

Unit-1

Law of Contract-1872

What is Law?

- Law Means Set of rules.
- These rules are framed by the government to regulate the conduct of the people to protect the property to have justice peaceful living and social security.

Why one should know about the law?

Law must be known by every person, Ignorance of the law is no excuse.

Ex:- X is thought while he was traveling in a train without ticket, X started he was not aware of the rules, but he was imposed with a penalty (Fine) of not purchasing the ticket.

Contract:-

According to 2(h) of Indian Contract Act (ICA) 1872, "An Agreement between two or more parties enforceable by law is called as a contract". Contract Must have two important elements.

Contract = Agreement = Enforceability of agreement

According to 2(e) Agreement is a set of promises between 2 parties.

(Offerer + Acceptance)

Contract Basics: Elements of a Contract

Every contract has a basic set of elements that define the objectives, duties, terms, & legality of a business relationship. To learn what elements are essential to a contract, it is important to know what is 'contract' in business law.

According to the [Cornell Law School](#), a contract is an agreement between multiple parties & enforcing it creates common obligations to all the included parties. The mutual commitments are enforced by the law & if any of the involved parties breach the contract, the law provides rectification to the affected parties.

The primary elements of any business contract include a mutual acceptance by all parties, which is demonstrated by a workable offer & acceptance, subject to a specified consideration, legal capacity, & legitimacy.

A contract needs to have six elements in order to make it enforceable:

Offer: An offer in a contract is an assurance one party provides to another, demonstrating the capability to perform or not perform a specific action in the upcoming future.

Acceptance: This component reflects the terms of the offer made on the contract & ensures that all the parties acknowledge the terms present in the contract. Acceptance is expressed through words or deeds.

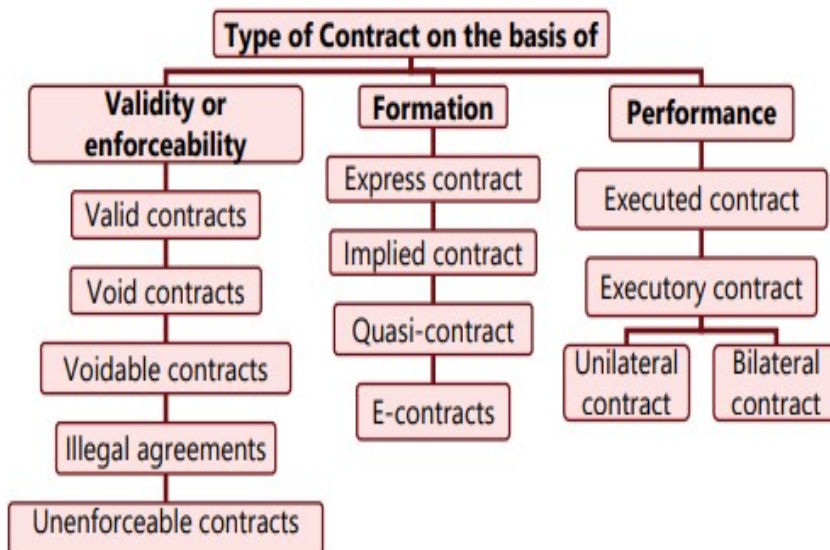
Awareness: Awareness of the contract is proof that the parties understand the basic matter of the contract & consent to it.

Consideration: The consideration element involves a promise of something valuable in return for the actions or non-actions outlined in the offer. In most cases, it is the payment for the goods or services delivered.

Capacity: Every person/party that signs the contract demonstrates the legal capacity to acknowledge what he/she is consenting to.

Legality: The contract is conditional to the laws of the jurisdiction under which it is created & operates.

Classification of contracts:-



I. On the Basis of the validity

1. Valid Contract:

An agreement which fulfils all the essentials prescribed by law on the basis of its creation. For example S offers to sell his car for Rs.2,00,000 to T. T agrees to buy it. It is a Valid Contract.

2. Void Contract (2(j))

A contract which ceases to be enforceable by law. A contract which does not satisfy any of the essential elements of a valid contract is said to be Void. For example A contract between drug dealers to buy and sell drugs is a void contract.

3. Voidable Contract 2(i)

An agreement which is enforceable by law at the option of one or more parties but not at the option of the other or others is a voidable contract. This is the result of coercion, undue influence, fraud and misrepresentation.

4. Illegal Contract

It is a contract which is forbidden by law. All illegal agreements are Void but all void agreements or contracts are not necessarily illegal. Contract that is immoral or opposed to public policy are illegal in nature.

- Unlike illegal agreements there is no punishment to the parties to a void agreement.
- Illegal agreements are void from the very beginning but sometimes valid contracts may Subsequently become void.

5. Unenforceable Contract

Where a contract is unenforceable because of some technical defect i.e. absence in writing barred by imitation etc. If the parties perform the contract it will be valid, but the court will not compel them if they do not

II. On the Basis of the Formation**1. Express Contract**

A contract made by word spoken or written. According to Section. 9, in so far as the proposal or acceptance of any promise is made in words, the promise is said to be express. For example P says to Q „will you buy my bicycle for Rs.1,000?” Q says to P “Yes”.

2. Implied Contract

The implied contract is one, which is not expressly written but understood by the conduct of parties. Where the proposal or acceptance of any promise is made otherwise than in words, the promise is said to be implied. For example A gets into a public bus, there is an implied contract that he will pay the bus fare.

3. Quasi Contract

It is a contract created by law. Actually, there is no contract. It is based on the principle that “a person shall not be allowed to enrich himself unjustly at the expense of the other”. In other

word sit is an obligation of one party to another imposed by law independent of an agreement between the parties.

4.E-Contract:-

An e-contract is a contract formed and executed electronically rather than on paper, governed by both traditional contract law (like the [Indian Contract Act](#)) and specific e-legislation (like the [IT Act](#)). It is legally enforceable if it includes essential elements such as mutual consent, a valid offer and acceptance, and it must adhere to electronic record and signature requirements. E-contracts are used for convenience, speed, and efficiency, particularly in e-commerce, and are considered as valid as paper contracts by courts.

III. On the Basis of Performance**1. Executed Contract**

A contract in which both the parties have fulfilled their obligations under the contract. For example X contracts to buy a car from Y by paying cash, Y instantly delivers his car.

2. Executory Contract

A contract in which both the parties are yet to fulfil their obligations, it is said to be an executor contract. For example A agrees to buy B's cycle by promising to pay cash on 15th June. B agrees to deliver the cycle on 20th June.

3. Unilateral Contract

A unilateral contract is a one sided contract in which only one party has performed his promise or obligation, the other party has to perform his promise or obligation.

For example X promises to pay Y a sum of Rs.10,000 for the goods to be delivered by Y. X paid the money and Y is yet to deliver the goods.

4. Bilateral Contract

A contract in which both the parties commit to perform their respective promises is called a bilateral contract. For example R offers to sell his fiat car to S for Rs.10,00,000 on acceptance of R's offer by S, there is a promise by R to Sell the car and there is a promise by S to purchase the car, there are two promises

The Essential Elements of a Valid Contract:-

A valid contract needs to satisfy certain legal conditions to be enforceable. These essential elements guarantee clarity, fairness, and mutual agreement between the parties. Let's discuss these essential elements in detail along with their relevant sections and practical examples.

1. Offer and Acceptance (Sections 3-9)

Every contract starts with a valid [offer made by one party and its unqualified acceptance by the other](#). The terms of the offer should be clear, definite, and communicated to the offeree. Acceptance should mirror the terms of the offer without any modifications.

Example: A house owner offers to sell a house for ₹50 lakh. The buyer agrees to purchase it at the offered price. This is an example of a valid offer and acceptance.

2. Intention to Create Legal Relations

For an agreement to be a contract, the parties need to intend to create legal obligations. Social or domestic agreements usually do not have that intention, whereas business agreements usually do. Although this is not stated in the Indian Contract Act, it is very much accepted.

Example: The agreement between a landlord and tenant to rent a house has legal obligations, whereas the promise to go to a family dinner has no legal obligations.

3. Lawful Consideration (Section 2(d))

Consideration includes the valuation between the parties, including money, goods, services, and a promise. It is real; it must be legal and neither immoral nor prohibited by law.

Example: In consideration of erecting an apartment, a contractor agrees to receive ₹20 lakh in cash. The money paid and the service of construction involved are proper considerations.

4. Capacity of Parties (Sections 11-12)

The parties to a contract shall have the legal capacity to do so. That is to say, they must not be minors, they shall be of sound mind and not disqualified by any law.

Example: A 25-year-old with a sound mind making an agreement in partnership is legal. However, an agreement entered with a 16-year-old minor is illegal because they are below legal age.

5. Free Consent (Sections 13-19)

The contract should be a product of free consent, which is not induced by coercion, undue influence, fraud, misrepresentation, or mistake. In case there is no free consent, the contract is voidable at the option of the aggrieved party.

Example: In case a person is threatened to sell his car, the contract can be declared voidable on the grounds of absence of free consent.

6. Lawful Object (Section 23)

The object of the contract must be lawful and not against public policy, immoral, or illegal. If the object is unlawful, the contract is void.

Example: An agreement to smuggle goods is void since the object is illegal.

7. Certainty and Clarity (Section 29)

The terms of the contract must be clear and not vague or ambiguous. A contract with uncertain terms is void.

Illustration: An agreement to deliver "a reasonable quantity of rice" is vague and void. But "100 kg of rice at ₹50 per kg" is a valid specification.

8. Possibility of Performance (Section 56)

The contract should have obligations that are capable of being performed. Contracts which require the performance of acts impossible to perform are void.

Example: A contract to deliver goods to a place that has been destroyed by a natural disaster is void for the impossibility of performance.

9. Compliance with Legal Formalities

Some contracts are governed by specific legal formalities. They may be required to be in writing, signed, registered, or attested, depending on their nature. If these formalities are not complied with, then the contract becomes unenforceable.

Example: A sale deed of immovable property is required to be in writing and registered under the law.

10. Agreement Not Expressly Declared Void (Sections 24-30)

A valid contract shall not fall within agreements expressed by the Indian Contract Act as declared to be void; like wagering agreements or those involving unlawful consideration and which restrict trade.

Illustration: A betting contract has been declared to be void under section 30 as the law expressly declares it unenforceable.

Offer And Acceptance:-

Offer:-

That is 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

actor abstinence, he is said to make a proposal.

Meaning of "Offerer" (or 'Promisor'), Offeree (or Promisee)

The person making the proposal is called the offerer or proposer. The person to whom the proposal is made is called the offeree or 'proposee'.

Example X says to Y, "I want to sell my car to you for Rs 1 lakh." Here, 'to sell car' is an offer or proposal. X who has made the offer is called offeror or promisor. Y to whom the offer has been made is called the offeree or proposee.

Let us discuss the rules one by one.

(a) Intention to Create Legal Relationship:-An offer must intend to create legal relations. An offer must be such that when accepted, it will create legal relationship among the parties. The question whether or not the parties have intention to create legal relationship can be answered with reference to type and terms of agreement and the circumstances under which the agreement is made.

(b) Certain and Unambiguous Terms The terms of the offer must be certain and unambiguous and not vague. If the terms of the offer are vague, no contract can be entered into because it is not clear as to what exactly the parties intended to do

Example I:- X offers to sell to Y his car for Rs 100 000 or Rs 1.50.000 Here X's offer is not certain because it is not clear which of the two prices was to be given by Y

Note: If the terms of the offer are capable of being made certain, the offer is not regarded as vague. For example, X offers to sell to Y "a 100 tons of coconut oil, Here the offer cannot be said to be uncertain on the ground that it is not clear what price to be given for oil because in such a case of such an offer if accepted by Y : Y has to give only a reasonable price

(C) Different from a Mere Declaration of Intention The offer must be distinguished from a mere declaration of intention which merely indicates that an offer will be made or invited in future.

Example-1 A Father wrote to his would be son-in-law that his daughter would have a share of what he left after the death of his wife. It was held that the letter was a mere statement of intention and not an offer (Farrine Vs Fickar)

(d) Different from an Invitation to Offer An offer must be distinguished from an invitation to offer. In case of an invitation to offer the person making an invitation invites others to make an offer to him. It is a prelude to an offer inviting negotiations or preliminary discussions

Example:-A Prospectus issued by a company for subscription of its shares and debentures is only an invitation to general public to make an offer to buy the shares debentures which way of may not be accepted by the company.

(e) Communication. An offer must be communicated to the person to whom it is made. An offer is made. An offer is complete only when it is communicated to the offeree. One can accept the offer only when he knows about it. Thus, an offer accepted without its knowledge does not confer any legal rights on the acceptors.

(f) No Term the Non-compliance of which Amounts to Acceptance The offer must not contain a term the non-compliance of which would amount to acceptance. It means that while making the offer, the offerer can not say that if offer is not accepted before a certain date, it will be presumed to have been accepted.

Example X writes a letter to Y. I offer to sell my car for Rs 1,00,000 if I do not receive your reply by Friday next. I shall assume that you have accepted the offer. Here if Y does not reply, it does not mean that he has accepted the offer:

(g) Communication of Special Terms or Standard Form Contracts The special terms of the offer must also be communicated along with the offer. If the special terms of the offer are not communicated, the offeree will not be bound by those terms. The question of special terms arises generally in case of standard form of contracts. Standard contracts are made with big companies such as insurance companies, railways, shipping companies, banking companies, hotel companies, dry cleaning companies. Since such companies are in position to exploit the weakness of general public by including certain terms in the contract which may limit their liabilities, it is provided that the special terms of the offer must be brought to the notice of general public:

Example 1 X purchased a steamer ticket for travelling from Dublin to White Haven and on the back of the ticket certain conditions were printed, one of which excluded the liability of the company for loss, injury or delay to the passengers or his luggage. X never looked at the back of the ticket and there was nothing to draw his attention to the conditions printed on the back side. His luggage was lost due to the negligence of the servants of the shipping company. It was held that X was entitled to claim compensation for the loss of his luggage in spite of the exemption clause because there was no indication on the face of the ticket to draw his attention to the special terms printed on the back of the ticket (Handerson Vs Stevenson).

Acceptance:-

Meaning of Acceptance- Acceptance means giving consent to the offer. It is an expression by the offeree of his willingness to be bound by the terms of the offer. According to sec 2(b) of ICA, 1872, A proposal said to be accepted when the person to whom the proposal is made signifies his assent thereto. A proposal when accepted becomes a promise.

(a) Absolute and Unqualified P:-According to Section 7(1) of the Indian Contract Act, 1877, In order to convert a proposal into a promise, the acceptance must be absolute and unqualified it means, that an offer must be accepted as it is without any reservation, variation or conditional. A qualified and conditional acceptance amounts to marking of a counter offer which puts an end to the original offer and it cannot be revived by subsequent acceptance

Example 1 x offered to sell his car for Rs 100,000 to y B agreed to buy it for Rs 90.000 Y's act is a counter offer and not an acceptance of X's offer Now. if Y accepts the original offer to buy the car for Rs 100.000 X will not be bound to sell the house because Y's counter offer has put an end to the original offer (Nihal Chand v. Amar Nath)

(b) Manner According to Section 7(2) of the Indian Contract Act, 1872, the acceptance of an offer must be given in the following manner

(a) If the proposal does not prescribe the manner in which it is to be accepted

(b) If the proposal prescribes the manner in which it is to be accepted

The offer must be accepted in some usual and reasonable manner The offer must be accepted in the prescribed manner.

(c) Communication The acceptance must be signified (i.e indicated or declared)

In other words, the acceptance is complete only when it has been communicated to the offerer A mere mental determination to accept is no acceptance in the eyes of law unless there is some external manifestation of that determination by words or conduct

Example x offered to supply coal to a Railway Company The manager of the company accepted the offer and put it in the drawer of his table and forgot all about it. It was held that no contract was made because acceptance was not communicated (Brogden v. Metropolitan Railway Com)

(d) By Whom Acceptance must be communicated by the offeree himself or by a person who has the authority to accept. In other words, if acceptance is communicated by an unauthorized person, it will not give rise to legal relations

Example P applied for the post of a headmaster in a school. The managing committee passed a resolution approving P to the post but this decision was not communicated to P But one member of the managing committee in his individual capacity and without any authority informed about the decision Subsequently the managing committee cancelled its resolution and appointed someone else P filed a suit for breach of contract It was held that P's suit was not maintainable because there was no communication of acceptance as he was not informed about his appointment by some authorized person. (Powell v Lee)

(e) To Whom Acceptance must be communicated to the offerer himself In other words, if acceptance is communicated to an unauthorized person, it will not give rise to legal relations

Example F offered by a letter to buy his nephew's horse for \$30 saying "If I hear no more about him, I shall consider the horse mine The nephew sent no reply at all but told his auctioneer, not to sell that particular horse as he intended to sell that horse to FB sold the horse by mistake It was held that F will not succeed because his nephew had not communicated acceptance to him.

(F) Time Limit The acceptance must be given within the time prescribed (if any) or within a reasonable time (if no time is prescribed) What is reasonable time depends upon the facts and circumstances of the case.

Example An offer to buy shares of a company was made in June but the acceptance was communicated in November it was held that the offerer was not bound by the acceptance because the acceptance was not given within a reasonable time

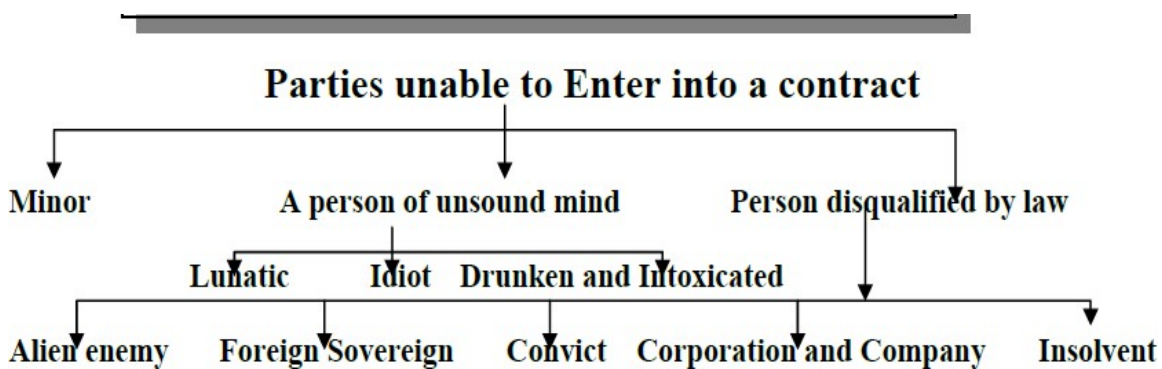
(g) Before Lapse of Offer The acceptance must be given before the offer lapses or is withdrawn In other words, if an acceptance is made after the lapse or withdrawal of the offer, it will not give rise to legal relations

Example X offered by a letter to sell his car for Rs 1,00,000 Subsequently. X withdrew his offer by a telegram which was duly received by Y After the receipt of telegram, Y sent his acceptance to X in this case the acceptance is invalid because it was made after the effective withdrawal of the offer.

CAPACITY TO CONTRACT:-

Who is competent to make a contract:-

Section 11 Every person is entered 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.



Parties Unable to Enter into a Contract

Under the **Indian Contract Act, 1872**, only those persons who are **competent to contract** can enter into a valid agreement. According to **Section 11** of the Act, every person is competent to contract who:

1. Is of the age of majority,
2. Is of sound mind, and
3. Is not disqualified from contracting by any law to which he is subject.

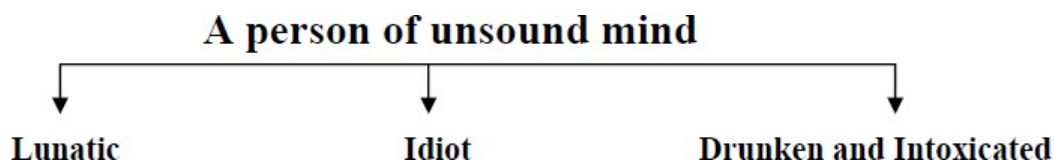
Hence, any person who does not fulfill these conditions is **not competent** to enter into a contract. Such persons are called **incompetent parties**, and any agreement made with them is **void**. The main categories of persons unable to contract are discussed below.

1. Should be a Minor

A minor is a person who has not completed **18 years of age**. In the case where a guardian has been appointed under the **Guardians and Wards Act**, the age of majority is **21 years**.

A contract with a minor is **void ab initio**, meaning void from the very beginning. A minor cannot be compelled to perform the contract, and no ratification (confirmation) of such contract can make it valid even after attaining majority.

However, a minor can **benefit** under a contract, such as receiving a scholarship or gift, because such agreements are for his advantage. A minor can also act as a **beneficiary** or **promisee**, but not as a promisor.



2. Person of Unsound Mind

A person of unsound mind is not competent to enter into a contract as per **Section 12** of the Indian Contract Act. A person is said to be of sound mind for the purpose of making a contract if, at the time of making it, he is capable of understanding the contract and forming a rational judgment as to its effect upon his interests.

Persons of unsound mind include **lunatics**, **idiots**, and **drunken or intoxicated persons**.

Each type is explained below:

(a) Lunatic

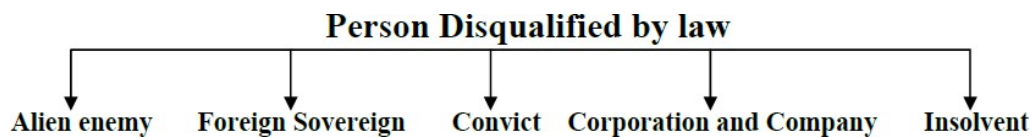
A lunatic is a person who suffers from temporary or permanent mental disorder. A lunatic cannot enter into a valid contract during the period when he is of unsound mind. However, if at any time he regains his sanity, he can make a valid contract during that period of sanity.

(b) Idiot

An idiot is a person who is mentally defective from birth and has never been of sound mind. As such, he cannot understand the nature and consequences of a contract, and any agreement made by him is void.

(c) Drunken or Intoxicated Person

A person who is under the influence of alcohol or drugs at the time of entering into a contract and is unable to understand its meaning or consequences is treated as of unsound mind. A contract made during such intoxication is void, but if he is sober and fully aware, he can enter into a valid contract.

3. Persons Disqualified by Law

Certain persons, though of sound mind and of the age of majority, are **disqualified from entering into contracts by law**. The disqualification may arise due to political status, legal disability, or other statutory restrictions. The main classes of such persons are as follows:

(a) Alien Enemy

An alien enemy is a person who belongs to a country at war with India. Contracts made with an alien enemy during wartime are **void**, as trading with the enemy is against public policy. However, contracts made before the outbreak of war are suspended during the war and may revive after peace is restored.

(b) Foreign Sovereigns and Ambassadors

Foreign sovereigns, diplomatic agents, and ambassadors enjoy **special privileges and immunities** under international law. They cannot be sued in Indian courts without the permission of the central government, hence they are partially disqualified from contracting.

