goods are manufactured or produced
(d) None of these

134. Where there is no contract as to the time of delivery, the goods are to be delivered within:

(a) 1 month
(b) Reasonable time
(c) 3 years
(d) None of these

135. Delivery of part of goods with an intention of separating it from the whole lot:

(a) Does not amount to the delivery of the whole of the goods
(b) Amount to the delivery of the whole of the goods
(c) Amounts to delivery of the whole goods if it is a Government order.
(d) None of these

136. Unless otherwise agreed, the expenses of putting the goods into a deliverable state shall be borne by:

(a) The seller
(b) the buyer
(c) Both seller & buyer equally
(d) none of these

137. Where the seller delivers a quantity of goods larger than contracted for; the buyer:

(a) Cannot accept the whole
(b) Cannot reject the whole
(c) May accept the contracted quantity and reject the excess
(d) None of these

138. Unless otherwise agreed, the buyer of goods:

(a) Cannot refuse to accept delivery by installments
(b) Is not bound to accept delivery by installments
(c) None of these

139. Delivery of the goods to a carrier is prima facie:

(a) Not deemed to be a delivery to the buyer
(b) Deemed to be a delivery to the buyer
(c) None of these

140. Which of the following modes of delivery of goods is considered effective for a valid contract of sale?

(a) Actual delivery
(b) Symbolic delivery
(c) Constructive delivery
(d) All of these

141. Where the goods are delivered to a carrier or wharfinger for the purpose of transmission to the buyer, the delivery is

(a) Invalid and ineffective
(b) Valid and effective
(c) Conditional
(d) None of these

142. If the buyer rejects the whole quantity of goods due to short delivery or excess delivery, the contract it treated as

(a) Subsisting
(b) Cancelled

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(c) Void
(d) Invalid

143. Which of the following is not a form of delivery?

(a) Constructive delivery
(b) Structured delivery
(c) Actual delivery
(d) Symbolic delivery

144. Where the seller wrongfully neglects to deliver the goods to the buyer, then the buyer

(a) Cannot sue the seller for damages for non-delivery
(b) May sue the seller for damages for non-delivery
(c) Either **(a)** or **(b)**
(d) None of the above

145. The buyer is deemed to have accepted the goods:

(a) When he does not intimate the seller that he has accepted the goods
(b) When he informs the seller that he has rejected the goods
(c) When he sends those goods to someone on sale or return basis
(d) None of these

146. Unless otherwise agreed, where goods are delivered to the buyer and he rejects them,

(a) He is not bound to return them to the seller
(b) It is sufficient if he intimates to the seller that he has rejected the goods
(c) He is bound to deliver them to the seller
(d) He may keep them with him

147. Unless otherwise agreed, where goods are sent by the seller to the buyer by a route involving sea transit, the seller:

(a) Must inform the buyer in time to get the goods insured
(b) May insure the goods
(c) Must insure the goods
(d) Need not inform the buyer

148. Where the neglect or refusal of the buyer to take delivery of goods amount to a repudiation of the contract, the seller may sue for the

(a) Price or damages
(b) Price only
(c) Damage only
(d) Both for price and damages

149. Which one of the following is / are document of title of goods?

(a) mate's receipt
(b) wharfinger's certificate
(c) Warehouse keeper's certificate
(d) **(b)** & **(c)**

150. Which one of the following is not true?

(a) Document showing title is different from document of title
(b) Bill of lading is a document of title of goods
(c) Specific goods can be identified and agreed upon at the time of the contract of sale
(d) None of the above

151. A seller is unpaid when

1. **Whole of the price have not been tendered**
2. **A negotiable instrument given has been dishonored**
3. **A bill of exchange given was dishonored**

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4. **A part of the price has only been paid**

(a) 1, 2, 3
(b) 2, 3,4
(c) 1, 2, 3, 4
(d) 1, 2, 3

152. An unpaid seller is having right against

(a) Goods only
(b) The buyer only
(c) Both goods and buyer
(d) None of the above

153. The seller shall not be called an unpaid seller:

(a) When only a small portion of the price remains to be paid
(b) When the buyer has paid the price of goods but not the other expenses due to seller
(c) When the price remains unpaid even on the expiry of credit period
(d) When the buyer becomes insolvent during the credit period

154. Which of the following is the Right of Unpaid Seller

1. **Right to re-sale**
2. **Right to stop the goods in transit**
3. **Right of lien**
4. **Right of demand back the goods**

(a) 2,3,4
(b) 1,2, 3
(c) 1, 3, 4
(d) 1, 2, 3, 4

155. The essence of a right of lien is to ——— ———

(a) Deliver the goods
(b) Retain the possession
(c) Regain the possession
(d) Recover price

156. The lien of an unpaid seller depends on:

(a) Possession
(b) Title
(c) Ownership
(d) Whether the buyer has paid the price or not

157. Right of lien can be exercised:

(a) Only when goods have been sold for cash
(b) Only when goods have been sold on credit
(c) Only when buyer becomes insolvent
(d) None of these

158. An unpaid seller can exercise his right of lien:

(a) Where the goods have been sold on credit and the term of credit has not expired
(b) Where the buyer has not become insolvent
(c) For the unpaid price of the goods
(d) For the unpaid price of the goods and other charges

159. Right of lien can not be exercised:

(a) If the seller possesses the goods as an agent or bailee for the buyer
(b) If part delivery is not intended as delivery of the whole
(c) If seller has obtained a decree for the price of the goods
(d) If seller delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods

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160. In which of the following cases, the unpaid seller loses his right of lien?

(a) Delivery of goods to buyer
(b) Delivery of goods to carrier
(c) Tender of price by buyer
(d) All of these

161. Under which of the circumstances unpaid seller loses his right of lien?

(a) By estoppel
(b) Where seller waived the right of lien
(c) Where the buyer or his agent lawfully obtains possession of the goods
(d) Any of the above

162. The unpaid seller has right of stoppage of goods in transit only where the buyer

(a) Become insolvent
(b) Refuses to pay price
(c) Acts fraudulently
(d) All of these

163. Under which circumstances, the right of stoppage can be exercised by the unpaid seller

(a) The buyer has become insolvent
(b) The goods are in transit
(c) The seller must be unpaid
(d) All of the above

164. An unpaid seller can exercise the right of stoppage in transit when the carries hold the goods

(a) As seller's agent
(b) as buyer's agent
(c) As agent of both of them
(d) in his own name

165. Right of stoppage of goods in transit can be exercised:

(a) Only when the price remains unpaid even on the expiry of credit period allowed and the buyer is solvent
(b) Only when the buyer become insolvent
(c) Even if the carrier holds the goods as seller's agent
(d) Even if the carrier holds the goods as buyer's agent

166. Right of stoppage in transit can be exercised:

(a) Only by taking actual possession of goods
(b) Only by giving notice of his claim to the carrier on other bailee who possesses the goods
(c) Either of the ways stated in **(a)** and **(b)**
(d) None of these

167. Right of stoppage of goods in transit cannot be exercised

(a) If the carrier holds the goods as buyer's agent or as seller's agent
(b) If part delivery is not intended as delivery of the whole
(c) If the buyer has sold the goods without seller's consent
(d) If after the arrival of the goods at the appointed destination, the carrier or other bailee has not acknowledged to the buyer or his agent that he holds the goods on his behalf

168. Which of the following right can be exercised by an unpaid seller against the buyer who is not insolvent

(a) Right of lien
(b) Right of stoppage in transit
(c) Both **(a)** and **(b)**
(d) None of the above

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169. Where the transfer of document of title was by way of pledge the unpaid seller's right of lien or stoppage in transit:

(a) Can be exercised subject to rights of transferor
(b) Can be exercised subject to rights of transferee
(c) Cannot be exercised at all
(d) None of these

170. If the buyer is insolvent,————

(a) The seller cannot exercise the right of stoppage in transit
(b) The seller cannot exercise the right of lien
(c) The seller can exercise the right of lien
(d) The seller can exercise the right of stoppage in transit

171. Under the provision 'goods perishing before the making the contract', contract of sale of goods is void if

(a) The sale is of future goods
(b) Contract is of 'agreement to sell' and not actual sale
(c) Goods perished before the contract is made
(d) Goods perished without the fault of the seller

172. Under which circumstances the unpaid seller can exercise right of re-sale

(a) When the goods are of perishable nature
(b) When he gives notice to the buyer
(c) When he gives notice to the buyer of his intention to re-sale and the buyer does not within a reasonable time pay the price
(d) Both **(a)** and **(c)**

173. Which of the following is a buyer right against the seller in case of breach of contract?

(a) Suit for non- delivery
(b) Suit for specific performance
(c) Suit for damages for breach of warranty
(d) All of the above.

174. Notice of Resale by seller must be given:

(a) Irrespective of the nature of goods
(b) Where the seller has expressly reserved the right of resale
(c) Where the unpaid seller has exercised his right of lien or stoppage in transit
(d) None of these

175. In case of resale of goods by seller without notice:

(a) The new buyer (who buys in resale) will get a good title
(b) The unpaid seller has right to recover the loss on resale
(c) Original buyer has no right to recover the profit on resale
(d) None of these

176. An unpaid seller has not given notice of resale to the buyer. On resale there is a profit. The unpaid seller

(a) Is bound to hand it over to the buyer
(b) Is not bound to hand it over to the buyer
(c) May dispose it of in any manner he likes
(d) May set it off against a previous loss in similar circumstances

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177. An unpaid seller has not given notice of resale to the buyer. On resale there is a loss:

(a) The unpaid seller can recover it from the buyer
(b) The unpaid seller cannot recover it from the buyer
(c) The buyer can recover it from the unpaid seller
(d) The buyer must compensate the unpaid seller

178. If the goods are rejected by the buyer and the carrier or other bailee continues to be in possession of them, the transit:

(a) Is deemed to be at the end
(b) Is not deemed to be at an end
(c) Commences
(d) None of the above

179. In case of an agreement to sale, if the seller becomes insolvent while the goods are in his possession, the buyer's remedy

(a) Is to claim the goods from the official receiver or assignee.
(b) Is to claim dividend from the estate of the seller for the price paid.
(c) Is not available.
(d) Is to file a suit for damages.

180. In case of an agreement to sell, the aggrieved party————.

(a) Can sue for price
(b) Can sue for damages
(c) Can sue the buyer for injunction
(d) None of the above

181. In an auction sale:

(a) A seller cannot reserve a right to bid at an auction
(b) A bid once given cannot be withdrawn
(c) An auctioneer can refuse to accept even the highest bid
(d) Damping intended to discourage the bidders from bidding is lawful

182. If a seller makes use of pretended bidding to raise the price, the sale is :

(a) Voidable at the option of the buyer
(b) Void
(c) Valid
(d) Illegal

183. An auction sale is complete on the

(a) Delivery of goods
(b) Payment of price
(c) Fall of hammer
(d) None of the above

184. In an auction sale, the property shall be sold to be

(a) Lowest bidder
(b) Highest bidder
(c) All bidders
(d) None of the above

185. Where in an auction sale, the seller appoints more than one bidder, the sale is

(a) Void
(b) Illegal
(c) Conditional
(d) Voidable

186. The bidder at an auction sale can withdraw his bid

(a) Any time during auction
(b) Before fall of hammer
(c) Before payment of price
(d) None of these

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187. Where in an auction sale notified with reserved price, the auctioneer mistakenly knocks down the goods for less than the reserve price, then the auctioneer is

(a) Bound by auction
(b) Not bound by auction
(c) Liable for damages
(d) Both **(a)** and **(c)**

188. Right of lien and Right of stoppage in transit ————————-.

(a) Actually mean the same right
(b) Are actually similar rights
(c) Are consequential or sequential in nature, i.e. the end of right of lien is the starting point of the right of stoppage in transit
(d) Are rights available to any seller of goods

189. Actual Sale of future goods is ———— ————.

(a) Impossible
(b) Possible through an agreement to sell
(c) Illegal
(d) A myth

190. Return of goods is possible in case of – ————————.

(a) Sale
(b) Bailment
(c) Exchange
(d) None of the above

191. A sold a tin of disinfectant powder to K without warning knowing fully that if the tine was not opened with care, it will likely to cause injury. K was injured while opening the tin. Which of the following statement (s) is /are correct?

(a) A is not liable to K under the Doctrine of caveat emptor
(b) A is liable for the damages
(c) A has no duty to disclose the facts to K
(d) The buyer has the responsibility to enquire about all the things before purchasing the goods.

192. R, a grain merchant, displays wheat of different varieties. A after satisfying himself of the quality buys the wheat in the belief that the wheat is of earlier harvest, In fact the wheat is of recent harvest. A wants to return the wheat and refuses to pay the price. Which of the following is / are true?

(a) A can return the wheat
(b) A can refuse to pay the price
(c) A cannot return the wheat
(d) R cannot sue A to recover the money

193. 'A' acquired certain goods from 'C' by falsely representing that he was acting on behalf of 'B' and was authorized to collect the goods. 'A' later sold the goods to 'D'. Is the sale valid?

(a) The sale is valid as 'D' is not supposed to inquire the status of 'A' as a seller
(b) The sale is valid because 'D' has purchased the goods in good faith
(c) The sale is valid as 'A' has acquired the goods by way of fraud
(d) The sale is not valid because it a sale by non- owner and therefore, 'D'. the buyer, will not acquire any good title of the goods.

