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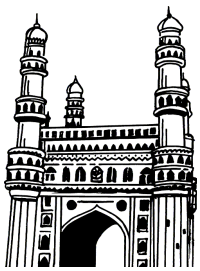

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MBA
I Year I Semester

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LEGAL AND BUSINESS ENVIRONMENT

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Companies Act, 2013, Steps and procedure for incorporation of the company, Appointment of Directors, Powers, duties, & liabilities of Directors, Role of Audit and Auditors, Company Meetings, Resolutions, Winding-up of a Company.

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Refer Unit-I, Q.No. 1.

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2. Discuss the procedure involved in registration and incorporation of a company.

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3. Explain the methods of Appointment of Directors of a company.

Ans : **(Jan.-20, Imp.)**

Refer Unit-I, Q.No. 7.

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Ans : **(Aug.-21, Imp.)**

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1. What are the objectives and scope of the Information Technology Act 2000 ?

Ans : **(Aug.-21, Jan.-20, Nov.-20, Imp.)**

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2. Explain the advantages and dis-advantages of Information Technology Act.

Ans : **(Nov.-20, Imp.)**

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3. What do you understand by Intellectual Property Rights ?

Ans : **(Jan.-18, Imp.)**

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Ans : **(Nov.-20, Imp.)**

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UNIT I

Introduction: Companies Act, 2013, Steps and procedure for incorporation of the company, Appointment of Directors, Powers, duties, & liabilities of Directors, Role of Audit and Auditors, Company Meetings, Resolutions, Winding-up of a Company.

1.1 COMPANIES ACT, 2013

1.1.1 Introduction

Q1. Define the term company. Explain the characteristics of a company.

Ans : **(Aug.-21, Jan.-20, Imp.)**

The term 'company' may be defined as a group of persons associated together to achieve some common objective. This, however, is not the legal definition. In legal sense, a company means an association of persons incorporated under the existing law of a country. The legal definition of a company has been amended by the new Companies Act, 2013 and is given in Section 2(20) of this Act which reads as under:

"Company means a company incorporated under this Act or under any previous company law".

(a) "Company limited by guarantee" is a company where the liability of its members is limited to the memorandum such that they can take part in contributing to the assets of the company in the event of its being terminated.

(b) "Company limited by shares" is a company where the liability of its members is limited to the memorandum to an amount that is unpaid on the shares owned by them.

(c) "Board of Directors" or "Board" of a company, is the group of directors of the company.

Thus, in legal sense a company is one which is incorporated (i.e., formed) under the Companies Act, 2013 or under any previous company law. The previous company law here means the Companies Act, 1956 and earlier Companies Acts. This definition, however, is not exhaustive [Strictly speaking, the term 'company' is not defined in Section 2(20)]. It simply emphasises the formation and registration of the company. The meaning and nature of the company becomes clear after looking into its characteristics, as discussed in the next article. The legal meaning of the term 'company', as revealed by these characteristics, may be summed up as under.

A company is a voluntary association of persons formed under the Company Law, to achieve some common objectives, having a separate legal entity independent and separate from its members, with a perpetual succession and a common seal, if any, and with capital divisible into transferable shares.

Following points are important to be noted with regard to the definition of a company:

1. Legally not every association of persons is a company; only such association of persons shall be a company which is registered under the Companies Act, 2013 or under any previous Companies Act.
2. A company is, legally, regarded as a person, which has rights and duties at law. However, it is not a natural person as human beings are. It is only a legal or artificial person, recognised by the law. Since, the company is created by law i.e., by registration under the Companies Act, it is known as a legal person, and as it has no body, no soul or conscience, no physical existence except in the eyes of law, it is known as artificial person.
3. Though the company is a legal or artificial person, yet it really exists and is not a fictitious persons.

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4. A company, being an artificial legal person, possesses similar rights and owes similar obligations like natural persons. Thus, a company can do everything like a natural person except the acts which are purely of personal nature, e.g., taking oath, seeking election, marriage or divorce.

5. Though, the company is a person, the sentence of imprisonment cannot be imposed on a company. Thus, where the violation of any provision of the Companies Act attracts penalty by way of imprisonment only, the company cannot be punished for the violation of such a provision.

Characteristics of a company

1. It has a separate legal entity

It is an important characteristic of a company that it has a separate legal entity. It means that the existence of a company is independent and separate from its members. In law, the company is regarded as an artificial legal person, which deals in its own name. Thus, a member of a company cannot be held liable for the acts of a company even if he holds the substantial part of company's share capital.

2. It has a perpetual succession

The term 'perpetual succession' may be defined as the continuous existence. A company has a perpetual succession i.e., company never dies. The membership of a company may change from time to time, but it does not affect the company's continuity. In other words, the members may come and go, but the company can go on for ever. This, however, does not mean that a company can never come to an end. As a company is created by the process of law, it can also be brought to an end by the process of law. Thus, a company comes to an end when it is wound up according to the provisions of the Companies Act. It may, however, be noted that till a company is wound up according to law, it continues to exist. Thus the death, insanity or insolvency of the members does not affect the corporate existence of the company in any way. Moreover, the admission of members also does not affect entity of new members. The company remains the same entity inspite of the total change in memberships.

3. It has a separate property

We know that company is a legal person in the eyes of law. It can, therefore, hold the property in its own name. All the property in the name of the company is its separate property which is controlled, managed and disposed of by the company in its own name. Thus, the company is the owner of its assets and capital. The members cannot claim to be the owner of the company's property. It is to be noted that a member does not have even an insurable interest in the property of the company i.e.. He cannot insure company's property in his own name for his own benefit.

4. It has capacity to sue and being used

We know that a company is a legal person and has independent existence. Being a legal person, the company can file suits against others in its own name. Similarly, the suits against the company can also be filed in company's name.

5. It has a common seal

We know that a company is a legal person, but it is not, physically, in existence. Thus, it cannot sign its name. It has a common seal which is used as a substitute for its signature. The common seal is the official signature of a company. As a matter of fact, every company must have a common seal with its name engraved on the same. The company being not physically in existence, it acts through natural persons, who are the directors of the company.

6. Its members have limited liability

As a matter of fact, it is the principal advantage of carrying the business under limited companies. A company may be limited by shares or by guarantee. In a company limited by shares, the liability of a member is limited to the extent of nominal value of the shares held by him. If the shares are partly paid, the liability of a member is limited to the extent of unpaid value of shares held by him. And if the shares are fully paid, the liability of the member is nil.

7. Its shares are freely transferable

The capital of a company is divided into parts, and each part is called the share. The shares of a company are freely transferable and can be purchased and sold in share market. This

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characteristic of a company is recognised by section 44 of the new Companies Act, 2013 which reads as under:

"The shares or debentures or other interest of any member in a company shall be movable property, transferable in the manner provided by the articles of the company Thus, the shares of the company are transferable like a movable property. Every member is free to sell his shares in the open market, and to get back his investment without having to withdraw the money from the company. This provides liquidity to the investor (member) and stability to the company because the company is in no way affected as the investments remain with the company.

8. It has several other advantages

Apart from the above advantages available to a company, it enjoys several other advantages also, such as

(a) a company has an autonomy and independence to form its own policies and implement them in accordance with the provisions contained in its memorandum, articles of association and the Companies Act.

(b) a company attracts professional management, and thus helps in promotion of professional management and efficiency,

(c) a company has the privilege of collecting interest free money from the public, for its business, by making a public issue or through private placement of shares and other securities,

(d) the restrictions, with certain exception, on the purchase of its own shares by the company, provide permanence of capital collected and stability to the company and protection to some extent to the creditors of the company.

Q2. What are the objectives of companies act 2013?

Ans :

The following are some of the objectives of companies Act, 2013.

1. To Encourage Investment in the Companies

More appropriate plans are made inorder to encourage the investment in companies.

Example

Payment of dividends, redemption of redeemable preference shares and debentures within the prescribed time, transferability of shares and repayment of public deposits.

2. To Administer the Performance of Duties

It makes sure that the individual who is responsible for the companies management perform his/her duties appropriately.

3. To Assists in Maintaining the Growth of Indian Corporate Sector

The Indian corporate sector's growth is maintained with the help of a new legal framework which is concise and manageable to have clear interpretations.

4. To Prevent Overlapping and Disputes of Jurisdiction

It helps in preventing the overlapping and disputes of jurisdictions with in the sectorial regulations.

5. To Attain the Objectives of Economic and Social Policy

This helps in attaining the objectives/goals of both economic and social policy within the framework of directive principles of state policy included in the constitution of India.

6. To Frame Minimum Standards

It assists in laying down the minimum standards/principles relating to business morals and regulations in the promotion and management of companies.

7. To Establish Successful Participation and Control

It make sure that shareholders effectively control and participate in the company and their interest is protected.

8. To Allow the Government to Involve and Investigate

The government is allowed to involve and investigate in the affairs of the company to monitor the business of the company which is being performed in the way that may harm the interests of the shareholders, the public at large or the company.

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9. To Provide Prominent Freedom of Operation and Innovation

It helps in providing the considerable freedom of operation and innovation with regard to process requirements and compliance cost.

10. To Assist in Responding Timely and Appropriate/Reasonable Manner

It helps in responding to the economic activities and business models in a timely and reasonable way inorder to meet their requirements.

11. To Encourage a Positive Environment

It helps in creating a positive environment for growth and investment.

Q3. Explain the classification of companies.

Ans :

i) Chartered Companies

A chartered company is one which is incorporated (formed) under a Special Charter granted by the King or Queen of England in the exercise of prerogative powers e.g., East India Company, Bank of England, Standard Chartered Bank. The chartered companies are governed by the provisions of the Special Charter, under which they are formed. The charter defines the nature and power of such companies. It may be noted that after independence, the chartered companies are rarely found in India. Moreover, the Companies Act, 1956 does not apply to such companies.

ii) Statutory Companies or Corporations

A statutory company is one which is incorporated by a Special Act of the Legislature (i.e., by the Act of Parliament or State Legislature). It may be noted that an Act is specially passed to create a statutory company e.g., the Life Insurance Corporation of India was created by the Life Insurance Corporation Act, the Food Corporation of India was created by the Food Corporation of India Act. The statutory companies are also known as 'corporations'. Such companies are, generally, created for the public utility services, and their main object is not to earn profits, but to serve the general public. The nature and powers of such companies are defined by the Special Act, under which they are created. However, the provisions of the Companies Act are also applicable to them in so far as they are consistent with the provisions of the Special Act.

A statutory company resembles with the company created under the Companies Act as it has a separate legal entity, and the liability of its members it also limited. However, it may not be required to use the word 'Limited' after its name. Moreover, it is also not required to have 'memorandum' and 'articles of association'. Following are some of the important provisions relating to the statutory companies:

1. A change in the structure of a statutory company is possible only by amending the Special Act under which it is created.
2. The audit of a statutory company is conducted under the control and supervision of Auditor General of India.
3. The annual report of working of a statutory company is required to be placed before the Parliament or State Legislature, as the case may be.

iii) Registered Companies

A registered company is one which is formed and registered under the Companies Act, 2013. It also includes an existing company, which was formed and registered under the earlier Companies Acts. It may be noted that a registered company comes into existence when it is registered (i.e., its name is entered in the register meant for this purpose) under the Companies Act, and a certificate of incorporation is granted to it by the Registrar of Companies. The registered companies are governed by the provisions of the Companies Act, 2013, and by the rules and regulations laid down in the 'memorandum' and 'articles' of association of the companies. These are the commonly found companies in India, and are the subject of our discussion of the Company Law. The registered companies may be of two kinds, namely:

1. Limited companies
2. Unlimited companies

1. Limited Companies

A limited company is one in which the liability of the members is limited i.e., the members

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are liable upto a limited amount, and beyond that limit they cannot be asked to contribute anything towards the payment of company's liabilities') Thus, if in the event of winding up of a company.

2. Unlimited Companies

An unlimited company is one in which the liability of the members is unlimited *i.e.,* the members are also personally liable for the payment of companies' liabilities. Thus, if in the event of winding up of a company, the assets of the company are not sufficient to pay its liabilities, then the private property of the members can also be utilised for the payment of company liabilities.

v) Private Company

A private company is defined in Section 2(68) of the new Companies Act, 2013, which correspond to Section 3(1)(iii) of the Companies Act, 1956, and section 2(68) has been amended by the Companies (Amendment) Act, 2015 w.e.f. 29-5-2015. Which has removed the minimum paid up share capital requirement of rupees one lakh for the formation of a private company.

As per amended Section 2(68), a private company is one which has a minimum paid up share capital of such sum as may be prescribed, and by its articles of association, puts the following restrictions on itself:

1. Restricts the right to transfer its shares, if any.
2. Limits the maximum number of its members to 200 (excluding the present or past employees of the company).
3. Prohibits any invitation to the public to subscribe for any shares or debentures, of the company i.e., it should not make public issue of its securities.

vi) Definition of a public Company

A public company is defined in Section 2(71) of the new Companies Act, 2013, which correspond to Section 3(1) (iv) of the Companies Act, 1956. The new section 2(71) has recently been amended by the Companies (Amendment) Act, 2015 w.e.f. 29-5-2015 which has removed the minimum paid up share capital requirement of ` 5 lakhs for the formation of a public company. A per amended Section 2(71), a public company means a company, which

(a) is not a private company;

(b) has minimum paid-up capital of such amount as may be prescribed.

Thus a public company may be defined as an association of persons consisting of not less than seven members, which is registered under the Companies Act with a minimum paid up capital of the prescribed amount and which is not a private company within the meaning of this Act.

vii) One Person Company

The concept of 'one person company' is a new concept and has been introduced in the company law for the first time.

It is defined in Section 2(68) of the Companies Act, 2013 as under:

"One person company means a company which has only one person as a member".

Thus, a one person company can legally be formed under the Companies Act, 2013.