(c) Convict

A person who is convicted and imprisoned for an offense is temporarily disqualified from entering into a contract. His capacity to contract is restored after his sentence is completed and the conviction ends.

(d) Corporation and Company

A corporation or company is an **artificial legal person** created by law and can act only within the powers given by its Memorandum of Association or statute. Any contract beyond those powers is **ultra vires (beyond authority)** and hence void. Therefore, companies are limited by their legal capacity to contract.

(e) Insolvent

An insolvent person is one who has been declared bankrupt by a court. When a person is adjudged insolvent, his property vests in the official receiver or assignee. He loses the capacity to deal with his property or enter into contracts related to it. However, after discharge from insolvency, he regains full capacity to contract.

CONSIDERATION (Some thing in Return)

Section 2(d) of the Indian Contract Act defines *consideration* as:

“When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing something, such act or abstinence or promise is called a consideration for the promise.”

Essentials of Valid consideration:-**1. Consideration Must Move at the Desire of the Promisor**

For a consideration to be valid, it must move at the **desire or request of the promisor**. This means that the act, abstinence, or promise forming the consideration should be done only because the promisor wanted it, not voluntarily or at the desire of a third person. If the act is done without the promisor's request, it cannot be regarded as valid consideration in the eyes of law.

Example: If A does some work for B without being asked and later B promises to pay, this is not valid consideration because the act was not done at B's desire.

2. Consideration May Move from the Promisee or Any Other Person

Under the **Indian Contract Act**, consideration may move not only from the **promisee** but also from **any other person**. This means that a contract is valid even if the consideration is provided by someone who is not directly a party to the contract, as long as it is done at the desire of the promisor. This is different from English law, where consideration must move only from the promisee.

Example: If A makes a promise to B, and C (a third person) provides the consideration at A's desire, the agreement is still valid in India.

3. Consideration May Be Past, Present, or Future

The law recognizes three types of consideration — **past, present, and future**.

- **Past Consideration** refers to an act that has already been done before the promise is made.
Example: A repairs B's car voluntarily. Later, B promises to pay ₹1,000. This is past consideration.
- **Present (or Executed)** Consideration occurs when consideration is given at the same time as the promise.
Example: A sells goods to B for immediate payment.
- **Future (or Executory)** Consideration is when one party promises to do something in the future in exchange for the other's promise.

Example: A agrees to deliver goods next week, and B agrees to pay after delivery.

4. Consideration Should Be Real and Not Illusory

For consideration to be valid, it must be **real, definite, and of some value** in the eyes of law. It cannot be uncertain, vague, or imaginary. A promise based on something that is impossible to perform or has no real existence is not a valid consideration.

Example: A promises to pay B ₹10,000 if B brings rainfall tomorrow — this is an illusory and invalid consideration because it is impossible.

5. Consideration Must Be Legal and Lawful

The consideration must be **legal and not forbidden by law**. It must not be fraudulent, immoral, or opposed to public policy. If the consideration involves illegal acts such as gambling, smuggling, or bribery, the agreement becomes void.

Example: A promises to pay B ₹5,000 for smuggling goods into the country. Such consideration is unlawful and the contract is void.

6. Consideration Must Have Some Value

Consideration must have **some monetary or practical value**, though it need not be equal or adequate to the promise. The law only requires that there should be something of value exchanged between the parties, not necessarily of equal worth. It may be a benefit to one party or a detriment (loss) to the other.

Example: A agrees to sell his gold ring to B for ₹100. Even though the price is inadequate, it is still valid consideration because it has some value.

FREECONSENT:-**Free consent (Willingness)(consent by both parties)**

A contract is any agreement made from the free consent of the parties. The parties must be competent to enter into a contract for a lawful consideration and object.

Two or more persons allegedly give consent once they agree upon an equivalent thing within the same sense.

Section 13 of the Indian Contract Act 1872 states that consent is free when not obtained by fraud, misrepresentation, undue influence, coercion, or mistake. If any of the above methods take the consent, then the contract is voidable at the choice of the aggrieved party. Any of the above factors' presence may disrupt the entire contract formation.

Types of Free Consent:-

- **Coercion:-**

Section 15 of the Indian Contract Act states, suppose a person acts or threatens to commit any act forbidden by IPC or unlawfully detains or threatens to detain any property, meaning to cause a person to agree. In that case, he has committed coercion.

The coercion method forces an individual to enter right into a contract. When intimidation or threats are used beneath strain to profit the party's consent, it is not free consent.

Reasons:-

1. Forcing a person against of IPC (Indian Penal Code)
2. Threatening a person against of IPC.
3. Un-lawful detention of property
4. Un-lawful threatening of property.

Effect of coercion

Any contract entered under coercion is often cancelled, and therefore the parties are free of the duty to perform obligations under such agreement.

- **Undue influence: -**

Assume a situation where one person is said to dominate another person's will and takes advantage of it. A contract made under such a scenario is often alleged to be under undue influence.

As per this section, an individual can abuse his authority in the following ways:

- When he holds real or apparent control over another person or any fiduciary relationship between two persons.
- If he makes a contract with a mentally disabled person.

- **Fraud:-**

In view of section 17 of the Indian Contract Act, 1872, an act committed by a person or his agent on his behalf to deceive another person or insist him enter a contract act is often called fraud. The

affected party must suffer some actual loss, thanks to the fraud. However, there is no fraud if there is no damage.

Elements: -

1. By a party to a contract
2. False representation
3. Representation as a fact
4. Actually deceived
5. Suffered loss

Effect of fraud

Such a contract is voidable, and therefore the deceived party has the power to revoke it and recover damages from the opposite party.

• Misrepresentation:-

It is defined under section 18 of the Indian Contract Act, 1872 and includes three aspects-

- Where any excellent announcement or declaration is formed by an individual, which is not real, though he believes it to be true
- Any breach of duty leads to the person's advantage by committing it.
- Causing another person to commit an error regarding the topic matter of the contract.

Elements:-

1. By a party at contract
2. False representation
3. Representation as a fact
4. Object
5. Actual acted

• Mistake

Section 20 of the Indian Contract Act, 1872 defines mistakes. The topic matter of fact is essential to any contract. When both the parties are at an error on the topic matter of fact, such a contract is void.

Mistakes are unpardonable under the following circumstances:

- Ignorance of the law is not a suitable excuse. No party can claim that he was unaware of the law.
- The second scenario happens when two parties misunderstand one another. These mistakes can be unilateral or bilateral.

Types of mistakes:

- Mistake on the topic matter of the agreement.
- Mistake on title or rights.
- Mistake on the various material within the minds of the parties.
- Error in material associated with its substance, nature, or quality.

- Mistake within the probability of the contract.
- Physical impossibility
- Legal impossibility

Legality of Object: -

Section 23 of The Indian Contract Act states that for a contract to be valid, there must be the legality of object and consideration. The object is the purpose for which the parties enter into a contract. The fulfillment of the object leads to the transfer of the consideration agreed from one party to the other. Let's look into the parameters under the legal object contract law that define what is a lawful object and consideration.

Lawful Object and Lawful Consideration

The legality of the object in contract law stipulates that the consideration and the object of a contract are considered legal except when:

- They are specifically forbidden by law.
- They are fraudulent in nature.
- The nature of the object and the consideration is such that it defeats the purpose of the law.
- They involve injury or harm to a person(s) or property.
- Are considered immoral by the court of law.
- Are against public policy.

Forbidden by the Law

An object and/or a consideration prohibited by law are not considered legal and render a contract void. Unlawful consideration of the object means unlawful acts that are punishable by the law. The acts disallowed by the appropriate authority by means of their rules and regulations are also considered for determining the legality. However, if these rules and regulations are not in tandem with the law, they are not applicable.

Forbidden by law provision renders a contract void but all void contracts may not be illegal.

Fraudulent in Nature

The object and the consideration of the contract must not be fraudulent as then, the contract will become void.

Example- A enters into a contract with B where he agrees to pay B if he embezzles money from C. This is considered a fraudulent object and the contract is not valid.

Defeats the Purpose of the Law

If the purpose of entering into the contract is to go against any provisions of law, the contract will be deemed void. The contract is void if:

- The object of the contract is to perform an illegal act.
- The object of the contract is explicitly or in an implied manner prohibited by law.
- The completion of the contract is impossible without going against the provisions of the law.

Example - A enters into a contract with B whereby B promises to not pursue legal proceedings against A if A commits a robbery in B's house. This contract is against the provisions of the IPC law.

Involves Injury or Harm to Another Person or Property

The object of the contract must not cause any destruction to property or cause injury to another person.

Examples:

- Publishing a book on the life of a person without his consent.
- Destruction of a property.
- Violation of licenses.
- Violation of copyrights.

A enters into a contract with B whereby he agrees to pay a sum of money to B if he destroys a city landmark. This contract does not have a lawful consideration and lawful object and it is not deemed legal.

Immoral as Per Law

If the object and/or consideration of the contract are considered immoral, the contract will not be deemed void. Immoral acts are against the reasonable and acceptable general behavior or personal conduct accepted by society.

Example - A lends money to B on the condition that B will divorce C, and later get married to A. If B does not divorce C, then A cannot pursue legal proceedings against B to recover the money. The basic premise of this contract is immoral so it will be deemed void.

Against the Public Policy

A lawful object in business law means that it should not be against public policy. The purpose of public policy is not to curtail any individual's rights but to maintain and protect the general welfare of the community. Let's see what kind of contracts are considered to be against the public policy:

- Entering into an agreement with a party that belongs to a country with which India does not have peaceful relations, makes the agreement void.
- Restraining from prosecution: A contract that prohibits a person from pursuing legal recourse is considered void.
- Maintenance and Champerty: In a maintenance agreement, a person promises to maintain a lawsuit in which he has no vested interest. Champerty is when a person agrees to assist another party in litigation in return for a portion of the damages or proceeds received.
- An agreement to indulge in trafficking in public offices.
- Agreements to create monopolies.
- An agreement to brokerage marriage as a reward.
- An agreement to induce judiciary or state officials to act in a corrupt manner and interferes with legal proceedings.

Contingent Contract:-

According to Section 31 of the Indian Contract Act deals with **contingent contracts** — that is, promises to do or not to do something **if some uncertain future event happens** (or does not happen). In plain language, the parties agree that one party's obligation will arise only on the occurrence (or non-occurrence) of a future event that is not certain at the time the contract is made.

Two basic rules (happening / non-happening of the event)

There are two simple outcomes for contingent contracts:

1. **If the future event happens** (the contingency occurs), the contingent promise **becomes an absolute/ordinary contract** and is enforceable — the promisor must perform. In other words, the contingency converts the promise into a present, enforceable obligation.
2. **If the future event is impossible of occurrence** at the time it was supposed to happen (i.e., the contingency cannot occur), the contingent contract is **void** — there is nothing to enforce because the condition on which the obligation depended cannot be fulfilled.

Elements:-

- **Dependence on a Future Event:** The contract's performance is not immediate but is contingent upon the happening or non-happening of a future event.
- **Collateral Event:** The event must be collateral to the contract, meaning it's not a mere performance of the contract itself. It should be an event extraneous to the primary agreement.
- **Uncertainty:** The event's occurrence or non-occurrence must be uncertain at the time of contract formation.

Rules Regarding Contingent Contracts:

1. The Indian Contract Act provides specific rules governing the enforcement of contingent contracts:
2. **Contingent on an Event Happening (Section 32):** If a contract is contingent on the happening of a future uncertain event, it cannot be enforced until the event has happened. If the event becomes impossible, the contract becomes void. For example, A contracts to pay B ₹10,000 if B's house is burnt. If the house burns, the contract becomes enforceable. If the house doesn't burn or it becomes impossible to burn, the contract becomes void.
3. **Contingent on an Event Not Happening (Section 33):** If a contract is contingent on a future uncertain event not happening, it can be enforced when the happening of that event becomes impossible. If the event happens, the contract becomes void. For example, A agrees to pay B ₹10,000 if a particular ship does not return. The contract becomes enforceable when it becomes certain that the ship has sunk.
4. • **Contingent on a Future Conduct of a Living Person (Section 34):** If the future event on which the contract is contingent is the way a person will act at an unspecified time, the event shall be considered to become impossible when such person does something which renders it impossible that he should so act within any definite time, or otherwise than under further contingencies.
5. • **Contingent Contracts to be done with in fixed time (Section 35):** contingent contracts contingent upon the happening of a certain event within a fixed time void, if at the expiration of the time such event has not happened, or if, before the time fixed, such event becomes impossible.
6. • **Contingent contracts to do or not to do anything if an impossible event happens (Section 36):** contingent agreements to do or not to do anything, if an impossible event happens, are void, whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made.

PERFORMANCE OF THE CONTRACT

According to 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 promise [38]

Promisor is not responsible for nonperformance and they can sue the promisee for breach of contract—n or he (promisor) there by lose his rights under the contract.

I. PERSON WHO CAN DEMAND PERFORMANCE

(Based on Sections 37, 38, and 45 of the Indian Contract Act, 1872)

1. Promisee (Section 37)

The person to whom the promise has been made, i.e., the **promisee**, is the primary person who can demand performance of the contract.

Once a contract is validly made, the promisee has a **legal right** to expect that the promisor will perform the promise exactly as agreed.

Example: A promises to sell his car to B for ₹2,00,000. B is the **promisee**. If A refuses to deliver the car, B can **demand performance** or sue for non-performance.

2. Legal Representatives of the Promisee

If the promisee dies before performance, his **legal representatives** can demand performance, unless the contract is of a **personal nature** (e.g., involving personal skills or talents).

Example: A promises to deliver 100 bags of rice to B. B dies before delivery. B's son (legal heir) can demand delivery.

But if A had promised to paint B's portrait, and B dies, the contract ends — it was a personal obligation.

3. Joint Promisees (Section 45)

When a promise is made to **two or more persons jointly**, all of them together must demand performance.

If one dies, the right passes to the survivor(s).

Example: A promises to deliver goods to B and C jointly. Both must jointly demand delivery. If B dies, C (the survivor) can demand performance.

II. PERSON WHO MUST PERFORM THE CONTRACT

(Based on Sections 37 to 40 of the Indian Contract Act, 1872)

1. Promisor Himself (Section 37)

The person who made the promise, i.e., the **promisor**, is primarily bound to perform his part of the contract. He must either perform personally or ensure it is performed according to the terms.

Example: A promises to deliver 100 bags of sugar to B. A must perform the delivery as agreed. If A fails, he is liable for breach of contract.

2. Legal Representatives of the Promisor

If the promisor dies before performing, his **legal representatives** are bound to perform the contract **unless** the contract involves personal skill or is otherwise terminated by death.

Example: A promises to deliver goods to B. A dies before delivery. A's son (legal representative) must deliver the goods.

But if A had promised to sing for B at a concert, his death ends the contract.

3. Third Person (if Allowed by Contract)

In some cases, the contract may specify that a **third party** will perform on behalf of the promisor. If the promisee accepts such performance, the promisor's obligation is discharged.

Example: A owes B ₹10,000. C pays the amount on behalf of A, and B accepts it. The contract is performed and A is discharged.

4. Joint Promisors (Section 42–45)

When two or more persons make a joint promise, **all of them are jointly responsible** for performing it.

If one dies, his legal representatives are also liable along with survivors.

Example: A, B, and C jointly promise to pay ₹60,000 to D.

- D can demand full performance from any one of them.
- Whoever pays can later recover proportionate shares from others.

Time and Place of Performance (Write it in detail)

Rule.1: Reasonable Time (Sec-46)

Rule.2: Particular day (Sec-47)

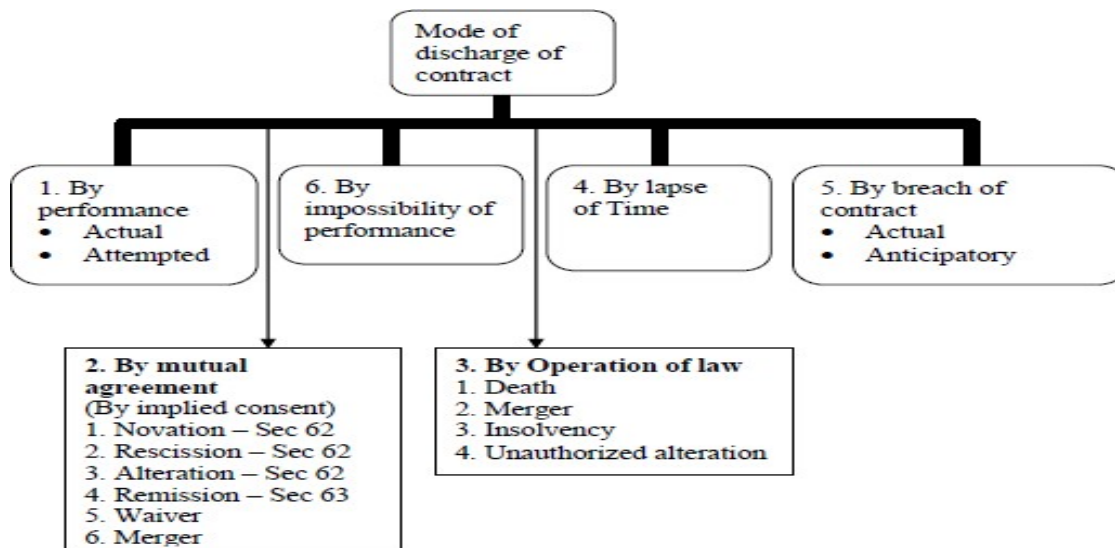
Rule.3: Particular Place (Sec-48)

Rule.4: Usually Business Hours (Sec-49)

Rule.5: A Proper Manner and Time (Sec-50)

DISCHARGE OF A CONTRACT:-

The discharge of a contract means the termination of the contractual relationship between the parties involved. When a contract is discharged, the rights and obligations of the parties come to an end.



Modes of Discharge of Contract

.According to the Indian Contract Act, 1872, a contract may be discharged in several ways such as by performance, by mutual agreement, by operation of law, by lapse of time, by breach of contract, or by impossibility of performance. Each of these methods is explained below in detail.

1. Discharge by Performance

A contract is discharged when the parties to it perform their respective obligations as agreed. Performance is the most natural mode of discharging a contract. It may be of two kinds—actual performance and attempted (or tendered) performance.

Actual performance takes place when both parties fulfill their promises completely. For example, if A agrees to sell his car to B for ₹5,00,000 and both perform their parts (A delivers the car and B pays the price), the contract is discharged by actual performance.

Attempted or tendered performance occurs when one party offers to perform his obligation but the other party refuses to accept it. For example, if A offers to deliver goods to B on the due date but B refuses to take them, the contract is discharged from A's side since A has fulfilled his duty by offering performance.

2. Discharge by Mutual Agreement

A contract can also be discharged by mutual consent of the parties. The principle behind this is that a contract is created by agreement, and it can also be ended by another agreement. This

is provided under **Sections 62 and 63 of the Indian Contract Act, 1872**. There are several ways in which this can happen:

Novation (Sec. 62): Novation means substituting a new contract for an existing one, either between the same parties or different parties. For example, A owes B ₹5,000. With B's consent, A agrees to give C (B's friend) a car instead. The old contract is replaced by a new one.

Rescission (Sec. 62): Rescission means cancellation of the contract by mutual consent. For example, A and B agree that A will sell his bike to B, but later both agree to cancel the contract. The contract stands discharged.

Alteration (Sec. 62): Alteration occurs when the parties agree to change the terms of the contract. For instance, A agrees to deliver 100 bags of wheat to B on 1st June, but later both agree to change the delivery date to 1st July. The old contract is discharged, and a new one is formed.

Remission (Sec. 63): Remission means accepting a lesser fulfillment of the promise. For example, A owes B ₹5,000, but B agrees to accept ₹3,000 as full settlement. The contract is discharged even though the full amount is not paid.

Waiver: Waiver means voluntarily giving up a right under the contract. For instance, if A owes B some money but B decides to forgive the debt, the contract is discharged.

Merger: Merger takes place when an inferior right merges into a superior right. For example, a tenant who later purchases the property becomes the owner. The lease agreement merges with ownership rights, discharging the contract.

3. Discharge by Operation of Law

Sometimes, a contract is discharged automatically by the operation of law, without any act or agreement between the parties. The main circumstances under which this happens are as follows:

Death: If the contract involves personal skill, talent, or qualification, the death of the promisor discharges the contract. For example, if a singer agrees to perform but dies before the event, the contract ends.

Merger: When a person who holds an inferior right under a contract acquires a superior right, the contract merges and stands discharged. For example, a tenant who becomes the owner of the same property.

Insolvency: When a person is declared insolvent, he is discharged from liability to pay debts as per insolvency laws. The contract ends as the insolvent person cannot perform his obligations.

Unauthorized Alteration: If one party makes a material change in the contract document without the consent of the other, the contract is discharged. For example, if A alters the amount payable in the written contract without B's consent, the contract becomes void.

4. Discharge by Lapse of Time

Every contract must be performed within a specific period prescribed by the **Limitation Act, 1963**. If a contract is not performed within the stipulated time, the aggrieved party loses the right to enforce it, and the contract is said to be discharged by lapse of time. For example, if a creditor fails to file a suit for recovery of debt within three years, he cannot recover it later, and the contract becomes unenforceable.

5. Discharge by Breach of Contract

A contract is said to be discharged by breach when one of the parties fails or refuses to perform his obligations under the contract. Breach can be of two types—actual breach and anticipatory breach.

Actual breach occurs when a party fails to perform his promise on the due date or during performance. For example, A fails to deliver goods to B on the agreed date; the contract is discharged by actual breach.

Anticipatory breach occurs when a party declares in advance that he will not perform his promise when the time comes. For instance, A agrees to deliver goods to B on 1st December but informs B on 15th November that he will not deliver. B can immediately treat the contract as discharged and claim damages.

6. Discharge by Impossibility of Performance

According to **Section 56 of the Indian Contract Act**, a contract is discharged when its performance becomes impossible. This is known as the doctrine of supervening impossibility.

Initial impossibility refers to cases where the act itself is impossible from the beginning. For example, A agrees to discover treasure by magic—such an agreement is void from the start.

Subsequent impossibility occurs when the performance becomes impossible after the contract is made. This may happen due to:

1. Destruction of subject matter (e.g., a concert hall burns down before a performance)
2. Change in law (e.g., an act becomes illegal)
3. Death or incapacity of a party (e.g., an artist becomes ill)
4. Outbreak of war (making trade with an enemy country illegal)
5. Non-occurrence of an event on which the contract depends (e.g., failure of a condition precedent)

When any of these situations arise, the contract becomes void and stands discharged.

BREACH OF CONTRACT

Meaning (Sec. 37–75 of the Indian Contract Act, 1872):

A **breach of contract** occurs when one party **fails, refuses, or neglects** to perform his promise **wholly or partly**, without any lawful excuse.

