

BUSINESS LAW AND REGULATIONS

UNIT-I

INDIAN CONTRACT ACT 1872

Contract : Every agreement and promise enforceable at law is a contract.” – Pollock

Contract 2(h) :- An agreement enforceable by Law is a contract.

NATURE OF CONTRACT/ ESSENTIALS OF VALID CONTRACT

“All agreements are contracts, if they are made –

by free consent of the parties, competent to contract, for a lawful consideration and with a lawful object, and not hereby expressly declared to be void.” - Sec.10.

Offer + acceptance = Promise

+ +

consideration

=

Agreement

+

enforceability By Law = Contract

Essentials of valid contract :

1. Intention to create legal relationship/Enforceable by law

Cases;- A and B agree to go to a movie on coming Sunday. A does not turn in resulting in loss of B's time B cannot claim any damages from B since the agreement to watch a movie is a domestic agreement which does not result in a contract.

In case of social agreement there is no intention to create legal relationship and there the is no contract (Balfour v. Balfour)

In case of commercial agreements, the law presume that the parties had the intention to create legal relations.

[an agreement of a purely domestic or social nature is not a contract]

2. Lawful consideration :- consideration must not be unlawful, immoral or opposed to the public policy.

3. Capacity:- The parties to a contract must have capacity (legal ability) to make valid contract.

Section 11:- of the Indian contract Act specify that every person is competent to contract provided.

(i) Is of the age of majority according to the Law which he is subject, and

(ii) Who is of sound mind and

(iii) Is not disqualified from contracting by any law to which he is subject.

Person of unsound mind can enter into a contract during his lucid interval.

An alien enemy, foreign sovereigns and accredited representative of a foreign state. Insolvents and convicts are not competent to contract.

4. Free consent :- consent of the parties must be genuine consent means agreed upon something in the same sense i.e. there should be consensus – ad – idem. A consent is said to be free when it is not caused by coercion, undue influence, fraud, misrepresentation or mistake.

5. Lawful object

The object of agreement should be lawful and legal.

Two persons cannot enter into an agreement to do a criminal act.

Consideration or object of an agreement is unlawful if it

(a) is forbidden by law; or

(b) is of such nature that, if permitted, would defeat the provisions of any law; or

(c) is fraudulent; or

(d) Involves or implies, injury to person or property of another; or

(e) Court regards it as immoral, or opposed to public policy.

6. Possibility of performance:

The terms of the agreement should be capable of performance.

An agreement to do act, impossible in itself cannot be enforced.

Example : A agrees to B to discover treasure by magic. The agreement is void because the act in itself is impossible to be performed from the very beginning.

7. The terms of the agreements are certain or are capable of being made certain [29]

Example : A agreed to pay Rs.5 lakh to B for ultra-modern decoration of his drawing room. The agreement is void because the meaning of the term “ ultra – modern” is not certain.

8. Not declared Void

The agreement should be such that it should be capable or being enforced by law.

Certain agreements have been expressly declared illegal or void by the law.

9. Necessary legal formalities

A contract may be oral or in writing.

Where a particular type of contract is required by law to be in writing and registered, it must comply with necessary formalities as to writing, registration and attestation.

If legal formalities are not carried out then the contract is not enforceable by law.

Example : A promise to pay a time. Barred debt must be in writing.

OFFER

Offer(i.e. Proposal) [section 2(a)]:-When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other person either to such act or abstinence, he is said to make a proposal.

To form an agreement, there must be at least two elements – one offer and the other acceptance. Thus offer is the foundation of any agreement.

The person who makes an offer is called “Offeror” or “ Promisor” and the person to whom the offer is made is called the Offeree” or “Promisee”.

Example

Mr. A says to Mr. B, “Will you purchase my car for Rs.1,00,000?” In this case, Mr. A is making an offer to Mr. B. Here A is the offeror and B is the offeree.

Essentials elements of an offer:-

(1) There must be two parties.

(2) The offer must be communicated to the offeree.

(3) The offer must show the willingness of offeror. Mere telling the plan is not offer.

(4) The offer must be made with a view to obtaining the assent of the offeree.

(5) A statement made jokingly does not amount to an offer.

(6) An offer may involve a positive act or abstinence by the offeree.

(7) Mere expression of willingness does not constitute an offer.

A tells B’ that he desires to marry by the end of 2008, if does not constitute an offer of marriage by A’ to B’ A further adds will you marry me. Then it become offer.

Legal Rules as to valid offer:-

1. Offer must be communicated to the offeree: The offer is completed only when it has been communicated to the offeree. Until the offer is communicated, it cannot be accepted. Thus, an offer accepted without its knowledge, does not confer any legal rights on the acceptor.

Example:

A’s nephew has absconded from his home. He sent his servant to trace his missing nephew. When he servant had left, A then announced that anybody who discovered the missing boy, would be given the reward of Rs.500. The servant discovered the missing boy without knowing the reward. When the servant came to know about the reward, he brought an action against A to recover the same. But his action failed. It was held that the servant was not entitled to the reward because he did not know about the offer when he discovered the missing boy.

[Lalman Shukla v. Gauri Datt (1913) All LJ 489]

2. The offer must be certain definite and not vague unambiguous and certain.

Example:

A offered to sell to B. 'a hundred tons of oil'. The offer is uncertain as there is nothing to show what kind of oil is intended to be sold.

3. The offer must be capable of creating legal relation. A social invitation is not create legal relation.

Example:

A invited B to a dinner and B accepted the invitation. It is a mere social invitation. And A will not be liable if he fails to provide dinner to B.

4. Offer may be express and implied

The offer may be express or implied; An offer may be express as well as implied. An offer which is expressed by words, written or spoken, is called an express offer. The offer which is expressed by conduct, is called an implied offer [Section 9].

5. Communication of complete offer

Example:

A offered to sell his pen to B for Rs.1,000. B replied, "I am ready to pay Rs.950". On A's refusal to sell at this price, B agreed to pay Rs.1,000. held, there was not contract at the acceptance to buy it for Rs.950 was a counter offer, i.e. rejection of the offer of A. Subsequent acceptance to pay Rs.1,000 is a fresh offer from B to which A was not bound go give his acceptance.

6. Counter offer – A counter offer amounts to rejection of the original offer

7. Cross offer do not conclude a contract

8. An offer must not thrust the burden of acceptance on the offeree.

Example:

A made a contract with B and promised that if he was satisfied as a customer he would favorably consider his case for the renewal of the contract. The promise is too vague to create a legal relationship.

The acceptance cannot be presumed from silence.

Acceptance is valid only if it is communicated to the offeror.

9. Offer must be distinguished from invitation to offer.

Example:

Menu card of restaurant is an invitation to put an offer.

Example ;

Price – tags attached with the goods displayed in any showroom or supermarket is also an invitation to proposal. If the salesman or the cashier does not accept the price, , the interested buyer cannot compel him to sell, if he wants to buy it, he must make a proposal.

Example:

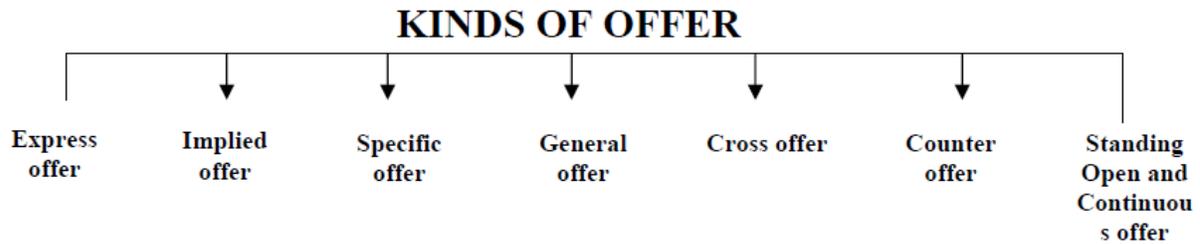
Job or tender advertisement inviting applications for a job or inviting tenders is an invitation to an offer.

Example: An advertisement for auction sale is merely an invitation to make an offer and not an offer for sale. Therefore, an advertisement of an auction can be withdrawn without any notice. The persons going to the auction cannot claim for loss of time and expenses if the advertisement for auction is withdrawn.

10. Offeror should have an intention to obtain the consent of the offeree.

11. An answer to a question is not a offer.

TYPES OF OFFER



I. Express offer - When the offeror expressly communication the offer the offer is said to be an express offer the express communication of the offer may be made by

Spoken word

Written word

II. Implied offer – when the offer is not communicate expressly. An offer may be implied from:-

The conduct of the parties or

The circumstances of the case

III. Specific:- It means an offer made in

(a) a particular person or

(b) a group of person: It can be accepted only by that person to whom it is made communication of acceptance is necessary in case of specific offer.

IV. General offer: - It means on offer which is made to the public in general.

General offer can be accepted by anyone.

If offeree fulfill the term and condition which is given in offer then offer is accepted.

Communication of acceptance is not necessary is case of general offer

Example

Company advertised that a reward of Rs.100 would be given to any person who would suffer from influenza after using the medicine (Smoke balls) made by the company according to the printed directions.

One lady, Mrs, Carlill, purchased and used the medicine according to the printed directions of the company but suffered from influenza, She filed a suit to recover the reward of Rs.100. The court held that there was a contract as she had accepted a general offer by using the medicine in the prescribed manner and as such as entitled to recover the reward from the company.

Carlill v Carbolic Smoke Ball Co. 1893

V. Cross offer:- When two parties exchange identical offers in ignorance at the time of each other's offer the offer's are called cross offer.

Two cross offer does not conclude a contract. Two offer are said to be cross offer if

They are made by the same parties to one another

Each offer made in ignorance of the offer made by the

The terms and conditions contained in both the offers' are same.

Example : A offers by a letter to sell 100 tons of steel at Rs.1,000 per ton. On the same day, B also writes to A offering to buy 100 tons of steel at Rs.1,000 per ton.

When does a contract come into existence: - A contract comes into existence when any of the parties, accept the cross offer made by the other party.

VI Counter offer :- when the offeree give qualified acceptance of the offer subject to modified and variations in the terms of original offer. Counter offer amounts to rejection of the original offer.

Legal effect of counter offer:-

(1) Rejection of original offer

(2) The original offer is lapsed

(3) A counter offer result is a new offer.

In other words an offer made by the offeree in return of the original offer is called as a counter offer.

Example:

A offered to sell his pen to B for Rs.1,000. B replied, " I am ready to pay Rs.950." On A's refusal to sell at this price, B agreed to pay Rs.1,000. Held, there was not contract as the acceptance to buy it for Rs.950 was a counter offer, i.e. rejection of the offer of A. Subsequent acceptance to pay Rs.1,000 is a fresh offer from B to which A was not bound to give his acceptance.

VII Standing, open and continuous offer:- An offer is allowed to remain open for acceptance over a period of time is known as standing, open or continually offer. Tender for supply of goods is a kind of standing offer.

Example:

When we ask the newspaper vendor to supply the newspaper daily. In such case, we do not repeat our offer daily and the newspaper vendor supplies the newspaper to us daily. The offers of such types are called Standing Offer.

ACCEPTANCE

Acceptance 2(b):- When the person to whom the proposal is made, signifies his assent there to , the proposal is said to be accepted.

Essentials of valid acceptance/Legal rules as to acceptance:

1. Acceptance must be absolute and unqualified

Example: A offers to sell his house to B for Rs. two lakhs. B accepts the offer and promises to pay the price in four installments. This is not pay the acceptance as the acceptance is with variation in the terms of the offer.

2. Acceptance must be communicated: Mere mental acceptance is no acceptance, But there is no requirement of communication of acceptance of general offer.

Example The manager of Railway Company received a draft agreement relating to the supply of coal. The manager marked the draft with the words “Approved” and put the same in the drawer of his table and forgot all about it. Held, there was no contract between the parties as the acceptance was not communicated. It may however, be pointed out that the Court construed a conduct to parties as railway company was accepting the supplies of coal from time to time.

3. Manner of acceptance

General rule say that it must be as per the manner prescribed by offeror. If no mode is prescribed in which it can be accepted, then it must be in some usual and reasonable manner.

4. If there is deviation in communication of an acceptance of offer, offeror may reject such acceptance by sending notice within reasonable time. If the offeror doesn't send notice or rejection, he accepted acceptance of offer.

Example: A offers B and indicates that the acceptance be given by telegram. B sends his acceptance by ordinary post. It is a valid acceptance unless A insists for acceptance in the prescribed manner.

5. Acceptance of offer must be made by offeror.

Example : A applied for the headmastership of a school. He was selected by the appointing authority but the decision was not communicated to him. However, one of members in his individual capacity informed him about the selection. Subsequently, the appointing authority cancelled its decision. A sued the school for breach of contract. The Court rejected the A's action and held that there was no notice of acceptance. “Information by unauthorized person is as insufficient as overhearing from behind the door”.

6. Acceptance must be communicated to offeror

7. Time limit for acceptance

If the offer prescribes the time limit, it must be accepted within specified time.

If the offer does not prescribe the time limit, it must be accepted within reasonable time.

Example : A applied (offered) for shares in a company in early June. The allotment (Acceptance) was made in late November. A refused to take the shares. Held, A was entitled to do so as the reasonable time for acceptance had elapsed.

8. Acceptance of offer may be expressly (by words spoken or written); or impliedly (by acceptance of consideration); or by performance of conditions (e.g.in case of a general offer)

9. Mere silence is not acceptance of the offer

Example A offers to B to buy his house for Rs.5 lakhs and writes “If I hear no more about it within a week, I shall presume the house is mine for Rs.5 lakhs. “B does not respond. Here, no contract is concluded between A and B.

10. However, following are the two exceptions to the above rule. It means silence amounts as acceptance of offer.

Where offeree agrees that non – refusal by him within specified time shall amount to acceptance of offer.

When there is custom or usage of trade which specified that silence shall amount to acceptance.