Following points are important in this regard:

1. Only a natural person can be a member of a one person company.
2. One person company can only be formed as a private limited company [Section 3].
3. The words 'One Person Company' shall be mentioned in brackets below the name of the company wherever its name is printed, affixed or engraved [Section 12(3)].
4. The memorandum of one person company shall indicate the name of other person who shall become member of the company in the event of death or incapacity of the single member.

viii) Holding And Subsidiary Companies

We know that a holding company is one which has control over another company. And the company, over which the control is exercised, is called the subsidiary company. It may be noted that the 'holding' and 'subsidiary' companies are relative terms. A company is a holding company of another if the other is its subsidiary. The circumstances in

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which such type of control is exercised (i.e., in which one company becomes the holding and the other a subsidiary.

ix) Government Companies

The definition of a 'government company' is contained in Section 2(45) of the Companies Act, 2013 which is almost similar to the definition contained in Section 617 of the Companies Act, 1956.

The new section has been made effective with effect from 12.9.2013, and the definition given below is as per new Section 2(45).

A Government company is one in which 51% or more of the paid up share capital is held by the Central Government, or by any one or more State Governments, or partly by Central Government or partly by one or more State Governments. The required percentage of share capital, to be held by the Central Government and/or by the State Government, may be either of equity share capital or of preference share capital or of both. Even if the holding by the Central or State Government consists of only preference shares carrying no voting rights, the company will still be a Government company. A subsidiary of a Government company is also a Government company.

x) Foreign Company

In simple words, a foreign company is one which is incorporated (i.e., formed) outside India. I Legally, it has now been defined in Section 2(42) of the Companies Act, 2013.

As per Section 2(42), a foreign company means any company or body corporate incorporated i outside India, which –

(a) has a place of business in India whether by itself or through an agent, physically or through electronic mode, and

(b) conducts any business activity in India in any other manner.

Thus, a 'foreign company' is one which is incorporated outside India and which apart from having a place of business in India also conducts any business activity in India. It is to be noted that having or establishing a place of business indicates something more than an occasional connection. A company will have an established place of business in India, if it has a specified' or identifiable place at which it carries on business, such as an office, store house, godown or other premises which indicates that the company has a concrete connection with such particular premises. Thus, there must be some specific location readily identifiable with the company where some substantial business activity of the company is being carried on. A place of business is not considered to be established in India where a foreign company has merely posted a representative in India only for the purposes of seeking orders.

1.2 Steps and Procedure for Incorporation of the Company

Q4. Discuss the procedure involved in registration and incorporation of a company.

Ans : **(Nov.-21, Aug.-21, Imp.)**

Registration and incorporation of a company is the second stage of formation of a company. After registration of the company and after getting certificate of incorporation, a company comes into existence. The four steps involved in the process of registration and incorporation of a company are,

I. Preliminary steps

II. Application for registration and delivery of documents

III. Examination and registration of documents by the registrar

IV. Issue of certification of incorporation and CIN.

I) Preliminary Steps

The following are the preliminary steps which are undertaken by the promoters to get registration of their company,

1. Deciding the Type of Company

The promoter has to decide which type of company he wants to register. As per the companies Act, 2013, both public company and private company can be registered. Even One Person Company (OPC) can be registered but as private company only. Any company may be registered as a company limited by shares, limited by guarantee

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with or without share capital. A company may even get registered with unlimited liability. Hence, the promoter has to decide the type of company he wants to register.

If the promoter wants to register an OPC, then he should make sure that the subscribes to the memorandum is a citizen of India, resident in India and is not a member of any other One Person Company (OPC).

2. Deciding the Location of Registered Office

The promoter has to decide the location of register office of the company. Atleast the state where the registered office will be located must be decided if in case the promoter is unable to decide the exact place of registered office. This decision is essential to recognize the registrar of the companies to whom the application for registration of the company is to be given. Once the state is decided, the promoter has to decide the company address for correspondence.

3. Acquiring DIN from Central Government

Acquiring Director's Identification Number (DIN) is compulsory for the person who wants to be a director of a company. It is unique and permanent number given by the central government in response to the application submitted by the prospective directors. The central government allot DIN before one month from the date on which application is submitted. DIN must be mentioned in the application form submitted to the registrar.

4. Acquiring Digital Signature

Digital signature is an electronic signature made through electronic means. Inorder to get company registered, the companies are required to e-file documents with digital signature, as manually signing e-file documents is not possible. Thus, promoters and other authorized individuals (like CA, CS, Solicitor, etc.) are required to acquire digital signatures.

5. Selecting and Reserving Company Name

A proper name has to be selected by the promoter for his intended company and get that name reserved. He should apply for reservation of company name in the Form No. INC- 1 with the specified fee to the registrar. The application must be given to that registrar of the state in which the registered office of the intended company is to be located. The name of a proposed company is reserved for a period of '0' days from the date on which application is received.

6. Drafting Memorandum

In schedule 1 of the companies Act, 2013, Tables A, B, C D and E comprises formats of memorandum for different types of companies. By taking into consideration these tables, promoter of the company along with his solicitor, company secretary and so on draft the memorandum of a company. The memorandum of an OPC should contain the name of a nominee of the member to the memorandum with his prior permission in written form.

7. Drafting Articles

The articles of association is the another essential document of the company which includes regulations for internal management of a company. The articles may include prescribed matters and also additional matters (if considered essential). Tables F, G, H, I and J of schedule-I contains formats of articles for various types of public companies. A promoter can draft the article by choosing the suitable format for his intended company. The promoter has to organize for drafting the articles, if he don't want to adopt format of the articles in totality.

The formats given in table F, G, H, I and J of schedule-1 are not applicable to private companies (including OPC). So they have to prepare their own articles and file with the registrar.

8. Inspecting the Drafts

The memorandum and articles drafted by the promoter must be inspected by the registrar to prevent mistakes and delays in the registration of the proposed company.

9. Printing of the Memorandum and Articles

The memorandum and articles must be printed as per the specifications given in the Act.

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10. Stamping of the Documents

Memorandum and articles must be stamped as per the stamp laws applicable to the respective document.

11. Dating of the Documents

Date should be specified on memorandum and articles. After the stamping date, any date may be chosen for dating the documents.

12. Obtaining Signature of the Subscriber

There should be minimum seven subscribes in the public company, two subscribers in the private company and one subscribers in OPC. Each and every subscriber must sign the memorandum. Every subscriber must give his address, description and occupation in the existence of minimum one witness. The witness should also give his signature and address and description of occupation like subscriber. A subscriber may sign the memorandum personally or may allow an agent to sign on behalf of him.

13. Getting Consent of the Nominee in Case of an OPC

In order to include the name of nominee of the subscriber in the memorandum in case of OPC, prior consent has to be acquired from the nominee is written in Form No. INC-3 [Sec.3(1) and Rule INC-4(2)].

14. Acquiring Declaration as to Compliance with Legal Requirements

A declaration in Form No. INC-8 should be acquired by the promoter of the company.

15. Getting Affidavit from Subscribers and Persons Named as First Directors

A promoter must also acquire an affidavit in Form No. INC-9 from every subscriber to the memorandum and from individuals who are named as the first directors in articles of association [Sec. 7(1) and Rule INC-14],

16. Acquiring Particular of Subscribers, Directors, Etc.

The particulars of the following people must acquired by the promoters.

(i) Particulars of every subscriber to the memorandum,

(ii) Particulars of individuals stated as first directors in the articles of the company,

(iii) Particulars of individuals stated in the articles as first directors of the company in other firms or corporate bodies.

17. Get Consent of the First Directors

The promoter must get the written consent of the individual who wants to act as first directors of the company. Consent must be obtained in a prescribed manner [Sec-7(1) and Rule INC-17],

18. Getting Approval of the Sectoral Regulators

At times, a company aims to possess objects which requires registration or approval of sectoral regulators like RBI and SEBI. In such situation, promoter has to get approval from the sectoral regulators.

19. Drafting Contracts

If the promoter intends to include other contracts in the terms of incorporation of the company then he will draft such contracts. These contracts contain all the preliminary contracts.

II) Application for Registration and Delivery of Documents

A One Person Company (OPC) promoter must file an application for incorporation of his company in Form No. INC-2. Except OPC, the other companies must file application for incorporation in Form No. INC-7 with the specified fees. The company must file an application with the registrar under whose authority the company's registered office in intended to be located.

The following are the documents and information which are to be enclosed with the application,

1. Notice of Address for Communication [Sec.7(1)(d)]

The company applying for registration must enclose a document comprising the notice of the address for communication with registrar until the company's registered office is situated.

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2. Memorandum of the Company [Sec. 7(1)(a) and Rule INC-13]

The Memorandum of Association (MOA) of the Company with signatures of all the subscribers must be submitted to the registrar as per the Rule INC-13.

3. Approval from Sectoral Regulators [Rule INC-12]

At times, company aims to pursue objects which require approval from sectoral regulators like RBI and SEBI. The copy of the approval need to be enclosed with the application for incorporation of the company. Apart from this, a declation concerning such approval must also be enclosed with the application.

4. Articles of the Company [Section 7(1) (a) and Rule INC-13]

The Articles of Association (AOA) of the company with the signatures of all the subscribers to the memorandum must be submitted to the registrar as per the Rule INC-13.

5. Declaration as to Compliance with Rules and Regulations of the Act [Section 7(1)(b) and Rule INC-14]

A declaration in Form No. INC-8 must be submitted to the registrar. In the declaration, the proposed company declare that it complied with all the rules and regulations of the companies Act, 2013. An advocate, cost accountant, chartered accountant or company secretary in practice who is involved in company formation can make declaration. Apart from these people and individual named as director, manager or company secretary in the AOA of the company can do declaration.

6. Affidavit from Subscribers and individuals Named as First Directors [Section 7(1)(c) and Rule INC-15]

A proposed company must submit an affidavit in Form No. INC-9 to the registrar. Affidavit must be made by all subscribers to the MOA and individuals named as first directors in AOA of the company.

In affidavit, it is declared that,

- No offense is conducted in relation to promotion, formation and management of the company.
- He has not involved in any fraud or misrepresentation or breach of duty in the last five years.
- The documents submitted to the registrar are true and complete to the best of his knowledge and belief.

7. Particulars of all Subscribers [Section 7(1)(e) and Rule INC-16]

The details of all subscribers to the MOA of the company must be submitted to the registrar. The details include name, surname, correspondance address, nationality and so on. Apart from this, identity proof of all subscribers must be submitted as per the specifications given in the Act. If subscriber is a corporate body then details must be submitted as prescribed in the Act.

8. Particulars of First Directors [Section 7(1)(F) and Rule INC-17]

In the Form No. DIR-12, the intended company must submit to the registrar the details of the individuals named as first directors in AOA of the company. The details must include name, surname the Director Identification Number (DIN), Correspondance address, nationality etc., along with identify proof as specified in the Act.

9. Particulars of Interest of Directors [Section 7(1) (g) and Rule INC-7]

The intended company must submit the details of the interested individuals stated in the articles as the first directors of the firm in other company or corporate bodies. The details must be filled in the Form No. DIR-12.

10. Consent to Work as Directors [Section 7(1) (g) and Rule INC-17]

A copy of the consent obtained from the people who agreed to work as directors of the company must be submitted to the registrar in Form No. DIR-12.

11. Copy of the Confirmation Letter for Reservation of the Name

A proposed company need to submit a copy of the confirmation letter received from the registrar confirming reservation of company name.

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12. Power of Attorney Executed by the Subscriber

At times, if a subscriber wants any other person to sign MOA and AOA on behalf of him then he needs to execute power of attorney. In this case, such copy must be submitted to the registrar. If subscriber is a corporate subscriber then execution of power of attorney becomes mandatory.

13. Power of Attorney to Make Corrections

In order to allow any person to make corrections in the documents submitted to the registrar, all subscribers execute power of attorney. A copy concerning this must be submitted to the registrar at the time of registration of a company.

14. Payment of Fees

The company should pay specified registration fees to the registrar. The fees may be paid by cash or through electronic mode (like credit card, debit card or on-line money transfer).

The above mentioned documents must be submitted to the registrar before 60 days from the date of confirmation of reservation of company name. The reason is, the reservation of company name becomes invalid after 60 days.

III) Examination and Registration of Documents by the Registrar

The registrar must examine the documents, after obtaining the application and the delivery of documents for incorporation from the company. If all the documents filed by the company are in sequence then the registrar register all such documents and information in the register of companies.

If registrar found any minor mistake is in a document then he may ask the authorized person to correct such mistake. But if major mistakes are found then all the documents which were submitted are sent back to the company for corrections. A registrar may refuse to register a company, if as per the law, registration of such company is unlawful. But, if registrar is refusing to register a company, even though registration of such company is lawful then in this situation registrar may be forced to register.

IV) Issue Certificate of Incorporation and CIN

After the registration of all documents and information, a 'certificate of incorporation' is issued in the form No. INC-II by the registrar, stating that the intended company is incorporated under the companies Act, 2013 [Sec.7(2) and Rule INC-18]

An incorporated company get Corporate Identity Number (CIN) from the registrar on the date specified in the certificate of incorporation. CIN gives distinct identity to the company and is included in the certificate of incorporation.

Certificate of incorporation is a conclusive evidence of date of incorporation. With this certificate company comes into existence as a separate legal entity. It is an evidence of registration and existence of a company as a legal entity. The date which is given in the certificate of incorporation is regarded as the date of incorporation of the company irrespective of whether it is correct or wrong and from that date company function as a corporate with the name mentioned in the Memorandum of Association (MOA). The following is the proforma of certification of incorporation.

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Proforma of Certification of Incorporation

Form No. INC-11

Certificate of Incorporation

[Pursuant to Section 7(2), Companies Act, 2013 Rule INC-18 and Rule INC 36(13) companies (Incorporation) Rules, 2014]

I hereby certify that _____ (Name of the company) is incorporated on this _____ day of _____ two thousand _____ under the company Act, 2013 and that the company is limited by shares/limited by guarantee/unlimited company.

The CIN of the company is _____

Given under my hand at _____ this _____day of _____ two thousand _____ .