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194. A purchased a refrigerator on hire purchase from B and pledged with C. D purchased the refrigerator from C in good faith, on knowing the facts B wants to recover the refrigerator from D. which of the following statement (s) is / are correct?

(a) B can recover the refrigerator from D

(b) B can recover the refrigerator from A only

(c) B cannot recover the refrigerator from D

(d) D will get good title for the refrigerator as he bought it in good faith

195. A timber merchant agreed to supply best teak at a certain agreed price to a builder. Later the merchant supplied timber, which was identified as ordinary class of timber and demanded the payment from the builder. Which of the following statement is /are true?

(a) Builder can reject the goods and can claim damages

(b) Builder has to accept the goods

(c) Builder has to pay the price by taking delivery of teak wood

(d) Timber merchant cannot plead the doctrine of caveat emptor

196. A agrees to sell 100 Refrigerators to B, at a price to be determined by C. 60 Refrigerator are delivered to B. B agreed to the above agreement, without asking the dealer whether the refrigerators are fit to make ice and paid the determined consideration. The refrigerators failed to make ice.

(a) A must refund the price, because refrigerators are meant to make ice.

(b) A will refund the price, only if buyer would have disclosed this particular purpose

(c) A will refund the price at his option.

(d) A need not refund the price

197. What would be the legal position in previous Q. 196 if C denies to determine the price?

(a) C can be compelled to determine the price

(b) The contract becomes voidable at the option of B

(c) The contract becomes void and B must return those 60 refrigerators

(d) The contract becomes void and B must pay reasonable price for 60 refrigerators.

198. What would be the legal position in Q. 196, if B prevents C from determining the price?

(a) C can be compelled to determine the price

(b) The contract becomes voidable at the option of A.

(c) The contract becomes void and B must pay reasonable price for 60 refrigerators

(d) B has to return the refrigerators

199. If 40 refrigerators are stolen at time of making contract, the aforesaid contract in Q.216 becomes

(a) Void, because the goods have perished

(b) Void, because the contract was indivisible

(c) Voidable at the option of B

(d) Partly Void and party voidable at the option of B

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200. A sold 1000 tins of oil to B without appropriating any particular oil to the contract. B sold 600 tins out it to C and gave delivery order addressed to A. C lodged the delivery order with A requesting him to "await" his orders. Meanwhile, B became insolvent and thus A became the unpaid seller.

(a) A can exercise his right of lien and refuse to make delivery to C.

(b) A cannot exercise his right of lien and refuse to make delivery to C.

(c) C has claim over the goods in possession of A.

(d) None of the above.

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ANSWERS

1	(b)	**2**	(a)	**3**	(b)	**4**	(a)	**5**	(d)	**6**	(a)	**7**	(c)
8	(a)	**9**	(b)	**10**	(d)	**11**	(d)	**12**	(c)	**13**	(b)	**14**	(a)
15	(c)	**16**	(b)	**17**	(c)	**18**	(c)	**19**	(a)	**20**	(b)	**21**	(c)
22	(b)	**23**	(c)	**24**	(b)	**25**	(b)	**26**	(c)	**27**	(b)	**28**	(b)
29	(b)	**30**	(d)	**31**	(b)	**32**	(b)	**33**	(a)	**34**	(a)	**35**	(a), (d)
36	(b)	**37**	(b)	**38**	(a)	**39**	(d)	**40**	(a)	**41**	(b)	**42**	(a)
43	(c)	**44**	(b)	**45**	(a)	**46**	(b)	**47**	(c)	**48**	(a)	**49**	(a)
50	(b)	**51**	(c)	**52**	(c)	**53**	(c)	**54**	(b)	**55**	(a)	**56**	(c)
57	(a)	**58**	(b)	**59**	(a)	**60**	(a)	**61**	(b)	**62**	(b)	**63**	(d)
64	(a)	**65**	(d)	**66**	(a)	**67**	(b)	**68**	(c)	**69**	(b)	**70**	(a)
71	(d)	**72**	(b)	**73**	(b)	**74**	(b)	**75**	(a)	**76**	(c)	**77**	(c)
78	(c)	**79**	(d)	**80**	(a)	**81**	(b)	**82**	(d)	**83**	(b)	**84**	(a)
85	(a)	**86**	(d)	**87**	(c)	**88**	(d)	**89**	(d)	**90**	(d)	**91**	(a)
92	(a)	**93**	(c)	**94**	(b)	**95**	(c)	**96**	(a)	**97**	(d)	**98**	(d)
99	(b)	**100**	(d)	**101**	(d)	**102**	(a)	**103**	(d)	**104**	(b)	**105**	(d)
106	(a)	**107**	(d)	**108**	(a)	**109**	(d)	**110**	(c)	**111**	(a)	**112**	(c)
113	(d)	**114**	(d)	**115**	(b)	**116**	(c)	**117**	(d)	**118**	(a)	**119**	(c)
120	(a)	**121**	(d)	**122**	(c)	**123**	(a)	**124**	(c)	**125**	(b)	**126**	(b)
127	(c)	**128**	(b)	**129**	(b)	**130**	(a)	**131**	(c)	**132**	(a)	**133**	(b)
134	(b)	**135**	(a)	**136**	(a)	**137**	(c)	**138**	(b)	**139**	(b)	**140**	(d)
141	(b)	**142**	(b)	**143**	(b)	**144**	(b)	**145**	(c)	**146**	(b)	**147**	(a)
148	(c)	**149**	(d)	**150**	(d)	**151**	(c)	**152**	(c)	**153**	(b)	**154**	(b)
155	(b)	**156**	(a)	**157**	(d)	**158**	(c)	**159**	(d)	**160**	(d)	**161**	(d)
162	(a)	**163**	(d)	**164**	(d)	**165**	(b)	**166**	(c)	**167**	(a)	**168**	(a)
169	(b)	**170**	(c)	**171**	(c)	**172**	(d)	**173**	(d)	**174**	(c)	**175**	(a)
176	(a)	**177**	(b)	**178**	(a)	**179**	(b)	**180**	(b)	**181**	(c)	**182**	(a)
183	(c)	**184**	(b)	**185**	(d)	**186**	(b)	**187**	(b)	**188**	(c)	**189**	(b)
190	(b)	**191**	(b)	**192**	(c)	**193**	(b)	**194**	(a)	**195**	(a)	**196**	(a)
197	(d)	**198**	(c)	**199**	(d)	**200**	(a)						

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CHAPTER 11 NEGOTIABLE INSTRUMENTS ACT, 1881

PRELIMINARY

The law relating to 'negotiable instruments' is contained in Negotiable Instruments Act, 1881. It extends to the whole of India. It came into force on first day of March, 1882. The Act, has been amended for more than a dozen times so far.

MEANING:

The word **'instrument'** means a **written document** by which a **right is created** in the favour of a person and **'negotiable'** means **transferable** by delivery. Negotiable Instrument means an instrument, the property in which is acquired by anyone who takes it – bonafide and for value, notwithstanding any defect in the title of the transferor.

According to **Sec. 13**, a negotiable instrument means a promissory note, bill **of exchange or cheque** payable either to order or to the bearer.

CHARACTERISTICS OF NEGOTIABLE INSTRUMENTS (SEC.- 13)

- **Freely Transferable:** Negotiable Instruments are freely transferable from one person to another. **In other words**, the property in these instruments passes by either endorsement and delivery or by delivery merely, and no further evidence of transfer is needed.
- **Transferable infinitum:** i.e. indefinitely
- **Holder in due course** gets good title to negotiable instrument even though the title of transferor is defective.
- A Negotiable Instrument **may name** more than one **payee jointly** or alternatively.

PRESUMPTIONS AS TO NEGOTIABLE INSTRUMENTS (Sec. 118)

Until the contrary is proved, the following presumptions shall be made:

i) **As to consideration:** that **every N.I.** was made or drawn **for consideration**, and that every such instrument when it has been **accepted, endorsed or negotiated** has been for **consideration.**

ii) **As to date:** It is presumed that every N.I. **bearing a date** was made or drawn on such date.

iii) **As to time of Acceptance:** That every accepted bill of exchange was **acceptedwithin** a reasonable time after its date and **before its maturity**.

iv) **As to time of Transfer:** that every transfer of Negotiable Instrument was made before its maturity.

v) **As to order of endorsement:** that endorsement appearing upon a negotiable instrument were made in the order in which they appear thereon.

vi) **As to Stamps:that a lost** promissory note, bill of exchange or cheque **was dulystamped.**

vii) **The holder is a holder in due course:that the holder** of a negotiable instrument **is a holder in due course**.

PROMISSORY NOTE (SEC.4)

MEANING: A promissory note is an instrument in writing **(not being a bank note or a currency note)** containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of a certain person, or to the bearer of the instrument.

ESSENTIAL CHARACTERISTICS OF A PROMISSORY NOTE (SEC.- – 4)

1) **In writing:** It must be in writing. An **oral** promise **does not** result in an instrument.

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2) **Promise to Pay:** There must be **an express promise to pay.** A mere acknowledgement of a debt is not a promissory note.
3) **Unconditional:Promise** to pay must be **unconditional or subject to condition which** according to ordinary experience of mankind **is bound to happen**.

i.e. I promise to pay 'X' Rs.5,100 on Y's death. In this case the promise is not conditional, but definite since death of Y is certain. Therefore, promissory note is valid.

4) **Certain sum of money only: Sum of money** promised must be **certain** and should be in terms of money and money only. If the instrument contains a promise to pay something **other than money** or something in addition to money, it will **not** be a promissory note.
5) **Signed by the maker:The maker** of the promissory note **must sign** the instrument and it is incomplete till it is so signed. The signature may be **made on any part of the document.**
6) **Payee must be certain:Theperson** by whose order and to whom the payment is to be made **must be definite**. The payee must be a certain person and where the name of the payee is not mentioned as a party the instrument becomes invalid**. If the payee** is **designated** by description (Secretary, ICAI) the promissory note **is valid** if the payee is ascertained by evidence.
7) **Not payable to maker himself:** Generally speaking a pro-note **cannot be** made payable to maker **himself**. However, it would become **valid when** it is endorsed to maker. This is so because it becomes payable to bearer, if endorsed in blank or it becomes payable to endorsee or his order, if endorsed specifically.
8) **Stamped:** A promissory note **must be stamped.**

PARTIES TO PROMISSORY NOTE:

i) **Maker:** The person who makes the promissory note is called, the maker. His liability is primary and unconditional.
ii) **Payee:** The person to whom money is to be paid is named in the promissory note. He is known as payee.

- The words 'or to the bearer of the instrument' is inoperative in the view of Sec. 31 of the RBI Act.

BILL OF EXCHANGE (SEC.5)

Meaning: A 'Bill of Exchange' is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.

ESSENTIAL CHARACTERISTICS OF BILL OF EXCHANGE

1) **In Writing:** Bill of Exchange must be in writing.
2) **Order:** It must contain an order to pay. Order to be made by drawer to drawee to pay money.
3) **Unconditional Order:** the order must be unconditional. An order does not become conditional by reason of time for payment of the amount being expressed to be on the lapse of a certain period or after the occurrence of a specified event which, according to the ordinary expectation of mankind, is certain to happen, although the time of its happening may be uncertain.
4) **Payment of Money only:** the order must be to pay money and money only. The sum of money payable must also be certain.
5) **Three Parties:** The three parties (namely drawer, drawee and payee) are to specified in the instrument with reasonable certainty. Usually, same person is drawer and payee.

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6) **Stamping:** The bill of exchange must be stamped.

PARTIES TO A BILL OF EXCHANGE (SEC.7)

A. **Drawer:** The maker of the Bill of Exchange or cheque is called drawer. His liability is secondary and conditional. His liability is primary and conditional till the bill is accepted.
B. **Drawee:** The person thereby directed to pay is called drawee. After acceptance the "drawee" becomes "acceptor", he becomes liable for the payment of the bill and his liability is primary and unconditional.
C. **Payee:** the person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid is called the "payee".

CHEQUE (SEC.6)

Meaning: 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 electronic image of a truncated cheque and a cheque in the electronic form.

❖ **Meaning of Truncated Cheque:** Truncated cheque means a cheque which is truncated during the course of clearing cycle, either by the clearing house or bank whether paying or recovering payment immediately on generation of electronic image for transmission, substituting the further physical movement of cheque in writing. **e.g.** A physical cheque deposited at bank, scanned electronically for processing.

❖ **Meaning of A Cheque in Electronic form:** It means a cheque which contains the exact mirror image of a paper, and is generated, written and signed in a secure system ensuring minimum safety standards. With the use of digital signature (with or without biometrics signature) and asymmetric crypto system. E.g. online payment instruction in net banking.

Distinguish between electronic cheque and truncated cheque	
Electronic Cheque	**Truncated Cheque**
1) Paper is not used at any stage in creation of an electronic cheque.	***1)*** A truncated cheque is nothing, but a paper cheque, which is truncated during the clearing cycle.
2) Digital signature must be used to create an electronic image of a cheque. Thus, an electronic cheque contains digital signature.	***2)*** The paper cheque, which is afterwards truncated, contains no Digital Signature. The signatures in ink appear on the truncated cheque.
3) The original writing of an electronic cheque is in electronic form.	***3)*** The original writing of a truncated cheque is on paper, duly signed in ink. After the paper cheque is converted into electronic form, it is truncated, and thus, it becomes a truncated cheque.