In simple words:

When a party to a contract **does not fulfill** his obligations as agreed, it is called a **breach of contract**.

TYPES OF BREACH OF CONTRACT

There are **two types** of breach of contract:

1. **Actual Breach of Contract**
2. **Anticipatory Breach of Contract**

1 Actual Breach of Contract

Meaning:

When a party **fails to perform** his obligations **on the due date** or **during performance**, it is called an **Actual Breach**.

□ **Sections Involved:**

- **Section 37:** Obligation of parties to perform their promises.
- **Section 39:** Effect of refusal to perform (Actual Breach).

Types of Actual Breach:

(a) At the time of performance

When the party **fails or refuses to perform** on the date fixed for performance.

Example:

A agrees to deliver goods to B on 10th October. On that day, A fails to deliver. This is **actual breach at the time of performance**.

(b) During performance

When performance has **already started**, but one party **stops performing** midway.

Example:

A agrees to build a house for B. After completing half the work, A stops construction without reason. This is **actual breach during performance**.

Effect:

- The **aggrieved party** may **rescind the contract** (cancel it).
- He may **claim damages** under **Section 73** for any loss suffered.

2 Anticipatory Breach of Contract

Meaning:

When one party **declares in advance** (before the due date of performance) that **he will not perform** his obligation, it is called an **Anticipatory Breach**.

□ **Section: 39 of the Indian Contract Act, 1872**

“When a party to a contract refuses to perform, or disables himself from performing, his promise in its entirety before the due date, the promisee may put an end to the contract.”

Ways of Anticipatory Breach:

(a) Express Repudiation:

By **words or written declaration**, a party refuses to perform.

Example:

A agrees to deliver 500 bags of rice to B on 1st December. On 15th November, A informs B that he will not deliver. This is **anticipatory breach**.

(b) Implied Repudiation (by conduct):

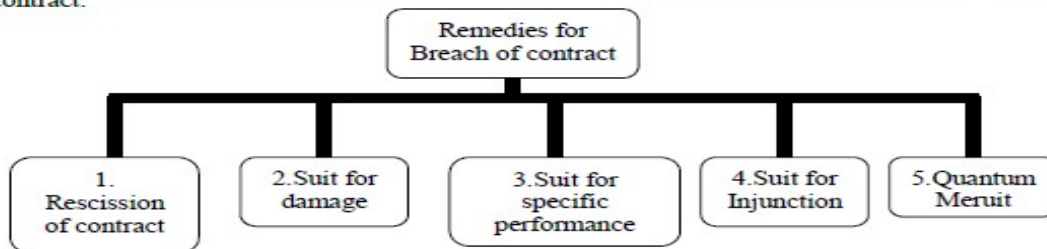
When a party **does something that makes performance impossible**.

Example:

A agrees to sell his horse to B on 1st January. Before that date, A sells the horse to someone else. This is **implied anticipatory breach**.

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 the Contract

Section: 39, 64, and 75 of the Indian Contract Act, 1872

Meaning:

Rescission means **cancellation or termination** of the contract. When one party refuses to perform or violates the terms, the other party may cancel the contract and treat it as **void**.

Key Points:

- The **aggrieved party** is released from performing their part.
- The party who rescinds can **claim compensation** for any loss suffered (Sec. 75).

- Once rescinded, both parties are restored to their **original positions** before the contract (Sec. 64).

Example:

A agrees to deliver goods to B on 1st October. A fails to do so. B can **rescind** the contract and refuse to accept goods later.

2. Suit for Damages**Section: 73 to 75 of the Indian Contract Act, 1872****Meaning:**

A **suit for damages** is a legal remedy where the aggrieved party claims **monetary compensation** for loss caused by breach of contract.

Types of Damages:**1. Ordinary Damages (Sec. 73):**

Compensation for the **direct loss** that naturally arises from the breach.

Example: A contracts to sell 100 bags of rice to B at ₹2000 each. A fails to deliver, and the market price rises to ₹2200. B can claim ₹200 per bag as ordinary damages.

2. Special Damages:

Losses due to special circumstances communicated to the other party at the time of contract.

Example: A tells B he needs a machine urgently for an exhibition. B delays supply. A can claim loss suffered due to exhibition failure.

3. Vindictive (Exemplary) Damages:

Granted in cases of **breach of promise to marry** or **wrongful dishonor of cheque**.

4. Nominal Damages:

Awarded when there is a **breach without actual loss**, to recognize the right being violated.

3. Suit upon Quantum Meruit

Section: Not specifically defined but based on equitable principle (implied from Sec. 65 and common law).

Meaning:

“**Quantum meruit**” means “**as much as earned**”.

When a contract is partially performed and then becomes void or is prevented by the other party, the performing party can **claim payment for the work done**.

Conditions:

- The contract must be **discharged** (not fully performed).
- The other party must have **accepted the benefit** of what was done.

Example:

A agrees to paint B's house for ₹20,000. After completing half the work, B stops him. A can claim reasonable payment for the work already done — say ₹10,000 — under **Quantum Meruit**.

4. Suit for Specific Performance of the Contract

Section: 10, 11, 12, 14 of the Specific Relief Act, 1963

Meaning:

Specific performance means a **court order** directing the party who breached the contract to **actually perform their promise**, rather than paying damages.

When Granted:

- When **monetary compensation is not adequate**.
- For contracts related to **sale of land, rare goods, or unique items**.
- Subject to court's discretion.

When Not Granted (Sec. 14):

- Contracts dependent on personal skill or talent.
- Contracts of continuous duty that cannot be supervised by court.

Example:

A agrees to sell his ancestral house to B. Later, A refuses. Since land is unique, B can file a **suit for specific performance** to compel A to transfer the property.

5. Suit for Injunction

Section: 36 to 42 of the Specific Relief Act, 1963

Meaning:

An **injunction** is a **court order restraining a person** from doing an act which is against the terms of the contract.

Types:**1. Prohibitory Injunction:**

Prevents a person from doing something.

Example: A singer agrees to sing only for X's theatre. She plans to sing for Y's theatre. The court can restrain her from doing so.

2. Mandatory Injunction:

Compels a person to **perform a specific act** to fulfill the contract.

Unit-2

Sales of Goods Act-1930

Till 1930 sales and purchase goods were regulated by Indian Contract Act 1872. In 1930 according to sec 76-123 of Indian contract act 1872 procedure a separate act called “Indian sales of Goods Act 1930”. This Act came In to force on 1st July 1930 from 22nd September 1963 the word Indian has removed and sales of goods act 1930 was finalised, this act applies for whole Indian excepts the state of Jammu & Kashmir.

Parties of Sales of Goods Act:-

Seller: - A Person who sales the goods for price

Buyer:- A Person who buys the goods for cash or price.

Essential elements of Contract of sale: -



1. Seller and buyer There must be a seller as well as a buyer. ‘Buyer’ means a person who buys or agrees to buy goods[Section 29(10)]. ‘Seller’ means a person who sells or agrees to sell goods [Section 29(13)].

2. Goods There must be some goods. ‘Goods’ means every kind of movable property other than actionable claims and money includes stock and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale[Section 2(7)].

3. Transfer of property: -Property means the general property in goods,and not merely a special property[Section 2(11)].General property in goods means ownership of the goods. Special property in goods means possession of goods.Thus, there must be either a transfer of ownership of goods or an agreement to transfer the ownership of goods.The ownership may transfer either immediately on completion of sale or sometime in future in agreement to sell.

4. Price There must be a price.Price here means the money consideration for a slae of goods[Section 2(10)].When the consideration is only goods,it amounts to a ‘barter’ and not sale.When there is no consideration, it amounts to gift and not sale.

5. Essential elements of a valid contract: - In addition to the aforesaid specific essential elements, all the essential elements of a valid contract as specified under Section 10 of Indian Contract Act,1872 must also be present since a contract of sale is a special type of a contract.

{Note: -Check Reference in Unit-1 Essential Elements of valid contract}

Meaning and types of goods: -

Meaning of goods[Section 2(7)]

Goods means every kind of movable property other than actionable claims and money, and includes the following:

- Stock and share
- Growing crops, grass and thing attached to or forming part of the land which are agreed to be served before sale or under the Contract of sale.

Types of Goods [Section 6]: -**1.Existing Goods: -**

Existing goods mean the goods which are either owned or possessed by the seller at the time of contract of sale. The existing goods may be specific or ascertained or unascertained as follows:

a) Specific Goods [Section 2(14)]: These are the goods which are identified and agreed upon at the time when a contract of sale is made-For example, specified TV, VCR, Car, Ring.

b) Ascertained Goods: Goods are said to be ascertained when out of a mass of unascertained goods, the quantity extracted for is identified and set aside for a given contract. Thus, when part of the goods lying in bulk are identified and earmarked for sale, such goods are termed as ascertained goods.

c) Unsanctioned Goods: These are the goods which are not identified and agreed upon at the time when a contract of sale is made e.g., goods in stock or lying in lots.

2. Future Goods [Section 2(6)]

Future goods mean goods to be manufactured or produced or acquired by the seller after the making of the contract of sale. There can be an agreement to sell only. There can be no sale in respect of future goods because one cannot sell what he does not possess.

3. Contingent Goods [Section 6(2)]

These are the goods the acquisition of which by the seller depends upon a contingency which may or may not happen.

Price of Goods: -

Meaning[Section 2(10)] Price means the money consideration for a sale of goods.

Modes of determining Price [Section 9(1)]

There are three modes of determining the price as under:

- It may be fixed by the contract or
- It may be left to be fixed in an agreed manner.

- It may be determined by the course of dealing between the parties.
- Thus, the price need not necessarily be fixed at the time of sale.

Consequences of not determining the Price in any of the Mode [Section 9(2)]

Where the price is not determined in accordance with Section 9(1), the buyer must pay seller a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case. It may be noted that a reasonable price need not be market price.

Consequence of not Fixing Price by third party[Section 10(1)]

The agreement to sell goods becomes void if the following two conditions are fulfilled.

- If such agreement provided that the price is to be fixed by the valuation of a third party,
- If such third party cannot or does not make such valuation.

Duty of buyer: -

A buyer who has received and appropriated the goods, must pay a reasonable price therefor.

Right of party not at fault to sue: -

Where such a third party is prevented from making the valuation by fault of the seller or buyer, the party not at fault may maintain a suit for damages against the party in fault.

Conditions and Warranties:

It is usual for both seller and buyer to make representations to each other at the time of entering into a contract of sale. Some of these representations are mere opinions which do not form a part of contract of sale. Whereas some of them may become a part of contract of sale. Representations which become a part of contract of sale are termed as stipulations which may rank as condition and warranty

Meaning of Conditions [Section 12(2)] A condition is a stipulation Which is essential to the main purpose of the contract The breach of which gives the aggrieved party a right to terminate the contract.

Meaning of Warranty[Section 12(3)] A warranty is a stipulation Which is collateral to the main purpose of the contract The breach of which gives the aggrieved party a right to claim damages but not a right to reject goods and to terminate the contract. Conditions to be treated as Warranty[Section 13] In the following three cases a breach of a condition is treated as a breach of a warranty:

Where the buyer waives a conditions; once the buyer waives a conditions, he cannot insist on its fulfillment e.g. accepting defective goods or beyond the stipulated time amount to waiving a conditions. Where the buyer elects to treat breach of the condition as a breach of warranty. where he claims damages instead of repudiating the contract.

Where the contract is not severable and the buyer has accepted the goods or part thereof, the breach of any condition by the seller can only be treated as breach of warranty. It can not be treated as a ground for rejecting the goods unless otherwise specified in the contract. Thus, where the buyer after purchasing the goods finds that some condition is not fulfilled, he cannot reject the goods. He has to retain the goods entitling him to claim damages.

Express and Implied Conditions and Warranties

In a contract of sale of goods, conditions and warranties may be express or implied.

1. Express Conditions and Warranties. These are expressly provided in the contract. Foreexample, a buyer desires to buy a Sony TV Model No. 2020. Here, model no. is an express condition. In an advertisement for Khaitan fans, guarantee for 5 years is an express warranty.

2. Implied Conditions and Warranties These are implied by law in every contract of sale of goods unless a contrary intention appears from the terms of the contract. The various implied conditions and warranties have been shown below: Implied Conditions

1. Conditions as to title [Section 14 (a)] There is an implied condition on the part of the seller that In the case of a sale, he has a right to sell the goods, and In the case of an agreement to sell, he will have a right to sell the goods at the time when the property is to pass.

2. Condition in case of sale by description [Section 15] Where there is a contract of sale of goods by description, there is an implied condition that the goods shall correspond with description. The main idea is that the goods supplied must be same as were described by the seller. Sale of goods by description include many situations as under. Where the buyer has never seen the goods and buys them only on the basis of description given by the seller. ii. Where the buyer has seen the goods but he buys them only on the basis of description given by the seller. iii. Where the method pf packing has been described.

3. Condition in case of sale by sample [Section 17] A contract of sale is a contract for sale by sample when there is a term in the contract, express or implied, to that effect. Such sale by sample is subject to the following three conditions: The goods must correspond with the sample in quality. The buyer must have a reasonable opportunity of comparing the bulk with the sample. The goods must be free from any defect which renders them unmerchantable, and which would not be apparent on reasonable examination of the sample. Such defects are called latent defects and are discovered when the goods are put to use.

4. Condition in case of sale by description and sample [Section 15] If the sale is by sample as well as by description, the goods must correspond with the sample as well as the description.

5. Condition as to quality or fitness [Section 16(1)] There is no implied condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale. In other words, the buyer must satisfy himself about the quality as well as the suitability of the goods.

Exception to this rule: There is an implied condition that the goods shall be reasonably fit for a particular purpose described if the following three conditions are satisfied:

1. The particular for which goods are required must have been disclosed (expressly or impliedly) by the buyer to the seller.
2. The buyer must have relied upon the seller's skill or judgement.
3. The seller's business must be to sell such goods.

6. Condition as to merchantable quality [Section 16(2)] Where the goods are bought by description from a seller who deals in goods of that description, there is an implied condition that the goods shall be of merchantable quality. The expression 'merchantable quality' means that the quality and condition of the goods must be such that a man of ordinary prudence would accept them as the goods of that description. Goods must be free from any latent or hidden defects.

7. Condition as to wholesomeness In case of eatables or provisions or foodstuffs, there is an implied condition as to wholesomeness. Condition as to wholesomeness means that the goods shall be fit for human consumption.

8. Conditions implied by custom [Section 16(3)] Condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.

Implied warranties

a) Warranty as to quiet possession [Section 14(b)] There is an implied warranty that the buyer shall have and enjoy quiet possession of the goods. The reach of this warranty gives buyer a right to claim damages from the seller.

b) Warranty of freedom from encumbrances [Section 14(c)] There is an implied warranty that the goods are free from any charge or encumbrance in favour of any third person if the buyer is not aware of such charge or encumbrance. The breach of this warranty gives buyer a right to claim damages from the seller.

c) Warranty as to quality or fitness for a particular purpose annexed by usage of trade [Section 16(3)] This means that even though the buyer may not have expressly informed the seller about the purpose for which the goods are required, if there is a **custom** or usage in the trade that the goods supplied are expected to be fit for a particular purpose, the seller is bound by such implied warranty.

d) Warranty to disclose dangerous nature of goods.

There is also an **implied warranty** that the seller must **disclose the dangerous nature** of the goods if the goods are of such a kind that they are **inherently dangerous** or **likely to cause harm** if used without special precautions.

If the seller fails to inform the buyer about the **dangerous character** of the goods and the buyer suffers injury or loss, the seller will be held **liable for breach of warranty**.

Indemnity and Guarantee:-

- The **contract of indemnity** and the **contract guarantee** are the **special contracts** under the **Indian Contract Act, 1872**. The contract of **indemnity** is the contract where one person **compensates** for the loss of the other.
- **Contract of guarantee** is a contract between **three people** where the third person **intervenes to pay the debt** if the **debtor** is at **default in paying back**.
- The **contract of guarantee** and **contract of indemnity** perform similar commercial functions in providing **compensation** to the creditor for the failure of a third party to perform their obligation.

In an indemnity contract, there are only two parties i.e.,

- **The Indemnifier:** The promisor, who agrees to make up the damage caused to the other group.
- **The Indemnified:** The person who is assured of compensation for the damage incurred (if any) is referred to as the indemnity holder or the indemnified.

Essentials in the Contract of Indemnity

- **Valid contract:** An **indemnity contract** must have all parts of a **valid contract**. The **Indian Contract Act of, 1872** applies to indemnity contracts.

- **Loss protection:** The indemnity contract is for **loss protection**. The indemnifier is bound to recover the losses.
- **Parties:** The indemnity contract shall have **two parties**. The indemnifier and the holder.
- **Contracts:** There is one contract only between the **holder and the indemnifier**.
- **Express or implied:** The indemnity contract can either be **spoken or written**. The parties can also imply it.

Types of Indemnity

- **Express Indemnity:**
 - This is also known as **written indemnity**. Under this, all the **terms and conditions of the indemnity** are mentioned specifically in the contract.
 - The **rights and the liabilities of both parties** are clearly set out in the agreement.
 - This type of agreement includes **insurance indemnity contracts, construction contracts, agency contracts, etc.**
- **Implied Indemnity:**
 - It refers to that **indemnity** wherein the **obligation arises** from the **facts and the conduct of the parties** involved. This is not a written contract.
 - The core example of this type of indemnity is the **master-servant relationship**.
 - The master is liable to indemnify his servant for the losses that he incurred while working as per his instruction.
- **Rights of an Indemnity Holder** (Indemnified Party)
Section 125 of Indian contract Act, 1872 deals with **rights of an indemnity holder**. The **promisee** in a contract of **indemnity**, acting within the scope of his authority, is entitled to **recover from the promisor**:
 - **Recovery of Damages and Costs:** The indemnity holder can recover from the indemnifier all damages, costs, and expenses they are legally compelled to pay in any suit or proceeding related to the matter covered by the indemnity.
 - **Bringing and Defending Suits:** The indemnity holder can recover costs if they bring or defend a suit with the indemnifier's authority.
 - **Compensation for Loss:** The primary right is to be compensated for losses or damages that are within the scope of the indemnity agreement.
 - **Subrogation (Implied):** While more prominent in insurance, this right allows the indemnifier to step into the shoes of the indemnity holder to sue a third party for damages after paying a claim. .

Rights of the Indemnifier (Promisor)

- **Right to Recover Losses:** After paying damages to the indemnity holder, the indemnifier has the right to recover these losses or have them reimbursed.
- **Control and Settlement of Claims:** The indemnifier can have the right to control and settle claims arising from the indemnified matter.

- **Demand Contribution:** If the indemnity holder also has a right to contribution from another party, the indemnifier can claim a share of the costs or damages from that third party.
- **Right to Defend Legal Proceedings:** The indemnifier has the right to defend any legal proceedings related to the matter for which they have provided indemnity.

Guarantee: -

Contract of guarantee is a contract between three people where the third person intervenes to pay the debt if the debtor is at default in paying back.

Essential Elements of Guarantee: -(Explain in detail)

- Tri partite agreement
- Consent of three party
- Existing liability
- Essential of Valid Contract
- Guarantee not received by misrepresentation.
- Guarantee not obtained by documents of material of facts.
- Kinds of Guarantee- **(Specific and Continuous)**
- **A specific guarantee** (also called a **simple or single transaction guarantee**) is a **guarantee that applies to a specific transaction or debt only**. It is given for a **particular purpose** or **single dealing** between the creditor and the principal debtor. Once that transaction is completed, the guarantee comes to an end automatically.
- **A continuing (continuous) guarantee** is a guarantee that **extends to a series of transactions**. It remains in force **until revoked** by the surety or until the total liability has been fulfilled.
- This type of guarantee covers **multiple future transactions** between the creditor and the principal debtor, within the agreed limit or period.

Bailment:-

A "bailment" is the **delivery of goods by one person to another for some purpose**, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the "bailor".

There are two parties in Bailment: -

1. Bailor and the other one
 2. Bailee
- **The person delivering the goods is called Bailor.**
 - **The person Receiving the goods is called Bailee.**

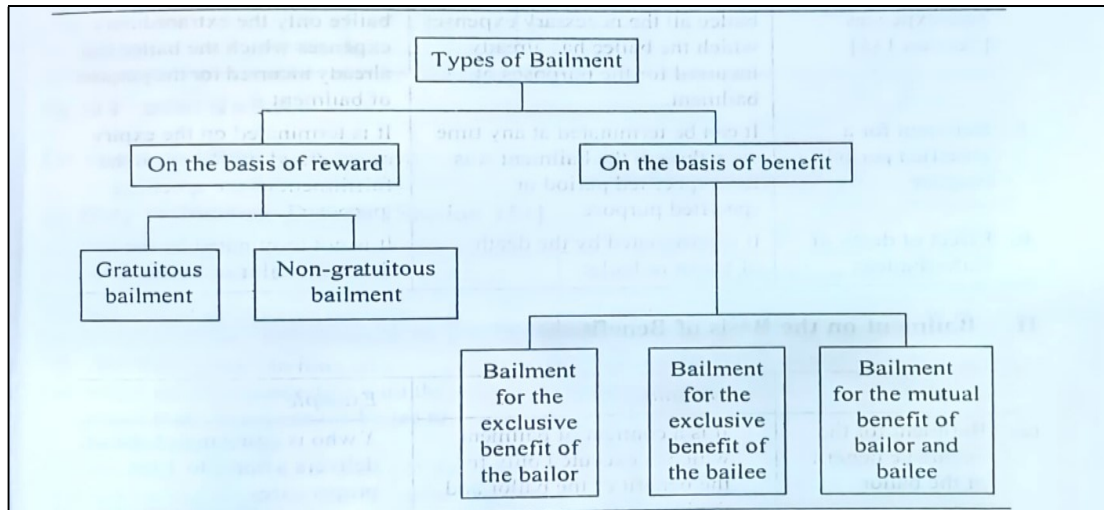
Hence after completion of the purpose the goods need to be returned or disposed of according to the terms of contract.

Essential Elements of Bailment:-

- Agreement (Between Two Parties Bailor & Bailee)
- Delivery of goods (What they Decided)

- Purpose (For Specific)
- Return of Specific Goods (Should be return)

Kinds of Bailment: -



On the Basis of Reward:-

1. Gratuitous Bailment

A **gratuitous bailment** is a type of bailment where neither the bailor nor the bailee receives any reward or consideration. It is done purely out of goodwill, without any payment or benefit to either party. For example, if A lends his book to his friend B for a week without any charge, it is a gratuitous bailment. In such a case, the bailee must take reasonable care of the goods (as per Section 151), and the bailor can terminate the bailment at any time, provided it does not cause loss to the bailee.

2. Non-Gratuitous Bailment

A **non-gratuitous bailment** (also known as a bailment for reward) is one where some consideration or payment is involved. It benefits either or both parties, and the bailee usually receives a reward or payment for the service rendered. For example, if A gives his car to B, a mechanic, for repair and pays ₹2,000 for the service, this is a non-gratuitous bailment. Such bailments are common in business and commercial transactions, where both parties are legally bound to fulfill their duties under the contract.