SEAL

_____

(Register of companies)

_____ (State)

Usually, a company comes into existence from the date of incorporation mentioned in the 'certificate of incorporation'. If such date is not mentioned in the certificate then the date on which certificate is issued is considered as date of incorporation irrespective of whether it is correct or wrong.

After the issue of certificate of incorporation, the validity of registration cannot be challenged or questioned. Certificate of incorporation cannot be cancelled, once they are issued, even though the objects are illegal. The only remedy available is winding up of a company by tribunal.

1.3 DIRECTORS OF A COMPANY

Q5. Explain the meaning of director.

Ans :

The director is defined in Section 2(34) of the Companies Act, 2013 as under:

"A director ' means a director appointed to the Board of a company "

Thus, a director is a person appointed as director under the provisions of the Companies Act, 2013.

The directors manage and control the overall affairs of the company. They generally confine themselves to the general business policies and overall supervision of the management of the company. The day to day working of the company is left to other managerial personnel. Thus, the director is a person who controls and services the overall management of company's affair. It is immaterial by what name he is called.

Following points be noted with regard to the directors:

1. Only an individual can be appointed a director. A firm, association, or a company cannot be a director of the company [Section 149(1)].
2. An individual can be appointed or re-appointed as a director only if he has been allotted a Director Identification Number [Section 152(3)].

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Note: The provisions relating to directors' appointment and qualifications etc. are provided in Sections 149 to 172 of the Companies Act, 2013 all of which have been notified to be effective. The corresponding provisions of the Companies Act, 1956 stands deleted and are no more relevant.

Number of Directors

The Companies Act, 2013 has fixed the minimum and maximum number of directors, vide Section 149, which is as under:

1. Minimum number of directors [Section 149(l)(a)]

Section 149 has fixed the minimum number of directors which a company must have. These are different for different type of companies as stated hereunder:

(a) A public company must have at least 3 directors.

(b) A private company must have at least 2 directors.

Note: A 'one person company', which is always a private company, shall have at least one director [Section 149(l)(a)].

2. Maximum number of directors [Section 149(l)(b)]

Section 149 has also fixed the maximum number of directors which a company must have. This section makes the following provisions in this regard:

(a) A company can have maximum of 15 directors.

(b) A company may also appoint more than 15 directors after passing a special resolution [Section 149(l)(b) first proviso].

3. Other important points

Following points are important to note with regard to directors.

(a) Woman director: The companies prescribed by the Central Government shall have at least one woman director [Section 149(1)(b), 2nd proviso],

(b) Compulsory stay in India: Every company shall have atleast one director who have stayed in India for a total number of not less than 182 days in previous calender year [Section 149(3)].

(c) Independent directors: Every listed public company shall have at least l/3rd of the total number of directors as independent directors. The Central Government may prescribe the minimum number of independent directors in case of any class of companies [Section 149(4)].

Note: This point will be discussed in detail in Art. 12.17 in the following pages.

(d) Small shareholders' director: A listed company may have one director appointed by small shareholders in such manner as may be prescribed [Section 151].

A 'small shareholder' means a shareholder holding shares of nominal value of not more than Rs. 20,000 or such other sum as may be prescribed.

(e) Minimum number in articles: The minimum number of directors which the company should have may be fixed in its articles of association. However, the minimum number so fixed should not be less than the statutory minimum limit as stated above.

(f) Minimum number statutory requirement: The provision as to the minimum number of directors is mandatory i.e. legally compulsory. Thus, every company must have the minimum number of directors at all times during its existence i.e., from the date of incorporation till dissolution of the company. Any business transacted after the number of directors falls below statutory minimum limit would be invalid.

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Q6. What are the Qualifications and Disqualifications of directors?

Ans :

Qualifications of a Director:

As regards to the qualification of directors, there is no direct provision in the Companies Act, 2013. But, according to the different provisions relating to the directors; the following qualifications may be mentioned:

1. A director must be a person of sound mind.
2. A director must hold share qualification, if the article of association provides such.
3. A director must be an individual.
4. A director should be a solvent person.
5. A director should not be convicted by the Court for any offence, etc.

Disqualifications of a director:

Section 164 of Companies Act, 2013, has mentioned the disqualification as mentioned below:

1) A person shall not be capable of being appointed director of a company, if the director is

   (a) Of unsound mind by a court of competent jurisdiction and the finding is in force;

   (b) An undischarged insolvent;

   (c) Has applied to be adjudicated as an insolvent and his application is pending;

   (d) Has been convicted by a court of any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than six months and a period of five years has not elapsed from the date of expiry of the sentence;

   (e) Has not paid any call in respect of shares of the company held by him, whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call; or

   (f) An order disqualifying him for appointment as director has been passed by a court in pursuance of section 203 and is in force, unless the leave of the court has been obtained for his appointment in pursuance of that section;

2) Such person is already a director of a public company which:

   (a) Has not filed the annual accounts and annual returns for any continuous three financial years commencing on and after the first day of April, 1999; or

   (b) Has failed to repay its deposits or interest thereon on due date or redeem its debentures on due date or pay dividend and such failure continues for one year or more:

Provided that such person shall not be eligible to be appointed as a director of any other public company for a period of five years from the date on which such public company, in which he is a director, failed to file annual accounts and annual returns under sub-clause (A) or has failed to repay its deposit or interest or redeem its debentures on due date or paid dividend referred to in clause (B).

1.3.1 Appointment of Directors

Q7. Explain the methods of Appointment of Directors of a company.

Ans : **(Jan.-20, Imp.)**

The' Various modes of the appointment of directors are given in the Companies Act itself which may be discussed under the following heads:

1. Appointment of first directors.
2. Appointment of directors by shareholders at general meeting.
3. Appointment of small shareholders directors.
4. Appointment of directors by the Board of Directors.
5. Appointment of directors by third parties.
6. Appointment of directors by tribunal.
7. Appointment of directors by Central Government.

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1. Appointment of First Directors

The first directors are usually named in company's articles of association and are appointed by promoters in the manner laid down in the articles of association. In case the articles of association are silent about the first directors, then the subscribers of the memorandum of association, who are individuals, shall be considered as the directors of the company. They shall hold the office until the directors are duly appointed at the first annual general meeting [Section 152(1)].

Thus, the first directors are appointed in accordance with the provisions of articles of association. And if company's articles do not provide for appointment of first directors, then as provided in section 152(1), the individual subscribers memorandum shall be deemed to be the first directors.

It is to be noted that, the provisions of section 152(1) are attracted only if there is no provision in company's articles for the appointment of first directors.

2. Appointment of Directors by Shareholders at General Meeting

The appointment of directors is the primary managerial function of the company, as such majority of the directors are required to be appointed by the company at its general meeting of shareholders. The legal provisions in this regard are contained in Sections 152(6) of the Companies Act, 152(6).

These provisions apply only to a public company.

Section 152(6) provides that not less than $\frac{2}{3}$rd of the total number of directors of a public company, shall be the rotational directors i.e. who shall be liable to retire by rotation. And the remaining $\frac{1}{3}$rd may be non-rotational i.e. who may be given permanent appointment.

The legal provisions relating to appointment of directors are, therefore, discussed separately as under:

(a) Appointment of rotational directors.

(b) Appointment of non-rotational directors.

(a) Appointment of rotational directors

We have noted above that not less than $\frac{2}{3}$rd of the total number of directors shall be liable to retire by rotation. These directors shall be appointed by the company in general meeting of shareholders [Section 152(6)(a)].

Notes:

1. The general meeting in which $\frac{2}{3}$ rd of the total number of director are appointed may be annual general meeting or extra-ordinary general meeting.
2. The term 'total number of directors' does not mean the maximum number of directors fixed by the articles, but only the number of directors for the time being appointed as directors.

(b) Appointment of non-rotational directors

The directors other than the rotational directors are called non-rotational directors. Thus, the remaining $\frac{1}{3}$rd of the total number of directors are non-rotational directors. These l/3 rd directors may be appointed in accordance with the provisions contained in company's articles of association. The company may prescribe, in its articles, the manner of appointment of remaining $\frac{1}{3}$rd directors e.g., the articles may empower the Board of directors to appoint $\frac{1}{3}$ rd of total number of directors. In the absence of any such provision in articles or in case of default in such appointment, these directors shall also be appointed by the company in general meeting [Section 152(6)(b)].

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As stated in last point, not less than 2/3rd of the total number of directors shall be liable to retire by rotation. This means that only the remaining $\frac{1}{3}$rd can be given permanent appointment. Thus, the provision about permanent directors and the retirement of directors by rotation may be stated as under:

(a) One-third of the total number of directors can be given permanent appointment.

(b) Two-third of the total number of directors are liable to retire by rotation.

3. Appointment of Small Shareholders' Director

A 'small shareholders' director' is one who is appointed to represent small shareholder in the company.

The provision relating to appointment of small shareholders director are made in Section 151 of the Companies Act, 2013. The Companies (Appointment of Small Shareholders' Director) Rules, 2001 have also been made for the appointment of such director. These are discussed in the following pages :

(a) Meaning of small shareholder

A small shareholder means a shareholder who holds shares of the nominal value of not more than Rs. 20,000 or such other such as may be prescribed in the company. He may be a holder of equity shares or preference shares or both.

It is to be noted that what is relevant here is nominal value of shares, and not the 'paid up value' or 'market value'. For example, A holds 4000 equity shares of ` 10 each (5 paid up) in ABC Ltd. In this case, A is not a small investor as the nominal value of shares held by him is ` 40,000 (10 × 4000) which exceeds the limit of ` 20,000.

(b) Applicable to listed company only

The provisions relating to appointment of small shareholders director apply only to listed companies.

A listed company may have one director elected by the small shareholders in such manner and with such terms and conditions as may be prescribed [Section 151].

(c) Appointment of small of small shareholders director - optional or obligatory:

A small shareholders' director may be appointed by the company somata i.e., on its own. In this sense, the appointment of such director is optional.

However, where a notice is served on the company by the small shareholders for the appointment of such director, then it is obligatory {i.e. legally compulsory) for the company to appoint small shareholders' director [Rule 4 of the Companies (Appointment of Small Shareholders' Director) Rule, 2001],

(d) Requirements of notice by small shareholders

The small shareholders may serve a notice on the company for the appointment of small shareholders' director. The requirements of such a notice are:

(a) The notice must be given in writing.

(b) The notice shall be given at least 14 days before the meeting.

(c) The notice shall be given by at least l/ 10th in number of small shareholders.

(d) The notice shall be signed by at least 100 small shareholders.

(e) The notice shall specify the name, address, number of shares held, particulars of shares with differential rights as to dividend or voting (if any) and folio numbers of

(i) shareholders proposing the resolution; and

(ii) the person whose name in proposed as a 'Small Shareholders' Director'.

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(e) Procedure of appointment of small shareholders director

A small shareholders' director shall be appointed in such manner and with such terms and conditions as may be prescribed [Section 151].

(f) Small shareholders director to be a small shareholder

Only a small shareholder can be appointed as a small shareholders ' director.

The small shareholders' director shall also file his consent in writing to act as a director.

(g) Disqualifications and vacation of office

In this regard, the provisions are as under:

(a) Disqualifications of a 'Small Shareholders' Director' are same as that of any other director, as specified under Section 164.

(b) Grounds for vacation of office of a 'Small Shareholders' Director' are same as applicable to any other director as specified under Section 167, except that

(c) he shall vacate his office if he ceases to be a small shareholder;

(h) Tenure of a small shareholders' director

In this regard, the provisions are as under:

(a) A 'Small Shareholders' Director' shall be appointed for a maximum period of three years.

(b) He shall not retire by rotation.

(c) He may be re-elected for another period of three years.

(i) Number of small shareholders' directorships

A person can be appointed as a Small Shareholder's Director in not more than 2 companies.

4. Appointment of Director By the Board of Directors

As discussed above, the power to appoint directors is vested in the shareholders who make appointment in general meeting. However, the Board of Directors may also appoint directors in the following cases

(a) Appointment of additional directors.

(b) Filling of casual vacancies.

(c) Appointment of alternate directors.

(d) Appointment of nominee directors.

(a) Appointment of Additional Directors

The Board of Directors may appoint additional directors from time to time if it is authorised by the articles of association. Legal provisions in this regard are contained in Section 161(1) of the Companies Act, 2013, which apply to all companies, whether public or private. These provisions may be stated as under:

1. Authorisation by articles of association

The Board of Director may appoint additional directors only if it is authorised by the articles of association to make the appointment [Section 161(1)].

2. Term of office of additional director

The term of office of additional director is limited. He shall hold office only upto the date of next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier [Section 161(1)].

3. [Position of an additional director

An additional director has the same rights, powers, duties and liabilities as any other director. The provisions relating to qualification, disqualifications, grounds for vacation of office, disclosure of interest by a director, etc. are applicable to an additional director as they apply other director. He can also be appointed as a whole-time director or managing director in accordance with the provisions of the Act.

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4. Other important points

Following points are important to note in respect of additional directors

(i) In any case, the approval of Central Government is not required for appointment of additional director.

(ii) In case the strength of directors fall below the legal minimum, the appointment of additional director by the remaining directors would be valid."

(b) Filling of Casual Vacancies

A casual vacancy occurs when the office of a director is vacated before the expiiy of his term of office. It may be caused by death, resignation, insanity insolvency, etc., of the director. The Board of Directors may fill a casual vacancy by passing a resolution at the Board meeting.

(c) Appointment of Alternate Director

The provisions relating to appointment of alternate director have been amended and are incorporated in Section 161(2) of the new Companies Act, 2013, which were earlier contained in section 313 of the Companies Act, 1956. An 'alternate director' is appointed to act in place of director who is absent for a period of more than three months from India. The Board of Directors may appoint an alternate directors if it is so authorised by the articles of association, or by a resolution passed by the company in general meeting. The person in whose place an alternate director is appointed is referred to as original director.