ESSENTIAL CHARACTERISTICS OF CHEQUE:

1) **Writing:** Cheques must be in writing.
2) **Order:** It must contain an express order to pay.
3) **Definite and unconditional:** the order to pay must be definite and unconditional.
4) **Sign:** It must be signed by the drawer.
5) **Certainty of sum of money:** the sum contained must be certain and in terms of money only.
6) **Bank as drawee:** It is always drawn upon a specified banker.

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7) A cheque, **prima facie,** is a bill of exchange and hence must satisfy the essential conditions of bill of exchange under Sec. (5).

8) A cheque is an exception to the general rule that a bill of exchange cannot be drawn payable to bearer on demand – **Sec. 31 of Reserve Bank of India Act, 1934.**i.e. cheques are always payable on demand.

9) A cheque does not require
- **(I)** Stamping or
- **(II)** Acceptance

PARTIES TO A CHEQUE (SEC.- – 7)

1) **Drawer:** The person who draws or makes a cheque.

2) **Drawee:** the bank on whom the cheque is drawn is called drawee.

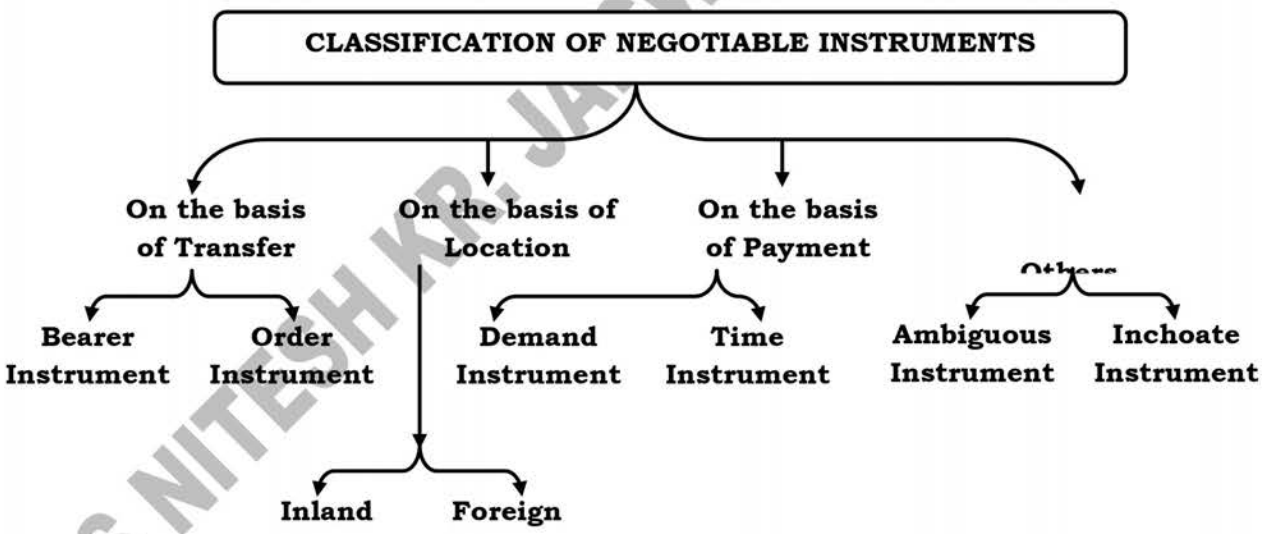
3) **Payee;** The person to whom money is to be paid is named in the cheque. He is called payee. The payee may be the drawer himself or a third party.

CAPACITY OF A PARTY TO N.I. (SEC. 26)

1) **Contractual Capacity:** Every person capable of contracting may bind himself and be bound by the making, drawing, acceptance, endorsement, delivery and negotiation of promissory note, bill of exchange or cheque.

2) **Minor and Negotiable Instruments:** A minor may draw, endorse, deliver and negotiate such instruments so as to bind all parties except himself.

CLASSIFICATION OF NEGOTIABLE INSTRUMENTS (SEC.13, 19 AND 21)



A. On the basis of Transfer:

1) **Order Instrument (Sec. 13):** An instrument is payable to order which is expressed to be so payable or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it shall not be transferable.

2) **Bearer Instrument (Sec. 13):** An instrument is payable to bearer which is expressed to be so payable or on which the only or last endorsement is an endorsement in blank.

B. On the basis of Location:

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1) **Inland Instrument (Sec. 11):** A negotiable instrument drawn or made in India and made payable in, or drawn upon any person resident in India shall be deemed to be an inland instrument.
2) **Foreign Instrument (Sec. 12):** Any such instrument not so drawn, (as an inland instrument) made or made payable shall be deemed to be a foreign instrument.

C. **On the basis of Payment Procedure:**
1) **TimeInstrument :** An instrument in which time for payment, i.e. "maturity" is specified and may be payable –
   - ❖ After a specified period, or
   - ❖ On a specified date
   - ❖ Certain period after sight, or
   - ❖ On the happening of certain event.
2) **Instrument Payable on Demand (Sec.19):** A promissory note or bill of exchange, in which no time for the payment is specified, and are payable on demand. A cheque is always payable on demand.

D. **Others:**
1) **Accommodation Bill (Sec.43):** A negotiable instrument made without consideration. Such negotiable crates no obligation of payment between the parties if it was made, drawn, accepted, endorsed or transferred without consideration. If the accommodated party pays the amount due, it cannot recover such amount from accommodating party, and vice versa. A holder for value and every subsequent holder deriving title from him can recover the payment of negotiable instrument from all the prior parties except from the party whom such holder derived title without consideration
2) **Incomplete/Inchoate Instruments (Sec. 20):** where one person signs and delivers to another, a paper stamped in accordance with the law relating to negotiable instruments then in force in India and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount.

MATURITY OF A NEGOTIAHBLE INSTRUMENTS

Maturity (Sec.22):

The maturity of a promissory note or bill of exchange is the date at which it falls due.

Days of Grace:

Every promissory note or bill of exchange which is not expressed to be payable on demand, at sight or on presentment is at maturity on the third day on which it is expressed to be payable.

Calculating maturity of a bill or note payable so many months after date or sight (Sec. 23) : In calculating the date at which a promissory note or a bill of exchange, made payable at stated number of months after date or after sight, or after a certain event, is at maturity, the period stated shall be held to terminate on the day of the months which corresponds with day on which the instrument is dated or presented for acceptance or sight, or noted for non-acceptance, or protested for non acceptance, or the event happens, or, where the instrument is a bill of exchange made payable a stated number of months after sight and has been accepted for honour, with the day on which it was so accepted. If the month in which the period would terminate has no corresponding day, the period shall be held to terminate on the last day of such month.

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Example:

a) Negotiable instrument dated 29th January, 2009, is made payable at one month after date. The instrument is at maturity on the third day after 28th February, 2009.

b) A negotiable instrument dated 30th August, 2009 is made payable three months after date. The instrument is at maturity on the 3rd December, 2009.

c) A promissory note or bill of exchange, dated 31st August, 2009 is made payable three months after date. The instrument is at maturity on the 3rd December, 2009.

Calculating maturity of bill or note payable so many days after date or sight (Sec. 24): In calculating the date at which a promissory note or bill of exchange made payable a certain number of days after date or after sight or after a certain event is at maturity, the day of the date, or of the presentment for acceptance or sight, or of protest for non-acceptance, or on which the event happens, shall be excluded.

When day of maturity is a holiday (Sec. 25): when the day on which a promissory note or bill of exchange is at maturity is public holiday, the instrument shall be deemed to be due on the next preceding business day.

❖ The expression "**public holiday**" includes Sundays and any other day declared by the C.G., by notification in the Official Gazette, to be a public holiday.

NEGOTIATION AND ENDORSEMENT

Negotiation Sec. 14: When a promissory note, bill of exchange or cheque is transferred to any person, so as to constitute that person the holder thereof, the instrument is said to be negotiated.

Methods of Negotiation:

1) **Negotiation by delivery:** A negotiable instrument payable to bearer is negotiable by delivery thereof **(Sec.47)**. Thus, a bearer instrument may be negotiated by delivery only. It does not require signature of the transferor (i.e. endorsement) and the transferee becomes the holder thereof by mere possession. The transferor of a bearer instrument is not liable on its dishonour because by not signing as endorser he has not added his credit to the instrument.

2) **Negotiation by endorsement and delivery:** A negotiable instrument payable to order is negotiable by the holder by endorsement and delivery thereof **(Sec. 48)**. Thus the negotiation of an order instrument requires two formalities :

- First, the holder should endorse it; and
- Then deliver to his endorsee.

Rules of Delivery:

❖ **Delivery:** The making, acceptance or endorsement of pro-note, bill or cheque is completed by delivery, actual or constructive, **(Sec. 46)**.

❖ **Mode of Delivery:** As between parties standing in immediate relation, delivery to be effectual must be made by the party making or endorsing the instrument, or by a person authorized by him in that behalf.

❖ **Conditional or unconditional delivery:** an instrument may be delivered conditionally or only for a special purpose and not for the purpose of transferring absolutely the property in the instruments. A bill delivered conditionally is **ESCROW.**

A bill may be drawn and a note must be made unconditionally. When an instrument is delivered conditional or for special purpose only, the property in the instrument does not pass on to the

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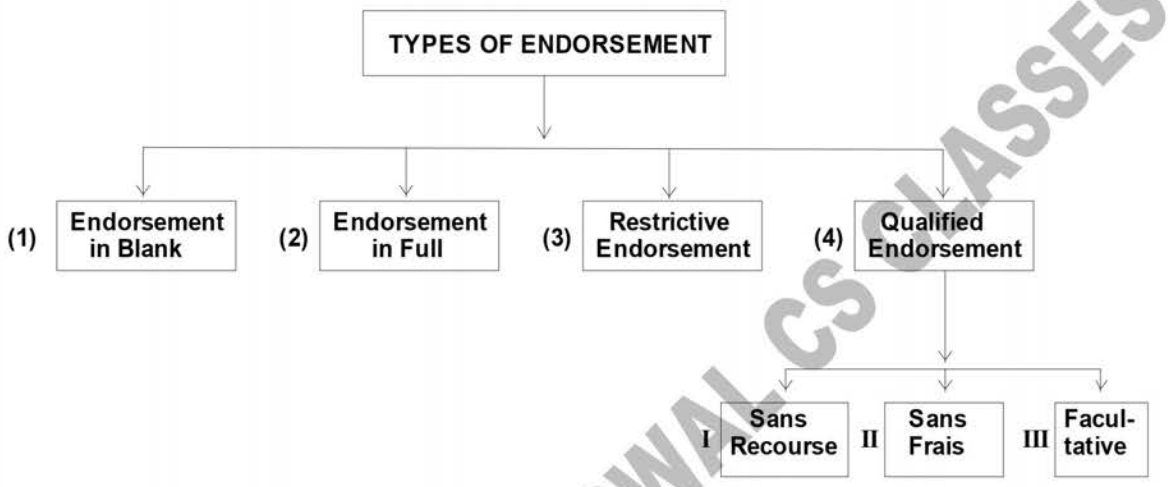
transferee until the condition is fulfilled and the transferee holds such instrument in law as trustee or agent of the transferor.

ENDORSEMENT AND ITS TYPES

Endorsement: When the maker or holder of a negotiable instrument signs the same, otherwise than as such maker for the purpose of negotiation, on the back or fact thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to **ENDORSE** the same, and is called the **ENDORSER**. The person in whose favour the endorsement made is called **ENDORSEE.**



1) **Endorsement in blank:** It is an endorsement wherein the endorser signs his name only. A negotiable instrument endorsed in blank is payable to the bearer thereof. **(Sec.16854).**
2) **Endorsement in full:** It is an endorsement, where the endorser signs his name and adds a direction to pay the amount mentioned to or to the order of, a specified person and the person so specified is called as endorsee of the instrument **(Sec. 16).**
3) **Restrictive Endorsement:** It is an endorsement which has the effect of restricting further negotiation and transfer **(Sec. 50)**.
4) **Qualified Endorsement:(Sec. 52)**
   i) **Sans recourse endorsement:** It is an endorsement where the endorser excludes his own liability or makes it conditional.
   ii) **Sans Frais Endorsement:** Such an endorsement indicates that endorser is not liable for expenses incurred on account of bill.
   iii) **Facultative Endorsement:** It is an endorsement wherein certain rights are waived and suitable words to this effect are indicated.

Negotiation Back:

An instrument is said to have been negotiated back to him and he is said to have taken up or taken back the negotiable instrument when a person who has been a party to the negotiable instrument takes it again.

Example: The endorsements on a negotiable instrument are as under:

P, A, B, X, Y, A

Here A is a person who is a prior party to the instrument. He negotiated it to B, B to X, X to Y and Y again to this very A resulting in 'negotiation back'.

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This will lead to a circuitry of action. Thus A, in the above case cannot sue Y, X or B. But A can sue P since the latter is prior to A's original endorsement. If however A, in original endorsement, had signed "sans recourse" there could be no circuitry of action and A could sue Y, X or B.

ASSIGNMENT

Meaning of Assignment: A person transfers his right to receive the payment of a debt. Then it can be said that'assignment of debt' takes place. 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. Negotiable Instrument are chose in action. Chose in action includes all debts and all claims which can not be enforced without action. Therefore, the ownership of N.I. as chose in action can be transferred by assignment. Assignment takes place by writing a separate transfer deed.

In case of assignment the little of the assignee shall be the same as that of the assignor and the Negotiable Instrument Act does not deal with transfer of Negotiable Instruments by assignment. The act only deals with negotiation.