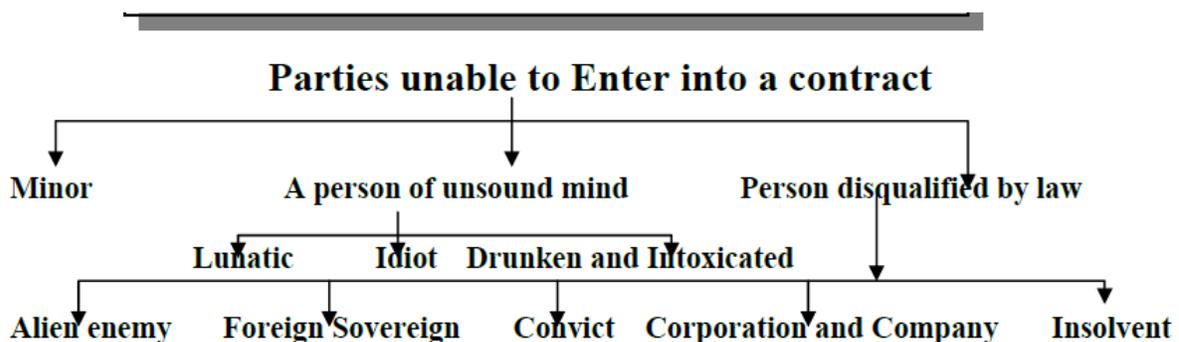
11. Acceptance subject to the contract is no acceptance

If the acceptance has been given ‘subject to the contract’ or subject to approval by certain persons, it has not effect at all. Such an acceptance will not create binding contract until a formal contract is prepared and signed by all the parties.

CAPACITY TO CONTRACT

Who is competent to make a contract:-

Section 11. Every person is competent to contract who is of age of majority according to the Law to which he is subject, who is of sound mind and not is disqualified from contracting by any Law to which he is subject.



Age of majority:- According to section 3 of Indian majority Act-1875 every person domiciled in Indian attains majority on the completion of 18 years of age.

Exception: - 21 years- in the following cases.

- a. Where a guardian of a minor's person or property is appointed under the Guardian and wards Act, 1890.
- b. Where minor's property has passed under the superintendence of the court of wards.

Position of Agreements by Minor:-

1. Validity: - An agreement with a minor is void-ab-initio

[Mohoribibee v. Dharmodas Ghose]

Example :

Mr. D, a minor, mortgaged his house for Rs.20000 to a money – lender, but the mortgagee, i.e. the money – lender, paid him a sum of Rs.8000. Subsequently, the minor sued for setting aside the mortgage. Held that the contract was void, as Mr. D was minor and therefore he is not liable to pay anything to the lender.

2. A minor's has received any benefit under a void contract, he cannot be asked to return the same.

3. If a minor has received any benefit under a void contract, he cannot be asked to return the same.

4. Fraudulent representation by a minor- no difference in the status of agreement. The contract remains void.

5. A minor with the consent of all the partners, be admitted to the benefits of an existing partnership.

6. Contracts entered into by minors are void-ab-initio. Hence no specific performance can be enforced for such contracts

7. Minor's parent/guardians are not liable to a minor's creditor for the breach of contract by the minor.

8. A minor can act as an agent but not personally liable. But he cannot be principal.

9. A minor cannot become shareholder of a the company except when the shares are fully paid up and transfer by share.

10. A minor cannot be adjudicated as insolvent.

11. Can enter into contracts of Apprenticeship, Services, Education, etc:

(a) A minor can enter into contract of apprenticeship, or for training or instruction in a special art, education, etc.

(b) These are allowed because it generates benefits to the Minor.

12. Guarantee for and by minor

A contract of guarantee in favour of a minor is valid. However, a minor cannot be a surety in a contract of guarantee. This is because, the surety is ultimately liable under a contract of guarantee whereas a minor can never be held personally liable.

13. Minor as a trade union member

Any person who has attained the age of fifteen years may be a member for registered trade union, provided the rules of the trade union allow so. Such a member will enjoy all the rights of a member.

Contract for the benefit of a minor. (EXCEPTIONS)

Contract by Guardian

Benefit of a minor by his guardian or manager of his estate.

a. within the scope of the authority of the guardian.

b. Is for the benefit of the minor.

Contract for supply of Necessaries.

Example :

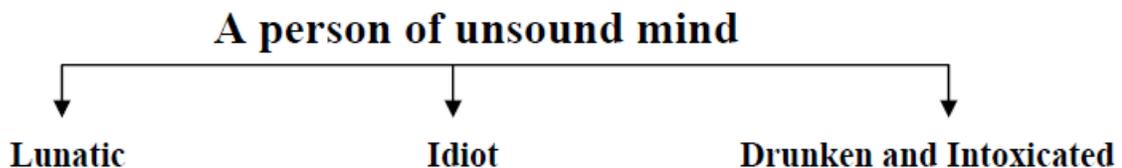
Food, clothes, bed, shelter, shoes, medicines and similar other things required for the maintenance of his life or for the life of his dependents, expenses for instruction in grade or arts; expenses for moral religions or intellectual education, funeral expenses of his deceased family members, marriage expenses of a dependent female member in the family; expenses incurred in the protection of his property or personal liberty, Diwali pooja expenses, etc. have been held by courts to be necessaries of life. However, the things like earrings for a male, spectacles for a blind person or a wild animal cannot be considered as necessaries.

Liability for tort: A minor is liable for a tort, i.e., civil wrong committed by him.

Example :

A, a 14 – year – old boy drives a car carelessly and injures B. He is liable for the accident i.e., tort.

Unsound Mind



Person of Unsound Mind

A person who is usually of unsound mind, but occasionally of sound mind can make a contract when he is of sound mind. Similarly, a person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

At time of entering into a contract, a person must be sound mind. Law presumes that every person is of sound mind unless otherwise it is proved before court. An agreement by a person of unsound mind is void. The following are categories of a person considered as person of a unsound mind.

An idiot

An idiot is a person who is congenital (by birth) unsound mind. His incapacity is permanent and therefore he can never understand contract and make a rational judgment as to its effects upon his interest. Consequently, the agreement of an idiot is absolutely void ab initio. He is not personally liable even for the payment of necessities of life supplied to him.

Delirious persons

A person delirious from fever is also not capable of understanding the nature and implications of an agreement. Therefore, he cannot enter into a contract so long as delirium lasts.

Hypnotized persons

Hypnotism produces temporary incapacity till a person is under the effect of artificial induced sleep.

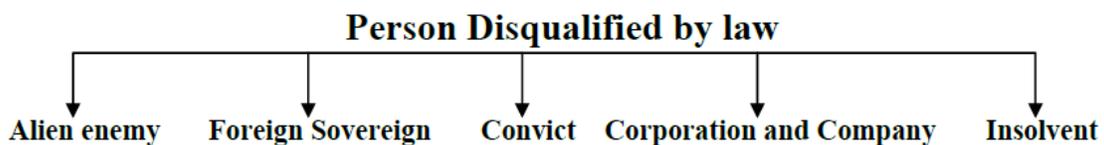
Mental decay

There may be mental decay or senile mind due to old age or poor health. When such person is not capable of understanding the contract and its effect upon his interest, he cannot enter into contract.

Lunatic is not permanently of unsound mind. He can enter into contract during lucid intervals i.e., during period when he is of sound mind.

Generally of	Occasionally of	Capacity to Contract	Example
Unsound Mind	Sound Mind	Can enter into a Contract when he is of Sound Mind.	A patient in a lunatic asylum, who is at intervals of sound mind, may contract during those intervals.
Sound Mind	Unsound Mind	Cannot make a Contract when he is of Unsound Mind.	A sane man, who is delirious from fever or who is so drunk that he cannot understand terms of a contract or form a judgment, cannot contract

Person Disqualified by Law



Body corporate or company or corporation

Contractual capacity of company is determined by object clause of its memorandum of association. Any act done in excess of power given is ultra – virus and hence void.

⇒ Alien enemy

An ‘alien’ is a person who is a foreigner to the land. He may be either an ‘alien friend’ or an ‘alien enemy. If the sovereign or state of the alien is at peace with the country of his stay, he is an alien friend. An if a war is declared between the two countries he is termed as an alien enemy. During the war, contract can be entered into with alien enemy with the permission of central government.

Convict can’t enter into a contract while he is undergoing imprisonment. But he can enter into a contract with permission of central government while undergoing imprisonment. After the imprisonment is over, he becomes capable of entering into contract. Thus the incapacity is only during the period of sentence.

Insolvent

When any person is declared as an insolvent, his property vests in receiver and therefore, he can’t enter into contract relating to his property. Again he becomes capable to enter into contract when he is discharged by court.

Foreign sovereigns, diplomatic staff and representative of foreign staff can enter into valid contract. However, a suit cannot be filed against them, in the Indian courts without the prior sanction of the central Government.

CONSIDERATION

1.(a) Consideration is a quid pro quo i.e something in return it may be –

(i) some benefit right, interest, loss or profit that may accrue to one party or,

(ii) some forbearance, detriment, loss or responsibility suffered on undertaken by the other party
[currie V mussa]

(b) According to Sir Frederick Pollock, “consideration is the price for which the promise of the other is bought and the promise thus given for value is enforceable.

2. Definition [Sec 2(d)]:- when at the desire of the Promisor, the promise or any other person.

(a) has done or abstained from doing , or [Past consideration]

(b) does or abstains from doing, or [Present consideration]

(c) promises to do or abstain from doing something [Future consideration] such act or abstinence or promise is called a consideration for the promise.

3. Example

(i) ‘P’ agrees to sell his car to ‘Q’ for Rs.50,000 Here ‘Q’s Promise to pay Rs50,000 is the consideration for P’s promise and ‘P’s promise to sell the car is the consideration for ‘Q’s promise to pay Rs.50,000.

(ii) ‘A’ promises his debtor ‘B’ not to file a suit against him for one year on ‘A’s agreeing to pay him Rs.10,000 more. Here the abstinence of ‘A’ is the consideration for ‘B’s Promise to pay.

Essentials of Valid consideration

1.Consideration must move at the desire of the promisor.

D constructed a market at the instance of District collector. Occupants of shops promised to pay D a commission on articles sold through their shops. Held, there was no consideration because money was not spent by Plaintiff at the request of the Defendants, but at instance of a third person viz. the Collector and, thus the contract was void.

Durga Prasad v. Baldeo

2. Consideration may move from the promisee or any other person who is not a party to the contract. [Chinnaya’s Vs Ramayya]

A owed Rs.20,000 to B. A persuaded C to sign a Pro Note in favour of B. C promised B that he would pay the amount. On faith of promise by C, B credited the amount to A’s account. Held, the discharge of A’s account was consideration for C’s promise.

National Bank of Upper India v. Bansidhar

3. Consideration may be past, present, Future:

Under English law, Past consideration is no consideration.

Present consideration :- cash sale

Future or executory consideration:- A Promises to B to deliver him 100 bags of sugar at a future date . B promise to pay first on delivery.

4. Consideration should be real and not illusory. Illusory consideration renders the transaction void consideration is not valid if it is.

(i) Physically impossible (ii) Legally not permissible
(iii) Uncertain (iv) illusory (fulfillment of a pre existing obligation)

5. Must be legal:-

Consideration must not be unlawful, immoral or opposed to public policy.

6. consideration need not be adequate. A contract is not void merely because of the fact that the consideration is inadequate. The law simply requires that contract should be supported by consideration. So long as consideration exists and it is of some value, courts are not required to consider its adequacy.

Example:

A agreed to sell a watch worth Rs.500 for Rs.20, A's consent to the agreement was freely given. The consideration, though inadequate. Will not affect the validity of the contract. However, the inadequacy of the consideration can be considered in order to know whether the consent of the promisor was free or not . [Section 25 Explanation II]

7. The performance of an act what one is legally bound to perform is not consideration for the contract mean's something other than the promisor's existing obligation –

A contract not supported by consideration is void .

FREE CONSENT

Free consent

⇒ Consent is said to be free when it is not caused by [Section 14]

- (a) coercion [Section 15]
- (b) Undue influence [Section 16]
- (c) Fraud [Section 17]
- (d) Misrepresentation [Section 18]
- (e) Mistake [Section 20, 21,22]

Effect of absence of Free Consent :- If consent coercion, undue influence, fraud , Misrepresentation the contract is voidable at the option of party whose consent was not free [19, 19A]

Coercion

- (a) Committing any act which is forbidden by the IPC
- (b) Threatening to commit any act which is forbidden by the IPC.
- (c) Unlawful detaining of any property or
- (d) Threatening to detain any property.

Above four [a – d]

- (e) coercion need not necessary proceed from party to contract.
- (f) Coercion need not necessary be directed against the other contracting party.
- (g) It is immaterial whether the IPC is or is not in force at the time or at the place where the coercion is employed [Bay of Bengal caption]

Effect of threat to file a suit:- A threat to file a suit (whether civil or court) does not amount to coercion unless the suit is on false charge. Threat to file a suit on false charge is an act forbidden by the IPC and thus will amount to an act of coercion.

Effect of Threat to commit suicide:- Threat to commit suicide amounted to coercion and the release deed. Therefore voidable. [**Chikham Ammiraju v seshama**]

Effect:- when coercion is employed to obtain the consent of a party the contract is voidable at the option of the party where consent was obtained by coercion.

A threat to strike by employees in support of their demands is not regarded as coercion. This is because the threat to strike is not an offence under the I.P.C. it is a right given under the Industrial Disputes Act.

Meaning of undue influence :- dominating the will of the other person to obtain an unfair advantages over the others.

(a) where the relation subsisting between the parties must be such that one party is in position to dominate the will of the other.

(b) The dominant party use his position.

(c) Obtain an unfair advantage over the other .

Presumption of domination of will:- Circumstances	Examples
Where he holds a real or apparent authority over the other	Master and servant, parent and child, Income Tax officer and assesses principal and a Temporary Teacher.
Where he stands in a Trust fiduciary (benefit) relation to the other	Trustee and beneficiary spiritual Guru and his disciples, solicitors and clients.
Mental Capacity of a person is temporarily or permanent effected by reason of age, illness or mental or bodily distress	Guardian and wards Relationship between medical attendant and ward.

Fraud (17)

The term fraud means a take representation of facts made willfully with a view to deceive the other party.

Sec.17- fraud means any act committed by a party to a contract or with his connivance or by his agent with intent to deceive another party there to or his agent or to induce to enter into contract.

Essentials of fraud :-

(a) By a party to the contract

(b) There must be representation – [an opinion a statement of expression – does not fraud].