(d) Appointment of Nominee Directors

This is the new provision added by Section 161(3) of the Companies Act, 2013 w.e.f. 12.9.2013.

As per this section, subject to the articles of a company, the Board may appoint any person as a director nominated:

(a) by any institution in pursuance of the provision of any law or of any agreement; or

(b) by the Central or State Government by virtue of its shareholdings in a government company.

5. Appointment of Directors by Third Parties (or) Appointment of Nominee Directors

The term 'third parties' here means debenture-holders', financial or banking companies or financial corporations who have advanced loan to the company. The directors so appointed are known as nominee directors. The nominee directors are watchdogs of the financial institutions (i.e., third parties) to safeguard their funds in the assisted company.

1. Nominee directors representing financial companies other than those constituted under special Acts' : The articles of association of a company may authorise a financial company (i.e., third party) to appoint their nominees on company's Board of Directors. It is to be noted that such financial company may appoint a nominee director only if articles of assisted company (i.e., to whom financial assistance is given) authorise the financial company to appoint a nominee director. Following points are important to note with regard to nominee directors:

(a) The number of directors so nominated must not exceed one-third of the total number of directors. This is so because 2/3 of the total number of directors must be appointed by the company at its general meeting of the shareholders [Section 152(6)].

(b) All the provisions of the Companies Act also apply to a nominee director. He holds a fiduciary position in the company and he is required to display utmost care, skill and care in the discharge of his duties. Therefore, a nominee director can also be prosecuted

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for any default, non-compliance or contravention of the Act if he is proved guilty. They are also liable to retire by rotation.

(c) The appointment of such nominee directors must be made in conformity with the provisions of Sections 152 of Companies Act, 2013, i.e., such a nominee director shall be included in total number of directors, and if he is appointed as a non-rotational director, he must fall within l/3rd of total number of directors. Also, his appointment should be within the maximum number of directors as specified in company's articles of association.

2. Nominee directors representing financial institutions constituted under special Acts : In case of financial institutions constituted under Special Acts e.g., UTI, IDBI, LIC, etc,, the relevant Special Acts under which they are constituted empower them to appoint a nominee director on the Board of an assisted company. Their appointments are governed by the special provisions which override the provisions of the Companies Act, 2013. The provisions applicable to such nominee directors may be stated as under:

(a) He shall not retire by rotation.

(b) He shall not be required to hold qualification shares.

(c) He is not counted for the purpose of total number of directors.

(d) In reckoning two-third or any proportion thereof, they shall not be taken into account.

(e) He can be appointed even if there is no provision in the assisted company's articles for the appointment.

(f) He can be appointed even if his appointment would result in increasing the strength of the Board beyond the 'maximum number of directors' as specified in the articles,

(g) He can be removed only by the authority appointing him.

6. Appointment of directors by the tribunal

The Tribunal has the power to appointment a nominee director on the Board of Directors of a company where the company's affairs are conducted in a manner prejudicial or oppressive to the members or prejudicial to public interest or company interest [Section 242(1)(k)].

The legal provisions in this regard are contained in Section 242 of the Companies Act, 2013 which apply to all companies, whether public or private.

7. Appointment by the Central Government

If all the directors of a company vacate the office due to non-compliance with the specifications given in Section 167(1) then in such situation, the central government (in the absence of promoter) can appoint directors. These directors will remain in the office till the company appoint its directors in the general meeting [Section-167(2)].

1.3.2 Powers, Duties & Liabilities of Directors

Q8. Explain the powers of directors under companies act 2013.

Ans : **(Nov.-21, Jan.-20, Imp.)**

The powers to the directors are given by the Companies Act, memorandum, and articles of association. Their powers may be discussed under the two heads, namely:

1. General powers
2. Specific powers

I. General Powers of Directors

This point may be discussed under two sub-heads namely

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(a) powers of the board of directors, and

(b) shareholders' intervention in exceptional circumstances:

a) Powers of the Board of Directors

The general power of the Board of Directors are provided in Section 179(1) of the Companies Act, 2013 which were earlier provided in Section 291 of the Companies Act, 1956.

The 'Board of Directors' of a company enjoy all such powers as are enjoyed by the company itself. Thus, the Board is entitled to exercise all such powers and to do all such acts and things as the company is authorised to exercise and do. This means that the powers of the Board of Directors are co-extensive with those of the company i.e., as great as those of the company. Following provisions/points are to be noted with regard to the general powers of directions.

1. Limitations on directors powers

There are the following two important limitations upon the powers of the directors:

(i) The Board of Directors must exercise its powers subject to the provisions contained in the Companies Act, company's memorandum or articles of association, or in any regulations made by the company in general meeting [Section 179(1), 1st provision.

(ii) The Board of Directors cannot exercise those powers which are required to be exercised by the shareholders in the general meeting [Section 179(2), 2nd provison]. The powers of the directors are normally set out in company's articles of association. And the directors can exercise all such powers which are not contrary to the Companies Act and articles of association.

2. Other important points

The following points, based upon judicial decisions, are important to note in connection with the powers of the directors:

(i) The individual directors have only such powers as are given to them by the memorandum and articles of association. An individual director has no authority to institute a suit on behalf of the company unless such power is specifically conferred on the directors by the board of directors by passing a resolution in that regard.

(ii) In case the board of directors, by passing a resolution, authorise a particular director to file an appeal in the court, and such authorised director delegates his power to an officer of the company, then an appeal filed by that officer would be competent.

b) Shareholder's Intervention in Exceptional Circumstances

In the following circumstances, the general meeting of the shareholders is competent to act aid interfere even in the matters delegated to the Board of Directors:

(a) Where the directors act *mala fide* and against the interest of the company *e.g.,* when their personal interest is in conflict with their duties towards the company.

(b) Where the directors have, for some valid reasons, become incompetent to act *e.g.,* when all the directors are interested in the transaction of the company.

(c) Where the directors are unwilling to act, or on account of deadlock are unable to act *e.g.,* when there are only two directors in a meeting and one refuses to act with the other.

It may, however, be noted that the shareholder can interfere with directors' powers only in the three circumstances as stated above. They cannot interfere with directors' powers of carrying on the business of the company. The reason for the same is that as a general rule, the powers given to the management (i.e., directors) can be exercised by them alone. If the shareholders are dissatisfied

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with the working of directors, their remedy is to suitably alter the company's articles of association, or to remove the directors in the manner provided by company's articles.

II. Specific Powers of Directors

The specific powers of the Board of Directors are provided in Section 179(3) of the Companies Act, 2013, which were earlier provided in Section 292 of the Companies Act, 1956.

Section 179(3) makes a specific mention of certain powers of the 'Board of Directors', and also lays down the manner in which these powers are to be exercised. Following are the specific powers given to the 'Board of Directors' which can be exercised by the Board only by means of resolutions passed at the Board meetings'.

(a) The power to make calls on shareholders in respect of the money unpaid on their shares.

(b) The power to authorise buy-back of securities under Section 68.

(c) The power to issue securities including debentures whether in or outside India.

(d) The power to borrow money.

(e) The power to invest the funds of the company.

(f) The power to grant loans or give guarantees or provide security in respect of loan.

(g) The power to approve financial statement and the Board's report.

(h) The power to diversify the business of the company.

(i) The power to approve amalgamation, merger or reconstruction.

(j) The power to take over a company or acquire a controlling or substantial stake in another company.

(k) The power on any other matter which may be prescribed.

Q9. Discuss briefly about various duties of directors.

Ans :

1. Duty of good faith [Section 166(2)]: A director of a company shall act in good faith

- in order to promote the objects of the company for the benefit of its members as a whole; and
- in the best interest of the company, its employees, shareholders, the community, and
- for protection of environment.

2. Duty of due and reasonable care [Section 166(3)

A director of a company shall exercise his duties with due and reasonable care, skill and diligence, and shall exercise independent judgement.

3. Duty not to involve in conflict of interest [Section 166(4)]

A director of a company shall not involve in a situation in which he may have interest, direct or indirect, that conflicts with the interest of the company.

4. Duty not to obtain gain or advantage [Section 166(5)]

A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates.

If the director' is found guilty of making any such undue gain, then he shall be liable to pay an amount equal to that gain to the company.

5. Duty not to assign his office [Section 166(6)]

A director of a company shall not assign his office. Any assignment so made shall be void.

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Q10. Explain briefly about various liabilities of directors as per companies Act 2013.

Ans :

The liabilities of the directors may be discussed under the following heads:

1. Liability to outsiders

Ordinarily, the directors are not personally liable to outsiders if they act for the company and within the scope of their powers. However, there are certain circumstances in which the directors are personally liable to the outsiders. These are as under:

(a) Where the directors act in their own name rather than in the name of the company.

(b) Where the directors act ultra-vires the company i.e., beyond their powers.

(c) Where the directors do some tortuous act (i.e., civil wrong).

(d) Where the prospectus issued by them contains any untrue statement. They are liable for damages.

(e) Where the directors fail to repay the application money within the specified time, the amount of minimum subscription is not subscribed.

(f) Where the directors fail to repay the application money if allotment of shares or debentures is not dealt in on stock exchange where it is intended to be so dealt in the prospectus.

2. Liability to company

In certain circumstances, the directors are held liable to the company. These are as under:

(a) Where the acts of the directors are ultra-vires the company i.e., beyond their power. The directors are liable to the company for any loss or damage suffered due to such ultra-vires acts.

(b) Where the directors are negligent in performing their duties e.g., when they do not use reasonable care and skill in the management of company's affairs.

(c) Where there is a breach of trust i.e., where they do not act honestly and in the interest of the company e.g., misapplication of company's fund or property.

(d) Where they are guilty of misfeasance. The 'misfeasance' means the wilful misconduct or wilful negligence which results in loss to the company.

3. Criminal Liability

The directors' liability discussed in the above two points is their civil liability. It is to be noted that the Companies Act contains various provisions which make them criminally liable (i.e., liable to punishment by way of fine or imprisonment) if tliby fail to comply with these statutory provisions. The important legal provisions relating to the criminal liability of the directors, as contained in the Companies Act, 2013, may be summed up as under:

(a) Where a prospectus containing an untrue statement is issued, every officer authorised to issue the prospectus shall be punishable with imprisonment of 6 months which may extend to 10 years, and also with fine minimum [Section 34, 447].

(b) Where the money receives from the applicants for shares is not kept in the Scheduled Bank, every director shall be punishable with imprisonment upto one year or with minimum fine of Rs. 50,000 which may extend to Rs. 3 lakhs or with both [Section 40(5)].

(c) Where the return of allotment is not filed with Registrar within 30 days of allotment, every officer in default shall be punishable with fine which may extend to ` 1,000 for every day during which the default continues or Rs. One lakh, whichever is less [Section 39(5)].

(d) Where the notice of consolidation of shares, sub-division of shares, or conversion of shares into stock is not given to the Registrar within 30 days of such consolidation etc. every officer in default shall be punishable with fine

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which may extend to ` 1,000 for every day during which the default continues or Rs. 5 lakhs, which ever is less [Section 64(2)].

(e) Where the certificate of shares or debentures is not delivered within 2 months after allotment, or in case of certificate of transfer, within one months after transfer, every officer in default shall be punishable with minimum fine of Rs. 10,000 but which may extend to Rs. One lakh [Section 56(6)].

(f) Where the particulars of a charge are not filed with the Registrar, within the prescribed time, then, every officer in default shall be punishable with imprisonment upto 6 months or with minimum fine of Rs. 25,000 which may extend to Rs. One lakh or with both [Sections 77, 86]

(g) Where the Registrar of charges is not maintained by the company, every officer in default shall be punishable as stated above [Section 85, 86].

(h) Where the annual return is not filed with the Registrar within the specified time, then, every officer in default shall be punishable with imprisonment upto 6 months or with fine from Rs. 50,000 to Rs. 5 lakhs or with both [Sections 92(5)].

(i) Where a default is made in holding the annual general meeting of the company, every officer in default shall be punishable with fine which may extend to ` one lakh, and if the default continues, a further fine may extend to ` 5,000 for every day during which such default continues [Section 99],

(j) Where the dividend is not distributed within 30 days of the declaration of the dividend, every director shall be punishable with simple imprisonment upto 2 years, and shall also be liable to fine of Rs. 1,000 for everyday during which the default continues [Section 127].

(k) Where the register of directors, managing directors, and managers, is not maintained, every officer in default shall be punishable with fine from Rs. 50,000 to Rs. 5 lakhs [Sections 170, 1720].

4. Liability for the acts of co-directors

The directors are the agents of the company for which they act. It may, however, be noted that they are not agents of one another i.e., a director is not the agent of his co-director. It, therefore, follows that a director is not liable for the acts of his co-directors if he has no knowledge about those acts and is also not a party to the same. Thus, nothing done by the Board of Directors can impose liability upon a director who did not know about their action, and also did not participate in the meeting, even if he attends the subsequent Board meetings.

1.4 Role of Audit and Auditors

Q11. Define Auditing.

Ans :

Introduction

The word Audit' takes its origin from the Latin 'audire' which means 'to hear'. In the leages, the auditor was a person, appointed by the owners whenever they suspected fraud, to check accounts and to hear explanations given by the persons responsible for financial transactions.

Auditing at that time was carried out to locate frauds and errors. But in 1464, an Italian named Luca Pacialo, published his treatise on the double entry system of book-keeping for the first time and also described the duties and responsibilities of an auditor. Since then, there have been noticeable changes in the scope of audit and in the duties and responsibilities of an auditor.

Further, when corporate enterprises started to grow, the result was dispersed ownership and the distinct separation of management from ownership. At the same time, institutional loans and borrowings came to play a significant role in the running of industry and business. Also, the gradual expansion of the idea of social responsibility of the

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State led to the introduction of the regulatory enactment in the field of trade, industry and commerce.

Definition

Auditing is concern with the verification of accounting data determining the accuracy and reliability of accounting statements and reports.

- R.K. Mantz

Auditing is an examination of accounting records undertaken with a view to establishment whether they correctly & completely reflect the transaction to which they purpose to relate.