Difference between Negotiation and Assignment:

Basis	Negotiation	Assignment
Notice of transfer	Not necessary	Notice must e served by assignee on his debtor
Consideration for transfer	Presumed	To be proved
Mode	❖ Barer instruments – delivery ❖ Order instrument – Endorsement & Delivery	Document to be reduced into writing and signed by transferor
Rights	Transferee acquires all rights of a holder in due course.	Assignee has only the right, title and interest of the assignor.
Title	The title of the transferee (ie., the holder in due course) is better than that of the transferor.	The title of the assignee is subject to the defects in the title of the assignor.

Crossing of Cheque:

1) Whena cheque bears across its face two parallel transverse lines, (usually on the top left corner of cheque) the cheque is said to be crossed.
2) Crossing affects mode of payment of cheque. Cheque is not payable to payee or holder at Bank. Payment is to be obtained only through Bank. Crossed Cheque can be negotiated similar to an open cheque.
3) The **objective of crossing** is to enable tracing the recipient of money, if an unauthorised person receives it.

Types of Crossing:

1) **General Crossing: (Sec. 123)**
   Where a cheque bears across its face an addition of –

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- ❖ The words 'and company' or any abbreviations thereof between two parallel transverse lines, or
- ❖ Two parallel transverse lines simply.

Either with or without the words 'not negotiable', the addition shall be deemed a crossing, and the cheque shall be deemed to be crossed generally.

Where a cheque is cross generally, the banker on whom it is drawn shall not pay it otherwise than to a banker.

2) Special Crossing: (Sec. 124)

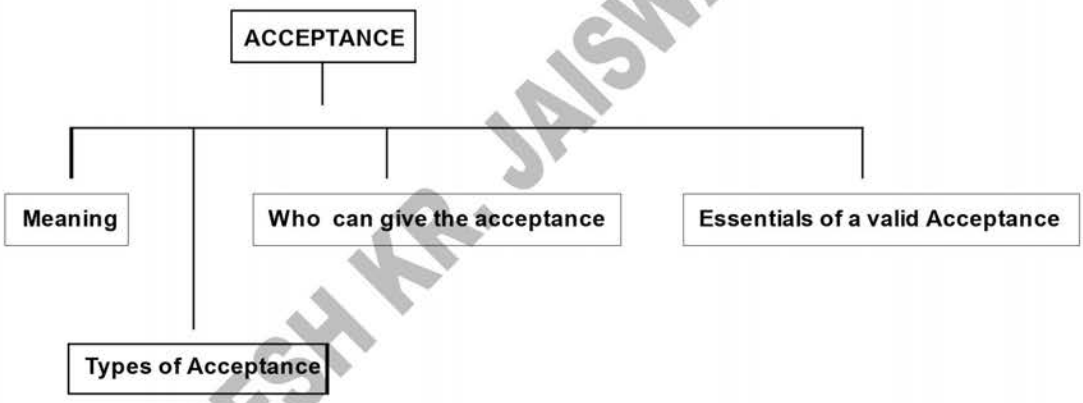
Two parallel transverse lines are not a must. Where a cheque is crossed specially, the banker on whom it is crossed shall not pay it, otherwise than to the banker to whom it is crossed or his agent for collection.

3) 'Account Payee' Crossing/Restrictive Crossing:

The purpose of this crossing bearing the words "A/c Payee" is to obviate the risk of a wrong person obtaining payment on a cheque.

It is a direction to banker to credit the proceeds only to the account of the payee.

The cheque remains legally negotiable but "A/c Payee" crossing hinders the negotiability of the cheque in practice.



MEANING:

When the drawee of the bill signifies his assent in writing to the drawer's order in the, by signing across the face of the bill with or without the word "accepted" and delivers back the bill to the holder or gives notice of acceptance to the holder, the bill is said to have been accepted.

TYPES OF ACCEPTANCE:

1) **General Acceptance:** When the drawee gives the acceptance to pay the sum in full and without any conditions or qualification, the acceptance is said to the general, absolute or unqualified.
2) **Qualified Acceptance (Sec.86):** When the drawee accepts the bill subject to some condition or qualification, thereby varying the terms as expressed in the bill, it is said to be a qualified acceptance. An acceptance is qualified –
   - Where it is conditional, declaring the payment to be dependent on the happening of an event therein stated;
   - Where it undertakes the payment of part only of the sum;

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- For a period longer than that specified in the bill;
- Where acceptance to pay only at a specified place and not elsewhere.

EFFECT OF QUALIFIED ACCEPTANCE

i) The holder may object to the qualified acceptance. It may also be treated as the bill of exchange to be dishonoured.

ii) If the holder has consented to a qualified acceptance without the consent of previous parties it discharges the previous parties.

Who can give the Acceptance:

i) Drawee

ii) All or some of the several drawees, when bill is addressed to more than one drawee.

iii) Drawee in case of need.

iv) An acceptor for honour

v) Agent of any of the persons mentioned above.

Essentials of a Valid Acceptance:

1) By a person having capacity to contract.

2) In writing

3) Signed

4) It must be signed on the bill

5) Acceptance must be completed by delivery.

HOLDER AND HOLDER IN DUE COURSE

Holder (Sec. 8): The 'holder' of promissory note, bill of exchange or cheque means any person, entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto.

Holder in Due Course (Sec. 9): the 'holder in due course' means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer, or the payee or endorsee thereof, if payable to order, before the amount mentioned in it became payable and having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

RIGHT AND PRIVILEGES OF HOLDER IN DUE COURSE

1) **Presumption:** Every holder is presumed to a holder in due course. (Sec. 118).

2) **Privilege in case of inchoate instrument (Sec. 20):** In the case of inchoate instrument, if the holder or original payee fills more amount than that was authorized, he cannot enforce the instrument for the whole amount (only authorized amount can be recovered). If such an instrument is transferred to a holder in due course, he can claim the whole of the amount so entered provided that the amount is covered by the stamp affixed thereon.

3) **Liability of Prior Parties (Sec. 36):** All parties to a negotiable instrument continue to remain liable to a holder in due course both jointly and severally (i.e. he can hold any or all prior parties liable) until the instrument is duly satisfied.

4) **Instruments obtained by unlawful means or for unlawful consideration (Sec. 58):** The person liable in negotiable instrument can not set up against the holder in due course the defence that the instrument had been lost or obtained from him by means of an offence or fraud or for an unlawful consideration.

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5) **Negotiable Instrument without consideration (Sec. 43):** No prior party can set up a defence that the negotiable instrument was drawn, made or endorsed by him without any consideration.

6) **Conditional Delivery (Sec. 46):** In case a bill or note is negotiated to a holder in due course, the other parties to the bill or note cannot avoid liability on the ground that the delivery of the instrument was
   i) conditional
   ii) for a special purpose only

7) **Acceptance of Bill drawn in fictitious name (Sec. 42):** An acceptor of a bill of exchange drawn in a fictitious name and payable to the drawer's order is not, by reason that such name is fictitious, relieved from liability to any holder in due course claiming under an endorsement.

Difference Between Holder And Holder In Due Course

Basis of Difference	Holder	Holder in Due Course
Consideration	Holder may become possessor or payee of instrument even without consideration	Holder in due course acquires possession only for consideration
Time of Possessing	No restriction as in case of holder in due course	Must possess instrument before amount thereon becomes payable
Good faith	A person becomes a holder, even if he does not obtain the N.I. in good faith.	For being a holder in due course a person must obtain the N.I. in good faith.
Privileges	A holder is not entitled to the privileges, which are available for Holder in Due course.	A Holder in Due Course is entitled to various privileges.
Right to sue	A holder cannot sue all the prior parties	Can sue all the prior parties

Payment in Due Course (Sec. 10)

Payment in due course means payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned.

Liability of the Paying Banker:

Any banker paying cheque crossed generally otherwise than to a banker, or
A cheque crossed specially otherwise than to a banker to whom the same (cheque) is crossed,
Shall be liable to the true owner of the cheque for any loss he may sustain.

Cases in which a banker must refuse to honour a cheque:

1) Stop payment
2) If a cheque undated
3) If it stale (outdated)
4) When cheque is presented before the date (post-dated)
5) When the customer's funds are not properly applicable.
6) Cheque drawn upon another branch.
7) Notice of customer's insolvency or lunacy

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8) If the court has given order to the banker not to make payment, i.e. 'GARNISHEE'
9) There is a notice to the banker of death of the customer.
10) Application of closure of account is served on the bank.
11) Cheque contains unauthorized material alteration.
12) Mutilated cheque.
13) Difference in signature of the drawer
14) Defect in title of the holder
15) If the instrument is inchoate or doubtful.

Cases In Which Banker May Refuse To Honour A Cheque

1) Insufficiency of the fund
2) Funds not applicable
3) Presentment of different branch
4) Presentment after usual banking hours.

Effect Of Cheque Not Duly Presented & Drawer Damaged

When the drawer has sufficient balance in his account and the cheque is to be presented for the payment, where cheque is not presented within a reasonable time of its issue, during the same period the bank fails and consequently the drawer suffers actual damages.
There is no liability of the drawer if bank fails for that above mentioned condition must be fulfilled.

Acceptance for Honour (Sec. 108)

Generally a stranger, cannot give the acceptance to a bill. In case where a bill is dishonoured by non-acceptance, the holder may allow any other person to accept it for the honour of the drawer. The person so accepting the bill is called "acceptor for honour".

Legal Requisites for a valid Acceptance for Honour:

i) A bill must have been noted or protested for non-acceptance or for better security.
ii) It can take place with consent of the holder
iii) Must be in writing
iv) An acceptor for honour is a person who is not already liable on the bill.
v) Acceptance for honour can be for the honour of any party already liable on the bill.

Rights of an Acceptor for Honour (Sec. 111)

On paying the bill, the acceptor for honour can sue the party for whose honour the bill is accepted and all prior parties. Such parties are liable to compensate the acceptor for honour for all loss or damage sustained by him in consequence of such acceptance.

Liabilities of an Acceptor for Honour (Sec. 112)

An acceptor for honour binds himself to all parties subsequent to the party for whose honour he accepts to pay the amount of the bill

The acceptor for honour has to pay only if the following conditions are fulfilled:

- The bill should once more be presented to the drawee for payment at maturity
- If the drawee still refuses to pay, the bill should be noted or protested for payment.
- The bill should be presented or forwarded to the acceptor for honour not later than the day next after the day of its maturity.

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PAYMENT FOR HONOUR (SEC. 113)

When a Bill of Exchange has been noted and protested for non-payment, any person can volunteer to pay it. Such a payment will be called payment for honour.

The conditions essential for such payment are:

- That the bill must have been noted or protested for non-payment;
- That the person paying or his agent declares before Notary Public, the party for whose honour he pays;
- That such declaration has been recorded by such Notary public;
- That the payment must be made for the honour of any party liable to pay the bill;
- That the payment may be made by any person whether he is already liable on the bill or not.

Right of payer for honour (Sec.114):

The person who pays a bill for honour is sugrogated to the position and rights of the holder. He is entitled to all the rights of the holder at the time of such payment. He can recover from the party for whose honour he made the payment:

- All sums paid by him for the satisfaction of the liability under the instrument.
- The interest on such sums; and
- All expenses properly incurred by him in making the payment of the bill.

Drawee In Case Of Need:

Where the drawer of a bill is afraid that the drawee may not accept the bill, he may mention the name of an additional drawee who may be resorted to in case the original drawee declines his acceptance. Such an additional drawee is called the "drawee in case of need".

On being dishonoured by the original drawee, the bill is carried to the drawee in case of need and if he also dishonours, then only the bill can be taken to be dishonoured. The drawee in case of need is not liable unless the bill has been present to him and he has accepted it. A drawee in case of need can accept and pay the bill of exchange without the need for any protest (Sec. 116). The failure to present the bill to the "drawee in case of need" absolves the drawer from liability.

DISHONOUR:

A bill may be dishonoured by non-acceptance or non-payment. A promissory note and a cheque are dishonoured only by non-payment.

Dishonour by non-acceptance (Sec. 91)

A bill of exchange is said to be dishonoured by non acceptance, when the drawee, or one of the several drawees not being partners, makes default in acceptance upon being duly required to accept the bill or whose presentment is excused and the bill is not accepted.

Where the drawee is incompetent to contract, or the acceptance is qualified the bill may be treated as dishonoured:

- Where a bill is not accepted by the drawee within 48 hours of presentment or refuses to accept it.
- Where the drawee is a fictitious person, or after reasonable search cannot be found.

Effects of dishonour by non-acceptance:

It amounts to a final dishonour of the bill. The holder gets an immediate right to sue all parties. He can not be compelled to wait for maturity of the instrument or to present it for payment at maturity.

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☞ **Sec. 91** is not applicable to promissory and cheque as the two require no acceptance.

Dishonour by non-payment (Sec. 92):

A promissory note, bill of exchange or a cheque is said to be dishonoured by non-payment when the maker of the note, acceptor of bills and drawee of the cheque makes default in payment upon being duly required to pay the same.

Notice of Dishonour (Sec. 93):

When a promissory note, bill of exchange or cheque is dishonoured by non-acceptance or non-payment, **the holder – thereof, or some other party thereto who remains liable thereon** must give notice that the **instrument has been so dishonoured** to all the **prior parties whom the holder seeks to make severally liable** thereon, and to some one of several parties whom he seeks to make jointly liable thereon.

Effects of non-service of Notice:

A party (except the party primarily liable on the N.I.) to whom notice of dishonour is not given is discharged from the liability on the Negotiable Instrument.