(c) The representation must be false.

(d) Before conclusion of contract.

(e) The misrepresentation must be made willfully.

(f) The misrepresentation must be made with a view to deceive the other party.

(g) The other party must have actually been deceived.

(h) The other party have suffered a loss.

Fraud – definition include

The suggestion, as to fact, of that which is not true by one who does not believe it to be true.

The active concealment of a fact by one having knowledge or belief of the fact.

Ex. A furniture dealer conceals the cracks in furniture by polish work. A promise made without any intention of performing it. Any other act fitted to deceive.

Effect of Fraud:-

Any such act or omission as the law specially declared to be fraudulent.

Ex:- T bought a cannon from H. It was defective, but H had plugged it. T did not examine the cannon, but it burst when he used it. Held as the plug had not deceived T, he was liable to pay for the cannon.

Ex.: Where the representation was true at the time of when it was made but becomes untrue before the contract is entered into and this fact is known to the party who made the representation. It must be corrected. If it is not so corrected it will amount to be fraud.

When the silence amount to fraud:-

(a) General rule:- Mere (only) Silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud.

where the circumstances of the case are such that regarding being had to them. It is duty of the person keeping silence to speak. Such duty arises in the following two cases.

(1) Duty to speak exists where the parties stand in a fiduciary relationship, e.g. father and son, guardian and ward, trustee and beneficiary etc. or where contract is a contract of ubberima fidei (requiring utmost good faith), e.g. contracts of insurance.

Ex.- A sells by auction to B a horse which 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 is the horse is unsound.

(2) When silence itself equivalent to speech. B says to A " if you do not deny it I shall assume that the horse is sound". A say nothing – A's silence equivalent to speech. A can held liable to fraud.

Sec. 19: A contract induced by fraud is voidable at the option of the party defrauded. Till the exercise of such option, the Contract is valid.

Rescinds of contract

Right to insist upon performance

Right to claim damages – if he suffered loss.

Exception : The contract is not voidable in the following cases.

When the party who consent was caused by silence amount to fraud and he has the means of discovering the truth with ordinary diligence. [Ex class room]

When the party give the consent in ignorance of fraud.

When the party after become aware of fraud takes a benefit.

When the parties can't be restored to their original position.

Where interests of third parties intervene before the contract is avoided.

Misrepresentation:

Misrepresentation is when a party (person) asserts something which is not true though he believes is to be true. In other words misrepresentation is a falls representation made innocently.

An agreement is said to be influenced by misrepresentation if all the following conditions are satisfied.

(a) The party makes a representation of a fact [The representation by a stranger (By anyone with his connivance or by agent) to the contract does not affect the validity of the contract.

(b) The misrepresentation was made innocently i.e. if was not made with a view to deceive the other party.

(c) The other party has actually acted believing the misrepresent to be true.

Misrepresentation include:-

Unjustified statement of facts – positive assertion – Believe true really not true no basis misrepresentation

Breach of duty.

Inducing other to make mistake as to qualify or nature of subject matter.

(1) Right to Rescind contract:-

Can't do

Discovering the truth with ordinary diligence.

Give consent in ignorance of misrepresentation

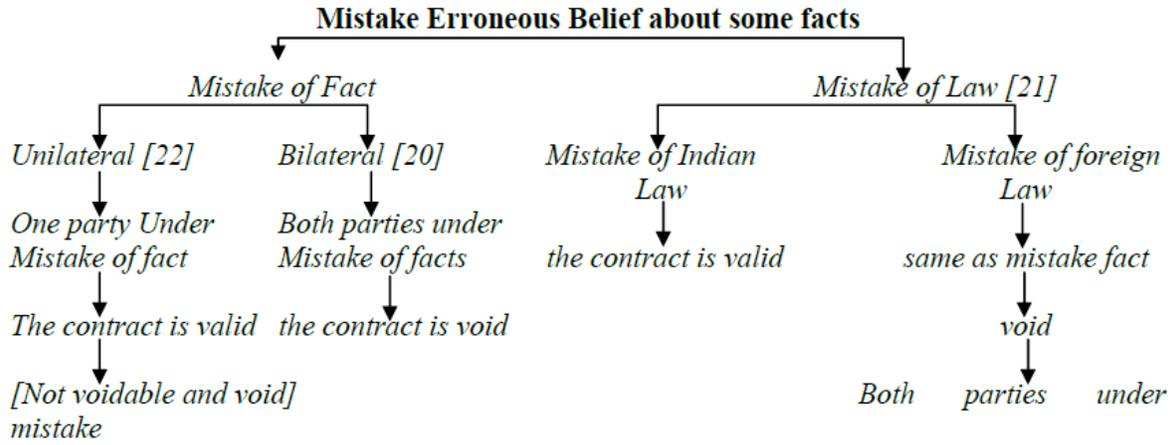
Become aware of misrepresentation takes a benefit

Where an innocent third party before the contract is rescinds acquires consideration some interest in the property passing under the contract.

Where the parties can't be restored to their original position.

(2) Right to insist upon performance.
 Ex.- Unlike Fraud he cannot sue for damage.

MISTAKE



LAWFUL OBJECT:

The object or purpose of contract is said to be unlawful if:

(a) It is forbidden by law – law would also include the rules regulations, notifications etc. under or issued under the authority given by a statute.

Ex.:- A sold liquor without license to B. The sale is unlawful as the sale of liquor without license is forbidden by the law, i.e., The Excise Act. Hence, A cannot recover the price.

Ex.:- a Hindu already married and his wife alive entered into a marriage agreement with Y an unmarried girl. The agreement is void because the second marriage is forbidden by Hindu Law.

(b) If it defeats the Provisions of any Law.

- not directly prohibited by any Law

Ex.:- A's estate is sold for arrears of revenue under the provision defaulter is prohibited from purchasing the state upon an understanding with A becomes the purchaser and agrees to convey the estate to A . Upon receiving from him the price which B has paid. The agreement is void.

(c) If it is Fraudulent

Ex.: Object or consideration of an agreement is fraudulent. An agreement with such an object or consideration is unlawful and void.

(d) If it involves or Implies injury to a person or property of another.

Ex. :- Where it create injury to a person or to the property of another. An agreement with such an object or consideration is unlawful and void.

(e) If the court regards it as immoral.

X gave Rs. 10,000 to Y a married woman to obtain a divorce from her husband. X agrees to marry when divorce taken. X would not recover the amt.

1. Partially unlawful Object or consideration [Sec. 24]: An Agreement is void if -

(a) any part of a single consideration for one or more objects is unlawful; or

(b) any one or any part of one of several consideration for a single object, is unlawful.

2. Example: B is a licensed manufactured of permitted chemicals. A promise B to supervise B's business and combine it with the production of some contraband items together with the permitted items. B promises to pay A, Salary of Rs.10,000 p.m. Agreement is void, object of A's promise and consideration for B's promise being partially unlawful.

3. Lawful Consideration enforceable: When there are several distinct promises made for one and the same consideration and one or more of them are of such nature that law will not enforce it, only such of the promises as are unlawful cannot be enforced. Other which are lawful, can be enforced.

4. Test of Severability:

EVERY AGREEMENT OF WHICH THE OBJECT OR CONSIDERATION IS UNLAWFUL IS VOID [SEC 23]

(a) If illegal part cannot be severed from legal part of a covenant, contract is altogether void.

(b) If it is possible to sever them, whether the illegality be due to Statute or Common Law, bad part alone may be rejected and good retained.

In case of pre – existing civil liability, the dropping of criminal proceedings need not necessarily be a consideration for the agreement to satisfy that liability.

Union Carbide Corpn. v. UOI

Illegal agreement – Void – ab – initio

Punishable by the criminal Law of the country or by any special legislation regulation effect of illegal agreement.

Collateral transactions – illegal

No action can be taken for the recovery of money paid or property transferred.

If illegal part can't be separated from the legal part.

Whole agreement is altogether illegal. [Sec.57]

If separated

Legal part – enforces illegal part – reject.

Reciprocal promises – In respect of reciprocal promises the agreement as to illegal promise is void.

Agreement opposed to public policy:-

Alternative promises: where in alternative promises one part is illegal, only the legal part can be enforced. [Sec. 58]

PERFORMANCE OF THE CONTRACT

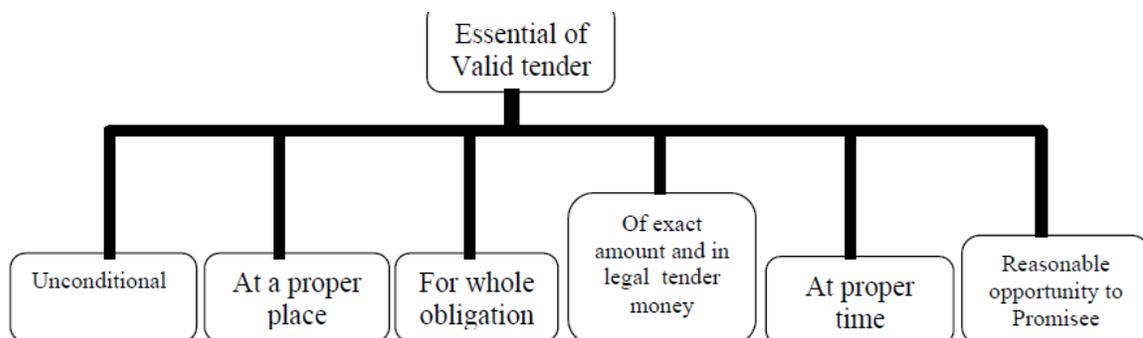
Sec 37:- That the parties to a contract must either perform or offer to perform, their respective promises unless such performance is dispensed with or excused under the provisions of contract Act, or of any other law.

Performance: - Two types

1. Actual performance – actually performed – liability of such a party comes to an end.
2. Attempted performance or tender of performance refusal to accept offer of performance by promisee [38]

Promisor is not responsible for non performance and they can sue the promisee for breach of contract – nor he (promisor) thereby lose his rights under the contract.

PERFORMANCE



A. Tender or offer of performance to be valid must satisfy the following conditions:-

(i) It must be unconditional

Ex :- ‘X’ offers to ‘Y’ the principal amount of the loan. This is not a valid tender since the whole amount of principal and interest is not offered.

(ii) It must be made at a proper time and place.

Ex:- If the promisor wants to deliver the goods at 1 am. This is not a valid tender unless it was so agreed;

(iii) Reasonable opportunity to examine goods.

Ex:- Delivery of something to the promisee by the promisor must have reasonable opportunity of inspection.

(iv) It must be for the whole obligation :- goods and amount.

Ex:- ‘X’ a debtor, offers to pay ‘Y’ the debt due in installments and tenders the first installment. This is not a valid tender minor deviation – not invalid [Behari lal v ram gulam]

(v) It must be made to the promisee or his duly authorized agent.

Ex:- It must be person who is willing to person his part of performance.

(vi) In case of payment of money, tender must be of the exact amount due and it must be in the legal tender.

Who can demand performance?

1. Promisee – stranger can't demand performance of the contract.
2. Legal Representative – legal representative can demand Exception performance.
 - contrary intention appears from the contract
 - contract is of a personal nature.
3. Third party – *Exception to "stranger to a contract"*

Person by whom promise is to be performed Sec 40.

[who will perform the contract]

1. **Promisor himself** :- include personal skill, taste or art work.
Ex:- 'A' promises to paint a picture for 'B' as this promise involves personal skill of 'A'. If must be performed by 'A'.
2. **Promisor or agent** :- [does not involves personal skill]
3. **Legal Representative** [does not involve personal skill and taste]

Time and Place of performance

1. Time of performance is not specified + promisor agreed to perform without, a demand from the promisee the performance must be made within a reasonable time. Reasonable time – in each particulars case – a question of fact.

2. Time specified but hour not mentioned [47].

Time of performance specified + promisor agreed to perform without application by the promisee

Performance must perform on the day fixed during the usual business hours and at the place at which the promise ought to be performed.

3. Where Time is fixed and application to be made [48]

Proper place and within the usual hour of business

Promisee to apply for performance

4. Performance of promise where no place is specified and no application is to be made by the promisee [49]

It is the duty of the promisor to apply to the promisee to appoint a reasonable place for the performance and perform it at such appointed place.

5. Performance in manner or at time prescribed or sanctioned by promisee [50]

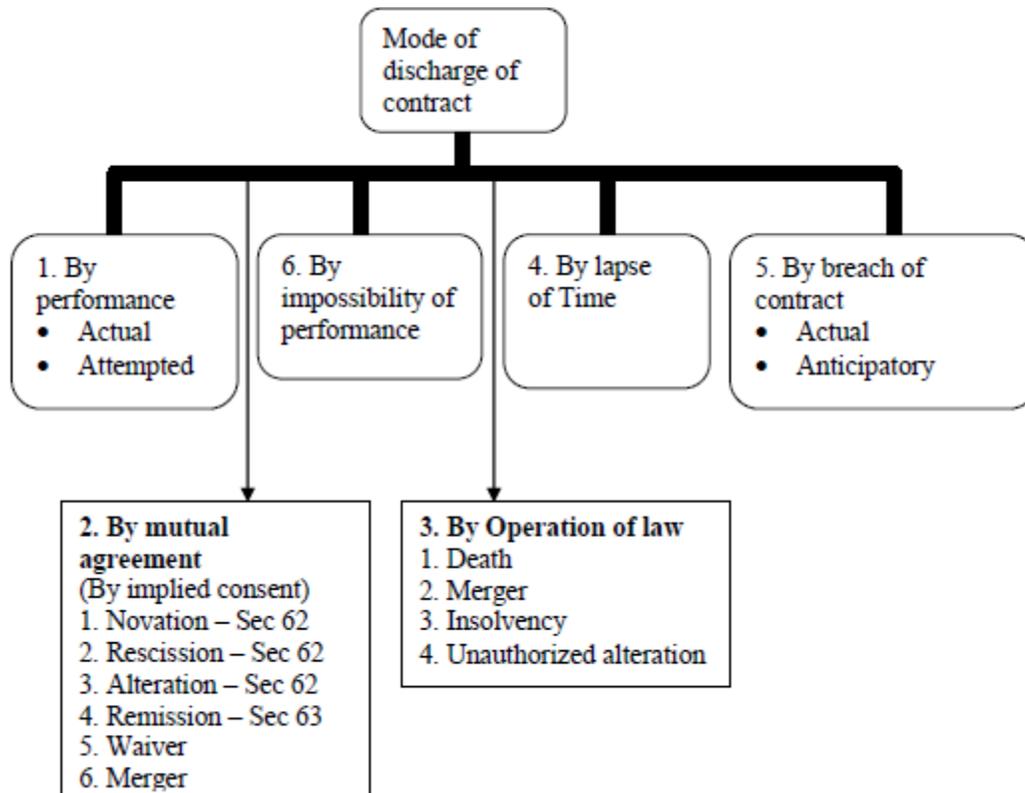
In such prescribed manner and

Prescribed time

Ex:- 'A' desires 'B' who owes him Rs 10,000 to send him a promissory note for Rs 10,000 by Post. The debt is discharged as soon as 'B' puts into the post a letter containing the promissory note duly addressed to 'A'.