On the Basis of Reward:-

1. Bailment for the Exclusive Benefit of the Bailor

A **bailment for the exclusive benefit of the bailor** occurs when the bailment is made only for the bailor's benefit, and the bailee receives no advantage. The bailee simply holds or takes care of the goods as a favor. For example, if A requests B to keep his jewelry safely while A is traveling, without any payment, this bailment benefits only A (the bailor). The bailee must take reasonable care of the goods, though he receives no benefit from the transaction.

2. Bailment for the Exclusive Benefit of the Bailee

A **bailment for the exclusive benefit of the bailee** happens when the goods are delivered solely for the bailee's advantage, without any benefit to the bailor. For instance, if A lends his motorbike to his friend B for personal use without any charge, the benefit is entirely for B (the bailee). In this case, since the bailee is the only one who gains, he is required to take **extraordinary care** of the goods and ensure they are returned in proper condition after use.

3. Bailment for the Mutual Benefit of Bailor and Bailee

A **bailment for the mutual benefit of both bailor and bailee** is the most common form of bailment in commercial dealings. In this type, both parties gain some advantage — the bailor receives the desired service, and the bailee earns payment or profit. For example, if A gives his watch to B, a watch repairer, and pays for the repair service, both benefit: A gets his watch repaired, and B receives payment. Such contracts are legally binding, and both parties are responsible for performing their obligations fairly.

❖ Duties of Bailor and Bailee:-

Duties of Bailor:-

1. Duty to Disclose Defects (Section 151)

According to **Section 151** of the Indian Contract Act, it is the duty of the **bailor** to disclose to the **bailee** any known faults or defects in the goods bailed, which are of such a nature that they might interfere with the use of the goods or expose the bailee to extraordinary risk. If the bailor fails to inform the bailee about such defects and any loss or damage occurs as a result, the bailor will be responsible for it. For example, if A lends his horse to B knowing that the horse is vicious but does not inform B, and B gets injured, A will be liable for the injury.

2. Duty to Bear Expenses (Section 158)

As per **Section 158**, in the case of a **gratuitous bailment**, the bailor must bear all the necessary expenses incurred by the bailee for the purpose of the bailment. However, if the bailment is **non-gratuitous** (for reward), the expenses are usually shared or borne by the bailee as agreed in the contract. For instance, if A gives his bicycle to B to use for free, A

must bear the expenses for its maintenance, but if B pays A for its use, B bears the cost of repairs.

3. Duty to Indemnify the Bailee in Case of Premature Termination of Gratuitous Bailment (Section 159)

Under **Section 159**, the bailor in a **gratuitous bailment** has the right to terminate the bailment at any time, even before the agreed period ends. However, if the premature termination causes any **loss or inconvenience** to the bailee that exceeds the benefit derived from the bailment, the bailor must **indemnify (compensate)** the bailee. For example, if A lends his piano to B for six months but asks for it back after one week, and B suffers a loss because he had spent money to transport and tune it, A must compensate B for that loss.

4. Duty to Indemnify the Bailee Against Defective Title of Bailor (Section 164)

According to **Section 164**, if the bailor's title to the goods is defective and the bailee suffers any loss due to this defect, the bailor must indemnify the bailee. This means that the bailor must compensate the bailee for any damages caused by the bailor's lack of ownership or authority over the goods. For example, if A gives B a car for use, but it turns out that A had stolen the car, and the real owner reclaims it from B, A must compensate B for the loss suffered.

5. Duty to Receive Back the Goods (Section 164)

As per **Section 164**, the bailor has a duty to accept the goods back once the purpose of the bailment has been accomplished or the period of bailment has expired. If the bailor refuses or neglects to take back the goods, he will be responsible for any loss, damage, or deterioration that occurs to the goods after the proper time for return has passed. For instance, if A gives his furniture to B for safekeeping and does not take it back after the agreed time, A will bear any loss that occurs thereafter.

6. Duty to Bear the Risk of Loss (Section 152)

Under **Section 152**, the **bailor** must bear the **risk of loss** if the goods bailed are destroyed or damaged due to no fault or negligence of the bailee, provided the bailee has taken the care required under Section 151. In such cases, the bailee is not liable, and the loss falls upon the bailor as the owner of the goods. For example, if A leaves his goods with B for safekeeping and the goods are destroyed in an accidental fire despite B's due care, A must bear the loss.

Duties of Bailee:-

1. Duty to Take Care of Goods (Sections 151 & 152)

According to **Section 151**, the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would take of his own goods of the same kind and under similar circumstances. The bailee must ensure the goods are protected from loss, damage, or destruction. Under **Section 152**, if the bailee has taken such due care and yet the goods are lost or destroyed due to accident or unavoidable causes, the bailee is **not liable** for that loss. For example, if A gives his watch to B for repair and B keeps it safely but it is stolen despite reasonable precautions, B is not responsible for the loss.

2. Duty Not to Make Unauthorized Use of Goods (Section 154)

As per **Section 154**, if the bailee uses the goods bailed for any purpose other than that agreed upon in the contract, he is liable to compensate the bailor for any loss or damage arising from such unauthorized use. The bailor can also terminate the bailment immediately. For example, if A gives his car to B to drive to a nearby town, but B uses it for a long trip, and the car gets damaged, B will have to compensate A for the damage caused due to the unauthorized use.

3. Duty Not to Mix Bailor's Goods with Bailee's Goods (Sections 155–157)

Under **Section 155**, if the bailee mixes the bailor's goods with his own goods **with the consent of the bailor**, both share the mixed goods in proportion to their respective interests. However, **Section 156** provides that if the bailee mixes the bailor's goods **without consent** and the goods can be separated, the bailee must bear the expense of separation and any damage caused during separation. If the goods cannot be separated, **Section 157** states that the bailee must compensate the bailor for the loss of goods. For instance, if A gives 100 kg of wheat to B for storage and B mixes it with his own wheat without permission, B must either separate A's wheat or compensate A for the loss if separation is impossible.

4. Duty to Return the Goods (Sections 160 & 161)

According to **Section 160**, it is the duty of the bailee to return or deliver the goods to the bailor, or according to the bailor's directions, **as soon as the purpose of the bailment is accomplished** or the period of bailment has expired. If the bailee fails to return the goods at the proper time, then under **Section 161**, he becomes responsible for any loss, destruction, or deterioration of the goods even if it happens accidentally. For example, if A gives his laptop to B for repair and B does not return it on the agreed date, and the laptop is later damaged in a fire, B will be liable for the loss due to the delay.

5. Duty to Return Accretion to the Goods (Section 163)

As per **Section 163**, if any increase, profit, or improvement (called **accretion**) is made in or upon the goods bailed, the bailee must return it along with the goods to the bailor. This means any natural or incidental addition to the goods belongs to the bailor. For example, if A leaves

his cow with B for care, and the cow gives birth to a calf during the bailment period, both the cow and the calf must be returned to A.

Rights of a Bailor:-

When a person (Bailor) delivers goods to another (Bailee) for some purpose under a contract of bailment, the Bailor enjoys certain rights as per the **Indian Contract Act, 1872**.

1. Right to claim damages in case of negligence (Section 152)

If the Bailee fails to take reasonable care of the goods bailed and the goods are damaged, lost, or destroyed due to his negligence, the Bailor has the right to claim damages.

Example: If A gives his car to B for repair and B carelessly leaves it unlocked, causing theft, A can claim compensation.

2. Right to terminate the contract in case of unauthorized use (Section 153)

If the Bailee uses the goods in a way not authorized by the Bailor or inconsistent with the contract, the Bailor can terminate the bailment immediately.

Example: If A lends his horse to B for riding within the city but B rides it to another town, A can terminate the bailment.

3. Right to claim compensation in case of unauthorized use (Section 154)

If the Bailee makes unauthorized use of the goods and any loss or damage occurs, the Bailee must compensate the Bailor for such loss.

Example: If A gives his car to B for a short trip, but B uses it for a long journey and damages the car, A can claim compensation.

4. Right to claim separation of goods in case of unauthorized mixture (Section 156)

If the Bailee, without the Bailor's consent, mixes the Bailor's goods with his own, and the goods can be separated or divided, the Bailor has the right to claim his goods after separation, and the Bailee must bear the cost of separation.

Example: A's grain is mixed with B's grain without permission, but they can be separated. A can demand separation at B's expense.

5. Right to claim compensation for unauthorized mixture of goods that cannot be separated (Section 157)

If the Bailee mixes the Bailor's goods with his own without consent and the goods cannot be separated, the Bailor has the right to claim compensation for the loss of his goods.

Example: A's oil is mixed with B's oil of a similar kind and cannot be separated. B must compensate A for the loss.

6. Right to demand return of goods (Section 160)

When the purpose of bailment is accomplished or the time of bailment has expired, the Bailor has the right to demand the return of goods from the Bailee.

Example: A gives his camera to B for a two-day event. After two days, A can demand its return.

7. Right to claim compensation for unauthorized retention of goods (Section 161)

If the Bailee fails to return or deliver the goods at the proper time, he is responsible for any loss, destruction, or deterioration of the goods, even if it happens without his fault.

Example: A gives furniture to B for repair, and B delays returning it. If the furniture gets damaged in a flood after the due date, B is liable.

8. Right to demand accretions to goods (Section 163)

If any increase, profit, or addition (accretion) is made to the goods bailed, the Bailor has the right to such accretions.

Example: If A gives a cow to B for safekeeping and the cow gives birth to a calf, A is entitled to both the cow and the calf.

Rights of a Bailee

A **Bailee** is a person to whom goods are delivered for some purpose under a contract of bailment. The Bailee has certain rights under the law to protect his interests during the period of bailment.

1. Right to claim damages (Section 150)

If the Bailor fails to disclose known faults or defects in the goods bailed and the Bailee suffers loss or injury due to such defects, the Bailee has the right to claim damages from the Bailor.

Example: If A lends a horse to B, knowing it is unfit for riding but does not inform B, and B gets injured, then A is liable to compensate B for the damages.

2. Right to claim reimbursement of expenses (Section 158)

When goods are bailed for the benefit of the Bailor, the Bailee has the right to be reimbursed for all necessary expenses incurred in connection with the bailment.

Example: If A leaves his dog with B for safekeeping, and B spends money on food and care, A must reimburse B for those expenses.

3. Right to be indemnified in case of premature termination of gratuitous bailment (Section 159)

If a gratuitous bailment (bailment without reward) is terminated before the agreed time or before the purpose is achieved, and the Bailee suffers a loss due to such premature termination, he is entitled to be indemnified by the Bailor.

Example: A lends his horse to B for a week without payment but asks for it back after two days. If B suffers any loss due to this early termination, A must compensate B.

4. Right to recover loss in case of Bailor's defective title (Section 164)

If the Bailor is not the true owner of the goods and the Bailee suffers loss due to a defective title of the Bailor, the Bailee has the right to recover such loss from the Bailor.

Example: If A gives B a car for hire that actually belongs to C, and C claims it back from B, then B can recover any loss from A.

5. Right to recover loss in case of Bailor's refusal to take goods back (Section 164)

If, after the completion of the bailment purpose, the Bailor refuses to take the goods back, the Bailee can recover compensation for any loss, expense, or inconvenience caused due to such refusal.

Example: If A gives machinery to B for repair and refuses to collect it after the repair, B can claim compensation for storage or maintenance costs.

6. Right to deliver goods to any one of the joint Bailors (Section 165)

If there are multiple joint Bailors, the Bailee can deliver the goods to any one of them without being responsible to the others.

Example: If A, B, and C jointly bail goods to D, D can return the goods to either A, B, or C.

7. Right to deliver goods to the Bailor in case of defective title (Section 166)

If the Bailee, in good faith, delivers the goods to the Bailor who has a defective title, the Bailee will not be held liable to the true owner for such delivery.

Example: If A lends B goods that actually belong to C, and B returns them to A before knowing C's ownership, B is not liable to C.

8. Right to particular lien (Section 170)

The Bailee has the right to retain the goods bailed to him until he receives due payment for services rendered or expenses incurred regarding those goods.

Example: If A gives his watch to B for repair and B repairs it, B has a right to retain the watch until A pays for the repair charges.

Performance of contract of sale: -

- ▶ Performance of a Contract: It is the duty of the seller to deliver the goods and of the buyer to accept and pay for them, in accordance with the terms of the contract of sale. Sec.31,
- ▶ The Sale of Goods Act, 1930. The performance of a contract is a simple transaction where the seller delivers the goods and the buyer pays..

- Seller's main duty:-

Is to deliver the goods to the buyer

- Buyer's main duty:-

To accept the goods and pay the price to the seller as per the terms of the contract The parties are free to provide any terms in their contract regarding time, place, delivery, payment of goods and so on. But if the parties are silent and no terms are mentioned in the contract then rules contained in the sale of goods act will be applicable.

Delivery of Goods:-

Acc to Sec. 33 to Sec. 39 of the Sale of Goods Act 1930 . Delivery means voluntary transfer of possession of goods from one person to another

- ▶ Seller: Delivers goods and receives consideration.
- ▶ Buyer: Accepts and pays for the goods.
- ▶ Terms: Contract can have terms of delivery and payment.

Types of Delivery:

- ▶ 1.Actual Delivery
- ▶ 2.Constructive Delivery
- ▶ 3.Symbolic Delivery

1. **Actual Delivery** It means actual physical delivery of the goods to the buyer or his authorized agent by the seller or his authorized agent.

2. **Symbolic Delivery** When goods are not physically delivered but the means of obtaining possession of goods is delivered to buyer. Symbol is used for delivery. Example: Handing over of keys of godown where goods are safely kept etc.

3. **Constructive Delivery** Third party is involved in delivery. Seller don't deliver the goods directly.

Example: Seller à Warehouse man/ warehouse keeper à Buyer Rules relating to delivery of Goods:

- **Rules of Delivery of Goods:-**

1. **Payment and delivery are concurrent** (performed at the same time) Payment and delivery are concurrent, which means both should be performed at the same time unless otherwise agreed. Example: Cash sale (this is not applicable for credit sale)

2. **Effect of part delivery** If the order placed is so big and delivery of goods takes place in parts so when buyer accepts the part delivery then that means, buyer is giving the acceptance to the whole delivery.

4. **Buyer to apply for delivery** Buyer should ask the seller to deliver the goods.

5. **Place of delivery** Place of delivery should be specified by the parties, in case when no agreement is there/ parties are silent about it then place of contract will be considered as place of delivery. Example: If place of contract is factory then place of delivery will also be considered as factory.

6. **Time for delivery of goods** Delivery should be done within specified time. If no time is specified then delivery should be completed within a reasonable time.

7. **Goods in possession of third party** If goods are in possession of third party like warehouseman/ warehouse keeper then seller needs to acknowledge the sale to third person like warehouseman who will then deliver the goods to buyer.

8. **Expenses of delivery** Seller will borne all the expenses to bring the product to deliverable state and for obtaining the delivery, buyer will borne all the expenses.

9. **Delivery of wrong quantity-** either short/ excess/ mixed delivery

a) **Short Delivery** Received amount is less than the ordered quantity.

Example: Ordered 100 quantity from sellerà Received 90 quantity In this case, buyer has below mentioned options:

i) Reject the goods

ii) Accept the goods- But if he accepts the goods so delivered then he is bound to pay for them at the contract price.

b) **Excess Delivery** Received amount is more than the ordered quantity.

Example: Ordered 100 quantity from seller -----Received 110 quantity In this case, buyer has below mentioned options:

i) Reject the whole goods

ii) Accept the whole goods

iii) Accept the contracted quantity of goods i.e 100 and reject the rest i.e 10

c) **Mixed Delivery** It means goods delivered have the goods of different description as well then contracted for.

Example: Ordered 100 quantity from seller a Received 50 quantity matches to the specified description during the contract and 50 quantity does not match with the description In this case, buyer has below mentioned options:

10. **Instalment Deliveries** If parties agree to get the goods in instalments then buyer is bound to accept the delivery thereof by instalments. Parties are not bound to deliver the goods in instalments unless agreed.

11. **Delivery to the carrier/ courier company** If seller gives the goods to carrier/ courier company to deliver the same to the buyer then that does not means that goods are delivered to buyer, it will be considered in transit unless delivered to the buyer actually.

Duties of Buyer & Seller

<ul style="list-style-type: none"> ▶ Accept delivery when seller is ready. ▶ Pay price as per contract. ▶ Apply for and demand delivery. ▶ Take delivery at reasonable hour/time. ▶ Accept instalments if agreed. ▶ Bear risk during transit (if agreed). ▶ Inform seller if rejecting goods. 	<ul style="list-style-type: none"> ▶ Transfer ownership properly. ▶ Identify and allocate goods to contract. ▶ Give clear title to buyer. ▶ Deliver as per contract. ▶ Ensure goods meet terms/warranties. ▶ Make goods ready for delivery. ▶ Deliver on time and during business hours.
Duties of Buyer	Duties of seller

Duties of Buyer & Seller

<ul style="list-style-type: none"> ▶ Accept delivery when seller is ready. ▶ Pay price as per contract. ▶ Apply for and demand delivery. ▶ Take delivery at reasonable hour/time. ▶ Accept instalments if agreed. ▶ Bear risk during transit (if agreed). ▶ Inform seller if rejecting goods. 	<ul style="list-style-type: none"> ▶ Transfer ownership properly. ▶ Identify and allocate goods to contract. ▶ Give clear title to buyer. ▶ Deliver as per contract. ▶ Ensure goods meet terms/warranties. ▶ Make goods ready for delivery. ▶ Deliver on time and during business hours.
Duties of Buyer	Duties of seller

Unit-3

Negotiable Instrument Act-1881

DEFINITION

According to Section 13 of the Act, "Negotiable instrument means a promissory note, bill of exchange or cheque payable either to order or to bearer, whether the word "order" or "bearer" appear on the instrument or not."

It came in to force on 1st March 1881, it is applicable to whole India except the states of Jammu and Kashmir.

Meaning of Negotiable Instruments: -

Negotiable instruments mean a promissory note, Bills of Exchange & Cheques i.e., payable either to order or bearer. The right of ownership contained in the instruments may be transferred either immediately or at some point of time.

Characteristics of a Negotiable Instruments: -

1. **Easy transferability** The property (ownership) in a negotiable instrument is transferred by mere delivery, if the instrument is payable to bearer, by delivery and indorsement if payable to order.
2. **Transferee's title free** from all defects the transferee who takes it bona fide and for value and before maturity (called holder in due course) gets a good title even if the title of transferor was defective.
3. **Transferee can sue in his own name:** The transferee of the negotiable instrument can sue in his own name, in case of dishonour.
4. **Prompt payment** A negotiable instrument enables the holder to expect prompt payment because a dishonour means the ruin of the credit of all persons who are parties to the instrument.
5. **Notice of transfer not necessary:** The transferee is not required to give a notice of transfer to the person liable to pay the instrument.

Presumptions Sections 118 and 119 of the Negotiable Instrument Act lay down certain presumptions which the court presumes regarding negotiable instruments:

1. **Consideration:** It is presumed that every negotiable instrument was made drawn, accepted or endorsed for consideration.
2. **Date:** Every negotiable instrument is presumed to have been made or drawn on the date which it bears.

3. **Time of acceptance:** It is presumed that every accepted bill was accepted within a reasonable time after its issue and before its maturity.

4. **Time of transfer:** It is presumed that every transfer was made before its maturity.

5. **Order of endorsement:** The endorsements are presumed to have been made in the order in which they appear thereon.

6. **Stamp:** In case an instrument is lost, it is presumed that it was duly stamped.

7. **Every holder is a holder in due course:** Every holder is presumed to be a holder in due course.

8. **Proof of protest:** In case a suit is filed for dishonour of instrument, the court shall on proof of the protest, presume the fact of dishonour, unless and until such fact is disproved.

PROMISSORYNOTE

Section 4 of the Act defines, "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 to or to the order of a certain person, or to the bearer of the instruments."

Parties to a Promissory Note:

1. **Maker**—The person who makes the note and promises to pay.
2. **Payee**—The person to whom the amount is payable.

Essential elements:-

An instrument to be a promissory note must possess the following elements:

(1) It must be in writing: A mere verbal promise to pay is not a promissory note.

(2) It must contain an express promise to pay: There must be an express undertaking to pay. A mere acknowledgment of debt is not enough.

(3) Promise to pay must be un conditional: A conditional undertaking destroys the negotiable character of an other wise negotiable instrument.

(4) It should be signed by the maker: The person who promises to pay must sign the instrument even though it might have been written by the promisor himself.

(5) The maker must be certain: The note itself must show clearly who is the person agreeing to undertake the liability to pay the amount.

(6) The payee must be certain: The instrument must point out with certainty the person to whom the promise has been made.

- (7) **The promise should be to pay money and money only:** Money means legal tender money and not old and rare coins.
- (8) **The amount should be certain:** The amount payable must be certain.
- (9) **Other formalities:** The other formalities regarding number, place, date, consideration, etc., though usually found given in the promissory notes, are not essential in law.

Specimen of Promissory Note

	216, MalkaGanj, Delhi-110 007 5th May, 2012.
₹ 10,000.00 P	
<div style="border: 1px solid black; width: 40px; height: 40px; margin: 0 auto; display: flex; align-items: center; justify-content: center;"> Stamp </div>	Three months after date, we promise to pay M/s Lakhmi Chand & Sons or their order a sum of Rupees Ten Thousand Only, for value received.
To M/s Lakhmi Chand & Sons, 126, Chandni Chowk, Delhi-11006	For M/s Aggarwal Stores (Signed) Nakul Gupta (Nakul Gupta) Partner

Bills of Exchange:-

According to Section 5 of the Negotiable Instruments Act defines: “A Bill of Exchange is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.”

Parties to a Bill of Exchange:-

1. **Drawer:** The maker of a bill of exchange. (Purchaser / Creditor)
2. **Drawee:** The person directed to pay the money by the drawer. (Vendor / Debtor) — Selling the goods on credit basis.
Acceptor: After a drawee of a bill has signed his assent upon the bill, he is called the acceptor.
3. **Payee:** The person to whom the money is to be paid. (Can be anyone)

Essential Conditions of a Bill of Exchange:-

- (1) **It must be in writing:** A bill of exchange must always be in written form. It can be handwritten, typed, or printed, but oral instructions are not valid under law.
- (2) **It must be signed by the drawer:** The person who creates the bill, known as the *drawer*, must sign it. Without the signature of the drawer, the bill has no legal effect.
- (3) **The drawer, drawee, and payee must be certain:** The bill must clearly mention who is the drawer (the maker), who is the drawee (the person who has to pay), and who is the payee

(the person to whom the payment is to be made). There should be no confusion about their identity.