When the notice of dishonour is unnecessary (Sec. 98):

1) When the necessity of notice is dispensed with by the party entitled thereto; e.g. when the drawer of a bill informs the holder that the bill will be dishonoured on presentment, the notice of dishonour is said to have been dispensed with.

2) In order to charge the drawer, when he has countermanded payment

3) When the party charged could not suffer damage for want of notice

4) When the party entitled to notice cannot be found after due search

5) When the drawer himself is an acceptor, no notice is necessary to charge the drawer.

6) When the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the instrument.

NOTING AND PROTESTING

Noting: It is a mode authenticating the fact that a bill or note has been dishonoured.

- ❖ It is not mandatory to get the fact of dishonour NOTED*.
- When promissory note or a bill of exchange has been dishonoured by non-acceptance or non-payment in order to create a proof of this fact, the holder may approach a Notary Public and have the fact of dishonour noted either on the instrument itself or on a separate piece of paper or partly upon both;
- Noting must be made within a reasonable time after dishonour. Upon such request being received the notary inquiries from the party liable to pay and if he still dishonour, the notary makes a note of the fact of dishonour.
- The note should contain –
  - ⇨ The fact that the instrument has been dishonoured
  - ⇨ The date of dishonour
  - ⇨ The reason, assigned for dishonour
  - ⇨ If the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured
  - ⇨ Notary's charges

Protest (Sec. 100):

Protest is one step further to noting. According to this Sec.- –

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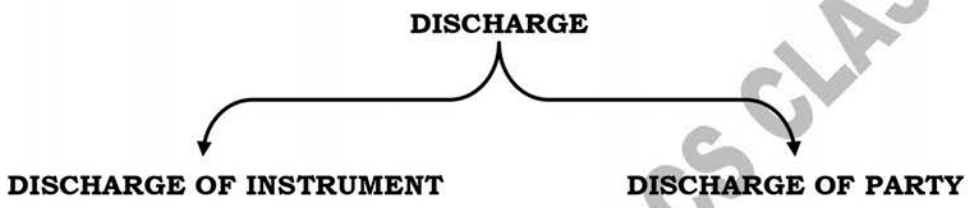
When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may, within a reasonable time, causes such dishonour to be noted and **Certified by a Notary Public.** Such certificate is called a protest.

Protest for better Security:

Protest for better security is a measure of protection against the consequences of the acceptor's insolvency.

⇨ When the acceptor of bill of exchange becomes insolvent or his credit has been publicly impeached, and this has happened **before the maturity** of the bill, the holder may approach a notary public and ask him to demand from the acceptor a better security than the mere bill.

⇨ If the acceptor refuses to oblige with any security, the holder should have the fact of refusal noted and certified by the notary. Such certificate is called a **Protect for better Security**. This should be done within reasonable time after the acceptor's refusal to provide security.



The term '**discharge**' in the context of Negotiable Instruments has two senses:

⇨ Discharge of Instrument, and

⇨ Discharge of one or more parties from liability on the instrument.

Discharge of Negotiable Instrument:

An instrument is said to be discharged when it becomes such that no action on the instrument will lie and it cannot be negotiated further discharge of the party primarily and ultimately liable on the instrument results in the discharge of the instrument itself. Discharge of Instrument takes place in the following manner:

1) **Payment in due course:** when the party primarily liable on the instrument makes the payment in due course to the holder at or after the maturity.
2) **Cancellation:** If the holder of an instrument cancels acceptor's or maker's name with an intention to discharge him, the instrument is discharged.
3) **Release:** if the holder of an instrument renounces his right against all the parties to the instrument, the instrument is discharged.
4) **By Negotiation back of a bill:** when the acceptor of a Bill of Exchange becomes the holder at or after the maturity in his own right, the instrument in discharged.

Discharge of a Party:

1) **By Cancellation [Sec. 82(a)]:** When the holder of a negotiable instrument deliberately cancels the name of any of the party liable on the instrument with an intent to discharge him from the liability thereon, such party and all endorser subsequent to him are discharged from liability.
2) **By release [Sec. 82(b)]:** If the holder of the instrument releases any of the parties to the instrument by any method other than cancellation of names (i.e. a separate agreement of waiver, release or remission) the party so released and all parties subsequent to him are discharged from liability.

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3) **By Payment [Sec.82(c)]:** When the party primarily liable on the instrument makes the payment in due course to the holder at or after the maturity all the parties to the instrument stand discharged.
4) **Discharge by allowing drawee more than forty eight hours to accept:** If the holder of the bill allows the drawee more than exclusive of public holidays, to consider, whether he will accept the same, all the previous parties not consenting to such allowance are thereby discharged from the liability to such holder.
   - ❖ According to Sec.- 63 the drawee is entitled to be allowed a period of 48 hours at the most (exclusive public holidays) to consider whether he will accept the bill or not.
5) **By taking qualified Acceptance [Sec.86]:** If the holder of a bill agrees to a qualified acceptance all prior parties whose consent is not obtained to such an acceptance are discharged from liability.
6) **By non-presentment of Acceptance [Sec. 61]:** when a bill of exchange is payable certain period after sight, its holder must present it for acceptance to the drawee within a reasonable time after it is drawn. If he makes a default in making such presentment the drawer and all endorsers who were liable towards such a holder are discharged from their liability towards him.
7) **By delay in presenting cheque (Sec. 84):** It is the duty of the holder of a cheque to present it for the payment within reasonable time of its issue. If he fails to do so and in the meantime the bank fails causing damage to the drawer, the drawer is discharged as against the holder to the extent of the actual damage suffered by him.

HUNDIS

Hundis refer to a bill of exchange in a vernacular or local language. They are governed by and subject to local customs and usage. The parties are free to exclude any prevalent custom or usage. The provision of Negotiable Instrument Act, 1881 shall apply where there is no custom or usage on a certain period.

Types of Hundis:

1) **Darshani Hundi:** Hundis payable to sight. It is transferable by endorsement. Similar to bill of exchange payable on demand.
2) **Mudath Hundis or Miadi Hundi:** Payable after a specified period of time.
3) **Shah Jog Hundis:** there are three parties namely drawer, drawee and Shah i.e. Financier. It is payable to Shah, who presents it on maturity. It is transferable by delivery.
4) **Nam Jog Hundis:** Same as Shah Jog except that the name of the person to whom or to whose order payable is clearly mentioned. It is payable only to or to the order of a person named in the hundi. It is negotiated by endorsement and delivery.
5) **Dhani Jog Hundi:** Dhani refers to Holder. It is self-explanatory as such it is payable to a holder or bearer. It is negotiated by mere delivery.
6) **Firman Jog Hundi:** Firman means order. Hence payable to order. Negotiated by endorsement and delivery.

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7) **Jokhami Hundi:** documentary bill drawn by consignor on consignee in respect of goods shipped by consignor. Consignee is required to pay only on goods reaching destination. The name of the vessel by which goods are shipped is mentioned in the hundi.
8) **Jawabi Hundi:** It is an instrument for remitting money through banker. The remitter hands over hundi to banker. Banker endorses hundi to a correspondent residing in the town in which payer is resident. Correspondent forwards Hundi to payer. Payee on presenting letter collects amount from correspondent.

Other Terms:

i) **Zikri Chit:** Issued by some party liable thereon to the holder of hundi. Letter of protection addressed to a merchant in town where hundi is payable requesting acceptance of the hundi in case of dishonour. It is intended to be used by holder if hundi is dishonoured by non-acceptance.

ii) **Peth:** When a hundi is lost, a duplicate called **PETH** is issued. A triplicate of hundi given on loss of duplicate hundi. So, duplicate of duplicate is **PERPETH**.

iii) **Khokha:** A hundi paid and cancelled.

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MCQ

1. **Negotiable Instruments Act define and amend the law relating to**

   (a) Promissory notes
   (b) Bills of exchange
   (c) Cheques
   (d) All of the above.

2. **The type of instruments recognized by The Negotiable Instrument Act are**

   (a) Promissory notes
   (b) Bills of exchange
   (c) Cheques
   (d) All of the above

3. **A inland instrument means an instrument**

   (a) Drawn or made in India
   (b) Made payable in India
   (c) Drawn upon any person resident in India
   (d) All of the above

4. **Foreign Instrument means an instrument**

   (a) Drawn outside India
   (b) Payable outside India
   (c) Which is not an inland instrument
   (d) All of the above

5. **Demand Instrument means a promissory note or bill of exchange in which time of payment is**

   (a) Clearly specified
   (b) Not specified
   (c) Yet to be mentioned
   (d) None of the above

6. **Time Instruments are those which are**

   (a) Payable immediately
   (b) Not payable on specified time
   (c) Payable at sometime in future
   (d) None of the above

7. **Ambiguous Instrument means an instrument which in form is such that it may be treated by the holder as**

   (a) Bill **(b)** Note
   (c) Both **(d)** None

8. **Inchoate or Incomplete Instrument means an instrument which is delivered as**

   (a) Wholly blank
   (b) Incomplete
   (c) Either **(a)** or **(b)**
   (d) None

9. **Instruments written in oriental language i.e., hundis are**

   (a) Negotiable Instruments
   (b) Not negotiable instruments
   (c) Sometimes negotiable & sometimes not so depending upon facts
   (d) None of the above

10. **To be a negotiable instrument, a promissory note must be in**

    (a) Oral
    (b) Writing
    (c) Either **(a)** or **(b)**
    (d) None of the above

11. **In promissory note, the number of parties are**

    (a) 2
    (b) 3
    (c) 4
    (d) 5

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12. In bills of exchange, the number of parties are

(a) 2 **(b)** 3
(c) 4 **(d)** 5

13. A cheque drawn on a bank payable always on demand and is like a

(a) Promissory note
(b) Bill of exchange
(c) Both **(a)** & **(b)**
(d) None of the above.

14. Clearing house means the clearing house managed by

(a) State Bank of India
(b) RBI
(c) Central Bank of Country
(d) Any of the above

15. Which of the following is not correct

(a) A cheque is always payable on demand
(b) A cheque is always on a particular bank
(c) All cheques are bills of exchange
(d) All bills of exchange are cheques.

16. A cheque becomes statue barred in time gap between date of issue and date of presentment is more than

(a) One year
(b) Two years
(c) Three years
(d) 4 years

17. A state cheque means a cheque which is in circulation for more than

(a) 3 months
(b) Six months
(c) Nine months
(d) 12 months

18. The date on which payment of an instrument falls due is called its

(a) Due date
(b) Maturity date
(c) Either **(a)** or **(b)**
(d) None

19. Every instrument payable at a specified period after date or after sight is entitle to days of grace which is

(a) 3 days **(b)** 4 days
(c) 7 days **(d)** 10 days

20. Number of days of grace allowed in case of cheques is

(a) 3 days
(b) 4 days
(c) 7 days
(d) No days as they are payable on demand.

21. If the day of maturity falls on a public holiday, the instruments is payable

(a) On the succeeding business days
(b) On the preceding business days
(c) On the same day next week
(d) None of the above

22. A negotiable instrument may be transferred by

(a) Negotiation
(b) Assignment
(c) Either **(a)** or **(b)**
(d) None

23. In negotiable instruments, delivery is

(a) Optional
(b) Essential
(c) Sometimes optional & sometimes essential depending upon situation
(d) None.

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24. A bill or cheque payable to bearer is negotiated by mere delivery of the instrument. An instrument is payable to bearer.

(a) Where it is made so payable,
(b) Where it is originally made payable to order but the only or the last endorsement is in blank
(c) Where the payee is a fictitious or a non-existing person.
(d) All of the above

25. Endorsement means and involves the writing of something on the

(a) Front of an instrument
(b) Back of an instrument
(c) Either **(a)** or **(b)**
(d) None

26. Endorsement may be

(a) General or special
(b) Restrictive or partial
(c) Conditional or qualified
(d) All of the above

27. Compulsory presentment for acceptance is excused and the bill may be treated as dishonoured in the following cases.

(a) Where the drawee cannot be found after reasonable search
(b) Where drawee is a fictitious person or one incapable of contracting.
(c) Where although the presentment is irregular, acceptance has been refused on some other ground.
(d) All of the above

28. A material alternation renders the instrument

(a) Valid
(b) Void
(c) Voidable
(d) Any of the above.

29. Those who take the altered instrument

(a) Can complain
(b) Cannot complain
(c) Are protected
(d) None

30. Material alteration means alternation of the

(a) Date of the instrument
(b) Sum payable
(c) Time of payable
(d) All of these

31. Conditions to be fulfilled for protection to a person who pays an altered note bill or cheque. However, in order to be able to claim the protection, the following conditions must be fulfilled.

(a) The alteration should not be apparent;
(b) The payment must be made in due course; and
(c) The payment must be by a person or banker liable to pay.
(d) All of above

32. Hundies are Negotiable Instrument written in

(a) English language
(b) Hindi language
(c) Regional language of the place where written
(d) Oriental language

33. Hundi are treated

(a) Sometimes as bills of exchange
(b) Sometimes as promissory notes
(c) Both **(a)** & **(b)**
(d) Sometimes as cheques

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34. **A negotiable instrument is subject to certain**

(a) Rules (b) Presumptions
(c) Regulations (d) Laws

35. **The rate of interest payable in case of dishonour of a negotiable instrument was revised in**

(a) 1981 (b) 1881
(c) 1888 (d) 1988

36. **Rate of interest as contained in sections 80 and 117 of the Negotiable Instruments Act, 1881 was revised**

(a) From 6% to 12%
(b) From 6% to 15%
(c) From 6% to 18%
(d) From 12% to 18%

37. **Sections 138 to 147 deals with penalties for dishonour of certain cheques due to**

(a) Material alteration
(b) Difference in signatures
(c) Insufficient funds
(d) All of the above

38. **Section 141 of the N.I. Act, 1881, dealing with offences by companies exempts**

(a) Nominated directors
(b) Additional directors
(c) Directors nominated by financial institutions
(d) Government nominated directors.