DISCHARGE OF A CONTRACT

Discharge of a contract means termination of contractual relation between the parties to a contract in other words a contract is discharged when the rights and obligations created by it are extinguished (i.e. comes to an end).



1. Discharge by performance

fulfillment of obligations by a party to the contract within the time and in the manner prescribed in the contract.

(a) Actual performance – no party remains liable under the contract. Both the parties performed.

(b) Attempted performance or tender:- Promisor offers to perform his obligation under the contract but the promisee refuses to accept the performance. It is called as attempted performance or tender of performance

But the contract is not discharged.

2. Discharge by mutual agreement

(a) Novation [Sec 62] – Novation means substitution of a new contract in the place of the original contract new contract entered into in consideration of discharge of the old contract. The new contract may be.

Between the same parties (by change in the terms and condition)

Between different parties (the term and condition remains same or changed)

Following conditions are satisfied :-

(1) All the parties must consent to novation

(2) The novation must take place before the breach of original contract.

(3) The new contract must be valid and enforceable.

Example:

o A owes B Rs.50,000. A enters into an agreements with B and gives B a mortgage of his estate for Rs.40,000 in place of the debt of Rs.50,000. (Between same parties)

o A owes money Rs.50,000 to B under a contract. It is agreed between A, B & C that B shall henceforth accept C as his Debtor instead of A for the same amount. Old debt of A is discharged, and a new debt from C to B is contracted. (Among different parties)

(b) Rescission [62]:- Rescission means cancellation of the contract by any party or all the parties to a contract. X promises Y to sell and deliver 100 bales of cotton on 1st oct his go down and Y promises to pay for goods on 1st Nov. X does not supply the goods. Y may rescind the contract.

(c) Alteration [62] :- Alteration means a change in one or more of the terms of a contracts with mutual consent of parties the parties of new contracts remains the same.

Ex:- X Promises to sell and delivers 100 bales of cotton on 1st oct. and Y promises to pay for goods on 1st Nov. Afterwards X and Y mutually decide that the goods shall be delivered in five equal installments at is godown . Here original contract has been discharged and a new contract has come into effect.

(d) Remission [63]:- Remission means accepting a lesser consideration than agreed in the contract. No consideration is necessary for remission. Remission takes place when a Promisee-

(a) dispense with (wholly or part) the performance of a promise made to him.

(b) Extends the time for performance due by the promisors

(c) Accept a lesser sum instead of sum due under the contract

(d) Accept any other consideration that agreed in the contract

A promise to paint a pictured for B. B after words for him to do so. A is no longer bound to perform the promise.

(e) Waiver:- Intentional relinquishment of a night under the contract.

(f) Merger :- conversion of an inferior right into a superior right is called as merger.
(Inferior right end)

3. Discharge by operation of law

(a) Death :- involving the personal skill or ability, knowledge of the deceased party one discharged automatically. In other contract the rights and liability passed to legal represent.

Example : A promises to perform a dance in B's theatre. A dies. The contract comes to an end.

(b) Insolvency:- when a person is declared insolvent. He is discharged from his liability up to the date of insolvency.

Example: A contracts to sell 100 bags of sugar to B. Due to heavy loss by a major fire which leaves nothing to sell, A applies for insolvency and is adjudged insolvent. Contract is discharged.

(c) By unauthorized material alteration – without the approval of other party – comes to an end – nature of contract substance or legal effect.

Example : A agrees upon a Promissory Note to pay Rs.5,000 to B. B the amount as Rs.50,000. A is liable to pay only Rs.5,000.

(d) Merger: When an inferior right accruing to a party in a contract merges into a superior right accruing to the same party, then the contract conferring inferior right is discharged.

Example: A took a land on lease from B. Subsequently, A purchases that land. A becomes owner of the land and ownership rights being superior to rights of a lessee, the earlier contract of lease stands terminated.

5. Rights and liabilities vest in the same person: Where the rights and liabilities under a Contract vest in the same person, the contract is discharged.

Example: A Bill of Exchange which was accepted by A, reaches A's hands after being negotiated and endorsed through 4 other parties. The contract is discharged.

4. Discharge by Lapse of time

Where a party fails to take action against the other party within the time prescribe under the limitation Act, 1963. All his rights to come end. Recover a debt – 3 Years recover an immovable property – 12 years

Ex.- On 1st July 20X1 X sold goods to Y to Rs 1,00,000 and Y had made no payment till August 20X4. state the legal position on 1st Aug 20X4

(a) If no. credit period allowed Ans. (Refer Classroom)

(b) If 2 month credit period allowed.

5. Discharge by Breach of contract

Failure of a party to perform his part of contract

(a) Anticipatory Breach of contract :- Anticipatory breach of contract occurs when the party declares his intention of not performing the contract before the performance is due .

(i) Express repudiation: - S agrees to supply B 100 tonnes of specified category of iron on 15.01.2006 on 31.12.2005. S express his unwillingness to supply the iron to B.

(ii) Party disables himself: - Implied by conduct.

Ex.:- S agrees to sell his fiat car to B on 15.01.2006 on 31.12.05 S sells his fiat car to T.

(b) Actual Breach of contract :- If party fails or neglects or refuses to perform his obligation on the due date of performance or during performance. It is called as actual breach.

During performance – party has performed a part of the contract.

Consequences of Breach of contract:- The aggrieved party (i.e. the party not at fault) is discharged from his obligation and get rights to proceed against the party at fault. The various remedies available to an aggrieved party.

6. Discharge by Impossibility performance

(a) Effect of Initial Impossibility

(b) Effect of supervening. Impossibility

(a) Initial Impossibility – at the time of making contract

Both parties know – put life into deed body – void .

Both don't know – void.

One know – compensate to other party

(b) Effect of supervening Impossibility:-

Where an act becomes impossible after the contract is made – void

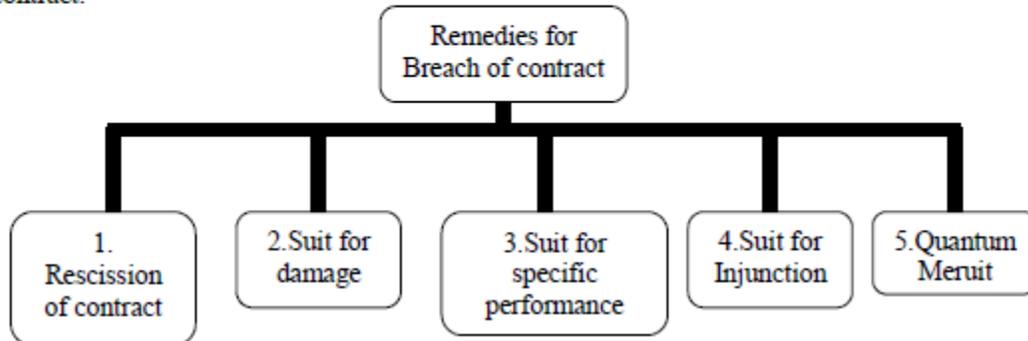
Becomes unlawful, beyond the control of promisor – void

Promisor alone knows about the Impossibility – compensate loss.

When an agreement is discovered to be void or where a contract becomes void

REMEDIES FOR THE BREACH OF CONTRACT

Remedy means course of action available to an aggrieved party when other party breaches the contract.



1. RESCISSION OF CONTRACT – SEC 39

It means right to party to cancel contract.

In case of breach of contract, other party may rescind contract.

Effect of Rescission of Contract

Aggrieved party is not required to perform his part of obligation under contract.

Aggrieved party claims compensation for any loss.

Party is liable to restore benefit, if any.

When can Court Grant Rescind Contract?

Court can rescind the contract in the following situation:

Contract is voidable.

Contract is unlawful.

2. SUIT FOR DAMAGES

It means monetary compensation allowed for loss.

Purpose is to compensate aggrieved party and not to punish party as fault.

In India, rules relating to damages are based on English judgment of Hadley vs Baxendale.

The facts of case were – H's mill was stopped due to the breakdown of the shaft. He delivered the shaft to common carrier to repair it and agree to pay certain sum of repair it and agree to pay certain sum of money for doing this work. H has informed to B that delay would result into loss of profit. B delivered the shaft after reasonable time after repair. H filed suit for loss of profit. It was held that B is not liable for loss of profit. The court laid down rule that damage can be recovered if party has breach of contract

The following are the different kinds of damages:

A. Ordinary damages

These are the damages which are payable for the loss arising naturally and directly as result of breach of contract. It is also known as proximate damage or natural damage.

B.Special damages

These are damages which are payable for loss arising due to some special circumstances. It can be recovered only if special circumstances which result in special loss in case of breach of contract and party have notice of such damage.

Example: A sends sample of his products for exhibition to an agent of a railway company for carriage to "New Delhi" for an exhibition. The consignment note stated: "Must be at New Delhi, Monday Certain." Due to negligence of the company, the goods reached only after the exhibition was over. Held, the company was liable for the loss caused by late arrival of the products because the company's agent was aware of the special circumstances.

Exemplary or punitive or vindictive damages

These damages are allowed not to compensate party but as mean of punishment to defaulting party. The court may award these damages in the case of:

Breach of contract to marry – loss based on mental injury.

Wrongful dishonor of cheque – smaller amount, larger the damage.

C.Nominal damages

Where party suffers no loss, the court may allow nominal damages simply to establish that party has proved his case and won. Nominal damage is very small in amount.

D.Damages for inconvenience

If party has suffered physical inconvenience, discomfort for mental agony as result of breach of contract, party can recover the damage for such inconvenience.

Example: A photographer agreed to take photographs at a wedding ceremony but failed to do so. The bride brought an action for the breach of contract. Held, she was entitled to damages for her injured feelings.

E.Liquidated damages and penalty

Party may specify amount at the time of entering into contract. The amount so specified may be (a) liquidated damage, or (b) penalty.

If specified sum represent, fair and genuine pre – estimate damages likely to result due to breach, it is called liquidated damage.

But if specified sum is disproportionate to the damages, it is called as penalty.

As regard the payment of liquidated damages and penalty court can't increase amount of damages beyond the amount specified in the contract.

Example : A gives B, a bond for the repayment of Rs.1,000 with interest at 12 per cent, at the end of six months, with a stipulation that, in case of default, the interest shall be payable at the rate of 75 per cent, from the date of default. This is a stipulation by way of penalty, and B is only entitled to recover from A such compensation as the Court considers reasonable.

⇒ Payment of interest

It is permissible.

If interest is in nature of penalty, court may grant relief.

If no rate of interest is specified in contract party shall be liable to pay as per the law in force or as per custom or usage of trade.

Cost of suit or decree

The court has also discretion to award cost of suit for damages in addition to the damages for breach of contract.

3.Suit for Specific Performance

It means, demanding an order from court that promise agreed in contract shall be carried out.

⇒ When is specific performance allowed?

Where actual damages arising from breach is not measurable.

Where monetary compensation is not adequate remedy.

⇒ When specific performance is not allowed?

When damages are an adequate remedy.

Where performance of contract requires numbers of minute details and therefore not possible for court to supervise.

Where contract is of personal in nature.

Where contract made by company beyond its power. (ultra – vires)

Where one party to contract is minor

Where contract is inequitable to either party.

Example : A agree to sell B, an artist painting for Rs.30,000. Later on, he refused to sell it. Here B can file suit against A for specific performance of the contract.

4.Suit for Injunction

It means stay order granted by court. This order prohibits a person to do particular act.

Where there is breach of contract by one party and order, of specific performance is not granted by court, injunction may be granted.

Example: Film actress agreed to act exclusively for W for a year and for no one else. During the year she contracted to act for Z.

5. Quantum Meruit: It means as much as earned. The benefit obtained through the contract partially has to be returned or compensated.

CONTINGENT CONTRACT

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

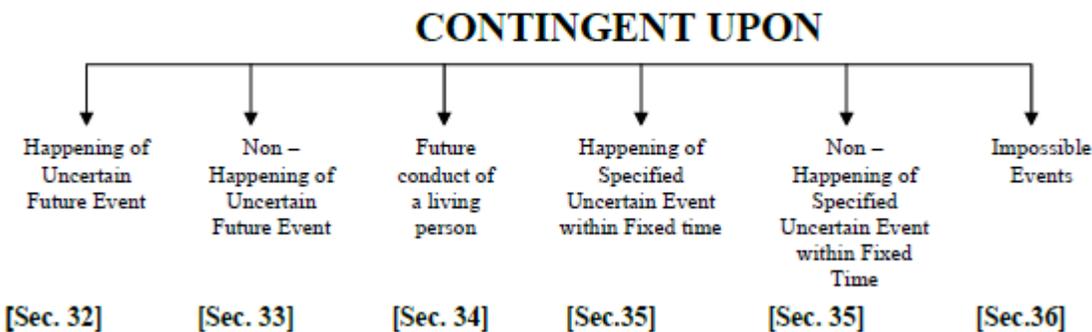
A contract to pay B Rs.10,000 if B house is burnt.

A promise to pay B Rs.1,00,000 if a certain, ship does not return within a year.

Essential features of a contingent contract :-

- (a) It is a contract to do or not to do something
- (b) Dependent on happening or non happening of an event
- (c) Such on event is a collateral event (i.e. it is collateral) to the contract i.e. the event must not depend upon the mere will of party.
- (d) The event is uncertain

Rules regarding contingent contract.