(4) **The sum payable must also be certain:** The amount mentioned in the bill must be fixed and definite. It should not depend on any future event or condition. For example, “Pay ₹10,000” is valid, but “Pay what is due after settlement” is not.

(5) **It should be properly stamped:** According to the Indian Stamp Act, a bill of exchange must bear the correct stamp value. Without the proper stamp, it cannot be used as legal evidence in court.

(6) **It must contain an express order to pay money and money alone:** The bill must include a clear and direct order to pay money only. It cannot be for payment in goods or services — only legal tender money is allowed.

(7) **The order must be unconditional:** The direction to pay must not depend on any condition. For example, “Pay ₹5,000 when goods are delivered” is conditional and invalid, but “Pay ₹5,000” is valid.

Specimen of Bill of Exchange

Mr. A (Drawer) 48, MP Nagar, Bhopal (M.P.) April 7, 2015
Rs. 10,000/- Four months after date, pay to Mr. B (Payee) a sum of Rupees Ten Thousand, for value received.
To Mr. C (Drawee) 576, Arera Colony, Bhopal (M.P.)
Signature Mr. A

CHEQUE

Section 6 of the Act defines "A cheque is a bill of exchange drawn on a specified banker, and not expressed to be payable other wise than on demand".

A cheque is bill of exchange with two more qualifications, namely,

- (i) It is always drawn on a specified banker, and
- (ii) It is always payable on demand.

Consequently, all cheque are bill of exchange, but all bills are not cheque.

Parties to a Cheque

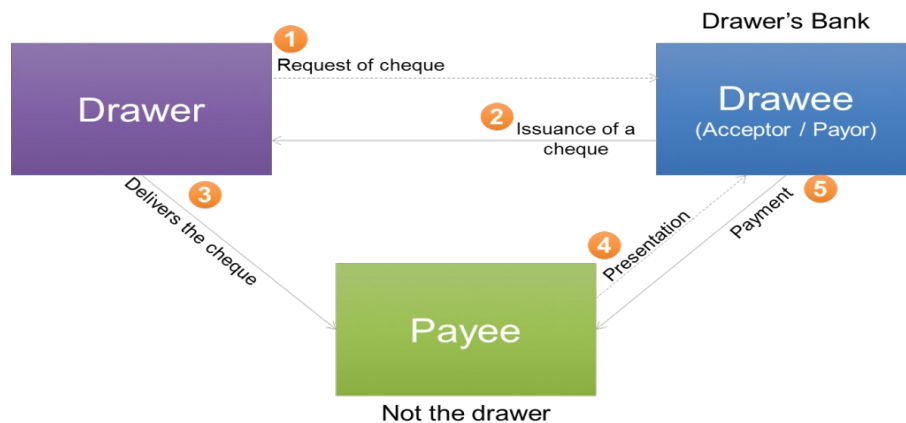
1. **Drawer.** The person who draws the cheque.
2. **Drawee.** It is the drawer's banker on whom the cheque has been drawn.

3. **Payee.** He is the person who is entitled to receive the payment of the cheque.

Specimen of Cheque

Date:
Pay..... a sum of Rupees.....
Rs.
A/C No. 12345678910
ABC Bank 622, Vijay Nagar, Indore (M.P.)
Signature
01212 1125864 000253 38

Process of Cheque:-



Elements /Characteristics of Cheque:-

- ❖ In writing
- ❖ Express order to pay, Definite and unconditional order
- ❖ Signed by the drawer, Order to pay certain sum
- ❖ Pay money only , Certain 3 parties, Drawn upon a specified banker
- ❖ Payable on demand

Types of Cheques:-

(a) **Open Cheque** – When the cheque is payable at the counter of the bank on whom it is drawn, it is called an open cheque. It may be of two types .

- **Bearer Cheque** -When a cheque is payable to the bearer i.e. to the person who presents the cheque to the bank for encashment, is called bearer cheque. It can be transferred by mere delivery. Hence there is a great risk. Eg. Pay‘A’ or bearer.
- **Order Cheque** - When a cheque is payable to person named in the cheque or to his order, is called Order Cheque. It can be transferred only by endorsement and delivery.

Eg. Pay 'A' or order.

(b) Crossed Cheque – To reduce the risk involved in open cheque, a cheque may be crossed. It is the cheque on which two parallel transverse lines are drawn a cross the top left, with or without the word :

(i) '&Co.'

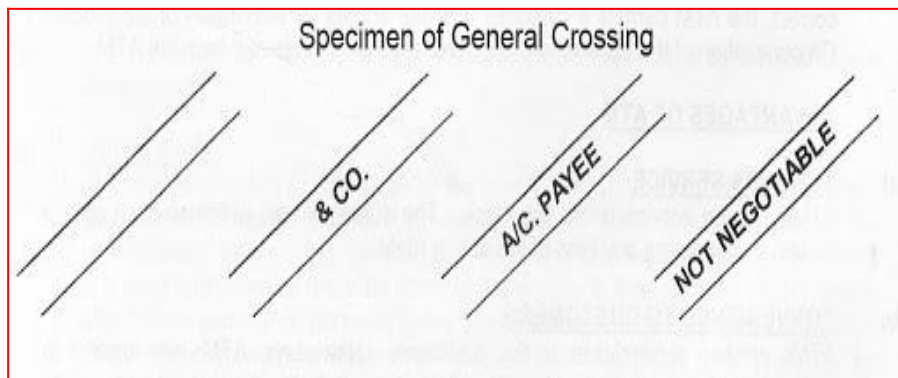
(ii) Not Negotiable

(iii) A/c Payee It cannot be cashed at the counter of the bank, can be received through a collecting banker.

MODES OF CROSSING:-

(1) General Crossing – In general crossing, simply two parallel transverse lines at the left hand side of its top corner with or without words such as 'and company' or 'not negotiable' may be drawn.

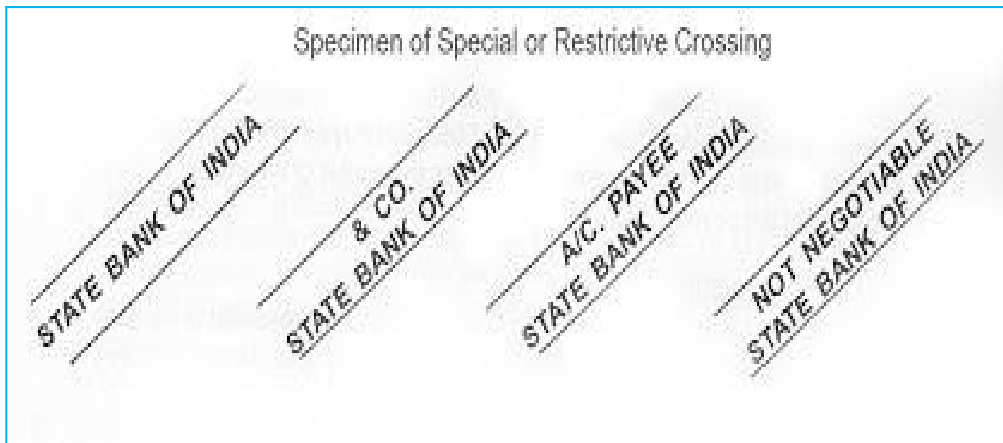
Effect-Payment can be made through bank account only, and not at the counter.



Example (General)	Meaning of the Lines	Why They Are Drawn
// (Two parallel lines)	Indicates the cheque is crossed. It cannot be encashed over the counter. It must be deposited into a bank account.	These lines ensure security — only credited to an account, not paid in cash.
& Co. written between lines	Shows general crossing continues even if the cheque passes through another bank.	It allows the cheque to be collected through any banker.
Payee's Account Only between lines	Adds restriction — only the payee's account can receive the money.	Prevents endorsement or transfer — enhances security.
Not Negotiable between lines	The cheque can be transferred, but the transferee cannot get a better title than the transferor.	Protects against fraud or theft — limits negotiability.

(2) Special Crossing - When a cheque bears the name of the bank in between the two parallel lines, with or without the words 'not negotiable' is called Special Crossing.

Effect- The bank will pay to the banker whose name is written in between he crossed lines.



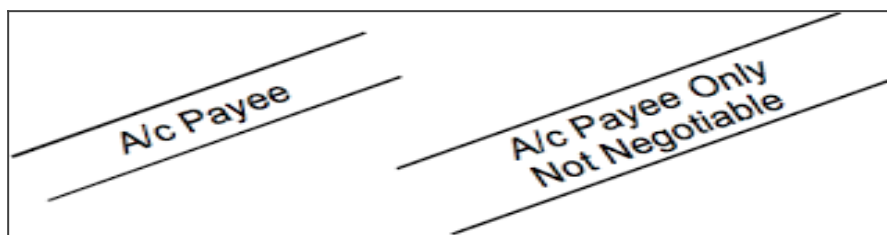
(3) Restrictive Crossing – In this, crossing of cheques is done by writing Account Payee or Account Payee only in between the crossing lines.

Effect-Payment will be credited to the account of payee named in the cheque.

(4) Not negotiable Crossing - A person taking a cheque crossed generally or specially, bearing in either case the words 'not negotiable' shall not be able to give a better title to the holder than that of the transferor.

Effect-The cheque can be transferred but the transferee will not acquire a better title to the cheque. Thus a cheque is deprived of its essential feature of negotiability.

Specimen of Not Negotiable Crossing



Example (Spe ,R, Not Neg)	Meaning of the Lines	Why They Are Drawn
// STATE BANK OF INDIA	The cheque can be collected only through that specific bank.	Ensures payment goes only through State Bank of India (SBI).
& Co., STATE BANK OF INDIA	Indicates the same — the collecting banker is SBI or its agent.	Adds clarity to the restriction.
A/C Payee STATE BANK OF INDIA	Means amount must be credited to the payee’s account only in SBI.	Prevents payment to anyone else — most restrictive form.
Not Negotiable STATE BANK OF INDIA	Transfer is possible, but title is not better than transferor’s.	Adds legal safeguard against loss or theft.

Comparison between Cheque and Bill of Exchange

S.N.	BASIS	CHEQUE	BILLOF EXCHANGE
1.	Meaning	A document used to make easy payments on demand and can be transferred through hand delivery	A written document that shows the In debtbness of the debtor towards the creditor
2.	Defined in	Section 6 of Negotiable Instrument Act,1881.	Section 5 of Negotiable Instrument Act,1881.
3.	Drawee	Always a specific bank	May be any person or bank
4.	Payable to bearer on demand	Always	Can not be made payable to bearer on demand.
5.	Acceptance	Does not require acceptance	A bill needs to be accepted.
6.	Validity period	3months	Not applicable
7.	Days of grace	No grace period is allowed	3daysof grace allowed
8.	Can it be crossed	Yes	No
9.	Stamping	No such requirement	Must be stamped

Comparison between Bill of Exchange and Promissory Note:-

S.N.	BASIS	BILLOF EXCHANGE	PROMISSORYNOTE
1.	Meaning	Bill of Exchange is an instrument in writing showing he in debtedness of a buyer towards the seller of goods.	It is an instrument in writing containing an unconditional undertaking signed by maker to pay a certain sum of money to a certain person or to the bearer.
2.	Defined in	Section5of Negotiable Instrument Act, 1881.	Section 4 of Negotiable Instrument Act, 1881.
3.	Nature of Payment	There is an unconditional order to pay	There is an unconditional promise to pay
4.	Number of Parties	Three parties ,i.e. drawer, drawee and payee.	Two parties, i.e. drawer and payee.
5.	Drawn by	Creditor	Debtor
6.	Liability of Maker	Secondary and conditional	Primary and absolute
7.	Notice of dishonour	Notice must be given to all persons Liable to pay	Notice of dishonor to maker is not Necessary
8.	Noting and protesting	Required in case of dishonor of a bill.	Not required in case of dishonor of a note.
9.	Payable to maker	The drawer and payee may be one person	Maker cannot pay to him self
10.	Copies	Bill can be drawn in copies.	Promissory Note cannot be drawn in copies.

ENDORSEMENT:-

What is Endorsement?

Endorsement means, “the writing of one’s name on the back of the instrument or any paper attached to it with the intention of transferring the rights therein“. – **Negotiable Instruments Act**

Thus, an endorsement is signing a negotiable instrument for the purpose of negotiation.

- Person who effects an endorsement is called an “**endorser**”
- Person to whom the negotiable instrument is transferred by endorsement is called the “**endorsed**”

Endorsement Meaning

Signing:-

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

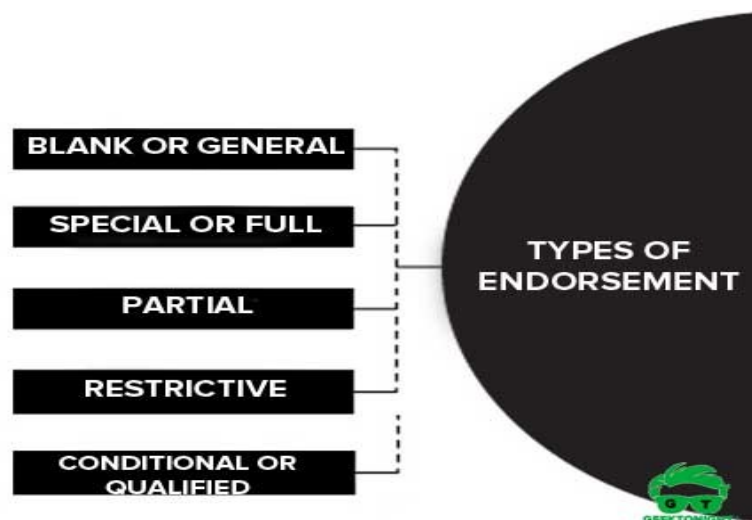
By:-

- the holder of negotiable instrument

Types of Endorsement

5 different types of endorsement are discussed below:

- ❖ Blank or general endorsement
- ❖ Special or full endorsement [Sec. 16]
- ❖ Partial endorsement [Sec. 56]
- ❖ Restrictive endorsement [Sec. 50]
- ❖ Conditional or qualified endorsement
 - Sans recourse
 - Facultative
 - Contingent



❖ Blank or General Endorsement

It is a type of endorsement when the **endorser just signs on the instrument without mentioning the name** of the person in whose favour the endorsement is made.

Endorsement in blank specifies no endorsee. It simply consists of the signature of the endorser on the endorsement.

Example: A bill is payable to X. X endorses the bill by simply affixing his signature. This is an endorsement in blank by X. In this case the bill becomes payable to bearer.

There is no difference between a bill or note endorsed in blank and one payable to bearer. They can both be negotiated by delivery.

❖ **Special or Full Endorsement**

In this type of endorsement contains **not only the signature** of the endorser **but also the name of the person** in whose favour the endorsement is made, then it is an endorsement in full.

In Special or Full Endorsement an endorsement, it is only the endorsee who can transfer the instrument.

Example: A is the holder of a bill endorsed by B in the blank. A writes over B's signature the words "Pay to C or order." A is not liable as an endorser but the writing operates as an endorsement in full from B to C.

❖ **Partial Endorsement**

A partial endorsement is a type of endorsement in which purports to transfer to the endorsee a part only of the amount payable on the instrument. Such an endorsement does not operate as a negotiation of the instrument.

Example: A is the holder of a bill for Rs.1000. He endorses it "pay to B or order Rs.500." This is a partial endorsement and invalid for the purpose of negotiation.

❖ **Restrictive Endorsement**

A restrictive endorsement is one which either by express words restricts or prohibits the further negotiation of a bill or which expresses that it is not a complete and unconditional transfer of the instrument but is a mere authority to the endorsee to deal with bill as directed by such endorsement.

Example: "Pay C," "Pay C for my use," "Pay C for the account of B" are instances of restrictive endorsement. The endorsee under a restrictive endorsement acquires all the rights of the endorser except the right of negotiation.

❖ **Conditional or Qualified Endorsement**

A type of endorsement where the endorsee limits or negatives his liability by putting some condition in the instrument is called a **conditional endorsement**. A conditional endorsement, unlike the restrictive endorsement, does not affect the negotiability of the instrument. It is also sometimes called a **qualified endorsement**.

(i) Sans recourse

Endorser relieves himself from the liability to all subsequent endorsees (or) An endorser who does not want to take risk on the instrument may, endorse it sans recourse by adding the words "sans recourse" or "without recourse".

Example: ‘Pay to A or order sans recourse, ‘pay to A or order with out recourse to me’.

(ii) Facultative

The endorser waives any of his rights (or) An endorsement where the endorser may curtail or waive his rights, is called a facultative endorsement. **Example:** “Pay A or order. Notice of dishonour waived”.

(iii) Contingent

The endorser makes his liability dependent upon happening of some event.(or) Where an endorser makes his liability dependent, upon the happening of a contingent event, which may or may not happen.

Example: ‘Pay A or order on his marriage with B’.

(iv) ‘Sansfrais’ endorsement: Where the endorser does not want the endorsee or any subsequent holder, to incur any expense on his account on the instrument, the endorsement is ‘sansfrais’.

Essential elements of endorsement: -

- An allonge must be their with the negotiable instruments
- It must be signed by endorser.
- It must be signed on negotiable instruments.
- It must be given by the holder of Instruments.

HOLDER

According to Section 9 of the Act ‘holder’ of a promissory note, bill of exchange or a cheque means any person entitled in his own name to the possession there of and to receive or recover the amount there on from the parties there to.

A holder in case of an instrument payable to order is payee or indorsee. In case the instrument is payable to bearer, holder means the possessor of the instrument.

HOLDER IN DUE COURSE

Holder in Due Course

Section 9 of the Act defines holder in due course as-“any person who acquires a promissory note, bill, or cheque bona fide, for value and before maturity.”

A holder in due course must satisfy the following conditions:

1. He must be a holder for valuable consideration.
2. He must have become a holder (possessor) before the date of maturity of the negotiable instrument.
3. He must have become a holder bona fide.
4. He should not have notice of defects, whether actual or constructive.

5. A holder in due course must take the negotiable instrument complete and regular on the face of it.

Example:

(i) A bill made out by pasting together pieces of a torn bill taken without enquiry will not make the holder, a holder in due course. It was sufficient to show the intention to cancel the bill.

Privileges of a Holder in Due Course**1. Instrument Purged of All Defects**

A holder in due course who gets the instrument in good faith in the course of its currency is not only himself protected against all defects of title of the person from whom he has received it, but also serves as a channel to protect all subsequent holders.

Example:

A obtains B's acceptance to a bill by fraud. A endorses it to C who takes it as a holder in due course. The instrument is purged of its defects and C gets a good title to it. In case C endorses it to some other person, he will also get a good title to it except when he is also a party to the fraud played by A.

2. Rights Not Affected in Case of an Inchoate Instrument (Section 20)

The right of a holder in due course to recover money is not at all affected even though the instrument was originally an inchoate stamped instrument and the transferor completed the instrument for a sum greater than what was intended by the maker.

3. All Prior Parties Liable (Section 36)

All prior parties to the instrument (the maker or drawer, acceptor, and intervening indorsers) continue to remain liable to the holder in due course until the instrument is duly satisfied. The holder in due course can file a suit against the parties liable to pay, in his own name.

4. Can Enforce Payment of a Fictitious Bill (Section 42)

Where both the drawer and payee of a bill are fictitious persons, the acceptor is liable on the bill to a holder in due course, if the latter can show that the signature of the supposed drawer and the first indorser are in the same hand.

5. No Effect of Conditional Delivery (Section 46)

Where a negotiable instrument is delivered conditionally or for a special purpose and is negotiated to a holder in due course, a valid delivery of it is conclusively presumed and he acquires good title to it.

Example:

A, the holder of a bill, indorses it "B or order" for the express purpose that B may get it discounted. B does not do so and negotiates it to C, a holder in due course. C acquires a good title to the bill and can sue all the parties on it.

6. No Effect of Absence of Consideration or Presence of an Unlawful Consideration (Section 58)

The plea of absence of or unlawful consideration is not available against the holder in due course. The party responsible will have to make payment.

7. Estoppel Against Denying Original Validity of Instrument (Section 120)

The plea of original invalidity of the instrument cannot be put forth against the holder in due course by the drawer of a bill of exchange or cheque or by an acceptor for the honour of the drawer.

However, where the instrument is void on the face of it (e.g., promissory note made payable to "bearer"), even the holder in due course cannot recover the money. Similarly, a minor cannot be prevented from taking the defence of minority. Also, there is no liability if the signatures are forged.

8. Estoppel Against Denying Capacity of the Payee to Indorse (Section 121)

No maker of a promissory note and no acceptor of a bill of exchange payable to order shall, in a suit therein by a holder in due course, be permitted to resist the claim of the holder in due course on the plea that the payee had not the capacity to indorse the instrument on the date of the note as he was a minor or insane or that he had no legal existence.

9. Estoppel Against Indorser to Deny Capacity of Parties

An indorser of the bill, by his endorsement, guarantees that all previous endorsements are genuine and that all prior parties had capacity to enter into valid contracts. Therefore, he, in a suit thereon by the subsequent holder, cannot deny the signature or capacity to contract of any prior party to the instrument.

DISCHARGE OF NEGOTIABLE INSTRUMENTS

The term 'discharge' in relation negotiable instruments has two meanings:

- (1) The discharge of the instrument, and
- (2) Discharge of one or more parties from liability on the instrument.

(a) Discharge of the instrument

An instrument is said to be discharged when all rights under it are extinguished so that instrument ceases to be negotiable. This happens when the party who is primarily and ultimately liable on the instrument is discharged from liability. A negotiable instrument may be discharged by any of the following ways :

1. By payment in due course.
2. By cancellation.
3. Where the principal debtor becomes the holder.
4. Where it discharges as simple contract

(b) Discharge of one or more parties from liability on the instrument

When any particular party or parties are discharged, the instrument continues to be negotiable and the un discharged parties remain liable on it. For example, the non presentation of a bill on the due date discharges the endorsers from their liability, but

the acceptor remains liable on it.

A party or parties may be discharged from liability in the following ways:

1. By cancellation
2. By release of the person liable
3. By Payment
4. By allowing drawee more than 48 hours to accept the bill.
5. By delay in presenting cheque.
6. By qualified acceptance
7. By material alternation
8. Dis charge by debtor becoming its holder
9. By operation of law

Unit-4
COMPANIES ACT-1956

Companies play very vital role in any economy. In our country, the Companies Act, 1956 primarily regulates the formation, financing, functioning and winding up of companies. The Act prescribes regulatory mechanism regarding all relevant aspects including organisational, financial and managerial aspects of companies. The winding up matters, presently are largely within the domain of the jurisdiction of High Courts. Regulation of the financial and management aspects constitutes the main focus of the Act. In the functioning of the corporate sector, although freedom of companies is important, protection of the investors and shareholders, on whose funds they flourish, is equally important. The Companies Act plays the balancing role between these two competing factors, namely, management autonomy and investor protection. The main objects of the Act are as under.