39. **Negotiable instrument means a document transferrable from**

(a) One person to bank
(b) Bank to bank
(c) One person to another person
(d) None of the above

40. **A promissory note, bill of exchange or cheque drawn or made in India, and made payable, or drawn upon any person resident in India shall be deemed to be**

(a) An inland instrument
(b) Negotiable instrument
(c) Valid instrument
(d) None of the above

41. **An instrument which is not an inland instrument, is deemed to be a foreign instrument. It must be drawn**

(a) In India (b) Outside India
(c) Any where (d) None

42. **A bill drawn an accepted for a genuine trade transaction is termed as a**

(a) Trade bill
(b) Business bill
(c) Commercial bill
(d) All of the above

43. **Accommodation bill is a bill in which a person lends or gives his name to oblige a friend or some person whom he**

(a) Knows or otherwise
(b) Trusts
(c) Both **(a)** & **(b)**
(d) None

44. **Collection banker is one who collects the proceeds of a cheque for a**

(a) Bank (b) Drawer
(c) Customer (d) All of the above

45. **A person is a holder of a negotiable instrument who is entitled in his own name**

(a) To the possession of the instrument

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(b) To recover or receive its amount from the parties thereto

(c) Both **(a)** & **(b)**

(d) None

46. A holder in due course is

(a) A person who for consideration, obtains possession of a negotiable instrument if payable to bearer

(b) The payee or endorse thereof, if payable to order, before its maturity and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

(c) Both **(a)** & **(b)**

(d) None

47. How many kinds of negotiable instruments are recognized by the Negotiable Instruments Act, 1881

(a) Two **(b)** Three

(c) Four **(d)** Five

48. Notice of dishonour may be in

(a) Writing

(b) Oral

(c) Either **(a)** or **(b)**

(d) None

49. The discharge in relation to negotiable instrument may be

(a) Discharge of the instrument

(b) Discharge of one or more parties to the instrument from liability

(c) Either **(a)** or **(b)**

(d) None

50. In order to be a holder in due course, a person must satisfy the following conditions.

(a) He must be the holder of the instrument and should have obtained the instrument for value or consideration

(b) He must have obtained the negotiable instrument before maturity.

(c) The instrument should be complete and regular on the face of it and the holder should take the instrument in good faith.

(d) All of the above.

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ANSWERS

1	(d)	**2**	(d)	**3**	(d)	**4**	(c)	**5**	(b)	**6**	(c)	**7**	(c)
8	(c)	**9**	(a)	**10**	(c)	**11**	(a)	**12**	(b)	**13**	(b)	**14**	(b)
15	(d)	**16**	(c)	**17**	(b)	**18**	(b)	**19**	(d)	**20**	(b)	**21**	(b)
22	(c)	**23**	(b)	**24**	(d)	**25**	(b)	**26**	(d)	**27**	(d)	**28**	(b)
29	(b)	**30**	(d)	**31**	(d)	**32**	(d)	**33**	(c)	**34**	(b)	**35**	(d)
36	(c)	**37**	(c)	**38**	(d)	**39**	(c)	**40**	(a)	**41**	(b)	**42**	(a)
43	(a)	**44**	(c)	**45**	(c)	**46**	(c)	**47**	(b)	**48**	(c)	**49**	(c)
50	(d)												

CHAPTER 12 CYBER LAWS

KEY POINTS

- **ELEMENTS OF CYBER LAW**
- **INFORMATION TECHNOLOGY ACT**
- **E COMMERCE**
- **ONLINE CONTRACTS**
- **BUSINESS SOFTWARE PATENTING**
- **E – TAXATION**
- **E - GOVERNANCE**
- **CYBER CRIMES**

WHAT IS CYBER SPACE?

Cyber space is a virtual medium. It has no boundaries, no geographical mass, or gravity. It represents an interconnected space created by computers, computer system or computer networks.

Cyberspace is the notional environment in which communication over computer networks occurs.The word became popular in the 1990s when the uses of the Internet, networking, and digital communication were all growing dramatically and the term "cyberspace" was able to represent the many new ideas and phenomena that were emerging.

- ✓ It exists in the form of bits and bytes- 0's and 1's
- ✓ It is nothing but a set of electronic pulses
- ✓ The word cyberspace first appeared in William Gibson's in his science fiction Necromancer published in 1984, where it describes the on line world of computers and elements of the society that uses this computer.
- ✓ It is a digital medium and not a physical world.
- ✓ It is limitless, constantly changing its shape, attributes and characteristics.
- ✓ Cyber space is dynamic, undefined and exponential.

The online world of computer network and the internet is termed as **CYBER SPACE** In effect, cyberspace can be thought of as the interconnection of human beings through computers and telecommunication, without regard to physical geography.

WHAT IS CYBER LAWS

Cyberlaw is the area of law that deals with the internet's relationship to technological and electronic elements, including computers, software, hardware and information systems (is).

With the emergence of cyberspace in a digital medium there is a need to regulate the human behavior but not the technology. Cyber law being technology incentive advocate the use and not misuse of technology. Any act which violates the right of a person in digital medium (cyberspace), would be treated as cyberspace violations.

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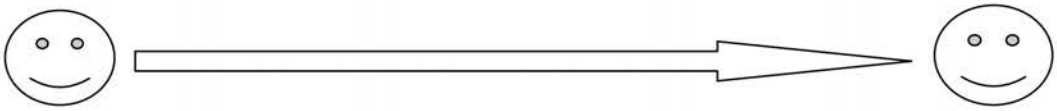

X, A PERSON USES COMPUTER OR COMPUTER NETWORK WITH A CRIMINAL MIND WITH THE INTENT TO DEFRAUD Y. THEN IN SUCH A CASE X COULD BE PUNISHED UNDER CYBER LAWS PROVISIONS.

Cyber law encompasses the legal, statutory and constitutional provisions that affect computer and computer networks. It concerns individuals, corporate bodies and institutions which

- ❖ Are instrumental for the entry into cyber space
- ❖ Provide access to cyber space
- ❖ Create hardware or software which enable people to access cyberspace and,
- ❖ Use their own computers to go 'online' and enter cyberspace.

There are two main statutes, which govern online criminal liability

- ⇨ The Indian Penal Code, 1860 And
- ⇨ The Information Technology Act, 2000

The main objective of the act is to regulate and control the affairs of the cyber world in an effective manner.

INFORMATION TECHNOLOGY ACT, 2000

India is a 12th nation in enactment of cyber law with the passage of information technology act, 2000.

- ➢ The United Nation commission on international trade law (UNICTRAL) adopted the model law on electronic commerce in 1996 in order to bring uniformity in the law of different countries.
- ➢ The first draft of legislation was created by the Ministry of Commerce Government of India as E commerce Act 1998.
- ➢ A redraft of legislation was prepared as 'Information technology Bill 1999' which was placed before the parliament in December 1999 and passed in May 2000.

Objectives of the act
To grant legal recognition to transactions carried out by means of electronic data interchange and other means of electronic communication commonly referred to as e commerce in place of paper based method of communication
To give legal recognition to digital signatures
To facilitate electronic filing of documents
To facilitate and give legal sanction to electronic fund transfer between banks and financial institutions
To give legal recognition for keeping books of accounts
To facilitate electronic storage

Features of the act
Electronic contracts have been made legally valid
Legal recognition has been granted to digital signature
Security procedures for electronic record
A procedure for appointment of adjudicating officers for holding inquiries under the act
A provision for establishment of CRAT
An appeal against controller can be made to CAT and not to civil court
An appeal against the order of CAT can be made to high court
Digital signature are to be affected by the use of crypto system and hash function
A provision has to be made for appointment of controller of certifying authorities(CCA)
The controller has to act as a repository for all the digital signature certificates
The act is apply to offence and contraventions done outside india
Senior officer has been authorized to enter public places and make arrest without warrants
Provisions have been made for the composition of cyber regulation advisory committee

Applicability of the act
Section 1(2) provides that the act extends to the whole of India, including Jammu & Kashmir. The act does not take citizenship into account. It provides an extraterritorial jurisdiction. The act can be applied to any offence or contravention committed outside India irrespective of his/her nationality ,if his/her conduct constituting the offence or contravention involves a computer, computer system or computer network located in India.

Non applicability of the act
The provisions of IT act shall not apply to following documents- ✓ Execution of Negotiable Instrument under Negotiable instrument act, 1881 except cheques. ✓ Execution of Power of attorney under the power of attorney act, 1882 ✓ Creation of trust under Indian Trust Act, 1882 ✓ Execution of Will under the Indian Succession Act, 1925 including any other testamentary disposition by whatever name called. ✓ Entering into a contract for the sale of conveyance of immovable property or any interest in such property. ✓ Any such class of documents or transaction as amy be notified by the central government in the Gazette

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BASIC DEFINITIONS

(a) access" with its grammatical variations and cognate expressions means gaining entry into, instructing or communicating with the logical, arithmetical, or memory function resources of a computer, computer system or computer network;

(b) "addressee" means a person who is intended by the originator to receive the electronic record but does not include any intermediary;

(c) "adjudicating officer" means an adjudicating officer appointed under sub-section (1) of section 46;

(d) "affixing digital signature" with its grammatical variations and cognate expressions means adoption of any methodology or procedure by a person for the purpose of authenticating an electronic record by means of digital signature;

(e) "appropriate Government" means as respects any matter,—

relating to any State law enacted under List III of the Seventh Schedule to the Constitution, Definitions 2. (1) In this Act, unless the context otherwise requires,— the State Government and in any other case, the Central Government;

(f) "asymmetric crypto system" means a system of a secure key pair consisting of a private key for creating a digital signature and a public key to verify the digital signature;

(g) "Certifying Authority" means a person who has been granted a licence to issue a Digital Signature Certificate under section 24;

(h) "certification practice statement" means a statement issued by a Certifying Authority to specify the practices that the Certifying Authority employs in issuing Digital Signature Certificates;

(i) "computer" means any electronic magnetic, optical or other high-speed data processing device or system which performs logical, arithmetic, and memory functions by manipulations of electronic, magnetic or optical impulses, and includes all input, output, processing, storage, computer software, or communication facilities which are connected or related to the computer in a computer system or computer network;

(j) "computer network" means the interconnection of one or more computers through—

(i) the use of satellite, microwave, terrestrial line or other communication media; and

(ii) terminals or a complex consisting of two or more interconnected computers whether or not the interconnection is continuously maintained;

(k) "computer resource" means computer, computer system, computer network, data, computer data base or software;

(l) "computer system" means a device or collection of devices, including input and output support devices and excluding calculators which are not programmable and capable of being used in conjunction with external files, which contain computer programmes, electronic instructions, input data and output data, that performs logic, arithmetic, data storage and retrieval, communication control and other functions;

(m) "Controller" means the Controller of Certifying Authorities appointed under sub-section (1) of section 17;

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(n) "Cyber Appellate Tribunal" means the Cyber Regulations Appellate Tribunal established under subsection (1) of section 48;

(o) "data" means a representation of information, knowledge, facts, concepts or instructions which are being prepared or have been prepared in a formalised manner, and is intended to be processed, is being processed or has been processed in a computer system or computer network, and may be in any form (including computer printouts magnetic or optical storage media, punched cards, punched tapes) or stored internally in the memory of the computer;

(p) "digital signature" means authentication of any electronic record by a subscriber by means of an electronic method or procedure in accordance with the provisions of section 3;

(q) "Digital Signature Certificate" means a Digital Signature Certificate issued under sub-section (4) of section 35;

(r) "electronic form" with reference to information means any information generated, sent, received or stored in media, magnetic, optical, computer memory, micro film, computer generated micro fiche or similar device;

(s) "Electronic Gazette" means the Official Gazette published in the electronic form;

(t) "electronic record" means data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche;

(u) "function", in relation to a computer, includes logic, control, arithmetical process, deletion, storage and retrieval and communication or telecommunication from or within a computer;

(v) "information" includes data, text, images, sound, voice, codes, computer programmes, software and data bases or micro film or computer generated micro fiche;

(w) "intermediary" with respect to any particular electronic message means any person who on behalf of another person receives, stores or transmits that message or provides any service with respect to that message;

(x) "key pair", in an asymmetric crypto system, means a private key and its mathematically related public key, which are so related that the public key can verify a digital signature created by the private key;

(y) "law" includes any Act of Parliament or of a State Legislature, Ordinances promulgated by the President or a Governor, as the case may be, Regulations made by the President under article 240, Bills enacted as President's Act under sub-clause (a) of clause (1) of article 357 of the Constitution and includes rules, regulations, bye-laws and orders issued or made thereunder;

(z) "licence" means a licence granted to a Certifying Authority under section 24;

(za) "originator" means a person who sends, generates, stores or transmits any electronic message or causes any electronic message to be sent, generated, stored or transmitted toany other person but does not include an intermediary;

(zb) "prescribed" means prescribed by rules made under this Act;

(zc) "private key" means the key of a key pair used to create a digital signature;

(zd) "public key" means the key of a key pair used to verify a digital signature and listed in the Digital Signature Certificate;

(ze) "secure system" means computer hardware, software, and procedure that—

(a) are reasonably secure from unauthorised access and misuse;

(b) provide a reasonable level of reliability and correct operation;

(c) are reasonably suited to performing the intended functions; and

(d) adhere to generally accepted security procedures;

(zf) "security procedure" means the security procedure prescribed under section 16 by the Central Government;

(zg) "subscriber" means a person in whose name the Digital Signature Certificate is issued;

(zh) "verify" in relation to a digital signature, electronic record or public key, with its grammatical variations and cognate expressions means to determine whether—

(a) the initial electronic record was affixed with the digital signature by the use of private key corresponding to the public key of the subscriber;

(b) the initial electronic record is retained intact or has been altered since such electronic record was so affixed with the digital signature.