- (1) Contracts contingent upon the happening of an event enforced – such event has happened [32]
Void – such event because impossible [happening of such event]
Ex.:- A contract to pay B a sum of money when B marries e dies without being married to B
contract – void
- (2) Non happening of a future event:- [33]
Enforced :- when the happening of such events becomes impossible.
Void:- such event has happened.

Ex.:- A agrees to pay B sum of money if a certain ship does not return. This ship is sunk. The contract can be enforced when the ship sinks. MS EDUCONZ PVT. LTD. LAW& AUDIT SUJEET JHA 40 9213188188

(3) Happening of an event within a specified time [35]

Enforce :- when such event has happened within the specific time.

Void :- When the happening of such event because impossible before the expiry of specified time.

When such event has not happened within specified time.

A promise to pay B sum of money if a certain ship return within a Year.

Enforce :- ship returns within the year .

Void :- If the ship is burnt within the year / not come within the year.

(4) Non – happening of an event within a fixed time [35]

Enforce :- When the happening of such event because impossible before the expiry of specified time.

When such event has not happened within the specified .

Void:- When such event has happened within the specified period.

(5) Future conduct of a living person. [34]

Enforced:- When such person acts in the manner as desired in the contract.

Void :- When such person does anything which makes the desired future conduct of such person – impossible – dependent upon certain contingency.

A agrees to pay B a sum of money if B marries C . C married D. The marriage of B to C must now considered impossible, although it is possible that D may die any that C may afterwards marry B.

(6) Impossible events [36]

- Such an agreement can not be enforced since it is void whether the impossibility of the event was known to the parties or not is immaterial.

A agrees to pay B Rs.1,000 if two parallel straight lines should enclose a space. Agreements are void.

A agrees to pay B Rs.1,000 if B will marry A's daughter C and C was dead at the time of the agreement. Agreement is void.

Unit-2

Sales of goods Act 1930

General Principles:-

The Sale of Goods Act 1930, which was an Indian legislation, was repealed and replaced by the Sale of Goods Act, 1930, was a piece of legislation that governed the sale of goods in India. It has since been replaced by the Sale of Goods Act, 1930. However, I can provide you with some general principles that were applicable under the Sale of Goods Act 1930:

1. **Contract of Sale:** The Act defined a "contract of sale" as a contract where the seller transfers or agrees to transfer the ownership of goods to the buyer for a price. It covers both sales and agreements to sell.
2. **Goods and Their Classification:** The Act defines "goods" as every kind of movable property other than actionable claims and money. Goods are classified as existing or future goods, specific or ascertained goods, and unascertained or generic goods.
3. **Transfer of Property:** The Act provides rules for the transfer of property in goods. Property in the goods passes from the seller to the buyer when the parties intend it to pass, as determined by the terms of the contract.
4. **Price:** The price in a contract of sale must be money, and it is an essential element of a valid contract.
5. **Conditions and Warranties:** The Act distinguishes between conditions (essential terms of the contract) and warranties (minor terms of the contract). The breach of a condition entitles the innocent party to repudiate the contract, while the breach of a warranty gives rise to a claim for damages.
6. **Implied Conditions and Warranties:** The Act implies certain conditions and warranties into contracts for the sale of goods, such as the condition of title, the condition of merchantability, and the warranty of quiet possession.
7. **Sale by Description:** If goods are sold by description, they must correspond to that description, even if the buyer has had an opportunity to inspect the goods.

8. **Delivery:** The seller is responsible for delivering the goods, and the buyer is responsible for accepting and paying for them in accordance with the terms of the contract.
9. **Transfer of Title:** In a contract for the sale of specific or ascertained goods, property in the goods passes to the buyer when the parties intend it to pass, as determined by the terms of the contract.
10. **Performance and Remedies:** The Act provides remedies for breach of contract, including the right to reject the goods, seek damages, or seek specific performance.
11. **Unpaid Seller's Rights:** The Act also lays down the rights and remedies available to an unpaid seller against the buyer and the goods.

It's essential to note that the Sale of Goods Act 1930 has been replaced by the Sale of Goods Act, 1930, which has further clarified and expanded the principles related to the sale of goods in India. The Sale of Goods Act, 1930, has also been supplemented by various other laws and regulations to address modern commercial practices and the rights and responsibilities of buyers and sellers. It's advisable to consult the relevant legal sources or seek legal advice for a comprehensive understanding of the current laws and regulations governing the sale of goods in India.

"Indemnity" and "guarantee:-

"Indemnity" and "guarantee" are two legal concepts that deal with the assurance of financial responsibility or the fulfillment of an obligation. These terms are often used in contracts and legal agreements, and they have distinct meanings and implications:

1. Indemnity:

- Indemnity is a legal concept where one party (the indemnifier) promises to compensate or make good any loss, damage, or liability suffered by another party (the indemnitee) due to specific actions, events, or circumstances.
- An indemnity is a promise to protect the indemnitee from financial loss and ensure that they are not worse off because of a particular event or occurrence.

- Indemnities are often used to allocate risks and provide protection in various types of contracts, including commercial agreements, insurance policies, and real estate transactions.
- Common examples of indemnities include indemnity clauses in contracts for intellectual property infringement, third-party claims, or environmental liability.

2. Guarantee:

- A guarantee is a contract where one party (the guarantor) promises to pay the debt, fulfill the obligation, or meet the contractual commitments of another party (the principal debtor) in case the principal debtor fails to do so.
- Guarantees are commonly used to provide security for loans, credit arrangements, or other financial transactions. In such cases, the guarantor stands as a secondary source of payment in case the debtor defaults.
- Guarantees may also be used in various contexts, such as rental agreements or business contracts, to ensure that the obligations of one party are met by another party if necessary.
- Guarantees are often distinguished from indemnities in that they involve a promise to perform or pay on behalf of the principal debtor, whereas indemnities involve a promise to compensate for losses incurred.

Key Differences:

- Indemnity primarily deals with the reimbursement or compensation for losses, damages, or liabilities incurred by the indemnitee, whereas a guarantee involves a promise to pay or fulfill the obligations of the principal debtor if they default.
- In an indemnity, the indemnifier's liability is triggered when a specific event or loss occurs. In a guarantee, the guarantor's liability arises when the principal debtor fails to fulfill their obligations.
- Indemnities are often used to cover a wide range of potential losses, while guarantees are typically more specific and limited to particular obligations or debts.
- Indemnities often protect the indemnitee from various risks, while guarantees are more focused on ensuring the fulfillment of a specific contractual obligation or debt.

Both indemnities and guarantees are essential legal tools that help parties manage financial and contractual risks in various transactions and agreements. It is crucial to carefully review the terms and conditions of these arrangements to understand the extent of liability and the specific obligations involved.

In contract law, "conditions" and "warranties" are two distinct types of terms that define the obligations and promises within a contract. These terms have different legal consequences in the event of a breach. Here's a brief overview of conditions and warranties:

1. Conditions:

- Conditions are essential terms in a contract that go to the very root of the contract's performance. They are fundamental promises or obligations that are so central to the contract that a breach of a condition is considered a serious matter.
- If a condition is breached, the innocent party has the right to treat the contract as discharged or void. In other words, they can terminate the contract and may also seek damages for any losses suffered.
- Whether a term is considered a condition or not depends on the intention of the parties, the nature of the contract, and the specific language used in the contract.

2. Warranties:

- Warranties, on the other hand, are subsidiary or secondary terms in a contract. They are not central to the main purpose of the contract but are ancillary promises or undertakings that are less fundamental.
- If a warranty is breached, the innocent party cannot treat the contract as void or terminated. Instead, they can only seek damages for any losses they have suffered due to the breach of the warranty.
- Warranties are less critical to the overall performance of the contract, and they do not go to the heart of the agreement.

It's important to note that not all contracts explicitly label terms as conditions or warranties. Sometimes, the determination of whether a term is a condition or a warranty can be a matter of

interpretation, and courts may consider various factors, including the relative importance of the term and the intention of the parties, in making this determination.

Additionally, some contracts may contain "innominate terms" or "intermediate terms" that fall between conditions and warranties. The legal consequences of breaching these innominate terms will depend on the seriousness and consequences of the breach.

In summary, conditions are fundamental terms in a contract, and a breach of a condition allows the innocent party to terminate the contract and seek damages. Warranties, on the other hand, are subsidiary terms, and a breach of a warranty allows the innocent party to seek damages but does not give them the right to terminate the contract.

Bailment is a legal concept that refers to the temporary transfer of possession and control of personal property (goods, assets, or belongings) from one party, known as the "bailor," to another party, known as the "bailee." In a bailment, the bailor retains ownership of the property while the bailee takes physical possession of it for a specific purpose or period of time. Bailments can occur in various situations, and they are governed by legal principles that define the rights and responsibilities of the parties involved.

Key elements of a bailment include:

1. **Personal Property:** Bailment involves personal property, which can include physical items such as vehicles, jewelry, documents, and other tangible goods. Real property (land or buildings) is not subject to bailment.
2. **Delivery of Possession:** The bailor voluntarily transfers possession and control of the property to the bailee. This transfer can be for a specific purpose or duration.
3. **Purpose or Benefit:** Bailments typically have a specific purpose or benefit, such as safekeeping, repair, transportation, or storage of the property. The bailee is entrusted with the property to fulfill this purpose.
4. **No Transfer of Ownership:** Importantly, in a bailment, ownership of the property does not change. The bailor remains the legal owner of the property, and the bailee merely holds it temporarily.

5. **Return of Property:** At the end of the bailment, the bailee is expected to return the property to the bailor in the same condition it was received, subject to any terms and conditions agreed upon in the bailment agreement.

Types of bailments include:

1. **Gratuitous Bailment:** This is a bailment for the benefit of the bailor or the bailee without any exchange of consideration or payment. An example is when you lend a book to a friend.
2. **Bailment for Reward:** In this type of bailment, the bailee receives compensation, typically in the form of payment, for taking possession of and caring for the property. An example is a valet parking service.
3. **Bailment for Safekeeping:** The bailee holds the property to keep it safe and secure. Safety deposit boxes at banks are an example of this type of bailment.
4. **Bailment for Repair:** The property is entrusted to the bailee for the purpose of repair or maintenance

In a bailment arrangement, the bailor (the person who owns the property) entrusts their personal property to the bailee (the person who temporarily possesses the property) for a specific purpose or duration. Each party has distinct characteristics, rights, and duties in this relationship:

Characteristics:

1. **Ownership:** The bailor retains legal ownership of the property during the bailment. The bailee does not acquire ownership rights over the property.
2. **Transfer of Possession:** The bailor voluntarily transfers possession of the property to the bailee, who has a duty to exercise care and control over the property.
3. **Purpose:** Bailments have a specific purpose, which can include safekeeping, transportation, repair, or storage of the property. The purpose defines the nature and extent of the bailment.

Rights and Duties of the Bailor: Rights:

1. **Right to Property:** The bailor retains the right to reclaim the property upon the termination of the bailment.
2. **Right to Sue for Breach:** If the bailee breaches their duty or fails to return the property as agreed, the bailor has the right to sue the bailee for damages or the return of the property.

Duties:

1. **Duty to Disclose:** The bailor has a duty to disclose any defects or dangerous qualities of the property to the bailee if they are aware of them. This is important to ensure the bailee's safety and proper care of the property.
2. **Duty to Compensate:** The bailor may be required to compensate the bailee for any expenses incurred in connection with the bailment, especially if these expenses were not initially agreed upon.
3. **Duty Not to Interfere:** The bailor should not interfere with the bailee's possession and use of the property during the bailment. This includes refraining from attempting to reclaim the property prematurely.

Rights and Duties of the Bailee: Rights:

1. **Right to Possession:** The bailee has the right to possess and use the property for the agreed-upon purpose during the bailment.
2. **Lien:** The bailee may have a right to retain possession of the property until any agreed-upon charges or compensation are paid. This is known as a "lien."
3. **Right to Sue for Compensation:** If the bailor breaches the agreement or fails to compensate the bailee as agreed, the bailee has the right to sue the bailor for damages or compensation.

Duties:

1. **Duty of Care:** The bailee owes a duty of care to the property. The level of care required may vary depending on the nature of the bailment. For example, higher care is expected in a bailment for safekeeping than in a bailment for repair.
2. **Duty to Use Property as Agreed:** The bailee must use the property for the specific purpose agreed upon and not for any other unauthorized purpose.
3. **Duty to Return:** The bailee has a duty to return the property to the bailor once the purpose of the bailment is fulfilled or the agreed-upon period expires.
4. **Duty to Account:** The bailee may be required to provide an account of any changes or improvements made to the property, especially in bailments for repair or storage.

These are general characteristics, rights, and duties associated with bailor and bailee in a bailment relationship. The specific terms and conditions of a bailment can vary and should be outlined in a written agreement to avoid misunderstandings or disputes.

The performance of a contract of sale involves the fulfillment of the terms and obligations outlined in the contract by both the seller (vendor) and the buyer (purchaser). A successful performance results in the transfer of goods or property from the seller to the buyer in exchange for the agreed-upon price. Here are the key steps involved in the performance of a contract of sale:

1. **Offer and Acceptance:** The contract of sale begins with an offer from the seller and acceptance by the buyer. This is typically done through negotiations and communication of the terms and conditions of the sale.
2. **Terms of the Contract:** The contract of sale should clearly specify the terms of the sale, including the description of the goods, price, payment terms, delivery terms, and any other relevant details. The terms may also include warranties, conditions, or other obligations.
3. **Transfer of Property and Title:** The seller is obligated to transfer the property (ownership) and title of the goods to the buyer. The timing and manner of this transfer

should be in accordance with the contract terms. The passing of property and title is a crucial aspect of the performance.