At the end of the II world war their started need for revision of the company law. Many changes have been taken place in the companies formation. The government of India their appointed with a committee with a 12 members on 25th October 1950 under the chairmanship of “Mr.H.C. Bhabha”, the committee developed a report and came in to existence on April 1952 the enactment of companies law was not prominent and barrowed a English companies act 1948 and companies act 1956 came in to existence.

Objectives of Companies Act:-

There are 4 objectives

1. It ensure proper administration.
2. It encourages investment.
3. It prevents from mall practice.
4. It allows investigation.

1. Ensures Proper Administration:

The Companies Act ensures that companies are managed and administered in a proper and efficient manner. This includes provisions for the appointment of directors, the conduct of board meetings, and the maintenance of company records.

2. Encourages Investment:

The Act aims to promote a stable and secure investment environment by providing a framework for companies to operate within. This includes provisions for the protection of shareholder rights, the disclosure of financial information, and the regulation of fundraising activities.

3. Prevents Malpractices:

The Companies Act contains provisions to prevent malpractices such as fraud, mismanagement, and oppression of minority shareholders. This includes provisions for the investigation of companies, the prosecution of offenders, and the protection of whistleblower rights.

4. Allows Investigation in Detail:

The Act provides for the investigation of companies in detail, including the power to inspect company records, interview directors and officers, and seize documents and assets. This enables regulators to detect and prevent malpractices, and to take enforcement action against companies that breach the law.

Features of Companies act 1956:-

1. Ridge and strict provisions.
 1. Share holders
 2. Stake holders
 3. Government
 4. Administration
 5. Promoters etc.

2. Administration by central government.
3. Recognize and indentify five years plan.
4. Companies act towards the achievement of social & Economic objectives.

1. Rigid and Strict Provisions:

The Companies Act 1956 contains rigid and strict provisions to regulate various stakeholders, including:

- 1. Shareholders:** Provisions related to shareholder rights, voting, and dividend payments.
- 2. Stakeholders:** Provisions related to stakeholder interests, including employees, customers, and suppliers.
- 3. Government:** Provisions related to government regulations, taxes, and reporting requirements.
- 4. Administration:** Provisions related to company administration, including board meetings, director responsibilities, and record-keeping.
- 5. Promoters:** Provisions related to promoter responsibilities, including disclosure requirements and fiduciary duties.

2. Administration by Central Government:

The Companies Act 1956 is administered by the Central Government, specifically the Ministry of Corporate Affairs. The government is responsible for:

- 1. Enforcing compliance:** Ensuring companies comply with the Act's provisions.
- 2. Regulating company affairs:** Overseeing company administration, including board meetings and director responsibilities.
- 3. Providing guidance:** Issuing circulars, notifications, and guidelines to clarify the Act's provisions.

3. Five-Year Plans:-

The Companies Act 1956 recognizes and identifies with the government's Five-Year Plans, which aim to:

- 1. Promote economic growth:** Encourage industrial development, employment, and economic growth.
- 2. Improve living standards:** Enhance the quality of life for citizens through better infrastructure, education, and healthcare.
- 3. Reduce poverty and inequality:** Implement policies to reduce poverty, inequality, and social injustice.

4. Social and Economic Objectives

The Companies Act 1956 aims to achieve various social and economic objectives, including:

- 1. Promoting transparency and accountability:** Ensuring companies operate transparently and accountably.
- 2. Protecting shareholder and stakeholder interests:** Safeguarding the rights and interests of shareholders and stakeholders.
- 3. Encouraging fair business practices:** Promoting fair competition, ethical business practices, and corporate social responsibility.
- 4. Supporting economic growth and development:** Contributing to India's economic growth and development through job creation, innovation, and investment.

What is a company?

A company is a group of persons associated together with a common Objective to achieve a common goal. A company is a volunteer association of members for the profit with shares.

INTRODUCTION

The word 'company' is derived from Latin word 'Com' which means 'Together' and the word 'panies' which means 'bread'. A company is thus an association of persons who took their meal together. In simple language the term company means an association of persons formed for some common purpose. When a few persons form a company for the purpose of some business of profit it is called Joint Stock Company. The persons forming the company are called 'shareholders'. The liability of the members of the company is usually limited.

MEANING”-

A joint stock company is an artificial person created by law having separate legal entity with a perpetual succession and common seal.

DEFINITION:-

- ❖ According to Section 3(1) of the Companies Act 1956, “a company means a company formed and registered under the act or an existing company” and “Existing Company means a company formed and registered under any of the previous companies act.”
- ❖ According to Prof. Haney — “a company is an artificial person created by law, having separate entity, with a perpetual succession and common seal.”.

Characteristics/ Features of company:-**1. Separate Legal Entity**

A company formed and registered under the companies act is a distinct legal entity. It is a creation of law and is sometimes called artificial person having invisible and intangible. It is a fiction of law with legal, but no natural or physical existence.

2. Perpetual Succession

A company is an artificial person, as such it never dies. Its life does not depend on the life of its members. It may not be affected by insolvency, mental disorder or retirement of its members. It is created by law and can be put an end to only by the process of law. Even the earthquake, flood or hydrogen bomb cannot destroy it. It continues to exist even if all its human members are dead. Unlike a natural person a company never dies. It is an entity with a perpetual succession. Its existence is not affected by the death, lunacy and insolvency of its members.

3. Limited Liability

In a company limited by shares, the liability of members is limited to the unpaid value of the shares. If the face value of a share in a company is Rs.10 and a member has already paid Rs.7 per share, he can be called upon to pay not more than Rs.3 per share during the lifetime of the company.

In a company limited by guarantee, the liability of members is limited to such amount as the members may undertake to contribute to the assets of the company in the event of its being wound up.

4. Common seal

A company is a juristic person with a perpetual succession and a common seal. Since the company has no physical existence, it must act through its agents and all such contracts entered into by its agents must be under the seal of the company. The common seal acts as the official signature of the company. Every company must have a seal with its name engraved on it.

5. Transferability of shares

The capital of a company is divided into parts, called shares. These shares are, subject to certain conditions, freely transferable so that no shareholder is permanently or necessarily wedded to the company. When the joint stock companies were established, the great object was that the shares should be capable of being easily transferred.

6. Capacity to sue and be sued

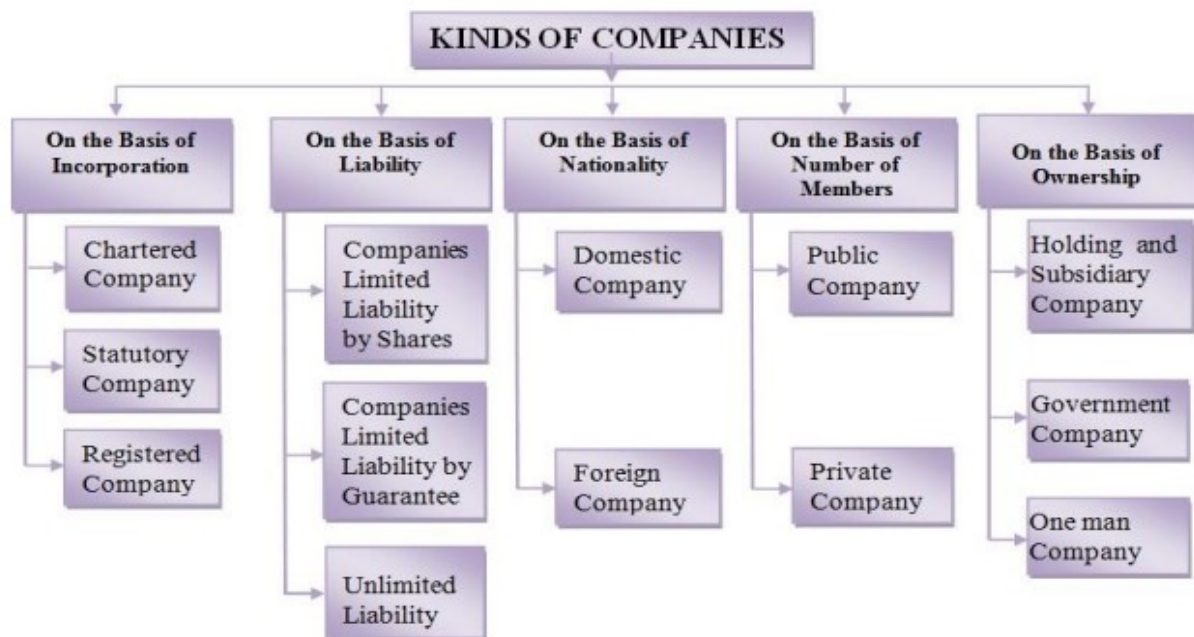
A company can sue and be sued in its corporate name. It may also inflict or suffer wrongs.

It can in fact do or have done to it most of the things which may be done by or to a human being. On incorporation, a company acquires separate and independent legal personality. As a legal person, it can sue and be sued in its name.

7. Separate Property

A company, as already observed, is a legal person distinct from its members. It is therefore capable of owing, enjoying and disposing of property in its own name. Although, the capital and assets of the company are contributed by its shareholders, they are not the private and joint owners of the property of the company. The property of the company is not the property of the shareholders; it is the property of the company.

Kinds of Company:-



I. On the Basis of Incorporation

Any company is to be incorporated under an Act. The provision of the particular Act under which it is established governs its working. Companies of this kind are of three types. They are;

a. Statutory Companies

These are the companies which are created by a special act of the Parliament or State Legislature, e.g., the Reserve Bank of India, the State Bank of India, the Life Insurance Corporation, etc. These are mostly concerned with public utilities, e.g., railways, tramways, electricity companies and enterprises of national importance.

b. Registered Companies

Companies which are registered under the Companies Act, 1956, or were registered under any of the earlier companies Acts are called registered companies. A vast majority of companies we come across belong to this category. Tata Motors Limited, Reliance Telecommunication Limited, EID Parry Limited, etc. belong to this category.

c. Chartered Companies

Companies established as a result of a charter granted by the King or Queen of a country are known as chartered companies. The charter issued governs their functioning. In other words, The Crown, in the exercise of the royal prerogative, has power to create a corporation by the grant of a charter to persons assenting to be incorporated. **Example** – Bank of England, East India Company, etc.

II. On the Basis of Liability

On the basis of the extent of liabilities of the shareholders such companies are divided into three categories.

a. Companies Limited by Share

Where the liability of the members of a company is limited to the amount unpaid on the shares such a company is known as a company limited by shares. If the shares are fully paid, the liability of the members holding such shares is nil.

b. Companies Limited by Guarantee

In a company limited by guarantee the liability of a shareholder is limited to the amount he has voluntarily undertaken to contribute to meet any deficiency at the time of its winding up. Such a company may or may not have a share capital. If it has a share capital a member's liability is limited to the amount remaining unpaid on his share plus the amount guaranteed by him. This type of company is started with the object of promoting science, arts, sports, charity, etc. it is clear that its objective is not profit earning. It gets subscription from its members and donations and endowments from philanthropists.

c. Unlimited Liability

A company without limited liability is known as an unlimited liability. In case of such a company, every member is liable for the debts of the company, as in an ordinary partnership, in proportion to his interest in the company. In other words, their liability extends to their private properties also in the event of winding up. Unlimited companies are almost non-existent.

III. On the Basis of Nationality

They are of two types' viz., domestic companies and foreign companies.

a. Domestic Company

Companies registered under the Companies Act, 1956, or under earlier Acts are considered domestic companies.

b. Foreign Company

Foreign company means a company incorporated outside India but having a place of business in India. It has to furnish to the authorities the full address of the registered or principal office of the company or a list of its directors or names and addresses of the residents in India authorized to receive notices, documents, etc.

IV. On the Basis of Number of Members**a. Private Company**

A private company means a company which by its articles

- i. restricts the rights to transfer its shares
- ii. Limits the number of its members minimum 2 and maximum number of members fifty (excluding the employees)
- iii. Prohibits any invitation to the public to subscribe for any shares or debentures of the company. The name of the company must end with the words 'private limited'.

b. Public Company

The public is invited to subscribe to the shares of the company usually by issuing a prospectus. Shares are easily transferable. A public company must have at least 7 persons to form and no maximum limit as to its number of shareholders or members. The name must end with the word 'limited'.

V. On the Basis of Control / Ownership**a. Holding Company and Subsidiary Company**

A company is known as the holding company of another company if it has control over that other company. A company becomes a holding company of another

- i) if it can appoint or remove all or majority of the directors of the latter company or

- ii) if it holds more than 50% of the equity share capital of the latter or
- iii) if it can exercise more than 50% of the total voting power of the latter.

A company is known as a Subsidiary of another company when control is exercised by the latter (called holding company). Over the former called a subsidiary company.

b. Government Companies

A Government company is one in which not less than 51% of the paid up capital is held by the Central Government or by any one or more State Governments or partly by the Central Governments and partly by one or more State Governments. Examples: Bharath Heavy Electricals Limited, Steel Authority of India Limited, etc.

A subsidiary of a Government company is also treated as a Government company. A Government company also enjoys a separate corporate existence. It should not be identified with the Government and its employees are not Government employees.

c. One man company

These are companies in which one man holds virtually the whole of the share capital with a few extra members holding the remainder who may be his relations or nominees.

STEPS IN FORMATION OF JOINT STOCK COMPANY:

In the formation of a public limited company having share capital, mainly four stages are involved viz.,

1. Promotion
2. Incorporation
3. Capital Subscription
4. Commencement of business

In the case of formation of a private company, only the first two stages are involved.

1.PROMOTION OF A COMPANY:

The person who undertakes responsibility to bring the company into existence are called **promoters**.

The steps which are taken to persuade a number of persons (**A person who is convincing all people**) to come together for the achievement of a common objective through the company form of organisation are called **promotion**.

According to Guthmann and Doughall, “A **Promoter** is a person who assembles the men, money and the materials into a going concern.”

Steps in Company Promotion:

- **Discovery of an idea:** The promoter starts out with an idea to start some business either in a new field which has not been commercially exploited or in some existing lines of manufacture or business. He makes a preliminary investigation to find out whether it is worthwhile to make a detailed investigation.
- **Detailed Investigation:** The promoter needs to make a detailed investigation of his idea with the assistance of many experts. It will help him to know whether the estimated income is adequate to cover the estimated costs and compensate the owner for the risks and services.
- **Assembling:** After a detailed investigation, if the promoter is satisfied with the practicability and profitability of the proposed concern, he starts assembling. Assembling means getting the support and consent of some other persons to act as directors or founders, arranging for patents, a suitable site for the company, machinery and equipment and making contracts for filling the positions.

- **Financing the proposition:** After assembling the proposition, the promoter prepares a prospectus to present to public and to underwriters to persuade them to finance the proposition.

Functions of promoters:

- **Promotion of the company:** The most important function of the promoters is the promotion of the company. They undertake various processes of promotion.
- **Incorporation of the company:** Promoters also undertake the function of getting the company registered. They prepare necessary documents such as M.O.A, A.O.A, etc and submit them to the registrar and the company incorporated
- **Raising Capital:** In the case of public limited company having Share capital promoters raise the required capital and obtain business commencement certificate.
- **Nursing the company:** Promoters are also associated with the company and nurse the company (They work for the growth of the company).

Types of promoters:

- **Professional promoters:** They are experts who specialise in company promotion. They float the company and hand it over to the shareholders or their respective. Promotion is their main profession or occupation.
- **Occasional promoters:** They promoters take interest in floating some companies. They are not engaged in promotion work on a regular basis. They take up the promotion of some company and once it is over they go to their original profession. For instance, engineers, lawyers etc. May float some companies.
- **Entrepreneur promoters:** They are both promoters and entrepreneurs. They conceive idea of a new business unit, does the ground work to establish it and subsequently become a part of the management.
- **Financier Promoters:** Some financial institutions, like investment banks or industrial banks, may take up the promotion of a company with a view to find opportunities for investment.

2.INCORPORATION:

The second stage is the formation of the company is incorporation stage where in, the company must be registered with the registrar of the companies.

a) Approval of name

It has to be ensured that the name selected for the company does not match with the name of any other company. For this, the promoter has to fill in a “name availability form” and submit it to the registrar of companies along with necessary fees.

b) Filing of documents

For registration an application has to be filed with the registrar of the companies along with the following documents:

- Memorandum of association properly stamped and signed by the signatories
- Articles of association properly stamped and signed by the signatories.
- Notice of the address of the registered office of the company.
- Copy of the letter received from the department of company law and administration of the Government, giving intimation about the availability of the proposed names of the company.

- Statutory declaration stating that all the requirements of the companies act have been complied with
- Statement of nominal capital of the company
- Details of persons(name, addresses, occupation etc.) who have accepted to act as the first directors of the company
- The written consent of the directors to act so
- An undertaking by the directors to take up and pay for the qualification shares
- Particulars of managing directors, manager, secretary, etc., if any.

c) Payment of filing and registration fees

Along with application and the necessary documents promoter must also pay required stamp duty, filing fees, registration fees. The registrar will scrutinise the documents and if satisfied will enter the name of the company in the register and will issue the company its birth certificate called the 'Certificate of Incorporation.'

3.CAPITAL SUBSCRIPTION OR RAISING OF SHARE CAPITAL

A private company can commence the business immediately after incorporation but a public company having a share capital can commence business only after obtaining another certificate called "Certificate of Commencement of Business" from the registrar of companies.

In this stage the company has to make arrangements for obtaining the necessary capital for the company.

a) Issue of prospectus: In order to raise the requires capital a prospectus has to be issued inviting the public to subscribe for the shares. After receiving the applications from the public the company proceeds with the allotment if the minimum subscription has been reached.

b) Minimum Subscription: It is the minimum amount of capital that should be subscribed for by the public before the company can proceed with allotment of shares. This amount should be stated in the prospectus. It has to be 90% of the issued share capital.

c) Allotment of shares: it means distribution of the shares among the applicants or subscribers. A company can proceed with the allotment of shares only after receiving the minimum subscription from the public. After the distribution is done by the director's letter of allotment should be sent to those applicants who have been allotted the shares and letter of regret should be sent to those applicants who have not been allotted any shares and their application money should be returned.

4.Commencement of Business:

To obtain certificate of commencement of business the promoter should apply to the registrar together with prescribed fees. This will be granted only if the following conditions are fulfilled:

- A prospectus or a statement in lieu of prospectus has to be filed with the registrar of companies. A statement in lieu of prospectus has to be prepared by those companies which do not find it necessary to issue a prospectus.
- Company has received the minimum subscription amount.
- Directors have paid the application and allotment money payable on the shares held buy them
- Declarations by the directors or secretary of the company that the requirement of companies act have been complied with If the registrar is satisfied he will issue the **business commencement certificate**. From the date of receipt of this certificate the company is legally authorised to commence the business.

MEMORANDUM OF ASSOCIATION (In detail)

The Memorandum of association is the most important document of the company. This is a document which sets out the constitution of a company. It defines the company's relations with the outside world, and the scope of its activities. Its purpose is to enable the shareholders, creditors as well as

those who deal with the company to know the company's permitted range of enterprises.

CLAUSES of Memorandum:

- **Name Clause:** The clause contains the name of the company. The name selected should not be similar to or identical with that of any existing company. Also the name must not be one which is considered undesirable by the Central Government. The name of the company should end with the word 'Limited' if it is a public company. If it is a private company the name should end with the words 'private limited'. The purpose of adding the word 'Limited' is to enable all those who deal with the company to know that the liability of the members is limited.
- **Situation Clause:** In this clause, the state in which the company's registered office is located should be given. To avoid any unnecessary legal formalities and expenses if there is a subsequent change in the address of the company, the exact address within the state is not given and only the name of the state is given.
- **Object Clause:** It should specify in unambiguous language the objects for which the company is formed. Great care would be taken in drawing up this clause, as the company will not be allowed to do any business which is not specifically mentioned here. As it is difficult to alter the object clause later, it is necessary that promoters should include in this clause, all possible types of business in which a company may engage in the future.
- **Liability Clause:** This clause states that the liability of members is limited to the face value of shares taken up by them. If a member has already paid some amount on the shares, he can be called upon to pay only the unpaid amount of the shares.
- **Capital Clause:** In this clause, particulars regarding the amount of share capital with which the company is proposed to be registered and the division for the capital into shares of fixed amount are included.
- **Association or subscription clause:** This contains a declaration by the subscribers to the memorandum. This declaration just precedes the names of the signatories to the memorandum.

ARTICLES OF ASSOCIATION:

Meaning: The articles are the internal regulation of the company on the basis of which its internal affairs are managed. They lay down the powers of the directors, shareholders and officers.

It is not compulsory for a public company to prepare its own article of association as it can follow Table A of companies act whereas preparation of articles of association is compulsory for private company.

Contents:

The following are the contents of AOA:

- Share capital and variation of rights
- Exercise of lien by the company
- Calls on shares
- Transfer, transmission, forfeiture and surrender of shares
- Issues of shares warrants
- Alteration and reduction of capital
- Voting powers of members
- Borrowing powers
- Proceedings at the board and at the general body meetings
- Appointment, powers, duties qualifications, remuneration etc, of directors.

- Appointment of manager, managing director and secretary
- Dividends and reserves
- Maintenance of books of accounts and their audit
- The company's seal
- Winding up

PROSPECTUS

Meaning:-According to sec 2(70) of the companies act of 2013, "A prospectus, notice, circular, advertisement or Other document inviting offers for the public for the subscription or purchase of any shares in Or debentures of a body corporate".

Objects of prospectus

- ✓ To inform the public about the forming of a new company.
- ✓ To induce the investors to invest in its shares and debentures.
- ✓ To preserve an authentic record of the terms on which the investors have been invited and to make the directors responsible for the statements in the prospectus.

Meeting:-

A Meeting is set to be taken place between two or ,more persons to discuss about the company issues, problems and advantages to bring a solution for the necessitate.

Meaning of company meetings:-

This is when two or more persons (shareholders or the directors or the debenture holder or of the contributories), get together at one place, at a specific time, for lawful purposes, to discuss any common issue.

A Meeting may be conducted by a Previsions notice or by mutual agreement for discussion of business.

Types of meetings:-

a. Public meetings

These are the meetings that consider matters of public concern and to which all members of the public have access, subject to physical limitations of the place where the meeting is held or conditions imposed by any law.

b. Private meetings

These are meetings attended by people who have a specific right to attend. For example, Committees members of a welfare group or of a registered company. Therefore, company meetings fall under this category.

1.Meeting of Share Holders;-

The Shareholders' Meeting represents the body, which voices corporate interest by decisions taken in compliance with the law and the Articles of Association. More specifically, the Shareholders' Meeting nominates the Board of Directors for a period not exceeding 3 financial years

1. Statutory meeting(sec-165) :-

Every public company limited by shares and every company limited by guarantee and having a share capital, must within a period of not less than one month and not more than 3 months from the date at which the company is entitled to commence business, hold a general meeting of the members which is to be called the Statutory Meeting. This meeting is held once in the lifetime of a company.

In this meeting, the members are to discuss a report by the directors, known as the statutory report, which contains particulars relating to the formation of the company.