- L.R Dicksee

According to Dicksee, "auditing can be understood as an examination of accounting records undertaken with a view to establishing whether they correctly and completely reflect the transactions to which they purport to relate. But this is not the end of the matter, in addition, the auditor also expresses his opinion on the character of the statements of accounts prepared from the accounting records so examined whether they portray a true and fair picture."

The International Auditing Practices Committee defines auditing as "the independent examination of financial information of any entity, whether profit oriented or not, and irrespective of size, or legal form, when such an examination is conducted with a view to expressing an opinion thereon.

Q12. Explain the role of audit of company's accounts.

Ans : **(Nov.-21)**

The companies are required to maintain and keep the proper books of accounts. The accounts are maintained so that the shareholders may know about the true affairs of the company. As the owners of the capital (i.e., the shareholders) do not have the direct control of the company's affairs, these accounts should be true and correct and should be checked and examined by independent qualified persons, called the auditors. The Companies Act, therefore, provides for the compulsory appointment of an auditor to examine the affairs of the company, and to report the same to the shareholders. The accounts of every company, whether public or private, must be audited by qualified auditors.

As a matter of fact, the audit is intended for the protection of the shareholders. It may be noted that the auditor is expected to examine the accounts maintained by the directors with a view to inform the shareholders the true financial position of the company.

Q13. Explain the appointment of auditors.

Ans :

1. First auditors [Section 139(6)]

The first auditors of a company are appointed by the Board of Directors within 30 days from the date of registration of the company.

Provisions

(a) If the Board of Directors fails to appoint the first auditors within 30 days from the date of registration of the company then the company shall appoint the first auditor's at its general meeting.

(b) The first auditors shall hold office till the conclusion of the first annual general meeting.

2. Subsequent auditors [Section 139(1)]

On the cessation of office of the first auditor, the subsequent auditor shall be appointed by every company at its first annual general meeting. Further provisions in this regard are as under:

(a) The auditor so appointed shall hold office till the conclusion of the 6th annual general meeting of the company, and thereafter till the conclusion of every 6th meeting. In simple word, it means that at first annual general meeting the auditor shall be appointed for 5 years, and thereafter, the appointment shall be for every 5 years.

(b) The company shall place the matter relating to such appointment for ratification b) members at every annual general meeting. Thus, in practical terms, the appointment of auditor would be ratified every year.

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(c) The company shall a inform the auditor concerned about his appointment.

(d) The company shall tile a notice of auditor's appointment with the Registrar within 15 days of the meeting in which the auditor is appointed.

(e) Before the appointment of the auditor is made, the written consent of the auditor to such appointment shall be obtained from the auditor.

(f) Before the appointment, the company shall also obtain from the auditor, a certificate to the effect that the appointment if made shall be in accordance with the conditions as may be prescribed.

(g) The certificate filed by the auditor shall also indicate that he is duly qualified to be appointed as auditor as per criteria provided in Section 141.

(h) The 'appointment' includes re-appointment also.

3. Casual vacancy [Section 139(8)]

The casual vacancy in the office of an auditor shall be filled as under:

(a) In case of a company whose accounts are subject to audit by an auditor appointed by Comptroller and Auditor General of India (CAG), the vacancy shall be filled by the CAG within 30 days; if the CAG does not fill the vacancy within this period, then the Board of Directors shall fill the vacancy within next 30 days.

(b) In case of the other companies, the casual vacancy shall be filled by the Board of Directors within 30 days. If such vacancy is due to resignation of an auditor, then such appointment made by the Board shall also be approved by the company at its general meeting convened within 3 months of recommendation of the Board. The auditor appointed under this provision shall hold the office till the conclusion of the next annual general meeting (Section 139(8)(i)].

4. Re-appointment of retiring auditors [Section 139(a)]

The retiring auditor may be reappointed at the annual general meeting of the company at which he is retiring, in the following circumstances:

(a) Where he is not disqualified for re-appointment.

(b) Where he has not given to the company a notice in writing of his unwillingness to be re-appointed.

(c) Where a special resolution has not been passed at the meeting (at which he is retiring) by which another person is appointed instead of the retiring auditor, or by which it is expressly provided that he shall not be re-appointed.

5. Continuation of existing auditor [Section 139(10)]

Where at any annual general meeting no auditor is appointed or re-appointed, then the existing auditor shall continue as auditor of the company.

Q14. Explain the qualifications and disqualifications of auditors.

Ans :

The qualifications and disqualifications of an auditor are contained in Section 141 of the Companies Act, 2013, and may be summed up as under:

Qualifications of Auditors

The eligibility and qualification of a person or a firm to be appointed as auditor, are:

(a) He should be a chartered accountant;

(b) A firm can be appointed as the auditor of a company in its firm name. But in such a case, majority of the partners practicing in India must be chartered accountants.

(c) In case a limited liability partnership (LLP) is appointed as the auditor of the company, then only such partner of the firm who are chartered accountants shall be authorised to act and sign on behalf of the firm.

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Disqualifications of Auditors

The following are the disqualifications of an auditor i.e., the following persons are not qualified for appointment as auditor of a company:

(a) a body corporate other than a limited liability partnership registered under the Limited Liability Partnership Act, 2008;

(b) an officer or employee of the company;

(c) a person who is a partner, or who is in the employment, of an officer or employee of the company;

(d) a person who, or his relative or partner

(i) is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company;

Provided that the relative may hold security or interest in the company of face value not exceeding one thousand rupees or such sum as may be prescribed.

(ii) is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of such amount as may be prescribed; or

(iii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, for such amount as may be prescribed;

(e) a person or a firm who, whether directly or indirectly, has business relationship with the company, or its subsidiary, or its holding or associate company or subsidiary of such holding company or associate company of such nature as may be prescribed;

(f) a person whose relative is a director or is in the employment of the company as a director or key managerial personnel.

(g) a person who is in full time employment elsewhere or a person or a partner of a firm holding appointment as its auditor, if such persons or partner is at the date of such appointment or reappointment holding appointment as auditor of more than twenty companies;

(h) a person who has been convicted by a court of an offence involving fraud and a period of ten years has not elapsed from the date of such conviction;

(i) any person whose subsidiary or associate company or any other form of entity, is engaged as on the date of appointment in consulting and specialised services as provided in section 144.

Q15. Explain the removal of auditors.

Ans :

A duly appointed auditor (including a firm of auditor) may be removed from his office before the expiry of his term. Section 140 of the Companies Act, 2013 makes the following legal provisions in this regard:

1. Removal by the company [Section 140(1)]:

The auditor can be removed by the company as under:

- after obtaining the previous approval of the Central Government for the removal;
- giving a reasonable opportunity of being heard to the auditor concerned before taking any action
- by passing a special resolution of the company.

Thus, the company should first obtain the approval of Central Government for removal and then pass a special resolution at the general meeting convened for approval. And before removing, an opportunity of being heard should also be given to the auditor.

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2. Removal by the Tribunal [Section 140(5)]

If the Tribunal either suo moto (i.e., or its own), or on an application made to it by the Central Government or by any person concerned, is satisfied that the auditor of a company has, whether directly .or indirectly. (i) acted in a fraudulent manner, or (ii) abetted or colluded in any fraud, by or in relation to, the company or its director or officer, then it can make the following order:

(a) Change of auditors: The Tribunal may make an order directing the company to change its auditor.

(b) Removal of auditor: If the application is made by the Central Government and the Tribunal is itself satisfied that change of auditor is required, then the Tribunal can make an order that the concerned person shall not function as an auditor and the Central Government may appoint another auditor in his place. Such an order can be made by the Tribunal within 15 days of the receipt of the application.

Q16. What are the rights of auditors?

Ans : **(Jan.-20)**

1. Right to access to books of accounts

The auditor has a right of access to the books, accounts and vouchers of the company. He has this right at all the times whether these books etc. are kept at the head office of the company or elsewhere [Section 143 (1)]. Right to call information and explanations: The auditor also has the right to require from the officers of the company such information and explanations as he thinks necessary for the performance of his duties [Section 143 (1)].

2. Right to receive notice and to attend the general meeting

The auditor has the right to receive the notice of any general meeting of the company and to attend the same. Moreover, he is also entitled to be heard, at any general meeting which he attends, on any part of the business which concerns him as auditor [Section 146].

3. Right to recover remuneration

The auditor has the right to receive his remuneration for auditing the accounts of the company [Section 142],

4. Right to be heard

In case of removal, the auditor has the right to be heard at the meeting before the resolution removing the auditor is passed [Section 140(1)].

Q17. Explain the duties and liabilities of auditors?

Ans : **(Jan.-20)**

The duties of an auditor may be discussed under the two heads, namely,

(a) Statutory duties, and

(b) General duties.

(a) Statutory Duties

These are the duties which are specifically provided in the Companies Act. Following are the statutory duties of an auditor:

1. Duty to make a report to the members [Section 143 (2)]

It is the most important duty of an auditor to submit his report to the members on all the accounts audited (examined) by him i.e., on every financial statements of the company, and on the report of the Board of Directors. The auditor's report must state whether in his opinion the accounts give the 'true and fair' view of the company's affairs and financial position. His report must also state the following [Section 143(3)]:

(a) Whether he has obtained all the information and explanations which, to the best of his knowledge and belief, were necessary for the purpose of his audit.

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(b) Whether, in his opinion, the proper books of accounts have been kept by the company.

(c) Whether proper returns, adequate for the purpose of his audit, have been received from the branches not visited by him.

(d) Whether the report on the accounts of any branch office audited by a person other than a company's auditor has been forwarded to him, and how he has dealt with the same.

(e) Whether the company's balance sheet and profit and loss account are in agreement with the books of accounts of the company.

(f) Whether, in his opinion, financial statements of the company comply with the accounting standard.

(g) The observations or comments of auditors on financial statements or matters which have any adverse effect on the functioning of the company.

(h) Any qualification, reservation or adverse remark relating to the maintenance of accounts and other matters connected there with.

(i) Such other matters as may be prescribed.

In case any of the above questions is answered in negative or is answered with qualifications, the report must state the reasons for such answers [Section 143(4)]. The auditor's report shall be read before the company in its general meeting. And it shall be open to inspection by any member of the company [Section 145].

2. Duty to make enquiries [Section 143(1)]

It is another duty of an auditor to enquire into certain matters in order to know correct position of company's affairs. Such enquiries may be related to the following matters:

(a) Where the loans and advances are made by the company on some security, whether these are properly secured.

(b) Whether loans and advances made by the company have been shown as deposits.

(c) Where the company is not an investment or banking company, whether any securities have been sold by the company at a price less than that at which they were purchased.

(d) Whether personal expenses have been charged to revenue account.

(e) Where any shares have been allotted for cash, whether cash has actually been received in respect of such allotment.

3. Duty to certify in the prospectus, profits and losses, assets and liabilities and rates of dividends [Section 26 (7)]

We know that the prospectus issued by the company must include the report by an auditor with respect to (a) profits and losses, (b) assets and liabilities, and (c) rate ofl dividends, if any, paid by the company. The auditor is required to certify the correctness of this report.

4. Duty to assist inspectors [Section 217]

Sometimes, the inspectors are appointed by the Central Government to investigate the affairs of any company. In such cases, it is the duty of an auditor to preserve and produce before the inspector all books and papers relating to the company. It is also the duty of the auditor to give to the inspector all possible assistance in connection with the investigation.

5. Duty to make a report in case of members' voluntary winding up [Section 305(2)]

In certain circumstances, the members may propose to wind up the company voluntarily. In such cases, the directors may make a declaration about the solvency of the

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company (i.e., that the company has no debts, or is in a position to pay its debts). This declaration must be accompanied by auditor's report. The auditor is, therefore, required to make a report on profit and loss account and the balance sheet of the company. The report should also contain statement of the company's assets and liabilities.

(b) General Duties

We have discussed, in the last article, the statutory duties of an auditor. In addition to these duties, there are certain other duties of an auditor which have been recognised by courts. These may be summed up as under:

1. To exercise reasonable care and skill

The auditor must exercise reasonable care and skill in the discharge of his duties. He must be honest i.e., he must not certify what he does not believe to be true, and he must take reasonable care before he believes that what he certifies is true. The term 'reasonable care and skill' depends upon the circumstances of each particular case, e.g., where there is no suspicion, very little enquiry will be reasonably sufficient; and where suspicion is aroused, more care is required. If he fails to exercise reasonable care and skill, he may be held liable for damages.

2. To check the accuracy of accounts

The auditor must check the accuracy of the accounts and see that the accounts show the true and fair position of the company. He should not confine himself merely to the task of verifying the arithmetical accuracy of the balance sheet, but should enquire into its substantial accuracy. He should also check the cash in hand and the bank balance.

3. To satisfy himself about securities

The auditor should satisfy himself that the securities mentioned in the books of the company in fact exist, and are in proper custody. He should make personal inspection of the securities and ascertain that they are in safe custody.

4. To report to the shareholders

The auditor must report all material points to the shareholders. The reason for the same is that the auditor is appointed to safeguard the interest of the shareholders, and thus, he must give report to the shareholders of all the accounts examined by him.

5. To verify the assets

The auditor should himself verify the assets of the company of which he has been appointed the auditor. He should not rely upon the verification done by person appointed by the company.

Liabilities Of Auditors

The liabilities of the auditors may be discussed under the, following two heads:

1. Civil liability

The civil liability means the liability to pay damages or compensation. The auditor is liable to pay damages if he fails to discharge his duties with reasonable care and skill. Thus, when he is negligent in performing his duties, he may be held liable to pay damages to the company for any loss suffered by it.

2. Criminal liability

The criminal liability means the liability which imposes punishment of imprisonment or fine or both. The auditor is also criminally liable in certain cases. Section 147 specifically states that if an auditor of a company contravenes any of the provisions of Section 139 (relating to appointment of auditors), Section 143 (relating to his powers and duties), Section 144 (relating to render of certain services) and Section 145 (relating to signing of auditor's report), the auditor shall be punishable with minimum fine of Rs. 25,000 which may extend to Rs. 5 lakhs.