4. **Delivery of Goods:** The seller must deliver the goods to the buyer as per the contract terms. This includes delivering the right quantity and quality of goods, ensuring they are in the agreed condition, and complying with any agreed-upon delivery schedule or location.
 5. **Payment:** The buyer is obligated to pay the agreed-upon price for the goods. Payment terms and methods should be outlined in the contract. Payment is usually due upon delivery or according to the agreed-upon schedule.
 6. **Inspection and Acceptance:** Upon receiving the goods, the buyer has the right to inspect them to ensure they conform to the contract's specifications. If the goods are found to be in conformity with the contract, the buyer accepts them.
 7. **Passing of Risk:** The risk associated with the goods typically passes from the seller to the buyer at a specific point in the transaction, as determined by the contract terms. This point is usually tied to the physical transfer of the goods.
 8. **Documentary Requirements:** Depending on the nature of the goods and the transaction, various documents may need to be exchanged, such as invoices, bills of lading, certificates of title, and any other documents relevant to the sale.
 9. **Remedies for Breach:** In cases where either party fails to perform its obligations under the contract, the non-breaching party has remedies available. Common remedies include seeking damages for losses incurred or specific performance to enforce the contract.
 10. **Closing the Transaction:** Once all obligations under the contract have been met, the contract is considered closed. The buyer has the full title to the goods, and the seller has received the agreed-upon payment.
-

INTRODUCTION TO NEGOTIABLE INSTRUMENTS

Definition of Negotiable instrument (Sec.13)

Negotiable instrument means

a promissory note; or

bill of exchange; or

cheque

Payable either to order; or to the bearer.

Meaning of Negotiable instrument

- 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 any prior party.

- In other words negotiable instrument means an instrument

- Notwithstanding any defect in the title of any prior party.

ESSENTIALS OR CHARACTERISTICS OF A NEGOTIABLE INSTRUMENT

(Sec.13)

- Freely transferable from one person to another
- Transferable infinitum (i.e. indefinitely).
- HDC gets a good title to negotiable instrument even though the title of transferor is defective.
- A negotiable instrument may more than one payee jointly or alternatively.

. PRESUMPTIONS AS TO NEGOTIABLE INSTRUMENTS (Sec.118)

Unless the contrary is proved, the following presumptions shall be made –

A.As to consideration

That every negotiable instrument was made or drawn for consideration and that every such instrument when it has been accepted, endorsed or negotiated has been for consideration.

B.As to date

That every negotiable instrument bearing a date was made or drawn on such date.

C.As to time of acceptance

That every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity.

D.As to time of transfer

That every transfer of a negotiable instrument was made before its maturity.

E.As to order of endorsements

That the endorsements appearing upon a negotiable instrument were made in the order in which they appear thereon.

F.As to stamp

That a lost promissory note or bill of exchange was duly stamped.

G.That holder is a holder;

That the holder of a negotiable instrument is a holder in due course.

H.As to dishonour

If a suit is filed upon an instrument which has been dishonored, the court shall, on proof of the protest, presume the fact of dishonour.

The above presumptions are rebuttable (debatable) by producing evidence to the contrary. It is the responsibility of the person alleging the non existence of presumptions to prove the same.

The above presumptions are not applicable where an instrument has been obtained by an offence, fraud or for unlawful consideration.

. MEANING OF PROMISSORY NOTE (Sec.4)

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 –

(a) a certain person; or

(b) the order of a certain person.

Rs.....	Place.....
	Date.....
.....month/days after date. I promise to payor Bearer/Order the sum of Rs.....for value received with interest @.....p.a. withrests	
..... (Maker)	

ESSENTIALS CHARACTERISTICS OF A PROMISSORY NOTE (Sec.4)

A.In writing

An oral promise to pay is not sufficient

Example

A promises to pay Rs.1,000 to 'B', over telephone.

B.Express promise to pay

There must be express promise to pay.

Mere acknowledgement of indebtedness is not sufficient.

"I acknowledge myself to be indebted to B in Rs.5,000, to be paid on demand, for value received". The promise to pay is definite and therefore this is a valid promissory note.

"Mr. B.I.O.U Rs.1,000." There is no promise to pay and therefore this is not a valid promissory note.

C.Definite and unconditional promise

If a promise to pay is dependent upon an event which is certain to happen, although the time of its happening is uncertain, the promise to pay is unconditional.

"I promise to pay B Rs.500 seven days after my marriage with C." The promise is conditional since the promise is dependent upon marriage of the promisor with C, which may or not happen.

"I promise to pay B Rs.500 on D's death, provided D leaves me enough to pay that sum." The promise is conditional since the promise is dependent upon the estate inherited by the promisor.

"I promise to pay B Rs.500 on D's death." The promise is not conditional, but definite since death of D is certain. Therefore, the promissory note is valid.

D.Signed by maker

A promissory note must be signed by the maker.

The signatures may be made on any part of the instrument.

E.Promise to pay a certain sum

"I promise to pay B Rs.500 and all other sums which shall be due to him." Since the amount payable is not certain, it is not a valid promissory note.

"I promise to pay B Rs.500 first deducting there from any money which he owes me." Since the amount payable is not certain, it is not a valid promissory note.

F.Promise to pay money only

"I promise to pay B Rs.500 and to deliver to him my black horse on 1st January next." It is not a valid promissory note since the promisor is required to deliver his black horse also, which is not 'money'.

G. Payee must be certain

The name of payee must be specified in the promissory note, otherwise it will be invalid.

H. Stamped

A promissory note must be stamped.

Parties to a promissory note

Maker : The person who makes the promissory note is called as maker. His liability is primary and unconditional.

Payee : The person to whom money is to be paid is named in the promissory note. He is called as payee.

The words “ or to the bearer of the instrument” is inoperative in view of section 31 of the Reserve Bank of India Act, 1934, which provides that no person in India other than Reserve Bank of India or Central Government can make or issue promissory note payable to bearer of the instrument.

BILL OF EXCHANGE (Sec. 5)

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 –

(a) a certain person ; or

(b) the order of a certain person; or

(c) the bearer of the instrument

Amount: Rs.	Place.....
	Date.....
<p>.....month/days after date, pay toor Bearer/Order the sum of Rupees.....only for value received.</p>	
<p>..... (Drawer)</p>	<p>To (Drawee)</p>

Essentials characteristics of a bill of exchange

- (a) It must be in writing
- (b) It must contain an express order to pay
- (c) The order to pay must be definite and unconditional
- (d) It must be signed by the drawer
- (e) The sum contained in the order must be certain
- (f) The order must be to pay money only
- (g) Drawer, drawee and payee must be certain (usually, same person is the drawer and payee)
- (h) It must be stamped.

□ Parties to a bill of exchange

Drawer

The person who draws the bill (i.e.the person who makes the bill) is called as drawer.
His liability is secondary and conditional
His liability is primary and conditional until the bill is accepted.

Drawee

- The person on whom the bill is drawn is called as drawee.
- On acceptance of the bill
 - (a) he is called as acceptor;
 - (b) he becomes liable for the payment of the bill;
 - (c) his liability is primary and unconditional.

Payee.

The person to whom money is to be paid is named in the bill.
He is called as payee.

The words “or the bearer of the instrument” is inoperative in view of section 31 of the Reserve Bank of India Act, 1934, which provides that no person in India other than Reserve Bank of India or Central Government can make or issue promissory note payable to bearer of the instrument.

CHEQUE (Sec.6)

A cheque is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand (i.e. it is always payable on demand) and it includes –

- the electronic image of truncated cheque; and
- a cheque in electronic form.

□ Essentials characteristics of a cheque

- (a)** It must be in writing
- (b)** It must contain an express order to pay
- (c)** The order to pay must be definite and unconditional
- (d)** It must be signed by the drawer
- (e)** The sum contained in the order must be certain
- (f)** The order must be to pay money only
- (g)** Drawer, drawee and payee must be certain
- (h)** It is always drawn upon a specified banker
- (i)** It is always payable on demand
 - A cheque must contain all the characteristics of a bill of exchange
 - A cheque does not require
 - (a)** stamping ; or
 - (b)** acceptance.

□ Parties to a cheque

Drawer

The person who draws the cheque, i.e., the person who makes the cheque is called as drawer. His liability is primary and conditional

Drawee

The bank on whom the cheque is drawn is called as drawee. He makes the payment of the cheque.

Payee

The person to whom money is to be paid (i.e., the person in whose favour cheque is issued) is named in the cheque. He is called as payee.

The payee may be the drawer himself or a third party.

Meaning of electronic cheque and truncated cheque

□ Meaning of truncated cheque

A truncated cheque means a cheque

Which is truncated during the course of a clearing cycle

Either by the clearing house or bank whether paying or receiving payment.

Immediately on generation of an electronic image.

For transmission substituting the further physical movement of cheque in writing

□ Meaning of ‘a cheque in electronic form’

A cheque in electronic form means a cheque

Which contains the exact mirror image of a paper cheque

- and is generated, written and signed in a secure system ensuring the minimum safety standards with the use of digital signature (with or without biometric signature) and asymmetric crypto system.

□ **Duties of collecting banker**

The collecting banker shall verify with due diligence and ordinary care –
The prima facie genuineness of the cheque to be truncated;
As to whether any fraud, forgery or tampering is apparent on the face of the instrument.

□ **Presentment of truncated cheque**

In case of any reasonable suspicion about the genuineness of the electronic image of a truncated cheque (e.g. suspicion as to fraud, forgery, tampering or destruction of the instrument), the paying banker is entitled to –
Demand any further information regarding the truncated cheque;
Demand the presentment of truncated cheque itself for verification.

MEANING OF ENDORSEMENT (Sec. 15)

Endorsement means

Signing

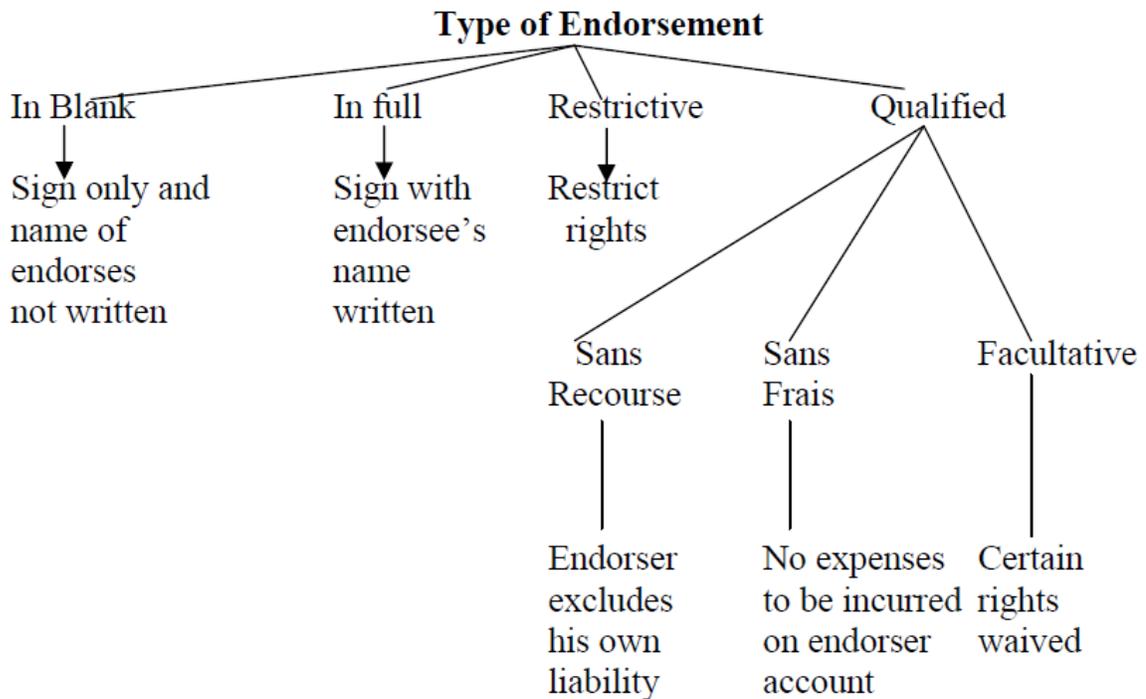
on the face or back of negotiable instrument; or
on a slip of paper annexed to the negotiable instrument

By

the holder of negotiable instrument

For the purpose of

negotiating such negotiable instrument



ESSENTIAL REQUEREMENTS OF A VALID ENDORSEMENT (Sec.15 and 16)

Writing

The endorsement must be in writing

Signed

The endorsement shall not be valid unless it is signed.

By holder

The endorsement shall be valid only if the negotiable instrument is signed by the holder.

15. KINDS OF ENDORSEMENTS (Sec.16, 50, 52, 56)

□ General endorsement i.e. endorsement in blank

Meaning

General endorsement means, an endorsement made by the endorser without writing the name of the endorsee.

Effect

Order instrument is converted into bearer instrument.

□ Special endorsement i.e., endorsement in full

Special endorsement means an endorsement made by a holder by –

- (a) signing his name, and
- (b) adding a direction to pay the amount to a specified person

Restrictive endorsement

An endorsement which restricts the right of further negotiation is called as restrictive endorsement.

Partial endorsement

An endorsement which purports to transfer only a part of the amount of the instrument is called as partial endorsement. Partial endorsement is not valid at law.

□ Conditional endorsement

- (a) **Sans Recourse** – Endorser relieves himself from the liability to all subsequent endorseees.
- (b) **Facultative** – Endorser waives any of his rights.
- (c) **Contingent** - Endorser makes his liability dependent upon the happening of an event.

Meaning of crossing

Crossing means a direction given by the drawer of the cheque to the drawee bank, not to pay the cheque at the counter of the bank, but to pay it to a person who presents it through a banker.

Purpose of crossing

Crossing makes it possible to trace the person to whom the payment has been made. Thus, it makes the cheque safe.

19. TYPES OF CROSSING (Sec. 123 to 131A)

□ General Crossing ; Sec.123

Where a cheque bears across its face an addition of –

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 crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker.

Special Crossing : Sec.124.

Where a cheque bears across its face an addition of the name of a banker, either with or without the words 'not negotiable', that addition shall be deemed a crossing and the cheque shall be deemed to be crossed specially.