Private companies are exempted from holding this meeting.

2. Annual General Meeting (AGM)

General meeting of a company means a meeting of its members for specified purposes. Public companies must hold an annual general meeting within or by the end of the six months of its financial year. Private companies are not required to hold an annual general meeting, unless they are a traded company (a corporation whose shareholders have a claim to part of the company's assets and profits) or their articles require it.

Every company must in each year hold, in addition to any other meeting, AGM. The notice conveying the meeting must specify that it is a notice of the AGM. Every AGM must be held during business hours and on working days.

The registrar may, for any special reason, extend the time for holding any AGM by any given period; but no extension of time is granted for holding the first AGM.

There should be at least one AGM per year and as many meetings as there are years.

Ordinary Business of an AGM

The normal business transacted at an AGM depends upon the articles. The article provides that the ordinary business of such a meeting shall be: –

- (i) The declaration of dividends.
- (ii) The consideration of accounts.
- (iii) The election of directors in place of the retiring.
- (iv) Appointment of and fixing of the remuneration of auditors.

Any business which is not defined as “ordinary business” of an AGM is known as special business.

3. Extra ordinary general meeting

Any general meeting of the company which is not an AGM or a statutory meeting is called extra ordinary general meeting.

Extra ordinary meetings can be convened either by the directors whenever they think fit or on the requisition of members of the company.

Where directors think fit to convene a meeting, they do so by resolution passed at a duly convened and constituted meeting of the Board.

Note that everything transacted at an extra ordinary meeting shall be deemed as special.

The extra ordinary general meeting may be convened: –

- (a) By Board of Directors on its own or on the requisition of the members
- (b) By the requisition is its themselves on the failure of Board of Directors to call the meeting

Extra ordinary meeting convened by Board of Directors:

a) **On its own:** The Board of Directors may call an extra ordinary meeting whenever some special business is to be transacted which in the opinion of the Board of Directors, cannot be postponed till the next AGM.

b) **On requisition of members:** – The requisite number of members of a company may ask for an extra ordinary general meeting to be held. The Board of Directors shall proceed to call such a meeting. The requisition for such a meeting by the members shall be signed:

(i) In case of a company with share capital holders of not less than 10% of the paid-up capital of the company having a right of voting in regard to the matter of acquisition.

(ii) In case of a company with no share capital, by members representing not less than one tenth of the total voting power in regard to the matter of requisition.

A requisition signed by one of the joint owners of the shares has the same force and effects as if it has been signed by all of them.

The requisition shall set out all matters for consideration on which the meeting is called and shall be deposited in the registered office of the company. The directors are required to convene such a meeting within 21 days from the date of deposit of the requisition, but if they fail to do so, the requisitionists themselves may convene the meetings, as nearly as possible in the manner required by the company's articles for convening the meeting.

The company must compensate the requisitionists for any reasonable expenses incurred and may repay out of sums payable by the company to such directors as were in default.

Note:

Unless the meeting is called to pass a special resolution, the requisite notice for an extra ordinary general meeting is 14 days (Saturdays, Sundays, Public holidays are not included). In case of unlimited company, 7 days' notice is required, but where special resolution is required, 21 days.

4. Class meeting

These meetings are held by a particular class of shareholders. The purpose of this meeting is effecting variation in the Articles in respect of their rights and privileges or for conversion of one class into another.

The provision for variation must be contained in the Memorandum or Articles. However, this variation must not be prohibited by the terms of

issue of shares of that particular class. Such resolutions are to be passed by three-fourth majority of the members of that class.

2. Meeting of creditors

These meetings are called when the company proposes to make a scheme of arrangement with its creditors. The court may order a meeting of the creditors or a class of creditors on the application of the company or of liquidator in case of a company being wound-up.

Such a meeting is held and conducted in such a manner as the court directs. If the arrangement is passed by a majority of three-fourth in value of creditors and the same is sanctioned by the court, it is binding on all the creditors.

3. Meeting of the Board of Directors

The management of the company is vested on the Board of Directors. Therefore, the directors are to meet frequently to decide both policy and routine matters.

The provisions regarding board meeting are:

Board meeting must be held once in every three calendar months and at least four times in every year. This provision may be exempted by the central government. Notice of board meeting shall be given in writing to every director for the time being in Kenya and at his usual address in Kenya.

Directors (Sec-252):-

MEANING :-

A company is an artificial person having separate legal entity, common seal and do not have any physical existence. In order to overcome that problem a director is replaced to deal with day to day offers of the company.

Definition:-

A Director is a person who is appointed to manage, supervise, and control the affairs of a company. According to Section 2(34) of the Companies Act, 2013 (India):

“Director” means a person appointed to the Board of a company.

According to sec 2 (13), A director includes any person occupying the position of director by whatever name called a director. Only an individual can be appointed a director.

APPOINTMENT OF DIRECTORS

First directors are usually named in the Articles if the Articles are silent, the signatories to the memorandum shall be deemed to be the first directors of the company.

a. Appointment of Directors by the Company Subsequent directors are elected by shareholders at the AGM. If a company adopts the principle of retirement by rotation, one-third of the directors must retire by rotation. The retiring directors are eligible for reappointment.

b. Appointment by Board of Directors The Board can appoint additional directors. They can fill up casual vacancy caused by death, resignations, etc. they can also appoint alternate director. If empowered by Articles, the Board may appoint an alternate director during his absence for a period of the less than 3 months from the date in which meetings of the Board are ordinarily held.

c. Appointment by Third Parties If authorized by the Articles, third parties such as vendor of the business, banking or financial institutions which have advanced loans to the companies, can appoint their nominees on the Board.

d. Appointment by Central Government The Central Government can also appoint directors on an order passed by the Company Law Board or on the application of not less than 100 members of the company or of members holding 10% of the total voting power.

NUMBER OF DIRECTORSHIP :-

A person can hold office as director in not more than 15 companies at the same time. In calculating the number of directorships, the directorship of independent private limited companies, non-profit associations, and alternate directorships excluded.

Every public company must have at least 3 directors and every private company must have at least 2 directors.

POWER OF DIRECTORS

According to sec.292, the powers are mentioned below;

1. General Powers The board of directors of a company is entitled to exercise all such powers and to do all such acts and things as the company is authorized to do. However the Board shall not do any act which is to be done by the company in general meeting.

2. Statutory Powers By means of resolutions passed at the Board meetings, the following powers can be exercised by the directors.

- i. Power to make calls to the shareholders.
- ii. Power to issue debentures (were rate of interest)
- iii. Power to borrow money otherwise than on debentures (Banks/Financial Institutions)
- iv. Power to make loans (for people/employees etc)
- v. To make investments in the companies in the same group
- vi. To appoint the first auditors of the company
- vii. To fill up the casual vacancy of the office of an auditor not caused by resignation

DUTIES OF DIRECTORS

1. Fiduciary Obligation: Since the company is an artificial person, it acts through the agency of natural persons who are known as directors. Though the directors have powers, they have to do it for the benefit of the company.

Accordingly they must display good faith in all dealings or acting on behalf of the company.

2. Duty to Care : The directors should work very careful and honesty so that the company will get more profits. Directors must act honesty in the performance of his duties.

3. Duty to attend the Board Meeting: Board meetings are the appropriate places for the decisions and policy making of the company. If the does not attend the meetings, it shows his negligence. If he absents for three consecutive meetings, then he shall be removed from the company. It is the duty of the directors to attend the board meetings regularly.

4. Duty not to delegate:- The directors must perform their duties personally. The powers of the company are delegated to the directors. Therefore he cannot delegate his powers to others persons.

5. Duty to disclose(Open) interest:- Every director who is in any way whether directly or indirectly concerned or interested in arrangement or proposed contract or arrangement, entered into or on behalf of the company shall disclose the nature of his concern or interest at a meeting of the board of directors.

6. Statutory(Legal) Duties :Some of the important duties laid down in the Companies Act are listed below;

- a. To sign a prospectus and deliver it to the Registrar before its issued to the public
- b. To see that all moneys received from applicants for shares are kept in a scheduled bank
- c. Not to allot shares before receiving minimum subscription
- d. To forward a statutory report to all its members at least 21 days before the date of the meeting
- e. To hold the meetings at least once in three months
- f. If a director is interested in a contract, to disclose the nature of his interest
- g. To call for annual general meeting every year
- h. To file all statutory returns with prescribed authorities
- i. To take steps for filing declaration of solvency in the case of voluntary winding up

LIABILITY OF DIRECTORS :-

A. liability to outsiders

The directors are personally liable to third parties of contract in the following cases;

- They contract with outsiders in their personal capacity
- They contract as agents of an undisclosed principal.
- They enter into a contract on behalf of prospective company
- When the contract is ultra vires **(Beyond powers) More than our powers** the company

- When they fail to repay application money.
- When they make misstatement in prospectus.
- When they make irregular

B. Liability to Company

The directors shall be liable to the company for the following;

- Where they have acted ultra vires (**Beyond powers**) the company
- When they have acted negligently
- Where there is a breach of trust
- Directors are liable to the company for **misfeasance (Rude behaviour)**

C. Criminal Liability of Directors

Directors may incur criminal liability for the following activities;

- a. Misstatement in the prospectus
- b. Failure to file return of allotment
- c. Failure to issue share certificates within the prescribed period
- d. Failure to pay dividend within 42 days from the date of declaration
- e. Failure to lay before the AGM audited profit and loss account and balance sheet
- f. Failure to file copies of special resolution with the Registrar within 30 days of passing the resolution
- g. Failure to furnish the necessary information to the company's auditors
- h. Destruction of important document
- i. Holding the office of directors in more than 15 companies excluding private companies.

RESOLUTION

When a proposal placed before the meeting is passed by the meeting, it becomes a resolution. A resolution thus reflects the decision of the majority. In other words, the decisions of the company are made by resolutions of its members passed at meetings of members. A proposal and accepted by the members becomes resolution.

Definition: A resolution is a formal decision or opinion of a company that has been formally passed at a meeting of its members or directors. It's a legally binding decision that must be recorded.

KINDS OF RESOLUTION:

- 1. ORDINARY RESOLUTION** Any resolution passed by a simple majority is an ordinary resolution. **Simple majority means that 51 percent** or more of the votes have been cast in favour of the resolution.

When ordinary resolution is necessary?

- a) Adoption of audited accounts, director's report and auditor's report
- b) Appointment of auditors
- c) Election of directors in place of those retiring
- d) Declaration of dividend

- e) Issuing shares at a discount
- f) Removing a director before the expiry of his term
- g) Appointing a director in the place of removed director

2. SPECIAL RESOLUTION (A special resolution is a legally binding decision that requires a minimum of 75% of eligible votes to pass. It's a formal decision made by shareholders on significant matters that require a larger majority of approval than an ordinary resolution)

Special resolution is one which is required for transacting any special business. It has to be passed by a three-fourths majority. In other words, the votes cast in favour of the resolution must exceed three times the votes cast against it. The notice calling the meeting should specify the intention to pass the resolution as a special resolution. Notice must be given at least 21 days before the date of the meeting.

When special resolution is required?

- a) Altering the objects clause of the Memorandum
- b) Changing the place of the registered office from one State to another
- c) Altering the Articles of Association
- d) Reducing the Share Capital
- e) Making loans to other companies under the same management
- f) Paying interest out of capital in certain cases
- g) Voluntary winding up of the company

3. RESOLUTION REQUIRING SPECIAL NOTICE :

This type of resolution does not belong to a separate category. However, the mover of the proposed resolution must give a special notice of 14 days to the company. On receipt of this resolution, the company in turn has to give notice to the members at least 7 days before the date of the meeting. Where it is not practicable, it can publish it in a newspaper.

Items requiring special notice:

- a) Appointing an auditor other than a retiring auditor
- b) Passing a resolution that a retiring auditor should not be appointed
- c) Removing a director before the expiry of his term
- d) Appointing a director in place of the removed director

WINDING UP OF THE COMPANIES

MEANING Winding up of a company is a process of putting to an end to the life of a company. It is a proceeding by means of which a company is dissolved and in the course of such dissolution its assets are collected, its members, if necessary pay off its debts out of assets of the company or from contribution. If any surplus is left, it is distributed among the members in accordance with their rights.

DEFINITION According to Prof. Gower, winding up of a company is the process whereby its life is ended and its property administered for the benefit of its creditors and members. An administrator, called liquidator, is

appointed and he takes control of the company, collects its assets, pay its debts and finally distributes any surplus among the members in accordance with their rights.

MODES OF WINDING UP

I. COMPULSORY WINDING UP BY THE COURT

A company may be wound up by an order of the court. This is called compulsory winding up. Sec.433 lays down the following grounds for the winding up of a company by the court;

Procedure for Compulsory Winding Up:-

The following steps outline the legal process for such a winding up:

1. **Filing a Petition:** The process begins with filing a petition to the tribunal, accompanied by a detailed statement of the company's affairs, requesting the winding up.
2. **Tribunal's Review:** The tribunal reviews the petition. If the petition is filed by someone other than the company, the tribunal may require the company to submit its objections and statement of affairs within 30 days.
3. **Appointment of a Liquidator:** The tribunal appoints a liquidator to oversee and manage the winding-up process, ensuring the company's assets are fairly distributed to its creditors and shareholders.
4. **Preparation and Approval of Reports:** The liquidator prepares a preliminary report, which, upon approval, is finalized and submitted to the tribunal to sanction the winding-up order.
5. **Submission to the Registrar of Companies (ROC):** The liquidator must submit a copy of the winding-up order to the ROC within 30 days. Failure to do so results in penalties.
6. **Final Approval by ROC:** Upon satisfactory review, the ROC officially dissolves the company by removing its name from the register.
7. **Publication in the Official Gazette:** The ROC publishes a notice in India to announce the company's dissolution formally.

Petition for winding up (Notice)

The following persons can file a petition

1. The company
2. Any creditors or creditor including any contingent prospective creditor or creditors
3. Any contributory or contributories
4. All or any of the aforesaid parties, together or separately
5. The Registrar
6. Any person authorized by the Central Government under section 243

II. VOLUNTARY WINDING UP The object of a voluntary winding up is that the company and its creditors are left to settle their affairs

without going to the court, but they may apply to the court for any directions or orders if and when necessary. This form of winding up is by far the most common and the most popular form.

TYPES OF VOLUNTARY WINDING UP

- i. Members voluntary winding up** Section 488 provides that where it is proposed to wind up a company voluntarily, the directors or a majority of them, may, at a meeting of the Board, make a declaration verified by an affidavit that the company has no debts or that it will be able to pay its debts in full within a period not exceeding 3 years from the commencement of winding up as may be specified in the declaration. Where such a declaration is duly made and delivered, the winding up following shall be called members voluntary winding up.
- ii. Creditors Voluntary winding up** Where the declaration of solvency is not made the winding up is referred to as creditors' voluntary winding up. The provisions for creditors' voluntary winding up are similar to those applicable to the members' voluntary winding up except that in the former, it is the creditors who appoint the liquidator, fix the remuneration and generally conduct the winding up.

Procedure for Voluntary Winding-up

To conduct a voluntary winding up of a company under the provisions of the relevant ordinance and company law, the following detailed procedure is to be followed:

Step 1: Declaration of Solvency

Directors assess the company's financial position and declare its ability to pay all debts. This declaration, made on Form 107 as per Rule 269, is supported by an auditor's report.

The board convenes to decide on proposing voluntary winding up to the shareholders and schedules a General Meeting (Annual or Extraordinary) as per Section 362.

Step 2: Shareholders' Approval

At the General Meeting, shareholders review the directors' proposal and, upon agreement, pass a Special Resolution to wind up the company voluntarily.

A liquidator is appointed during this meeting, and his remuneration is fixed. The appointment of the liquidator effectively dissolves the Board of Directors, as stated in Sections 358 and 364.

Step 3: Notification of Resolution

The resolution to wind up is published in the Official Gazette and newspapers within 10 days, ensuring public notification. A copy is also filed with the Registrar in compliance with Section 361.

Step 4: Liquidator's Appointment Notification

The company must inform the Registrar about the liquidator's appointment or any changes, along with the liquidator's consent, within 10 days of such occurrence, as mandated by Section 366.

Step 5: Liquidator's Public Announcement

The appointed liquidator must announce his role in the Official Gazette and to the Registrar within 14 days of appointment, using Form 110 as prescribed under Rule 271, according to Section 389.

Step 6: Creditors' Meeting

Should the liquidator determine that the company cannot fully settle its debts, he must convene a creditors' meeting, presenting a financial statement that outlines the company's assets and liabilities, as per Section 368.

Step 7: Documentation of Creditors' Meeting

The liquidator must file a return, including the creditors' meeting notice and other relevant documents, with the Registrar within 10 days of the meeting, adhering to Section 368.

Step 8: Annual General Meeting

Suppose the winding-up process extends over a year. In that case, the liquidator must call an annual general meeting of the shareholders and seek court approval for extending the winding-up duration, as outlined in Section 387(5).

Step 9: Filing of General Meeting Documentation

A return, including the notice of each general meeting, financial statements, and minutes, must be filed with the Registrar within 10 days post-meeting, as required by Section 369.

Step 10: Final Report and Meeting

Upon completing the winding-up process, the liquidator compiles a final report and financial account, summoning a meeting of members to present these documents. This step is conducted on Form 111 as per Rule 279, following Section 370.

Step 11: Notice of Final Meeting

The final meeting notice is published in the Gazette and newspapers at least 10 days before the scheduled date, ensuring compliance with Section 370.

Step 12: Submission of Final Documents

Within a week following the final meeting, the liquidator submits a copy of the final report and accounts to the Registrar using Form 112, as dictated by Rule 279 and Section 370, marking the completion of the winding-up process.

II. WINDING UP SUBJECT TO SUPERVISION OF COURT

At any time after a company has passed a resolution for voluntary winding up the court may make an order that the voluntary winding up will continue, but subject to the supervision of the court and with such liberty for creditors, contributories and others to apply to the court on such terms and conditions as the court thinks fit. A petition for the continuance of a voluntary winding up subject to the supervision of the court must be deemed to be a petition for winding up by the court. The court may appoint or remove a liquidator on the application of the Registrar.

LIQUIDATOR:-

An administrator, called liquidator, is appointed and he takes control of the company, collects its assets, pay its debts and finally distributes any surplus among the members in accordance with their rights.

Sec.449, on winding up order made, the official liquidator by virtue of his office becomes the liquidator of the company.

Fees to the Central Government sec.451 (2), where the official liquidator becomes or acts as liquidator, there shall be paid to the central government out of the assets of the company such fees as may be prescribed.

Provisional Liquidator sec.450 The court may appoint official liquidator as liquidator provisionally. He has same powers and duties as liquidator in a winding up. Appointment of a provisional liquidator is a drastic measure. Should not be restored to except in special circumstances i.e., in cases of urgency.

Implications of Company Winding Up

Winding up a company brings about significant changes affecting various stakeholders. **Here's a breakdown of the key consequences:**

For the Company

The company continues to exist as a legal entity until officially dissolved, retaining all rights associated with such an entity. However, its management shifts to the appointed liquidator(s) who oversee operations until dissolution.

For Shareholders

Shareholders face a new form of statutory liability as contributors. Any share transfers or changes in shareholders' status post the initiation of winding up, if not sanctioned by the liquidator, are considered null and void.

For Creditors

Legal Actions: Creditors are barred from initiating or continuing any legal proceedings against the company without court permission.

Execution of Decrees: If creditors have previously obtained decrees against the company, they are prevented from enforcing them.

Debt Claims: Creditors must formally submit and validate their claims with the liquidator to be considered for repayment.

For Management

Upon a liquidator's appointment, the powers held by the company's directors, chief executive, and other officers are suspended, except for

specific actions like notifying stakeholders of the winding-up resolution, appointing a liquidator, and similar procedural tasks.

Regarding Company Assets

Any disposition of the company's assets post the commencement of winding up is invalid without either the liquidator's consent or court approval.

These consequences collectively ensure that the winding-up process is orderly, with the liquidator playing a central role in managing the company's affairs, settling debts, and, ultimately, distributing any remaining assets to the rightful claimants.

Duties of Liquidator

1. Proceedings in winding up sec.451 (1)
2. reports Sec.455 (1)
3. Additional reports
4. custody of company property sec.456
5. exercise and control of liquidators power sec.460
6. directors from the court
7. proper books sec.461
8. appointment of committee of inspection sec.464
9. pending liquidation sec.551

Powers of liquidator Powers of liquidator in winding up are divisible into 3 main groups;

1. With the sanction of the court sec.457 (1)
2. without the sanction of the court sec.457 (2)
3. with the leave of the court in case of onerous contracts sec.535

Liabilities of liquidator

Liquidator of company liable for negligence

1. If he distributes its assets without making due provision for liabilities or contingent claims of which he has notice
2. if he applies the company's assets in paying a doubtful claim without taking proper legal advice or direction from the court.
3. if there is breach of any of his statutory duties, in such case he is liable in damages to a creditor or a contributory for injury to him..

A liquidator is a trustee for the company's funds and property in his hand for the creditors. Liquidator is not trustee for the property in the assets invested in the company and when he makes contracts he does so in the company's name.

Companies Act 2013

The Companies Act, 2013 was introduced to provide an overall framework and a set of rules for companies in India. The Act is comprehensive and inclusive legislation covering all aspects of company operations.

The Companies Act, 2013 has been enacted to promote the economic development and welfare of the country by making it easier for Indian companies to start and operate their businesses. The Act also aims at improving corporate governance in India.

The objectives behind the enactment of this legislation are as follows:

- 1) To provide a comprehensive framework for regulating companies in India
 - 2) To make it easier for Indian companies to start and operate their businesses;
 - 3) To promote corporate governance in India;
 - 4) To improve economic development in the country by promoting entrepreneurship.
- The Companies Act, 2013 is a law that regulates the governance of companies in India. It was enacted by the Government of India on April 1, 2013 and came into force on April 1, 2014.
 - The Companies Act, 2013 has been criticised for its clarity in certain areas. One such place is what constitutes a company under this Act. The law does not define what constitutes a company and leaves it to be decided by the courts.
 - The Companies Act, 2013 also does not provide any specific penalties or sanctions for violations of this Act. It led to inconsistent rulings from different courts, which have confused the interpretation and implementation of this Act.
 - The Companies Act, 2013 was passed by the Parliament of India to provide a strong and effective regulatory framework for companies in India.
 - The Companies Act, 2013 has introduced a new concept of board meeting minutes. The minutes must be approved by all members who attended the meeting. It also introduced a new idea of a company secretary who is responsible for administering the affairs of the company.

Purpose of the Act;

The Companies Act, 2013 governs the company's functioning. It enumerates the rights and duties of a company and its members. It came into force on April 1, 2013, and applies to all companies incorporated under this Act or those whose incorporation has been renewed after April 1, 2013.