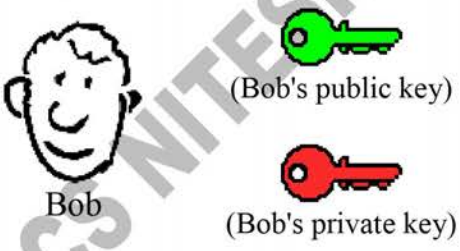
WHAT IS DIGITAL SIGNATURE?

A **digital signature** is basically a way to ensure that an electronic document (e-mail, spreadsheet, text file, etc.) is **authentic**.

Authentic means that you know who created the document and you know that it has not been altered in any way since that person created it

Digital signatures rely on certain types of **encryption** to ensure authentication. Encryption is the process of taking all the data that one computer is sending to another and encoding it into a form that only the other computer will be able to decode.

Authentication is the process of verifying that information is coming from a trusted source. These two processes work hand in hand for digital signatures.



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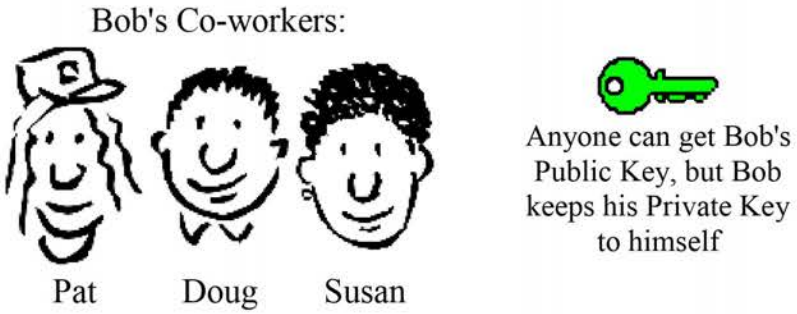
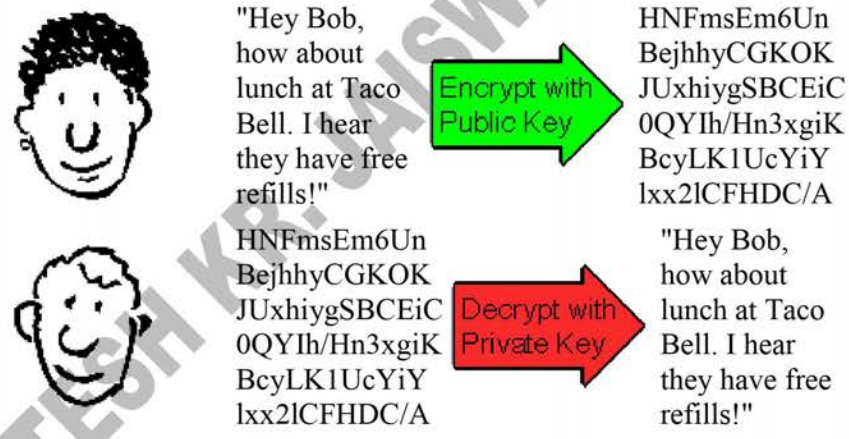
Bob has been given two keys. One of Bob's keys is called a Public Key, the other is called a Private Key.



Bob's Public key is available to anyone who needs it, but he keeps his Private Key to himself. Keys are used to encrypt information. Encrypting information means "scrambling it up", so that only a person with the appropriate key can make it readable again. Either one of Bob's two keys can encrypt data, and the other key can decrypt that data.

Susan (shown below) can encrypt a message using Bob's Public Key. Bob uses his Private Key to decrypt the message. Any of Bob's coworkers might have access to the message Susan encrypted, but without Bob's Private Key, the data is worthless.



With his private key and the right software, Bob can put digital signatures on documents and other data. A digital signature is a "stamp" Bob places on the data which is unique to Bob, and is very difficult to forge. In addition, the signature assures that any changes made to the data that has been signed can not go undetected.

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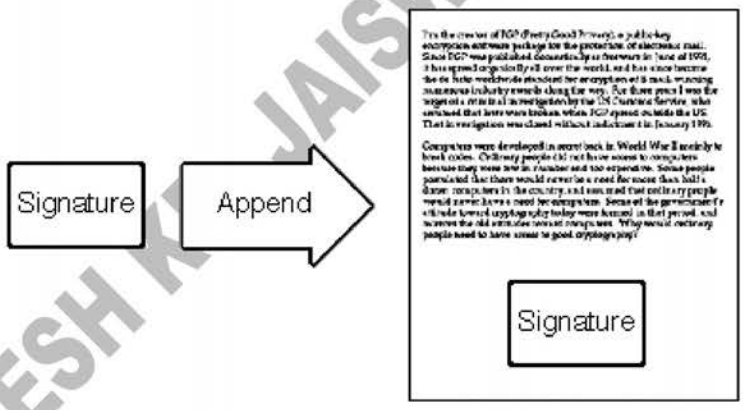
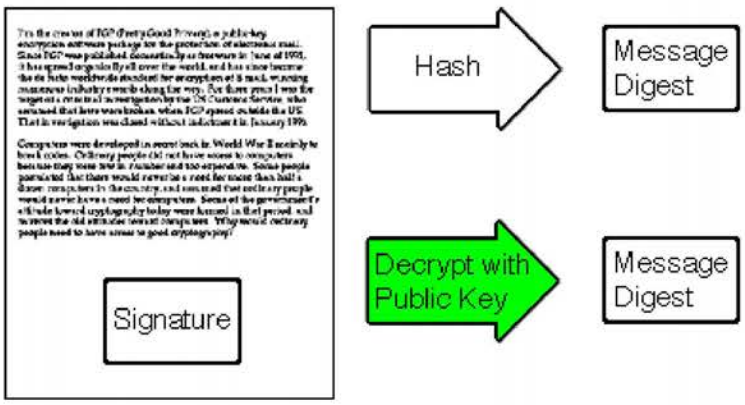
To sign a document, Bob's software will crunch down the data into just a few lines by a process called "hashing". These few lines are called a message digest. (It is not possible to change a message digest back into the original data from which it was created.)



Bob's software then encrypts the message digest with his private key. The result is the digital signature.



Finally, Bob's software appends the digital signature to document. All of the data that was hashed has been signed.



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Bob now passes the document on to Pat.



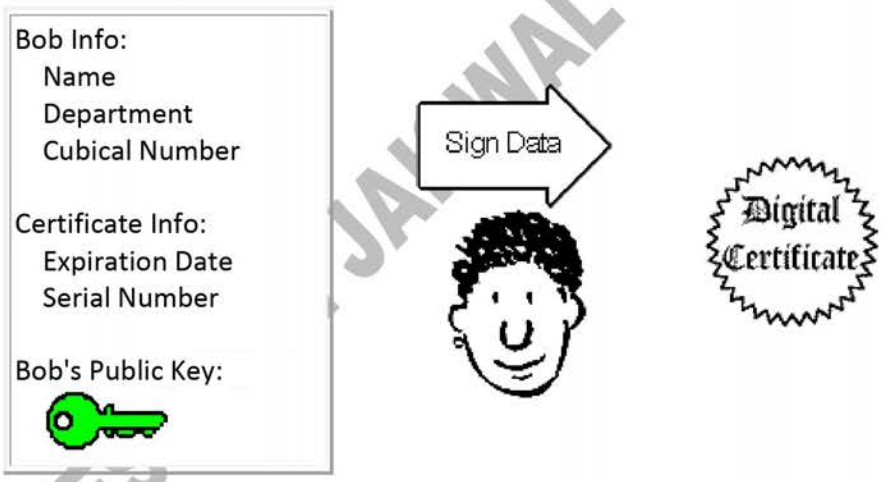
First, Pat's software decrypts the signature (using Bob's public key) changing it back into a message digest. If this worked, then it proves that Bob signed the document, because only Bob has his private key. Pat's software then hashes the document data into a message digest. If the message digest is the same as the message digest created when the signature was decrypted, then Pat knows that the signed data has not been changed.

Plot complication...



Doug (our disgruntled employee) wishes to deceive Pat. Doug makes sure that Pat receives a signed message and a public key that appears to belong to Bob. Unbeknownst to Pat, Doug deceitfully sent a key pair he created using Bob's name. Short of receiving Bob's public key from him in person, how can Pat be sure that Bob's public key is authentic?

It just so happens that Susan works at the company's certificate authority center. Susan can create a digital certificate for Bob simply by signing Bob's public key as well as some information about Bob.



Now Bob's co-workers can check Bob's trusted certificate to make sure that his public key truly belongs to him. In fact, no one at Bob's company accepts a signature for which there does not exist a certificate generated by Susan. This gives Susan the power to revoke signatures if private keys are compromised, or no longer needed. There are even more widely accepted certificate authorities that certify Susan.

Let's say that Bob sends a signed document to Pat. To verify the signature on the document, Pat's software first uses Susan's (the certificate authority's) public key to check the signature on Bob's certificate. Successful de-encryption of the certificate proves that Susan created it. After the certificate is de-encrypted, Pat's software can check if Bob is in good standing with the certificate authority and that all of the certificate information concerning Bob's identity has not been altered.

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Pat's software then takes Bob's public key from the certificate and uses it to check Bob's signature. If Bob's public key de-encrypts the signature successfully, then Pat is assured that the signature was created using Bob's private key, for Susan has certified the matching public key. And of course, if the signature is valid, then we know that Doug didn't try to change the signed content.

Electronic record and e- governance

Electronic governance or e-governance is the application of information and communication technology (ICT) for delivering government services, exchange of information, communication transactions, integration of various stand-alone systems and services between government-to-customer (G2C), government-to-business (G2B), government-to-government (G2G) as well as back office processes and interactions within the entire government framework

Through e-governance, government services will be made available to citizens in a convenient, efficient and transparent manner. The three main target groups that can be distinguished in governance concepts are government, citizens and businesses/interest groups. In e-governance there are no distinct boundaries.

Generally four basic models are available – government-to-citizen (customer), government-to-employees, government-to-government and government-to-business.

SCOPE OF CYBER LAWS

The scope and relevance of cyber law touches those areas which have a technological blend

- E commerce law
- Online contracts
- E taxation
- E governance
- Business software patenting
- Cyber crimes

The information Technology Act provides for the following provisions in the context of Electronic Governance

- ✓ Legal recognition of electronic records
- ✓ Legal recognition of digital signatures
- ✓ Use of electronic records and digital signatures in Government and its agencies.
- ✓ Retention of electronic records
- ✓ Publication of rules, regulation, etc in Electronic Gazette
- ✓ Power to make rules by Central Government in respect of digital signatures.

CLASSIFICATION OF CYBER CRIMES

Cyber-crimes can be classified on various basis such as on the basis of –a.Subject of crime b. against whom crime is committed c. on the basis of temporal nature of criminal activities being carried out on computer and internet

The subject of cyber-crime may be broadly classified under the following three groups

AGAINST INDIVIDUALS | **AGAINST ORGANISATION** | **AGAINST SOCIETY**

AGAINST INDIVIDUALS

Against an individual	Against individual property
Harassment via e mail	Computer vandalism
Cyber stalking	Transmitting virus
Dissemination of obscene material	Netrespass
Defamation	Intellectual property crimes
Unauthorized control/access over computer system	Internet time thefts
Indecent exposure	
E mail spoofing	
Cheating and fraud	

AGAINST ORGANIZATION

Possession of unauthorized information
Cyber terrorism against the government organization
Distribution of pirated software

AGAINST SOCIETY

Polluting the youth through indecent exposure
Trafficking
Financial crimes
Sale of illegal articles
Online gambling
Forgery

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PROVISIONS RELATING TO CYBER CRIMES

provisions	Penalty
Section 43 penalty for damages to computer, computer system, etc	Not exceeding one crore rupees to the person affected
Section 65 Tampering with computer source document	Imprisonment upto to 3 years or with fine which may extend upto 2 lakh or with both
Section 66 hacking of computer system	Imprisonment upto 3 years or with fine which may extend upto 2 lakh or with both
Section 67 publishing of information which is obscene in electronic form	1st conviction Imprisonment of term which may extend to 5 years and with a fine which may extend to one lak 2nd conviction Imprisonment which ,ay extend to ten years and with a fine which may extend to two lakh
Section 74 publication for fraudulent purpose	Imprisonment which may extend to 2 years or which may extend one lakh or with both
Section 44 penalty for failure information return etc	Penalty not exceeding 1,50,000 for each failure
Section 45 residuary penalty	Compensation not exceeding 25,000rs or penalty thereto
Section71 penalty for misrepresentation	Imprisonment which may extend to two years or fine which may extend to one lakh
Section 72 penalty for breach of confidentiality and privacy	Imprisonment of term which may extend to 2 years or with fine which may extend to 1 lakh rupees or both
Section 73 penalty for publishing digital signature certificate false in certain particulars	Imprisonment which may extend to 2 years or with fine upto 1 lakh or both
Section 74 publication for fraudulent purpose	Imprisonment which may extend to 2 years or with fine which may extend to 1 lak rupees or both

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REGULATION OF CERTIFYING AUTHORITIES

The act has established a certifying authority to regulate these transaction relate to electronic matters and these are explained below-

1. Appointment of controller and other officers
2. Functions of controller
3. Recognition of foreign certifying authority
4. Controller to act as repository
5. License to issue digital signature certificates
6. Power to investigate contraventions

1. APPOINTMENT OF CONTROLLER AND OTHER OFFICERS

a. The central government may by notification in the official gazette appoint
   - ✓ Controller of certifying authority

- ✓ Deputy controllers
- ✓ Assistant controllers

As it deems fit

b. The controller shall discharge his functions under this act subject to the general control and directions of Central Government.
c. The deputy controllers and assistant controller shall perform the functions under the superitendence of the controller.
d. There shall be seal of the office of contoller

Q.1. Who prescribe the qualification, experience and terms and conditions of service of controller, assistant controller and deputy controller?