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

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 remarks legally negotiable but "A/c payee" crossing hinders the negotiability of the cheque in practice

DISCHARGE OF A PARTY (Sec.82 to 90) Discharge by	Causal Factor	Discharge of
Cancellation	Holder deliberately cancels the name of Acceptor / Indorser (by striking off the name) with an intent to discharge him from liability.	Maker, Acceptor or Indorser of N/I is discharged from liability to such Holder and to all parties claiming under such Holder.
Release	Holder discharges the	Maker, Acceptor or Indorser
Payment	Party primarily liable on the N/I makes payment in due course to the Holder at or after maturity.	All the parties to the instrument stand discharged, as the instrument is also discharged by such payment.
Allowing Drawee more than 48 hours to accept	Holder of a B/E allows the Drawee more than 48 hours, exclusive of public holidays, to consider whether he will accept the same .	All previous parties not consenting to such allowance are thereby discharged from liability to such holder.

Cheque not duly presented	Cheque is not presented for payment within a reasonable time, and Drawer suffers actual damage as a result of the delay by the bankers.	Drawer is discharged as against the Holder to the extent of the actual damage suffered by him.
Payment of Cheque payable to order	Cheque payable to order purpose to be endorsed by or on behalf of the payee is paid in due course.	The Drawee i.e. the Paying Banker is discharged from liability.
Cheque originally expressed payable to Bearer	Bank makes a payment in due course to a Bearer.	The Drawee, i.e. the paying Banker is discharged from liability notwithstanding any indorsement (full or blank or restrictive) thereon.
Payment of Drafts	A Draft drawn by one Bank upon another office of the same Bank for a sum of money payable to order on demand is paid in due course.	The Bank is discharged from liability.
Taking Qualified or Limited Acceptance	Holder of B/E agrees to acceptance – Which is qualified, or Limited to part of money due, or Which substitutes a different time or place for payment or Not signed by all Drawees who are not partners.	All prior parties whose consent is not obtained to such an acceptance are discharged from liability to the Holder and those claiming under such Holder.
Material alteration	Any material alteration without the consent of any party thereto.	N/I is void as against anyone who is a party at the time of making such alteration.

UNIT 4

Companies Act 2013

The Companies Act 2013 regulates the formation and functioning of corporations or companies in India. The first Companies Act after independence was passed in 1956, which governed business entities in the country. The 1956 Act was based on the recommendations of the Bhabha Committee. This Act was amended multiple times, and in 2013, major changes were introduced. By Section 135 of the 2013 Act, India became the first country to make corporate social responsibility (CSR) spending mandatory by law.

Currently, the Ministry of Corporate Affairs is administering the following Central government Acts:

1. Companies Act 2013
2. Companies Act 1956 (some provisions of this Act still apply)
3. Competition Act 2002
4. Insolvency & Bankruptcy Code, 2016
5. Chartered Accountant Act 1949

The Companies Act 2013 has replaced the 1956 Act.

Comparison of Companies Act 2013 and Companies Act 1956

Detail	Companies Act 1956	Companies Act 2013
Parts	13	NA
Chapters	26	29
Sections	658	470
Schedules	15	7

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Companies Act 2013 Highlights

The major highlights of the 2013 Act are given below:

- The maximum number of shareholders for a private company is 200 (the previous cap was at 50).
- The concept of a one-person company.
- Company Law Appellate Tribunal & Company Law Tribunal
- CSR made mandatory

Salient Features of the Companies Act 2013

- It has introduced the concept of 'Dormant Companies'. Dormant companies are those that have not engaged in business for two years consecutively.
- It introduced the National Company Law Tribunal. It is a quasi-judicial body in India adjudicating issues concerning companies. It replaced the Company Law Board.
- It provides for self-regulation concerning disclosures and transparency rather than having a government-approval based regime.
- Documents have to be maintained in electronic form.
- Official liquidators have adjudicatory powers for companies having net assets of up to Rs.1 crore.
- The procedure for mergers and amalgamations have been made faster and simpler.
- Cross-border mergers are allowed by this Act (foreign company merging with an Indian company and reverse) but with the permission of the Reserve Bank of India.
- The concept of a one-person company has been introduced. This is a new type of private company which may have only one director and one shareholder. The 1956 Act required at least two directors and two shareholders for a private company.

- Having independent directors has been made a statutory requirement for public companies.
- For a prescribed class of companies, women directors are mandatory.
- All companies should have at least one director who has been a resident of India for not less than 182 days in the last calendar year.
- The Act provides for entrenchment (apply extra-legal safeguards) of the articles of association.
- The Act mandates at least 7 days of notice for calling board meetings.
- In this Act, the duties of a Director has been defined. It has also defined the duties of 'Key Managerial Personnel' and 'Promoter'.
- For public companies, there should be a rotation of audit firms and auditors. The Act also prevents auditors from performing non-audit services to the company. In case of non-compliance, there is substantial criminal and civil liability for an auditor.
- The whole process of rehabilitation and liquidation of the companies in the case of the financial crisis has been made time-bound.
- The Act makes it mandatory for companies to form CSR committees, and formulate CSR policies. For certain companies, mandatory disclosures have been made with regard to CSR.
- Listed companies ought to have one director to represent small shareholders as well.
- There is provision for search and seizure of documents, during the investigation, without an order from a magistrate.
- Norms have been made stringent for accepting deposits from the public.
- Setting up of the National Financial Reporting Authority (NFRA) has been provided for. It engages in the establishment and enforcement of accounting and auditing standards and oversight of the work of auditors. (Due to notification of NFRA, India is now eligible for membership of the International Forum of Independent Audit Regulators (IFIAR).)
- The Act bans key managerial personnel and directors from purchasing call and put options of shares of the company if such person is reasonably expected to have access to price-sensitive information.

- The Act offers more power to shareholders in that it provides for shareholders' approval for many major transactions.

UNIT 5

GST is a multi-stage tax system which is comprehensive in nature and applied on the sale of goods and services. The main aim of this taxation system is to curb the cascading effect of other Indirect taxes and it is applicable throughout India. GST is referred as Goods and Services Tax. It is an indirect tax that was implemented to replace a variety of previous indirect taxes, including the value-added tax, service tax, purchase tax, excise duty, and others. GST is a tax that India imposes on the supply of specific products and services. There is only one tax that is imposed in India.

GST Works in India

- **Manufacturer:** The manufacturer will have to pay GST on the raw material that is purchased and the value that has been added to make the product.
- **Service Provider:** In this case, the service provider will be responsible for paying GST on both the product's purchase price and the value added to it. However, the manufacturer's tax payment may be deducted from the total GST that must be paid.
- **Retailer:** It must be paid by the retailer on both the product they bought from the distributor and the margin they added. However, the retailer's tax payment may be deducted from the total amount of GST that must be paid.
- **Consumer:** GST must be paid on the product that has been purchased.

Types of GST in India

The four different types of GST are given below:

1. **Central Goods and Services Tax :** CGST is charged on the intra state supply of products and services.
2. **State Goods and Services Tax :** SGST, like CGST, is charged on the sale of products or services within a state.

3. **Integrated Goods and Services Tax** : IGST is charged on inter-state transactions of products and services.
4. **Union Territory Goods and Services Tax** : UTGST is levied on the supply of products and services in any of the Union Territories in the country, viz. Andaman and Nicobar Islands, Daman and Diu, Dadra and Nagar Haveli, Lakshadweep, and Chandigarh. UTGST is levied along with CGST.

Tax Laws Before the Implementation of GST

- The Centre and the State used to collect tax separately. Depending on the state, the tax regimes were different.
- Even though import tax was levied on one individual, the burden was levied on another individual. In the cases of direct tax, the taxpayer must pay the tax.
- Prior to the introduction of GST, direct and indirect taxes were present in India.

Who Should Register for GST?

The below mentioned entities and individuals must register for Goods And Services Tax:

- E-commerce aggregators
- Individuals who supply through e-commerce aggregators
- Individuals who pay tax as per the reverse charge mechanism
- Agents of input service distributors and suppliers
- Non-Resident individuals who pay tax
- Businesses that have a turnover that is more than the threshold limit
- Individuals who have registered before the GST law was introduced

Registration of GST

Any company that is eligible under GST must register itself in the GST portal created by the Government of India. The registered entities will get a unique registration number called GSTIN.

It is mandatory for all Service providers, buyers, and sellers to register. A business that makes a total income of Rs.20 lakhs and more in a financial year must be required to do GST registration. It takes 2-6 working days to process.

Significance of GST

1. Easy compliance:

A robust and comprehensive IT system would be the foundation of the GST regime in India. Therefore, all taxpayer services such as registrations, returns, payments, etc. would be available to the taxpayers online, which would make compliance easy and transparent.

2. Uniformity of tax rates and structures:

GST will ensure that indirect tax rates and structures are common across the country, thereby increasing certainty and ease of doing business. In other words, GST would make doing business in the country tax neutral, irrespective of the choice of place of doing business.

3. Removal of cascading:

A system of seamless tax credits throughout the value-chain, and across boundaries of States, would ensure that there is minimal cascading of taxes. This would reduce the hidden costs of doing business.

4. Improved competitiveness:

Reduction in transaction costs of doing business would eventually lead to improved competitiveness for the trade and industry. World Bank believes that the implementation of the Goods and Service Tax (GST), combined with the dismantling of inter-state check-posts, is the most crucial reform that could improve the competitiveness of India's manufacturing sector.

5. Gain to manufacturers and exporters:

The subsuming of major Central and State taxes in GST, complete and comprehensive set-off of input goods and services and phasing out of Central Sales Tax (CST) would reduce the cost of locally manufactured goods and services. This will increase the competitiveness of Indian goods and services in the international market and give a boost to Indian exports. The uniformity in tax rates and procedures across the country will also go a long way in reducing compliance costs.

6. Simple and easy to administer:

Multiple indirect taxes at the Central and State levels are being replaced by GST. Backed with a robust end-to-end IT system, GST would be simpler and easier to administer than all other indirect taxes of the Centre and State levied so far.

7. Better controls on leakage:

GST will result in better tax compliance due to a robust IT infrastructure. Due to the seamless transfer of input tax credit from one stage to another in the chain of value addition, there is an in-built mechanism in the design of GST that would incentivize tax compliance by traders.

8. Higher revenue efficiency:

GST is expected to decrease the cost of collection of tax revenues of the Government, and will, therefore, lead to higher revenue efficiency.

9. Single and transparent tax proportionate to the value of goods and services:

Due to multiple indirect taxes being levied by the Centre and State, with incomplete or no input tax credits available at progressive stages of value addition, the cost of most goods and services in the country today is laden with many hidden taxes. Under GST, there would be only one tax from the manufacturer to the consumer, leading to transparency of taxes paid to the final consumer.

10. Relief in the overall tax burden:

Credits of input taxes paid at each stage will be available in the subsequent stage of value addition, which makes GST essentially a tax only on value addition at each stage. Because of efficiency gains and the prevention of leakages, the overall tax burden on most commodities will come down, which will benefit consumers. The final consumer will thus bear only the GST charged by the last dealer in the supply chain, with set-off benefits at all the previous stages.

GST Rates

The GST Council determines the GST rate slabs. The GST Council reviews the rate slabs for goods and services on a regular basis. GST rates are typically high for luxury items and low for necessities. GST rates in India for various goods and services are divided into four slabs: 5% GST, 12% GST, 18% GST, and 28% GST.

Since the inception of the Goods and Services Tax, the GST council has revised the GST rates for various products several times (GST). The most recent rate revision went into effect at the 41st GST Council Meeting on August 27, 2020. Previously, there had been numerous GST Council Meetings at which certain rate revisions were introduced.

On February 1, 2022, Finance Minister Nirmala Sitharaman announced the Union Budget 2022. According to the most recent budget, no proposal has been made to change the country's GST rates.

The GST Rates in 2022

The following are some of the changes that were made-

Category	Old GST Rates	New GST Rates
Railways Goods and Parts under Chapter 86	12%	18%
Pens	12%	18%

Metal Concentrates and Ores	5%	18%
Certain Renewable Energy Devices	5%	12%
Recorded media reproduction and print	12%	18%
Broadcasting, sound recordings, and licensing	12%	18%
Printed material	12%	18%
Packing containers and boxes	12%	18%
Scrap and polyurethanes	5%	18%

Decrease in the GST Rates

Category	Old GST Rates	New GST Rate
If vehicles are equipped with retrofitting kits for disabled people,	Applicability	5%
Keytruda for cancer	12%	5%
IGST is levied on goods sold at the Indo-Bangladesh border	Applicability	NIL

Kinds of GST Rates and Structures in India

The primary GST slabs for regular taxpayers are currently 0% (nil-rated), 5%, 12%, 18%, and 28%. There are a few GST rates that are less commonly used, such as 3% and 0.25%.

Furthermore, the taxable composition persons are required to pay General Service Tax at lower or nominal rates such as 1.5%, 5%, or 6% on their turnover. TDS and TCS are also concepts under GST, with rates of 2% and 1%, respectively.

These are the total IGST rates for interstate supplies or the sum of CGST and SGST for intrastate supplies. To calculate the GST amounts on a tax invoice, multiply the GST rates by the assessable value of the supply.

Furthermore, in addition to the above GST rates, the GST law imposes a cess on the sale of certain items such as cigarettes, tobacco, aerated water, gasoline, and motor vehicles, with rates ranging from 1% to 204%.