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1.5 COMPANY MEETINGS

Q18. What do you mean by Company Meeting?

Ans :

The word "meeting" is not defined anywhere in the Companies Act. Ordinarily, a company may be defined as gathering, assembling or coming together of two or more persons (by previous notice or by mutual arrangement) for discussion and transaction of some lawful business.

A company meeting may be defined as a concurrence or coming together of at least a quorum of members in order to transact either ordinary or special business of the company.

Essentials of Company Meetings

The essential requirements of a company meeting can be summed up as follows:

1. Two or More Persons

To constitute a valid meeting, there must be two or more persons. However, the articles of association may provide for a larger number of persons to constitute a valid quorum.

2. Lawful Assembly

The gathering must be for conducting a lawful business. An unlawful assembly shall not be a meeting in the eye of law.

3. Previous Notice

Previous notice is a condition precedent for a valid meeting. A meeting, which is purely accidental and not summoned after a due notice, is not at all a valid meeting in the eye of law.

4. To Transact a Business

The purpose of the meeting is to transact a business. If the meeting has no definite object or summoned without any predetermined object, it is not a valid meeting. Some business should be transacted in the meeting but no decision need be arrived in such meeting.

Components of Meeting

A meeting consists of the following:

(a) The Participants

In case of a private meeting only the persons entitled to attend a meeting, can participate in it. The members of the organisation, committee or sub-committee etc. as well as invitees are entitled to participate. Sometimes a person entitled to attend a meeting may send his representative or proxy to attend the meeting. In case of a public meeting general members of the public can take part in it.

(b) The Chairman

There must be a Chairman at every meeting who has the powers and duties for conducting a meeting.

(c) The Secretary

The secretary of the orga-nisation, committee or sub-committee etc. who has many duties before, at and after a meeting, has to play a significant role to play.

(d) The Invitees

Apart from those who are entitled to attend a meeting, some people are invited, e.g.. press reporters.

(e) The Material Elements

The sitting arrangement, materials for writing etc. are essential.

1.5.1 Kinds of Meetings

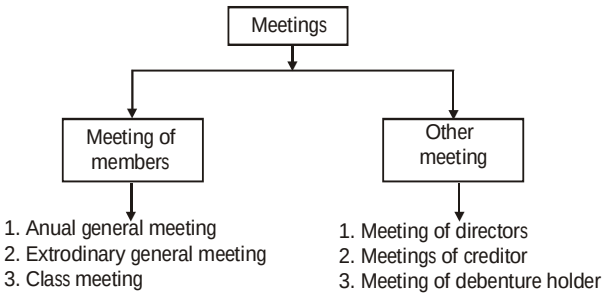
Q19. Explain the different Kinds of Meetings.

Ans :

The meeting of a company broadly be classified into the following two categories :

(i) Meeting of members

(ii) Other meetings



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1.5.1.1 Annual General Meeting

Q20. What is Annual General Meeting. Explain the legal provisions relating to the annual general meeting.

Ans : **(Aug.-21, Imp.)**

It is the regular meeting of the members of the company. It must be held in each year in addition to any other meeting [Section 96(1)]. The purpose of this meeting is to provide an opportunity to the members of the company to express their views on the management of company's affairs. Every company public or private is required to hold this meeting.

Note: One Person Company is not required to hold any annual general meeting [Section 96(1)].

The legal provisions relating to the annual general meeting are contained in Sections 96 to 99, which may be summed up as under:

1. The annual general meetings in each year

The annual general meeting must be held once in each year in addition to any other meetings [Section 96(1)].

2. Time of holding first annual general meeting

The first annual general meeting must be held within 9 months from the date of closing of first financial year, and this time cannot be extended even by the Registrar [Section 96(1), 1st and 3rd Proviso], When the first annual general meeting is held within this period of 9 months, then it shall not be necessary for the company to hold any annual general meeting in the year of incorporation [Section 96(1) 2nd provison].

3. Time of holding subsequent annual general meetings

The subsequent annual general meetings should be held in each year within a period of 6 months from the date of closing of the financial year [Section 96(1), 1st provison].

However, the gap between the two meetings should not be more than 15 months. The Registrar may, for special reasons, extend the time of holding general meeting by a period not exceeding 3 months [Section 96(1), 3rd provison]

4. Notice of meeting

At least 21 days clear notice of the meeting in writing, or through electronic mode must be given to every member of the company. A shorter notice may also be given if agreed to by 95% of the members who are entitled to vote at the meeting. The place, day and hours should be specified in the notice [Sections 101].

5. Time of holding meeting

The meeting must be held during the business hours (i.e. between 9 a.m. and 6 p.m.) and on a day which is not a national holiday [Section 96(2)].

6. Place of holding meeting

The meeting must be held either at the registered office of the company, or at some place within the city, town or village in which the registered office is situated [Section 96 (2)].

Note: The Central Government may exempt any company from the provisions at No. 5 and 6 above subject to such conditions as it may impose [Section 96 (2)].

7. Consequences of failure to hold the meeting

If the company fails to hold the annual general meeting, the consequences will be as under:

(a) Any member of the company can apply to the Tribunal for calling the meeting. On such application, the Tribunal may order the calling of the meeting, or it may issue directions for calling the meeting. A meeting called by the order of the Tribunal shall be deemed to be an annual general meeting of the company [Section 97].

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(b) The company and every officer in default shall be punishable with fine up to ` one lakh, and if the default continues, with a further fine upto ` 5,000 for every day after the first day of default during which the default continues. This penalty is also there if the meeting is not held in accordance with the directions of the Tribunal [Section 99].

1.5.1.2 Extra Ordinary General Meeting

Q21. What is extra Ordinary General Meeting. Explain the legal provisions relating to the extra ordinary general meeting.

Ans : **(Aug.-21, Imp.)**

All general meetings other than Annual General Meeting shall be called extra-ordinary annual general meeting of the company.

This meeting is called for dealing with some urgent special business which cannot be postponed till the next annual general meeting. This meeting can be convened.

(a) by the Board of Directors on its own

(b) by the Board of Directors on requisition of members;

(c) by the requisitionists themselves

(d) by the National company Law Tribunal (i.e. Tribunal

The legal provisions relating to the extra-ordinary general meeting have been provided in Sections 100 and 98 of the Companies Act, 2013, which were earlier incorporated in Section 169 and Section 186 of the Companies Act, 1956, and are discussed here under.

i) Calling of Extra-Ordinary General Meeting by the Board of Directors [Section 100(1)]

The extra-ordinary general meeting may be called by the Board of Directors on its own motion whenever it thinks fit to call the meeting.

Note: This meeting may also be called by any director or by any two members of the company if the quorum of the Board of Directors is not complete due to directors being not within India at the time when the calling of extra-ordinary general meeting became necessary

ii) Calling of Extra-Ordinary General Meeting on the Requisition of Members [Section 100(2)]

The extra-ordinary general meeting becomes necessary on the requisition of members. As a matter of fact, on the requisition of members, the directors are bound to call an extra-ordinary general meeting. The legal provisions relating to the calling of the extra-ordinary general meeting on the requisition of members, may be stated as under:

1. Requisite number of members to make requisitions

The requisition for calling this meeting must be made by such number of members who hold at least 1/10 of the paid up capital of the company, and have the right to vote at the meeting on the matter. And if the company has no share capital it must be signed by such number of members who have at least 1/10 of the total voting power [Section 100(2)].

2. Signing of requisition and sending to registered office

The requisition must set out the matters for the consideration of which the meeting is to be called, and it must be signed by the requisitionists. And it should be deposited at the registered office of the company [Section 100(3)].

3. Board to call meeting

On the receipt of a valid requisition at company's registered office, the directors must move to call a meeting within 21 days, and the meeting must actually be held within 45 days from the date of receipt of requisition [Section].

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iii) Calling of Extra-ordinary General Meeting by the Requisitionists Themselves [Section 100(4)(5)]

If the Board does not proceed to call the meeting within the time stated above, then, the requisitionists may themselves proceed to call the meeting. However, the requisitionists must hold the meeting within 3 months from the date of the requisition. It is to be noted that the meeting called and held by the requisitionists must be concluded within 3 months from the date of requisition [Section 100(4)].

Following points are important to note in this regard:

1. Claim of expenses

The requisitionists may claims from the company the reasonable expenses incurred by them in calling the meeting by reason of Board's failure to call the meeting. And the company may deduct such sums out of the remunerations payable to the directors in default [Section 100(6)].

2. Legal right to call meeting

The shareholders have the right to requisition the extra-ordinary general meeting in accordance with the provisions of the Companies Act. They cannot be restrained from requisitioning this meeting. Moreover, they are not bound to disclose the reasons for the resolutions proposed to be moved at the meeting.

3 Cancellation of meeting

If in a meeting called upon the requisition of member, the quorum is not present within half an hour from the time appointed for holding the meeting, the meeting shall stand cancelled.

iv) Calling of Extra-ordinary General Meeting by the Tribunal [Section 98]

Sometimes, it is impracticable to call, hold or conduct the meeting of a company, other than an annual general meeting. In such cases, the Tribunal is empowered to call, hold and conduct the meeting. The following points may be noted in this regard:

1. The Tribunal can order a meeting to be called, held or conducted in accordance with its directions.

2. The Tribunal can make such order either of its own motion or on the application of any director or member who is entitled to vote at the meeting.

The expression 'impracticable' means not possible to call, hold or conduct the meeting in a manner prescribed by the Companies Act or company's articles of association. The Tribunal may call an extra-ordinary general meeting under Section 98 on the ground of 'impracticability'.

In the following cases, the holding of a meeting is held to be 'impractiable':

(i) The holding of a meeting is impracticable where the registered office of the company is locked, the Tribunal may order meeting in such a case

(ii) The holding of a meeting is impracticable where there is a dispute between the company's shareholders as to who are the lawful directors of the company entitled to call a meeting. The Tribunal may interfere and order meeting in such a case.

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(iii) The holding of a meeting would be impracticable where the company has no duly constituted board of directors. The Tribunal may order the meeting for putting the company on rail by removing impediments that have arisen in the way of proper functioning.

Q22. What are the differences between AGM and EGM?

(or)

Distnguish between annual general meeting and extra-ordinary general meeting.

Ans :

Comparison Chart

BASIS FOR COMPARISON	ANNUAL GENERAL MEETING (AGM)	EXTRAORDINARY GENERAL MEETING (EGM)
Meaning	An Annual General Meeting (AGM) is the general meeting which must be held by the company every year, to discuss various business matters.	An Extraordinary General Meeting (EGM) is any meeting other than the AGM in which business relating to company's management are transacted. business relating to company's management are transacted.
First meeting	Must be held within 9 months of the end of the financial year.	No such requirement
Business	Ordinary business and special business (if any) is transacted.	Special business only.
Day and Time	It can be held on any day excluding national holiday, in business hours only.	It can be held on any day including national holiday, and any time during a day.
Penalty	When meeting is not summoned within the stipulated time, penalty is levied.	No penalty is prescribed as per law.
Convened by	Board	Board, Board on requisition of shareholders, requisitionist or tribunal.

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1.5.1.3 Class Meeting

Q23. What is Class Meeting.

Ans : **(Aug.-21)**

It is the meeting of a particular class of shareholders. Generally, the companies have to classes of shareholders, namely

(a) equity shareholders and

(b) preference shareholders.

It may be noted that at a class meeting, only the shareholders of the particular class have the right to be present

Example if the rate of dividend on preference shares is to be reduced, the meeting of preference shareholders will be called at which only the preference shareholders are entitle; to be present.

The most frequent case of holding the class meeting is that if the rights attached to the shares of any

particular class of shareholders are to be varied, a separate meeting (i.e., class meeting) of that particular class of shareholders must be held and the matter should be approve: at the meeting by a special resolution [Section 48].

1.5.1.4 Other Meetings

Q24. Define :

(a) Meetings of directors

(b) Meetings of creditors

(c) Meetings of debenture holders

Ans : **(Aug.-21)**

1. Meetings of directors

We know that the directors are responsible for the overall control and supervision of the affairs of the company. The directors generally act collectively i.e., as Board of Directors unless the powers have been delegated to individual directors. It will be interesting to know that their meetings are more frequent than the meetings of shareholders. A company must hold meeting of its Board of Directors at least once in every three calendar months. And there must be at least four meetings of the Board of Directors in every year [Section 173].

2. Meetings of creditors

The meetings of creditors are held by an order of the Tribunal. Sometimes, a compromise or arrangement is proposed between a company and its creditors or any class of creditors. In such cases, the Tribunal may order a meeting of creditors or a class of creditors to be called, held and conducted in such manner as the Tribunal directs. The Tribunal orders such a meeting on the application of the company, or of any creditor or member of the company. In case the company is in liquidation, the application may be filed by the liquidator.

3. Meetings of debenture-holders

The meetings of the debenture-holders may be held from time to time in accordance with the provisions contained in the debenture trust deed. Their meetings are usually held when the conditions of the issue of debentures are to be altered. Where a scheme of compromise or arrangement is proposed, the meetings of the debenture-holders may also be held through an order of the Tribunal.

Q25. What are the standards regarding minutes of a general meeting?

Ans :

The following are some of the standards regarding the minutes of a general meeting,

1. Recording and Maintaining

As per SS-2, each and ever} company is supposed to record and maintain minutes of general meetings and for doing so, the following standards must be followed,

(a) The minutes should be recorded in the books which are for maintaining minutes of general meeting.

(b) For recording the meeting of the members, creditors and others, a distinct minute book may be maintained as specified in the act. The resolutions which are passed through the postal ballot should be recorded in the minute book.

(c) The minute book may be in physical form or electronic form with time stamp. The minutes which are maintained in electronic form should be in a way that is specified in the act and decided by the board.

(d) The minutes book should be numbered in a sequential order.

(e) Minutes of general meeting should not be attached to the minute book.