Ans. Central government

2. FUNCTIONS OF CONTROLLER

(a) Exercising supervision over the activities of the Certifying Authorities;

(b) Certifying public keys of the Certifying Authorities;

(c) Laying down the standards to be maintained by the Certifying Authorities;

(d) Specifying the qualifications and experience which employees of the Certifying Authorities should possess;

(e) Specifying the conditions subject to which the Certifying Authorities shall conduct their business;

(f) Specifying the contents of written, printed or visual materials and Advertisements that may be distributed orused in respect of a Digital Signature Certificate and the public key;

(g) Specifying the form and content of a Digital Signature Certificate and the Key,

(h) Specifying the form and manner in which accounts shall be maintained by The Certifying Authorities;

(i) Specifying the terms and conditions subject to which auditors may be Appointed and the remuneration to\be paid to them;

(j) Facilitating the establishment of any electronic system by a Certifying Authority either solely or jointly with other Certifying Authorities and regulation of such systems;

(k) Specifying the manner in which the Certifying Authorities shall conduct their Dealings with the subscribers;

(l) Resolving any conflict of interests between the Certifying Authorities and the Subscribers;

(m) Laying down the duties of the Certifying Authorities;

(n) Maintaining a data base containing the disclosure record of every Certifying Authority

(o) Authority containing such particulars as may be specified by regulations, which shall be accessible to public.

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3. RECOGNITION OF FOREIGN CERTIFYING AUTHORITY

- ✓ The Controller of Certifying Authority may recognize the foreign certifying authority with the prior approval Of the Central Government provided they fulfill the prescribed conditions and restrictions
- ✓ Where any Certifying Authority is recognized, the electronic Signature Certificate issued by such CertifyingAuthority shall be valid for the purposes of this Act.
- ✓ The Controller may, if he is satisfied that any Certifying Authority has contravened any of the conditions andrestrictions subject to which it was granted recognition under subsection (1) he may, for reasons to berecorded in writing, by notification in the Official Gazette, revoke such recognition.

5. CONTROLLER TO ACT AS A REPOSITORY

- ✓ The controller shall be the repository of all digital signature certificates issued under this act.
- ✓ The controller shall-
  - Make use of hardware, software and procedures that are secure
  - observe such other standards as may be prescribed by the Central government, to ensure that the secrecy and security of the digital signatures are assured.
- ✓ The controller shall maintain a computerized data base of all public keys in such manner that such database and public keys are available to any manner of the public.

6. LICENSE TO ISSUE DIGITAL SIGNATURE CERTIFICATES

- ✓ Any person may make an application,to the controller, for the license of DSC
- ✓ No license shall be issued unless the applicant fulfils the requirement prescribed by the central government
- ✓ A license granted shall-
  - Be valid for such period as may be prescribed by central government
  - Not be transferable or heritable
  - Be subject to such terms as may be specified by regulation

7. POWER TO INVESTIGATE CONTRAVENTIONS

- ✓ The controller or any other officer as may be authorized shall look upto the matter and see to any contravention of provision or rules and regulation made thereunder
- ✓ The controller or any other officer authorized shall exercise the like powers which are conferred under Income tax Act,1961

ADJUDICATION

A .BY ADJUDICATING OFFICER

B. BY CYBER APPELLATE TRIBUNAL

SECTION 46 EMPOWERS POWER TO ADJUDICATING OFFICER TO ADJUDICATE UNDER THIS ACT

SECTION 48 OF THE ACT IS RELATED TO ESTABLISHMENT OF CYBER APPELLATE TRIBUNAL

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ADJUDICATING OFFICER

FOR THE PURPOSE OF ADJUDGING, CENTRAL GOVERNMENT SHALL APPOINT FOLLOWING AS AN ADJUDICATING OFFICER FOR HOLDING ENQUIRY IN THE MANNER PRESCRIBED BY CENTRAL GOVT

- ✓ ANY OFFICER NOT BELOW THE RANK OF DIRECTOR TO THE GOI,OR
- ✓ AN EQUIVALENT OFFICER OF A STATE GOVERNMENT

THE ADJUDICATING OFFICER AFTER BEING SATISFIED FROM THE INQUIRY IF HE FINDS ANY CONTRAVENTION SHALL HAVE POWER TO IMPOSE PENALTY OR AWARD COMPENSATION

NO PERSON SHALL BE APPOINTED AS ADJUDICATING OFFICER UNLESS HE POSSESSES

EXPERIENCE IN THE FIELD OF INFORMATION TECHNOLOGY AND LEGAL OR JUDICIAL EXPERIENCE AS MAY BE PRESCRIBED

CYBER APPELLATE TRIBUNAL

A CYBER APPELLATE TRIBUNAL SHALL CONSISTS OF ONE PERSON ONLY REFERRED TO AS PRESIDING OFFICERTO BE PPOINTEB BY NOTIFICATION IN THE OFFICIAL GAZETTE

A PERSON SHALL NOT BE QUALIFIED AS PRESIDING OFFICER UNLESS-

- ✓ IS,OR HAS BEEN QUALIFIED TO BE, A JUDGE OF HIGH COURT
- ✓ IS OR HAS BEEN A MEMBER OF THE INDIAN LEGAL SERVICE AND IS HOLDING OR HAS HELD A POST IN GRADE 1 OF THAT SERVICE FOR ATLEAST 3 YEARS.

THE PRESIDING OFFICER SHALL HOLD OFFICE FOR A TERM OF-

- ✓ FIVE YEARS FROM DATE ON WHICH HE ENTERS UPON HIS OFFICE,OR
- ✓ AGE OF 65 YEARS

WHICHEVER IS EARLIER

POWERS OF CYBER APPELLATE TRIBUNAL

THE CAT SHALL HAVE FOLLOWING POWERS-

- ✓ SUMMONING AN DENFORCING THE ATTENDANCE OF any person and examining on oath
- ✓ Requiring the discovery and production of documents or other electronic record
- ✓ Receiving evidence on affidavits
- ✓ Issuing commissions for the examination of witnesses or documents
- ✓ Reviewing its decisions
- ✓ Dismissing an application for default or deciding it

APPEAL

Any dispute between certifying authority and applicant shall be referred to controller

Any person aggrieved by the order of controller shall appeal to cyber appellate tribunal within 25 days from the date of such order

Any person aggrieved by the order of cyber appellate tribunal shall appeal to High court within 60 days from the date of communication of such order

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CHAPTER 13 ROLE OF COMPANY SECRETARY

KEY POINTS

- **INTRODUCTION OF COMPANY SECRETARY**
- **ROLE OF COMPANY SECRETARY**
- **COMPANY SECRETARY IN PRACTICE**
- **INSOLVENCY AND BANKRUPTCY CODE,2016**

WHO IS COMPANY SECRETARY?

The Company Secretary

- ✓ Is a vital link between the company and its Board of Directors, shareholders, government and regulatory authorities.
- ✓ Ensures that Board procedures are both followed and regularly reviewed and provides guidance to Chairman and the Directors on their responsibilities under various laws.
- ✓ Commands high position in the value chain and acts as conscience seeker of the company.

WHAT DOES A COMPANY SECRETARY DO?

The Company Secretary

- ✓ To report to the Board about the compliance with the provisions of this Act.
- ✓ To ensure that the company complies with the applicable secretarial standards.
- ✓ To provide to the directors of the company the guidance they require in discharging their duties, responsibilities and powers.
- ✓ To facilitate the convening of meetings and attend Board, committee and general meetings and maintain the minutes of these meetings.
- ✓ To obtain approvals from the Board, general meeting, the government and such other authorities as required under the provisions of the Act.
- ✓ To assist the Board in the conduct of the affairs of the company.
- ✓ To assist and advise the Board in ensuring good corporate governance and in complying with the corporate governance requirements and best practices.

ROLE OF COMPANY SECRETARY UNDER COMPANIES ACT,2013

The Companies Act, 2013 has considerably enhanced the role and responsibilities of company secretaries both in employment and in practice. Company secretary is a key managerial person in a company, responsible to ensure the effective and efficient administration of the company and certifying the company's compliance with the provision of the Act

Under Section 203 of the new Companies Act, 2013, the companies has to compulsorily appoint the whole time Key Managerial Personnel in respect of certain class of companies as prescribed by the Central Government to ensure good corporate governance and regulation. The company shall have the following whole-time Key Managerial Personnel (KMP):

- Managing Director, or Chief Executive Officer or manager and in their absence, a whole-time director.
- Company Secretary.

- Chief Financial Officer.

So this made the appointment of whole-time Company Secretary mandatory for better efficiency

FUNCTIONS OF COMPANY SECRETARY

According to Section 205 of the Companies Act, 2013 the Company Secretary shall discharge following functions and duties, this is the first time that the duties of the company secretary have been specified in the company law:

- To report to the Board about the compliance with the provisions of this Act.
- To ensure that the company complies with the applicable secretarial standards.
- To provide to the directors of the company the guidance they require in discharging their duties, responsibilities and powers.
- To facilitate the convening of meetings and attend Board, committee and general meetings and maintain the minutes of these meetings.
- To obtain approvals from the Board, general meeting, the government and such other authorities as required under the provisions of the Act.
- To assist the Board in the conduct of the affairs of the company.
- To assist and advise the Board in ensuring good corporate governance and in complying with the corporate governance requirements and best practices.

Secretarial Audit is the process to check whether the company is adhering to the legal and procedural requirements and a process to monitor the company's compliance with the requirements of the stated laws. The objective behind the introduction of secretarial audit is to improve corporate governance and compliance.

According to Section 204 of the Companies Act 2013, it is the duty of the Company Secretary in practice to perform secretarial audit of every listed company and any such other class of prescribed companies. The Central Government has prescribed the other class of prescribed companies as-

- Every public company with a paid-up share capital of Rs. 50 Crore or more.
- Every public company with a turnover of Rs. 250 Crore or more.

The objective behind the formulation of secretarial standards is to integrate, harmonize and standardization of diverse secretarial practices. The Companies Act, 2013 under Section 118 has made the compliance of Secretarial Standards compulsory on meeting of the Board of Directors and on general meetings.

Annual return is a comprehensive document contains information regarding share capital, directors, shareholders, changes in directorships etc about the company. Under the old Companies Act of 1956 the annual return of the listed companies are required to be signed by the company secretary in practice. The new Companies Act, 2013 under Section 92 has widened this requirement by providing that annual returns of companies having such paid up capital and turnover to be signed and certified by the company secretaries in practice.

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Difference between old and new company law relating to the issue of compliance certificate by company secretary

Company Secretaries in practice are those persons who are independently carrying on public practice. Under the old Companies Act, 1956, these company secretaries in practice have a duty to issue compliance certificate to the companies who have paid-up capital of more than 10lakh Rupees but not more than 5Lakh Rupees.

Whereas the new Companies Act, 2013 has enhanced the role of company secretaries in practice by providing with the opportunities such as promotion, formation and incorporation of companies, secretarial audit and certification services, signing of annual return, appointment of company liquidator, assistance to company liquidator, and many more.

COMPANY SECRETARY AS

- ✓ SCRUTINIZER IN E-VOTING

  The board of director to appoint one scrutinizer, who may be ca in practice,or cwa in practice, or cs in practice or an advocate who can srutinize e-voting process

- ✓ ADMINISTRATOR

  Company secretary alongwith other vprofessionals have been recognised being appointed as interim/company administrator from a panel to be maintained by the central government or any institute or agency authorised by the central governmentin respect of revival of sick companies.

- ✓ COMPANY LIQUIDATORS

  Companysecretary shall be appointed as provisional liquidator or the companyliquidator from a panel to be maintained by central government.

SECURITIES LAWS

Appearnce before securities appellate tribunal Pcs has been authorised to appear as authorised representative before Securities Appellate Tribunal (sat).

RECONCILIATION OF SHARE CAPITAL AUDIT

Pcs is authorised to issue quaterly certificate with regard to reconciliation of the total issued acpitl, listed capital, and held by depositories in demat form, details of the changes during the quarter and in principle aaproval obtained by the issuer from all the stock exchanges where it is listed in respect of such further issued capital under SEBI.

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