Products	Tax Rates
Milk	0%
Eggs	0%
Curd	0%
Lassi	0%
Kajal	0%
Educations Services	0%
Health Services	0%

Children's Drawing & Coloring Books	0%
Unpacked Foodgrains	0%
Unpacked Paneer	0%
Gur	0%
Unbranded Natural Honey	0%
Fresh Vegetables	0%
Salt	0%
Unbranded Atta	0%
Unbranded Maida	0%
Besan	0%
Prasad	0%
Palmyra Jaggery	0%
Phool Bhari Jhadoo	0%

Products	Tax Rates
Sugar	5%

Tea	5%
Packed Paneer	5%
Coal	5%
Edible Oils	5%
Raisin	5%
Domestic LPG	5%
Roasted Coffee Beans	5%
PDS Kerosene	5%
Skimmed Milk Powder	5%
Cashew Nuts	5%
Footwear (< Rs.500)	5%
Milk Food for Babies	5%
Apparels (< Rs.1000)	5%
Fabric	5%

Coir Mats, Matting & Floor Covering	5%
Spices	5%
Agarbatti	5%
Coal	5%
Mishti/Mithai (Indian Sweets)	5%
Life-saving drugs	5%
Coffee (except instant)	5%

Products	Tax Rates
Butter	12%
Ghee	12%
Computers	12%
Processed food	12%
Almonds	12%

Mobiles	12%
Fruit Juice	12%
Preparations of Vegetables, Nuts Fruits, or other parts	12%
Packed Coconut Water	12%
Umbrella	12%

Products	Tax Rates
Hair Oil	18%
Capital goods	18%
Toothpaste	18%
Industrial Intermediaries	18%
Soap	18%
Ice-cream	18%
Pasta	18%

Toiletries	18%
Corn Flakes	18%
Soups	18%
Computers	18%
Printers	18%

Products	Tax Rates
Small cars (+1% or 3% cess)	28%
High-end motorcycles (+15% cess)	28%
Consumer durables such as AC and fridge	28%
Beedis are NOT included here	28%
Luxury & sin items like BMWs, cigarettes	28%
and aerated drinks (+15% cess)	28%

UNIT 5

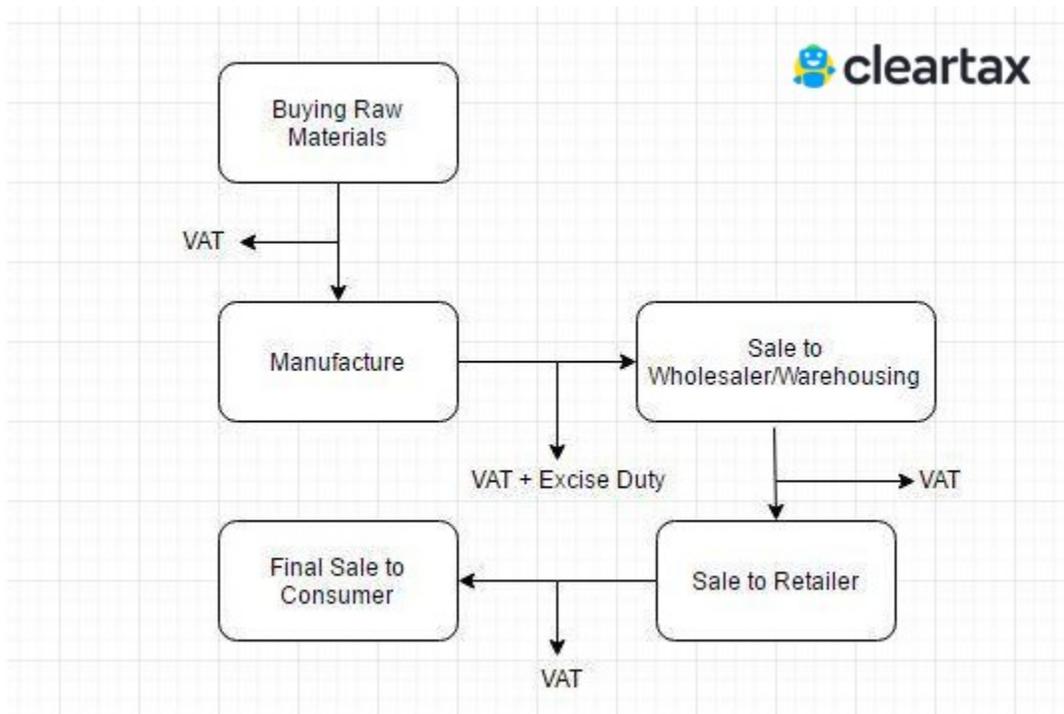
GST in India and Basic Concepts

GST is known as the Goods and Services Tax. It is an indirect tax which has replaced many indirect taxes in India such as the excise duty, VAT, services tax, etc. The Goods and

Service Tax Act was passed in the Parliament on 29th March 2017 and came into effect on 1st July 2017. In simple words, Goods and Service Tax (GST) is an indirect tax levied on the supply of goods and services. This law has replaced many indirect tax laws that previously existed in India.

In other words, Goods and Service Tax (GST) is levied on the supply of goods and services. Goods and Services Tax Law in India is a comprehensive, multi-stage, destination-based tax that is levied on every value addition. GST is a single domestic indirect tax law for the entire country.

Before the Goods and Services Tax could be introduced, the structure of indirect tax levy in India was as follows:



Multi-stage

An item goes through multiple change-of-hands along its supply chain: Starting from manufacture until the final sale to the consumer.

Let us consider the following stages:

- Purchase of raw materials
- Production or manufacture
- Warehousing of finished goods
- Selling to wholesalers
- Sale of the product to the retailers
- Selling to the end consumers



Objectives of GST

- To achieve the ideology of ‘One Nation, One Tax

GST has replaced multiple indirect taxes, which were existing under the previous tax regime. The advantage of having one single tax means every state follows the same

rate for a particular product or service. Tax administration is easier with the Central Government deciding the rates and policies.

- To subsume a majority of the indirect taxes in India

India had several erstwhile indirect taxes such as service tax, Value Added Tax (VAT), Central Excise, etc., which used to be levied at multiple supply chain stages. Some taxes were governed by the states and some by the Centre. There was no unified and centralised tax on both goods and services.

- To eliminate the cascading effect of taxes

One of the primary objectives of GST was to remove the cascading effect of taxes. Previously, due to different indirect tax laws, taxpayers could not set off the tax credits of one tax against the other.

- To increase the taxpayer base

GST has helped in widening the tax base in India. Previously, each of the tax laws had a different threshold limit for registration based on turnover. As GST is a consolidated tax levied on both goods and services both, it has increased tax-registered businesses.

- Online procedures for ease of doing business

Previously, taxpayers faced a lot of hardships dealing with different tax authorities under each tax law. Besides, while return filing was online, most of the assessment and refund procedures took place offline. Now, GST procedures are carried out almost entirely online. Everything is done with a click of a button, from registration to return filing to refunds to e-way bill generation

- An improved logistics and distribution system

A single indirect tax system reduces the need for multiple documentation for the supply of goods. GST minimises transportation cycle times, improves supply chain and turnaround time, and leads to warehouse consolidation, among other benefits

- To promote competitive pricing and increase consumption

Introducing GST has also led to an increase in consumption and indirect tax revenues. Due to the cascading effect of taxes under the previous regime, the prices of goods in India were higher than in global markets. Even between states, the lower VAT rates in certain states led to an imbalance of purchases in these states.

Types of GST

The four different types of GST are given below:

1. Central Goods and Services Tax : CGST is charged on the intra state supply of products and services.
2. State Goods and Services Tax : SGST, like CGST, is charged on the sale of products or services within a state.
3. Integrated Goods and Services Tax : IGST is charged on inter-state transactions of products and services.
4. Union Territory Goods and Services Tax : UTGST is levied on the supply of products and services in any of the Union Territories in the country, viz. Andaman and Nicobar Islands, Daman and Diu, Dadra and Nagar Haveli, Lakshadweep, and Chandigarh. UTGST is levied along with CGST.

Who is Eligible for GST?

The below mentioned entities and individuals must register for Goods And Services Tax:

- E-commerce aggregators
- Individuals who supply through e-commerce aggregators
- Individuals who pay tax as per the reverse charge mechanism
- Agents of input service distributors and suppliers
- Non-Resident individuals who pay tax
- Businesses that have a turnover that is more than the threshold limit
- Individuals who have registered before the GST law was introduced

Tax Laws before GST

In the earlier indirect tax regime, there were many indirect taxes levied by both the state and the centre. States mainly collected taxes in the form of Value Added Tax (VAT). Every state had a different set of rules and regulations.

Inter-state sale of goods was taxed by the centre. CST (Central State Tax) was applicable in case of inter-state sale of goods. The indirect taxes such as the entertainment tax, octroi and local tax were levied together by state and centre. These led to a lot of overlapping of taxes levied by both the state and the centre.

For example, when goods were manufactured and sold, excise duty was charged by the centre. Over and above the excise duty, VAT was also charged by the state. It led to a tax on tax effect, also known as the cascading effect of taxes.

The following is the list of indirect taxes in the pre-GST regime:

- Central Excise Duty
- Special Additional Duty of Customs
- State VAT
- Central Sales Tax
- Purchase Tax
- Luxury Tax
- Entertainment Tax
- Entry Tax
- Taxes on advertisements
- Taxes on lotteries, betting, and gambling

Registration of GST

Any company that is eligible under GST must register itself in the GST portal created by the Government of India. The registered entities will get a unique registration number called GSTIN.

It is mandatory for all Service providers, buyers, and sellers to register. A business that makes a total income of Rs.20 lakhs and more in a financial year must be required to do GST registration. It takes 2-6 working days to process.

Know the GSTIN – GST Identification Number

A 15-digit distinctive code that is provided to every taxpayer is the GSTIN. The GSTIN will be provided based on the state you live at and the PAN. Some of the main uses of GSTIN are mentioned below:

- Loans can be availed with the help of the number.
- Refunds can be claimed with the GSTIN.
- The verification process is easy with the help of the GSTIN.
- Corrections can be made.

GST Rates in 2022: List of Goods & Services Tax Rates, Slabs, and Revision

Latest GST Tax Slab Rates for Goods

1. Goods and services tax (GST) on foods and drinks

Numerous items in this bracket have lower GST rates. Those who had 12 per cent GST have 5 per cent GST, those who had 18 per cent GST previously have 12 per cent GST, and those who had 28 per cent have 18 per cent GST.

2. GST on routine household items

The new GST rates are lower for a number of products in the category of household items. Those who previously paid 18 per cent GST now pay 12 per cent or 5 per cent GST. Those that had a GST rate of 28% have GST rates of 5%, 18%, and even 0%.

3. GST on educational products

GST rates for several items in this category have been lowered from 28 per cent to 12 per cent.

4. Medical and health-related items are subject to GST

GST is whittled down from 12% to 5% for goods in the health and medical bracket, and to 0% for individual components.

5. GST on agricultural products

Agrarian items with a previous GST of 12% now have a GST of 5%. Items in the classification with a previous GST rate of 18% now have a diminished GST rate of 12 per cent.

6. Goods and services tax (GST) on infrastructure, fuel, and environmental items

Objects in this classification that previously had a GST of 28% now have a GST of 18%. Items that earlier had an 18% GST rate now have a 12% GST rate.

7. Goods and services tax (GST) on safety and security items

There have been no significant changes declared from the previously applicable rate of 18%.

8. GST on a variety of items

Numerous items with 28 per cent GST now have 18 per cent GST, 18 per cent GST now has 12 per cent, and 5 per cent GST now has 0 per cent GST.

Services with 0% GST rates

Comprise of a long list of service items that include:

- Independent bodies, government organisations, academic facilities, faith communities, and healthcare institutions.
- Services rendered for humanitarian causes, arts or heritage, and charitable athletics donations are defined in section 12 AA of the IT Act.
- Folk culture showings, theatrical performances, circus, dance, and drama shows with a ticket price of no more than Rs. 250 per person.
- Services of a socially beneficial nature, provided to a foreign official, UN organisations, and the Indian consulate.

Services with 5% GST rates

Include the following services:

- Scheduled airline aircraft subletting for routine procedures.
- Selling advertising space in print advertising.
- Services provided by tour companies.
- Printing of books and newspapers.
- Organic textile yarn production, natural fibre production, and animal skin preparation.
- Polishing of precious metals and stones.

Services with 12% GST rates

Include the following services:

- Food and beverages are available in restaurants with air conditioning and central heating but no alcohol license.
- Lodging services trying to charge more than Rs. 1000 per day but less than Rs. 2500 per day.

Services with 18% GST rates

- Foreman assistance for chit fund.
- Air transport of passengers in non-economy class.
- Intellectual property rights of services except for IT software.
- Buildings built for the purpose of resale.
- Food and beverages are available at diners with an alcohol license, as well as air conditioning, central heating, and outdoor catering.
- Charges for lodgings that are more than Rs 2500 per day and less than Rs 7500 per day.
- Food and beverage supply and lodging services are packaged services.
- Services identified in article 2, clause 119 of the GST Act include circuses, Indian classical dance, folk dance, theatrical performances, and cinemas with tickets costing less than Rs. 100.

Services with 28% GST rates

Lodging services that charge Rs. 7500 per day or more, amusement services, sports, racetrack, casino, ballet, and films are all included.

Changes made in the 45th GST council meeting

Item	Old tax rate	New tax rate
Import of life-saving drugs like Viltepso or as advised by an appropriate government department	12%	Nil
IGST on goods sold at Indo-Bangladesh border	Applicable rate	0%
Air and water transportation of goods abroad extended up to 30 September 2022	0%	0%
Paid national permit grants to goods carriages	18%	0%
Skill enhancement courses (for when the state/central government funds 75% or more of the expenditure)	18%	0%
Services on the 2022 AFC Women’s Asia Cup	18%	0%
‘Keytruda’ cancer treatment drug		

	12%	5%
Biodiesel, sold for the purpose of blending with diesel	12%	5%
Rice grains for the Integrated Child Development Services (ICDS) Scheme, etc.	18%	5%
Retro fitment kits in carriages for the disabled	Applicable rate	5%

The taxes on the following goods and services were decreased:

Taxes on the following goods and services were increased:

Item	Old tax rate	New tax rate
Polyurethanes and other plastics wastes	5%	18%
Cartons, bags, boxes, paper packing containers, etc	12-18%	18%
Paper products like cards, printed catalogs, etc specified under Chapter 49	12%	18%
Entertainment sector-related services like licensing, broadcasting, and showing original films, television programs, radio, sound recordings, etc.	12%	18%

Printing and reproducing recorded media	12%	18%
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GST rate corrections for inverted tax structure:

Item	Old tax rate	New tax rate
Certain renewable energy tools and parts	5%	12%
Ores and metal concentrates	5%	18%
Pens (all types)	12-18%	18%
Railway parts, locomotives, and goods in Chapter 86	12%	18%

All of these changes came into effect from 1 October 2021 onwards.

Latest GST rates on key goods

- Food and beverages: All the goods have fallen down by one slab. For instance, foods that were taxed at 28% earlier will now be taxed at 18%.
- Daily-use household goods: Most goods have fallen down by one tax slab. For instance, goods that were taxed at 5% earlier are now not taxable at all.
- Educational items: Tax has been reduced from 28% to 12%.
- Agricultural Items: Goods taxed at 18% are being taxed at 12%, and goods that were being taxed at 12% are being taxed at 5%.