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(f) If the minutes of the meeting are maintained in loose leaf form then they should be binded according to its volume and size.

(g) Minute books should be placed at the registered office of a company or other place as specified by the board.

Apart from this, the following conditions are required to be met by the minutes,

(i) A fair and correct/accurate conclusion of the proceedings of the meeting should be included in the minutes.

(ii) These should be written in clear and understandable language.

(iii) The business items which are discussed at the meeting should be numbered for the purpose of reference or cross reference.

2. Contents

As per minutes SS-2 the contents of minutes of general meeting should be classified into two categories. They are, specific contents and general contents.

3. Record in the Minute Book

The minutes should be recorded in minute book, in the following way,

(a) Within 30 days from the date of conclusion of meeting, the minutes should be recorded in the minutes book. If the general meeting is postponed then the minutes concerning original meeting and postponed meeting should be recorded in minutes book before the completion of 30 days from the dates of respective meeting.

(b) The company secretary should record the date on which minutes are recorded in the minute book. Incase of absence of company secretary, a person authorized by the board or chairman can do so.

(c) The minutes once recorded in the minute book should not be changed.

4. Signing and Dating of Minutes

The chairman of the meeting should sign and date the minutes of a general meeting. If the chairman cannot sign and date the minutes due to his death or inability, then it can be signed and dated by any director who attended the meeting. The signed and dated minutes are authorized by the board before 30 days from the date of the meeting.

The chairman of the company should give initiate to each and every page of the minutes and put his sign on the last page along with the date on which he signed and the place where he has signed the minutes. In case of minutes in electronic form, the chairman has to do digital signature on the minutes.

1.6 RESOLUTIONS

Q26. What do you mean by Resolutions? Explain different types of Resolutions.

Ans :

The provisions relating to resolutions (ordinary and special) have been amended by the Companies Act, 2013 and are incorporated in Section 114 of the new Act which were earlier provided in Section 189 of the Companies Act. 1956.

Meaning of resolutions

The term 'resolution' may be defined as the proposal which is voted at the meeting and accepted by the members. In other words, it is the decision taken at the meeting.

The business of a meeting is conducted in the form of resolutions. The Companies Act provides for the two kinds of resolutions, namely:

(i) Ordinary resolution, and

(ii) Special resolution.

The kind of resolution to be passed in particular case depends upon the nature of the business to be transacted, and not upon the kind of meeting at which it is passed.

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Validity of resolution

The validity of a resolution passed at a meeting depends on the constitution and conduct of the meeting, which means that

(a) the notice convening the meeting had been given according to law.

(b) the quorum was present.

(c) the proper person was in chair.

(d) the meeting was competent to pass the resolution.

(e) the reasonable discussion was allowed on the resolution.

(f) the resolution was correctly voted upon.

i) Ordinary Resolution

It is the resolution which is passed, at a validly called general meeting, by simple majority of the members i.e., where the votes cast in favour of the resolution exceed the votes cast against it. The voting may be either by show of hands or electronically or by polls. In determining the simple majority, all the votes cast by the members whether personally or by proxy are considered. The casting vote of the chairman is also taken into account [Section 114(1) The casting vote means the deciding vote in case the members are equally divided.

In determining whether the resolution has been passed by simple majority, only the votes cast at the meeting shall be considered. If the votes cast in favour of the resolution exceed the votes cast against it, the resolution is said to be passed. If certain members abstain from voting i.e., do not cast their votes, then their presence shall not be taken into account. Thus, only the votes cast in favour of the resolution and against the resolution are counted. And the votes remaining neutral are not considered either way.

ii) Special Resolution

It is the resolution which is passed, at a validly called general meeting, by special majority of the members i.e., by the support of 3/4th majority of the members present and entitled to vote at the meeting. The voting may be either by show of hands or electronically or by polls. In determining the 3/4th majority, all the votes cast by the members, whether personally or by proxy or by postal ballot, are considered [Section 114(2)]. In case of special resolution, it is also necessary that the intention to propose the resolution as special resolution should have been specified in the notice calling the general meeting of the members [Section 114 (2)]. It may be noted that the requirement of giving notice specifying the 'intention to propose the resolution as a special resolution' is mandatory (i.e., legally compulsory). If such an intention is not made clear, the resolution would be ineffective.

Some of the important matters, requiring special resolution, are as under:

1. To alter the memorandum of association for changing the place of registered office from one State to another, or for changing the objects of the company [Section 13].
2. To change the name of the company [Section 13].
3. To alter the articles of association having the effect of conversion of a public company into private or vice versa [Section 14].
4. To issue further shares to the outsiders without first being offered to the existing shareholders [Section 62].
5. To reduce the share capital of the company [Section 66].
6. To shift the registered office of the company out of the local limits of the city, town or village in which it is situated [Section 12].
7. To request the Central Government to appoint inspectors to investigate the affairs of the company [Section 212].
8. To obtain an order from the Tribunal for winding up of the company [Section 271].
9. To wind up the company voluntarily [Section 304].
10. To direct the manner of disposing company's books and papers when in case of voluntary winding up, the affairs of the company have been completely wound up [Section 347].

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1.7 WINDING-UP OF A COMPANY

Q27. What do you meant by winding up of company ?

Ans :

The term 'winding up' of a company may be defined as the proceedings by which a company is dissolved (i.e., put to an end).

According to Prof. Gower. "Winding up of a company is the process whereby its life is ended and its property is administered for the benefit of its creditors and members. And an administrator, called a liquidator, is appointed and he takes control of the company, collects its assets, pays its debts and finally distributes any surplus among the members in accordance with their rights".

Thus, the winding up is the process of putting an end to the life of the company. And during this process, the assets of the company are disposed of, the debts of the company are paid off out of the realised assets or from the contribution of its members. If any surplus is left, it is distributed among the members in proportion to their rights in the company. The winding up of the company is also called the 'liquidation ' of the company. The process of winding up begins after the Tribunal passes the order for winding up. And till such order is passed there cannot be any winding up in fact.

It may be noted that the company is not dissolved immediately on the commencement of the winding up proceedings. As a matter of fact, the winding up of a company precedes its dissolution i.e., the winding up is the prior stage and the dissolution, the next. On the dissolution, the company is no more in existence, and its name is struck off by the Registrar from the register of companies. But on the winding up, company's name is not struck off from the register. Thus, in between the winding up and dissolution, the legal status of the company continues and it can be sued in a Court of Law.

The company is dissolved by an order of the Tribunal. Until the company is dissolved by the Tribunal order, it remains a tax payer.

1.7.1 Modes of Winding-up

Q28. Explain the various modes of Winding-up of a company.

Ans :

The following two types of the modes of winding up are specified in Section 270 of the Companies Act, 2013:

1. Compulsory winding up (i.e., winding up by the Tribunal);
2. Voluntary winding up (i.e., winding up without the intervention of the Tribunal).

The powers to order winding up were earlier vested in the court. Now these have been vested in the Tribunal to be known as the National Company Law Tribunal which is to be constituted under Section 408 of the Companies Act, 2013. On the Commencement of the new Act, these powers would be exercised by the Tribunal. The text has been amended accordingly.

1.7.1.1 Compulsory Winding-up / Winding-up by Tribunal

Q29. What is meant by Compulsory Winding-up? Who can order such winding-up and in what circumstances? What is the nature and extent of contributory's Liability.

Ans : **(Imp.)**

The winding up of a company by an order of the Tribunal is called the compulsory winding up. Section 271 of the Companies Act, 2013 contains the cases (i.e., grounds) in which the company may be wound up by the Tribunal. The Tribunal may wound up the company on a petition submitted to it on any of these grounds. The power of the Tribunal to order winding up, on these grounds, is discretionary. The Tribunal is not bound to make an order of winding up.

Section 271 of the Companies Act, 2013 has deleted three existing grounds for winding up, namely

(a) Default in providing statutory report to the Registrar or default in holding statutory meeting.

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(b) failure to commence business within one year of incorporation or suspension of business for a whole year;

(c) reduction in company membership below the minimum prescribed limit. And the following new grounds have been added by this section, namely:

(i) The affairs of the company have been conducted in a fraudulent manner;

(ii) The company was formed for fraudulent and unlawful purpose;

(iii) The persons concerned in formation or management of the company have been guilty of fraud, misfeasance, or misconduct.

All the grounds/circumstances for winding up of the company as provided in Section 271, are as under:

1. Company's inability to pay its debts [Section 271(l)(a)]

If, the company is unable to pay its debts, then the Tribunal may order the winding up of the company.

The term 'debt' here means a definite sum of money which is due and immediately (i.e., presently) payable by the company. A conditional liability (i.e., amount payable upon some condition) is not a debt unless the condition has happened.

The term 'inability to pay' here means company's inability to pay its current liabilities. In other words, it is the company's inability to pay its liabilities (i.e., claims) as and when they arise in the ordinary course of business. Thus, inability to pay debts is to be taken in the commercial sense. The test of 'inability to pay debts', therefore, is whether the company can pay its existing liabilities so long as it is a going concern. If the company is not in a position to meet its existing liabilities, a petition for winding up is maintainable even if it may have very valuable assets not presently realisable. The Companies Act recognises the following three cases in which a company shall be deemed to be unable to pay its debts [Section 271(2)]:

(a) If a creditor to whom the company owes a sum exceeding ` One lakh, has served on the company, at its registered office, a demand notice for the payment of his amount. And the company has failed to pay the sum within 21 days after the receipt of such demand, or to provide adequate security or restructure or compound the debt to the reasonable satisfaction of the creditor [Section 271(2)(a)].

(b) If a creditor of the company obtains a decree from any court or Tribunal for the payment of his debts by the company, and the execution issued on the decree in favour of the creditor is returned unsatisfied in whole or in part [Section 271 (2) (b)].

(c) If it is proved to the satisfaction of the Tribunal that the company is unable to pay its debts [Section 271 (2) (c)].

2. The Special resolution by the company [Section 271(l)(b)]

If, the company passes a special resolution to the effect that the company be wound up by the Tribunal then, the Tribunal may order the winding up of the company on a petition (i.e., application) presented to it by the company or contributory.

It important to note that the passing of special resolution by the company itself is a ground for presenting a petition to the Tribunal. And no other ground (or reason) is required for presenting the petition. Thus, a winding up petition under this clause is maintainable simply if the company passes a special resolution that it be wound up by the Tribunal. However, the Tribunal is not bound to order the wind up of the company. It has discretionary power in this regard, and may refuse to wind up the company, when it is opposed to public interest or company's interest.

3. Acting against interest of sovereignty and integrity of India [Section 271 (l)(c)]

If the company has acted against the interests of

- the sovereignty and integrity of India;
- the security of the state;
- the friendly relations with foreign states;
- the public order, decency or morality, then the company may be wound up by the Tribunal.

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It is important to note here that on this ground, the application (i.e., petition) for winding up can be made by the Central Government or the State Government [Section 272 (1)(g)].

4. Company becoming a sick company [Section 271 (l)(d)]

If the company has become a sick company and its revival is not feasible and the revival scheme is not approved by the creditors, then the Tribunal shall order the winding up of the company.

Note: A company may be declared as a sick company by the Tribunal when on the demand by secured creditors representing 50% or more of its outstanding amount of debt, the company has failed to pay the debt within 30 days of the service of notice of demand [Section 253].

5. Conducting company's affairs in fraudulent manner [Section 271(l)(e)]

It is a new clause providing three new grounds for winding up of the company by the Tribunal. Under this clause, a company may be ordered to be wound up by the Tribunal in the following cases:

(a) If the affairs of the company have been conducted in a fraudulent manner; or

(b) If the company was formed for fraudulent and unlawful purpose; or

(c) If the persons concerned in the formation or management of its affairs have been guilty of fraud, misfeasance or misconduct in connection their with.

The Tribunal may order the winding up of the company under this clause if he is of the opinion that any of the above circumstances exist and it is proper that the company be wound up.

The Tribunal may order the winding on the above grounds on an application made to it by the Registrar or by any other person authorised by the Central Government by notification under this Act.

6. Default in filing financial statements or annual return [Section 271(l)(f)]

If the company has made a default in filing with the Registrar its financial statements or annual returns for immediately preceding 5 consecutive financial years, then the company may be wound up by the Tribunal.

7. Just and equitable to order winding up [Section 271(l)(g)]

If, the Tribunal is of the opinion that it is just and equitable that the company should be wound up then, the Tribunal may order the winding up of the company. This clause gives a very wide discretionary power to the Tribunal to order the winding up whenever it appears desirable.

Q30. Who are the persons entitled to file petition with tribunal for compulsory winding up?

Ans :

Any of the following persons are entitled to file petition for winding up of a company by the tribunal,

1. The company itself
2. Creditor/Creditors
3. Contributory/Contributories
4. Joint Petition
5. The Registrar
6. Person Authorized by Central Government
7. Central or State Government.

1. The Company Itself

According to Section [271 (1)], a company is entitled to file a petition for its winding up, if the shareholders have provided a special resolution to this effect. If there exists no such resolution, then it is not possible to file a petition for winding up. It is also important that the petition must be filed by an authorized person of board of directors.

2. Creditor/Creditors

Any creditor/creditors can file a petition for a winding up of a company. The team creditor basically includes contingent or prospective creditor. Besides this, it also includes secured creditors, trustees for debenture holders and debenture-holders. Thus, it is permissible for all these persons to file a petition for the winding up.

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The tribunal does not accept the petition of a creditor whose debt is bonafide disputed by the company. It is important to note that the tribunal accepts/considers the petition of a contingent or prospective creditor, only when the creditor applies for a leave before the admission of a petition.

3. Contributory/Contributories

According to Section [272 (1)], the company shareholders are included in contributories in case of winding up of the company. Thus, a petition can be filed by any contributory/contributories for winding up.

Following are some of the conditions which should be satisfied by a contributory to present a petition for the winding up of the company,

(i) The shares for which he is a contributory, were originally allotted to him.