The Companies Act, 2013 has been enacted to change how companies are governed by providing a set of rules that govern their functioning and their rights and duties towards stakeholders. The Act was made effective on April 1, 2014, when it came into force after being passed by Parliament in December 2012.

Aim of the Act;

The Government of India introduced it to regulate the functioning of companies in India.

The Companies Act, 2013 aims to **improve the quality of corporate governance**. Corporate governance is the system of rules, practices, and processes that guide and control a company. It's responsible for managing a company's relationships with its stakeholders, including shareholders, employees, customers, suppliers, and the community. The goal of corporate governance is to maximize long-term value while safeguarding the interests of all stakeholders. **and protect investors from fraud.** The Act also seeks to promote competition in the marketplace and increase corporate transparency.

It also aims at promoting sustainable development and environmental protection, which is a crucial aspect of its objectives.

The Companies Act, 2013 is a new law that the Indian government has passed to regulate the business environment in India.

The Companies Act, 2013 is a new law that the Indian government has passed to regulate the business environment in India. The Act came into effect on April 1, 2014 and included provisions such as:

- A Company shall not make any statement or publish any advertisement which is false or misleading in any material particular; s
- A Company shall not make any statement which is disparaging of another person's reputation;
- A Company shall not make any statement which is disparaging of goods or services;
- A Company shall not indulge in unfair practices.
- The Companies Act, 2013 was enacted to address the problems of the business environment and make it more conducive for companies. It is a piece of legislation that the Indian Parliament has passed. It is the first law to be given in India for company incorporation.

The Companies Act, 2013 is a set of laws that govern the Indian company. It has many features that make it easier for companies to be set up and run.

The Act has provisions for:

- Formation of companies
- Registration of companies
- Name and address of the registered office
- Registration number for directors
- Shareholders' agreement and share transfer deed
- Board resolutions
- Directors' duties and liabilities
- Company secretary duties

Conclusion:

The Companies Act, 2013 was replaced by the Companies Act, 2018. The new Act provides more clarity and a better framework for the companies registered in India.

The Companies Act, 2013 was enacted by the Indian Parliament on May 26, 2013. It replaced the earlier legislation, the Companies Act, 1956. The new Act provides more clarity and a better framework for companies registered in India. The new legislation has been enacted to address the lack of uniformity in corporate law among states and for proper enforcement of laws.

(Once go through with Google for more information)

Unit-5 Goods and Service Tax

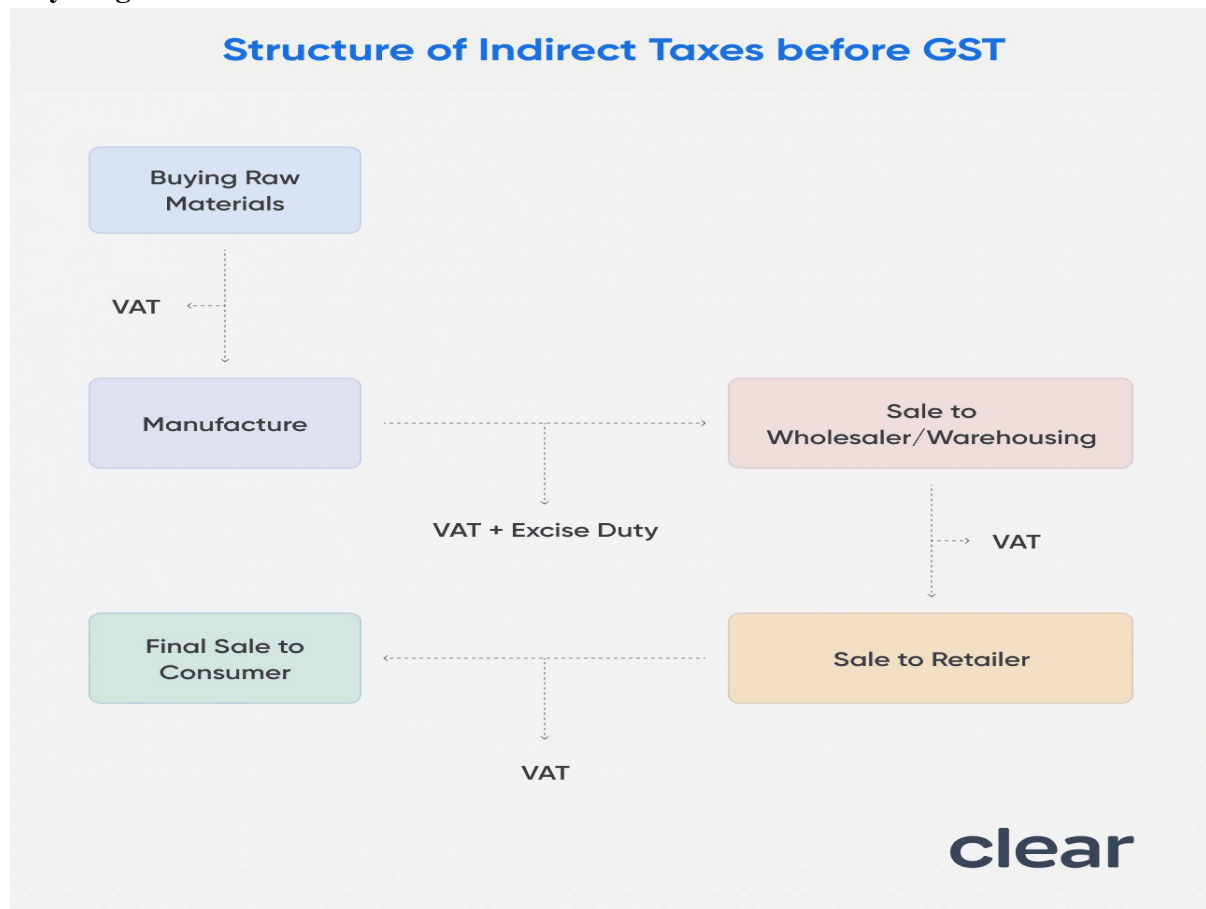
What is the goods and services tax?

GST is a single tax on the supply of goods and services, right from the manufacturer to the consumer. 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.

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 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. After subsuming majority indirect taxes, 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 on goods in India was as follows:



Under the GST regime, the tax is levied at every point of sale. In the case of intra-state sales, Central GST and State GST are charged. All the inter-state sales are chargeable to the Integrated GST.

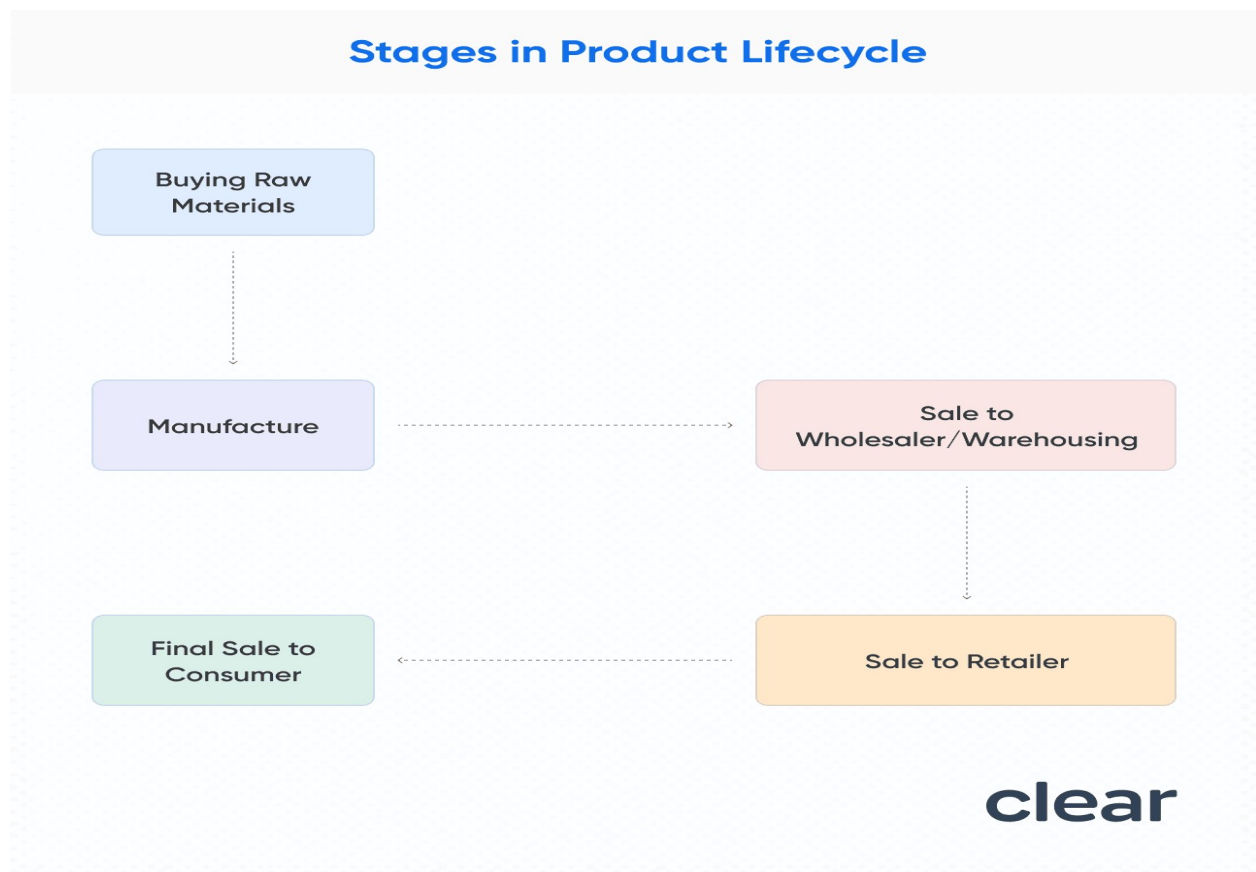
Now, let us understand the definition of Goods and Service Tax, as mentioned above, in detail.

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



Value Addition



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. Common laws can be introduced, such as e-way bills for goods transport and e-invoicing for transaction reporting. Tax compliance is also better as taxpayers are not bogged down with multiple return forms and deadlines. Overall, it's a unified system of indirect tax compliance.

- **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. Hence, GST was introduced. Under GST, all the major indirect taxes were subsumed into one. It has greatly reduced the compliance burden on taxpayers and eased tax administration for the government.

- **To eliminate the cascading effect of taxes (A cascade tax is a tax that is imposed on products at each successive stage in the supply chain. (Tax on Tax)**

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. For example, the excise duties paid during manufacture could not be set off against the VAT payable during the sale. This led to a cascading effect of taxes. Under GST, the tax levy is only on the net value added at each stage of the supply chain. This has helped eliminate the cascading effect of taxes and contributed to the seamless flow of input tax credits across both goods and services.

- **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. Besides, the stricter laws surrounding input tax credits have helped bring certain unorganised sectors under the tax net. For example, the construction industry in India.

- **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. It has contributed to the overall ease of doing business in India and simplified taxpayer compliance to a massive extent. The government also plans to introduce a centralised portal soon for all indirect tax compliance such as e-invoicing, e-way bills and GST return filing.

- **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. With the e-way bill system under GST, the removal of interstate checkpoints is most beneficial to the sector in improving transit and destination efficiency. Ultimately, it helps in cutting down the high logistics and warehousing costs.

- **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. Having uniform GST rates have contributed to overall competitive pricing across India and on the global front. This has hence increased consumption and led to higher revenues, which has been another important objective achieved.

In most cases, the tax structure under the new regime will be as follows:

Transaction	New Regime	Old Regime	Revenue Distribution
Sale within the State/UT	CGST + SGST/UTGST	VAT + Central Excise/Service tax	Revenue will be shared equally between the Centre and the State/UT
Sale to another State	IGST	Central Sales Tax + Excise/Service Tax	There will only be one type of tax (central) in case of inter-state sales. The Centre will then share the IGST revenue based on the destination of goods.

Different Types of GST:-

India currently recognizes four types of Goods service tax returns. These are:

CGST (Central Goods and Services Tax): When buying or selling things within one state, CGST is collected as an indirect tax by the central government in order to raise money for activities like infrastructure development and public services.

SGST (State Goods and Services Tax): When purchasing or selling something within your state, an SGST tax is collected by your government and used for local projects, schools and other purposes that benefit the entire population of that particular state. The money collected stays within its borders to fund local needs or state initiatives.

IGST (Integrated Goods and Services Tax)B/W two sates: When buying something that originates in another state, IGST comes into effect to facilitate transactions smoothly across state boundaries and ensure a fair distribution of revenues among participating jurisdictions.

UTGST (Union Territory Goods and Services Tax): UTGST is applied only on sales occurring within Union Territories governed directly by the central government; thus enabling more consistent financial management and development across these regions.

Significance of GST:- (Try to rite Objectives)

- 1. Unified Market:** GST creates a unified market, eliminating tax barriers and facilitating the free flow of goods and services.
- 2. Increased Tax Revenue:** GST is expected to increase tax revenue for the government, enabling it to invest in infrastructure and social welfare programs.
- 3. Boost to Economic Growth:** GST is expected to boost economic growth by increasing investment, job creation, and economic efficiency.
- 4. Improved Supply Chain Efficiency:** GST enables businesses to optimize their supply chains, reducing transportation costs and improving delivery times.
- 5. Increased Competitiveness:** GST increases the competitiveness of Indian businesses, enabling them to compete more effectively in the global market.

Types of Taxes in India: A Complete Guide on Tax System

<https://www.canarahsbclife.com/blog/tax-saving/all-about-tax-structure-in-india>

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.

As per the Union Budget 2024-25, no changes have been made to GST Rates.

GST Rates in 2024

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%

As per the recently held GST Council on 22 June 2024, the following GST rates were announced-

Items	Old Rate	New Rate
A uniform rate for all types of milk cans	–	12%
A uniform IGST rate applies to imports of aircraft tool kits	–	5%
Carton boxes and cases	18%	12%
All types of solar cookers	5%	12%
A uniform rate for all types of sprinklers	–	12%
Indian Railways – Platform tickets	–	Exempt
Indian Railways – Facility of retiring rooms/waiting rooms	–	Exempt
Indian Railways – Cloak room services	–	Exempt
Indian Railways – Battery Operated car services	–	Exempt
Hostel accommodation service under certain conditions	–	Exempt

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%
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%

GST registration**GST registration procedure**

As per the GST regime, all businesses liable to pay service tax, VAT, or central excise have to register under goods and service taxes. An applicant can initiate the GST registration process on the GST portal. Once the application is submitted, the online portal will generate ARN status instantly. With the help of the ARN, an applicant can check his/ her application status. Applicants can also post queries if needed. Usually, taxpayers will receive their GST registration certificate and GSTIN within a week of their ARN generation.

ARN stands for Application Reference Number and is used to track GST registration application status. GSTIN is a 15-digit code allotted to every taxpayer registered with GST. Note that GSTIN is mandatory for businesses with an annual turnover of more than Rs. 20 lakh.

Documents required for GST registration

Below are the GST registration documents required by different eligible users to complete the process:

Sole proprietor or individual

- PAN
- Address proof

- Aadhaar card (owner)
- Bank account details
- Photograph (Owner)

Partnership firms inclusive of LLP

- PAN
- Address proof (partners and place of business)
- Bank account details
- Copy of partnership deed
- Registration certificate or board resolution (for LLP)
- Photographs of authorised signatories and partners
- Proof of appointing an authorised signatory

Hindu Undivided Family (HUF)

- PAN (HUF)
- Address proof
- Bank account details
- Photograph of the owner
- Aadhaar card and PAN card (Karta)

Company (both Indian and foreign, public and private)

- PAN (company)
- Bank details
- Address proof (principal place of business)
- PAN and Aadhaar card (authorised signatories)
- PAN and address proof (directors of the company)
- Article of association or Memorandum of association
- Proof of appointment of an authorised signatory
- Photographs (directors and the authorised signatory)
- Certificate of incorporation provided by the Ministry of Corporate Affairs

Advantages of GST

The introduction of GST is touted as one of the biggest tax reforms in India. To know more about the impacts of GST, it is imperative to learn more about its advantages and disadvantages.

In this regard, the most prominent advantages of GST include:

- **Removal of the cascading effect of tax:** The implementation of GST has brought indirect taxes under one umbrella, successfully eliminating the cascading tax effect and lowering the amount of compliance one must consider. For example, previously, service tax and VAT had their respective returns and compliance, but with the introduction of GST, entities only have to file one return. This, in turn, simplifies the process of inputting tax credit claims.
- **A uniform tax structure:** GST has brought the entire country under one tax regime; it facilitates uniformity in processes, laws, and tax rates across India.
- **Simplified GST online process:** All Goods and Services Tax processes can be initiated online, including registration and Goods and Services Tax return (GSTR) filing. This has simplified the process significantly and made it possible for start-ups to get registered with GST services without hassle in one place.
- **Regulation of the unorganised sector:** The GST bill effectively streamlines the processes related to online compliance, payments, and claim processes. Further, it helps the unorganised sector, bringing them directly under the regulation of goods and service tax norms.

• **GST extends the composition scheme for all small businesses:** Small businesses with an annual turnover up to Rs 1.5 crore (Rs 75 lakh for special category States) can become beneficiaries of GST's composition scheme. The said scheme allows businesses to reduce their taxes. Besides these, the GST bill has replaced 17 indirect taxes with one uniform tax. It has lowered the cost of goods and boosted demand for them, bringing in more revenue for both the centre and state governments.

GST registration fees

It is important to note that the government does not levy GST registration fees if an individual decides to register through the online GST service tax portal. However, suppose that an individual wants to seek professional help from an authorised chartered accountant or GST practitioner for GST services. In that case, they will have to pay a fee to avail of the professional service.

GST login for existing users

Existing users can access GST service details by simply logging into the GST portal. Notably, the GST bill and its online portal have simplified the GST registration and payment process. The portal has also made accessing details such as allotted GSTIN, orders, and notices easier. You will require the credentials for GST login, such as username and password, and follow a few steps to access such details from the GST portal.

The below steps explain the GST portal login process.

Step 1: Visit the official Goods and Services Tax portal

Step 2: Navigate to the right-hand corner of the homepage

Step 3: Click on the 'Login' button

Step 4: Enter your username, password, and CAPTCHA code and click on the 'login' button

Step 5: After completing GST login, you will be redirected to the dashboard, where you will find the summary of GST credit, 'pay tax' tab, 'file returns' tab,

Annual aggregate turnover or AATO, saved forms, notices received, etc.

If you do not have your credentials, you can easily retrieve them through the GST services portal. All you need to do is click on the 'forgot password' button on the login page and follow the subsequent steps.

GST rates slabs (Old rate slabs)

In a broader sense, there are 4 GST tax slabs in India. GST rates have been structured to ensure that food items and essential services are kept in the lower tax brackets, while luxury items and services fall in the higher brackets. Based on their type, more than 1,300 goods and nearly 500 services are categorised under four different goods and service tax slabs – **5%, 12%, 18%, and 28%**. Note that the GST on gold does not belong to these categories and is at a slab of 3%. Similarly, semi-precious and rough precious stones come under the special GST services slab of 0.25%.

GST rates in India

The GST rates in India can be summarised as follows:

Under the 5% slab

Goods: The goods under this slab include apparel up to Rs. 1,000, agarbatti, Braille items (watches, paper, typewriters), coir mat, cashew nuts, domestic LPG, edible oils, floor covering, fish fillet, fertilisers, first-day covers, frozen vegetables, footwear up to Rs. 500, hearing aids, insulin, milk food for babies, medicines, matting, packed paneer, packaged food items, pizza bread, postage stamps, roasted coffee beans, revenue stamps, rusk, sugar, stent, sabudana, stamp-post marks, skimmed milk, and tea.

Services: The services under this slab include road transport by motor cabs and radio taxis, supply of tour operators' services, restaurants with a turnover of up to Rs. 50 lakh, air travel by economy class, sale of advertisement space, transport services such as railways and airways.

Under the 12% slab

Goods: The goods included under this slab encompass ayurvedic medicines, almonds, apparel above Rs. 1,000, animal fat sausage, butter, bhujia, chutney, chess board, carom board, cake server, reagents and diagnostic kits, exercise books, fruits, frozen meat products, fish knives, forks, fruit juice, glasses for corrective spectacles, ghee, jam, jelly, mobile phones, namkeen, notebooks, non-AC restaurants, pickle, packed coconut water, sewing machine, tongs, tooth powder, work contracts.

Services: Services under this section include hotels, guest houses, inns with a tariff between Rs. 1,000 and Rs. 2,500 each night. This slab includes air tickets purchased for the business class as well.

Under the 18% slab

Goods: Some of the goods covered under the purview of this slab include aluminium foil, furniture, biscuits, bamboo, branded clothing, CCTV, camera, cakes, corn, curry paste, envelopes, footwear priced above Rs. 500, hair oil, instant food mixes, ice cream, mineral water, mayonnaise, monitors, padding pools, pasta, printers, preserved vegetables, soups, soaps, salad, dressing, steel products, tissues, tampons, toothpaste, weighing machines (both electronic and non-electronic variants), etc.

Services: Under 18% GST slab include telecom services, AC hotels that serve alcohol to patrons, IT services, and hotels with room tariffs ranging between Rs. 2,500 and Rs. 5,000 each night.

Under the 28% slab

Goods: Aerated water, personal use aircraft, aftershave, automobile motorcycles, ceramic tiles, chocolates without cocoa, dishwasher, deodorants, dye, hair shampoo, paan masala, paint, shaving cream, shavers, vacuum cleaners, water heater, washing machine, etc., are a part of this slab.

Services: Services attracting 28% GST include 5-star hotels, gambling and betting in race clubs, hotels with a nightly room tariff of Rs. 5,000 and above, cinema and entertainment.

There are also some Zero rated supply in GST, which is for goods that are exempted from GST.

GST calculation (Note:- GST Updated Rate Slabs Given below)

New GST Rates in India 2025: List of Goods and Service Tax Rates, Slabs & Revision-Try to follow this-

<https://cleartax.in/s/gst-rates>

How to calculate GST

In India, GST (Goods and Services Tax) is calculated as a sum total of GST payable on reverse charge, inward supplies, and output supplies. This total is derived individually for every month, and you will have to pay the amount calculated while filing GST returns every month.

As a taxpayer, you will have to consider all aspects and charges such as reverse charge, exempted supplies, inter-state sales, along with eligible, and non-eligible ITC, while calculating GST. Calculating the right GST amount will help you evade the 18% interest that will be levied if your payment falls short of your actual obligation.

GST calculation formula

GST amount = (original price x GST rate) / 100

Net price = original price + GST amount

example: Say you are selling a commodity from Mumbai and sending it to Kolkata for Rs. 10,000, and the rate of GST applied on it is 12%.

The GST amount applicable for it will be $(10,000 \times 12) / 100 = \text{Rs. } 1,200$; and the net price will be $\text{Rs. } 10,000 + \text{Rs. } 1,200 = \text{Rs. } 11,200$.