(ii) He should be a registered holder of the shares for minimum 6 months out of the 18 months immediately prior to the initiation of the winding up.

(iii) He was entrusted with the shares through the death of a former holder.

A contributory can file a petition for winding up only in the following cases:

(a) He is not a holder of fully paid-up shares.

(b) The company possesses no assets.

(c) The company has no surplus assets left for distributing it to shareholders after the fulfillment of its liabilities.

However, the contributory whose calls are in arrears, can file a petition for winding up, only when he pays to the tribunal whatever he is able to pay.

4. Joint Petition

According to Section [271 (1) (d)], a petition can be jointly filed by the company, creditor/creditors and contributory/contributories.

5. Registrar

A petition can be presented by a registrar in the following cases,

(i) When the registrar feels that the company is not in a position to pay its debts. The registrar can determine this either through the financial position of the company (i.e, through balance sheet) or from the report from the appointed inspector.

(ii) When the actions of company are against the security of the state, public order, decency/ morality, interests of the sovereignty and integrity of India.

(iii) When the company affairs are carried out in a fraudulent manner or when the company was established based on fraudulent purpose.

(iv) When the company has made a default in filing with the registrar its annual returns or financial statements for immediately proceeding 5 financial years.

Based on the above grounds, the registrar obtains the prior sanction of the central government for filing the petition. Nevertheless, the sanction shall not be given by central government untill and unless the company has been given a considerable opportunity of making representation.

6. Person Authorized by Central Government

According to [Section 272 (1) (f)], a person who is authorized by the central government can file a petition for the winding up on behalf of the central government.

7. Central or State Government

When the company has performed any actions that are against the interests of the sovereignty and integrity of India, security of the state, public order etc, the central or state government may present a petition for winding up of the company.

Q31. Explain the procedure for winding up by tribunal.

Ans :

The following is the procedure for winding up by the tribunal,

1. Petition

Presentation of the petition for winding up is the initial step for winding up by the tribunal. According to Section 272, any of the following persons can present the petition,

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(a) The company, if it has passed a resolution to this effect.

(b) Any creditor including contingent creditor or prospective creditor.

(c) Any contributories.

(d) The registrar

(e) Any person who is authorized by the central government.

(f) The state government or central government.

2. Order by Tribunal

The tribunal can pass any of the following orders on the receipt of a petition for winding up of a company.

(a) The tribunal can dismiss the petition with/ without costs.

(b) It can make any interim order as it considers suitable.

(c) It can appoint a temporary liquidator of the company till the making of a winding up order.

(d) It can make an order for the company wind up with or without costs.

(e) It can make any other order as it considers suitable.

The tribunal is required to make the orders within 19 days from the date of presenting the petition.

3. Notice to Company and Appointment of Temporary Liquidator

At times, tribunal decides to make an order of appointing a provisional liquidator till it makes a winding up order. Therefore, prior to the appointment, the tribunal gives notice to the company and afford a considerable opportunity to make its representations. Nevertheless, the tribunal may cancel this opportunity whenever it thinks appropriate for special reasons.

4. Issue of Directions to Company

Any person can sometimes file a petition to the tribunal for winding up of the company. The tribunal may direct the company to submit the (a) Objections against the petition and (b) A statement of its affairs within 30 days if it is satisfied that a prima facie case for winding up of the company is made out.

According to Section 274 (1), the tribunal may extend more 30 days in case of contingency or special situations.

5. Filing Objections and a Statement of Affairs

Now, the company files objections against the petition along with the statement of its affairs. These are required to be filed within 30 days of the order and in a specified form. According to Section [274 (1) and (2)], the company cannot oppose the petition if it fails to file the objections along with the statement of affairs.

At times, it may also happen that a company itself may file a petition for its winding up. In this situation, the petition must be filed along with the statement of affairs. Because, the tribunal will not admit the petition without statement of affairs.

6. Appointment of Company Liquidator

If the tribunal decides to make an order for winding up of the company, it will appoint a liquidator from the panel of central government, as a company liquidator to look after the proceedings for the winding up. If the provisional liquidator is appointed by the tribunal, then this provisional liquidator may be appointed as company liquidator [Section 275 (1) and (7)].

7. Intimation to Company Liquidator and Registrar

According to Section [277 (1)], if the tribunal makes an order for the winding up, then an intimation is sent to both company liquidator and the registrar within 7 days from the date of the order.

8. Endorsement in Company Records and Notification in Gazette and to Stock Exchange

The registrar makes endorsements in the records of the company, upon receipts of the copy of the winding up order. He shall send this notification to the official gazette. The registrar shall also intimate about such order to the stock exchange (where the securities of the companies are listed) in case of a listed company.

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9. Winding up Company and its Report

According to Section 277 (4), the company liquidator makes an application to the tribunal for setting up a "Winding up Committee". This application is made within 3 weeks from the date of passing an order of winding up. The winding up committee is established to assist the company liquidator in monitoring the progress of liquidation proceedings.

10. Appointment of Advisory Committee

The tribunal directs the appointment of an advisory committee while passing an order of winding up. This advisory committee assists the company liquidator and reports different matters of winding up to the tribunal (Section 287).

1.7.1.2 Voluntary Winding-up

Q32. What do you mean by Voluntary Winding-up? Explain the conditions to be followed in Voluntary Winding-up.

Ans : **(Imp.)**

Voluntary winding up is one of the method of winding up of companies. It is further classified as member's voluntary winding up and creditor's voluntary winding up. Companies Act, 2013 explains only about voluntary winding up which takes place after the acceptance of members and creditors. In order to have voluntary winding up, an appropriate resolution must be passed by members and creditors of two third value must be give their approval to such resolution. The company cannot proceed for voluntary winding up unless it gets an approval from creditors. Hence, Companies Act, 2013 eliminated the variation between member's and creditors voluntary winding up. Sometimes, creditors recommend to wind up the company by the tribunal by passing a resolution. In this case, company cannot have voluntary winding up but company has to file a petition for its winding up by the tribunal.

Conditions of Voluntary Winding Up

The conditions relating to voluntary winding up of a company are as follows,

1. Declaration of Solvency

When company decides to wind up voluntarily then director must give declaration of solvency. If there are more than two directors then majority of them must give declaration at board meeting. An effective declaration must satisfy the following conditions,

(a) It should made 5 weeks before the date of passing of resolution and must be submitted to registrar for registration.

(b) A statement should be attached stating that company is not being wound up to defraud any person or persons.

(c) A report of auditors should also be attached which is prepared upto date of declaration.

(d) Even a report of valuation of the assets made by a registered values should be attached.

If director makes a wrong declaration of solvency then he is punished with imprisonment for period of 3 to 5 years or fine of ` 50,000 to ` 3 lakhs.

2. Resolution of General Meeting

When statutory declaration is made by the directors, company can pass the resolution within 5 weeks for voluntary winding up. Following are the cases in which company must pass an ordinary resolution,

(i) If winding up of company occurs because of expiry of duration decided by its articles.

(ii) If winding up of company occurs because of happening of an event which results in dissolution as per the articles.

In any other cases, company is required to pass a special resolution.

3. Resolution at Creditor's Meeting

When company calls for the company meeting, it must also call for creditors meeting either on same day or on next day. The notice of such meeting must be send through registered post to creditors with notice of company meeting relating to resolution of voluntary winding up. If creditors give their approval then company can voluntarily wind up otherwise not.

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In creditor's meeting, Board of Directors must present documents such as,

(i) Statement of affairs of the company.

(ii) List of creditors of the company and

(iii) Statement showing estimated amount of claims.

4. Delivery of Declaration and Resolutions to Registrar

The company must deliver declaration of solvency and resolution of voluntary winding up to the registrar within 5 weeks and 10 weeks respectively.

5. Publication of Resolution

The company must give notice of resolution through advertisement in official gazette and in newspaper within 14 days of its passing. Newspaper must be circulated in district of registered office of the company.

If company goes against this provision then company and every officer in default is punished with penalty of ` 5,000 for each day of default continues.

Other Provisions Relating to Voluntary Winding Up

Some other essential provisions relating to voluntary winding up are as follows,

1. Company liquidator is appointed and his remuneration is decided in general meeting of the company for voluntary winding up.
2. After appointment of company liquidator, all the powers of board of directors or manager will be terminated except the power of giving notice of appointment of liquidator to registrar.
3. A committee is appointed in general meeting which facilities in voluntary liquidation and helps the liquidator to perform his functions.
4. All the expenses incurred in relation to winding up must be paid from assets of the company prior to other claims.
5. At times an arrangement is made between company and its creditors, which can be amended or confirmed incase of winding up if creditors applies to tribunal within 3 weeks from completion of arrangement.

Q33. Discuss about,

(a) Provisions relating to dissolution of company in case of voluntary winding up.

(b) Consequences of voluntary winding up.

Ans :

(a) Provisions relating to Dissolution of Company in Case of Voluntary Winding up

Following are the provisions relating to dissolution of company during voluntary winding up:

1. Resolution for Dissolution

The final winding up report prepared by company liquidator must be taken into consideration in final general meeting of the company. If majority of members of the company agree for winding up then resolution for dissolution must be passed.

2. Filing Report, Books etc and Application for Dissolution to Tribunal

Company liquidator must file the details to tribunal within a period of 2 weeks after the meeting. Liquidator must file the following,

(i) Winding up report.

(ii) Books and papers of company relating to winding up.

(iii) An application to pass an order of dissolution of the company in specified way.

3. Sending Copies of Accounts, Resolution etc to Registrar

Company liquidator must send some documents to the registrar within 2 weeks after the meeting. Documents such as,

(i) Final winding up accounts copy.

(ii) Resolutions copy passed at the meeting.

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4. Dissolution Order by Tribunal

If Tribunal feel satisfied with winding up process then it passes an order for dissolving the company in 60 days of receiving the application.

5. Filing Copy of the Order to Registrar

Within 30 days of passing an order for dissolution, liquidator must file a copy of dissolution order with the registrar.

6. Publication of Order in Gazette

After receiving a copy of order, registrar must publish a notice in official gazette stating that company is dissolved.

7. Punishment

Income of any default by company liquidator relating to these provisions then he is liable for penalty which may increases to ` 1 lakh.

(b) Consequences of Voluntary Winding up

The consequences of voluntary winding up are as follows,

1. Impact on Business of the Company

When voluntary winding up on company begins, business of the company is terminated except those which are needed for effective winding up.

2. Impact on Corporate Existence

The corporate existence of the company will continue even after passing resolution of voluntary winding up. The corporate status and powers of the company will not be affected until a company dissolves.

3. Application of Property

Incase of voluntary winding up, assets of company are utilized for marking preferential payments and then other liabilities are paid. If any surplus assets are leftover then they are distributed among members based on their rights and interests in the company.

4. Impact on Powers of Directors, MD or WD and Manager

When liquidator is appointed, all the powers of Board of directors or managing director or manager are terminated except the power of giving notice to the Registrar about the appointment of liquidator.

5. Impact on Employees

The resolution passed for voluntary winding up acts as notice of discharge for the employees if business of company is discontinued. The resolution must not act as discharge notice if company's business is continued by liquidator even after resolution and incase company is winding up for reconstruction purpose.

6. Transfer of Shares and Alteration of Status of Members Void

After the commencement of winding up, any transfer of shares and any modifications in the status of the members of the company are considered as invalid.

7. Impact on Shareholder and Contributories

The shareholder of company who are limited by Shares need to make the payment of due amount. After winding up of the company, the liability of shareholders will continue but as a contributory. Contributory's liability is not developed by contract but it is because of his name in members register. Liquidator has power to demand the unpaid calls from contributory as winding up develops new liability on shareholders/contributories lor such calls amount.

8. Other Consequences

(i) It will also have an impact on creditors when company is either solvent or insolvent.

(ii) It will effect the floating charges.

Q34. Explain the appointment of company liquidator.

Ans :

The Company Liquidator is appointed to conduct the proceedings of winding up. In case of voluntary winding up, legal provisions relating to the appointment are provided in Section 310 of the Companies Act, 2013 which are as under:

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1. Appointment of Company Liquidator [Section 310(1)(2)]

Section 310 makes the following provisions in this regard:

(a) Appoint by the company in general meeting [Section 310(1)]

The company shall appoint a Company Liquidator (from the panel of professionals prepared by the Central Govt.), for the purposes of winding up its affairs and distributing the assets of the company.

The Company Liquidator shall be appointed in the general meeting in which a resolution of voluntary winding up is passed.

The fee to be paid to the Company Liquidator shall also be recommended by the company.

(b) Approval by the creditors [Section 310(2)]

The appointment of a Company Liquidator shall be effective only if it is approved by the majority of creditors in value of the company.

It is to be noted that if the creditors do not approve the appointment of such Company Liquidator, then they shall appoint another Company Liquidator.

2. Declaration by the Company Liquidator [Section 310(4)]

The Company Liquidator shall file a declaration in prescribed form with the company and the creditors within 7 days from the date of his appointment disclosing conflict of interest or lack of independence in respect of his appointment, if any.

3. Notice of appointment to Registrar [Section 312]

The notice of appointment of Company Liquidator, along with his name and particulars, shall be given by the company to the Registrar within 10 days of such appointment.

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Short Question and Answers

1. Define the term company.

Ans :

The term 'company' may be defined as a group of persons associated together to achieve some common objective. This, however, is not the legal definition. In legal sense, a company means an association of persons incorporated under the existing law of a country. The legal definition of a company has been amended by the new Companies Act, 2013 and is given in Section 2(20) of this Act which reads as under:

"Company means a company incorporated under this Act or under any previous company law".

(a) Company limited by guarantee" is a company where the liability of its members is limited to the memorandum such that they can take part in contributing to the assets of the company in the event of its being terminated.

(b) "Company limited by shares" is a company where the liability of its members is limited to the memorandum to an amount that is unpaid on the shares owned by them.

(c) "Board of Directors" or "Board" of a company, is the group of directors of the company.

2. Objectives of companies Act 2013

Ans :

The following are some of the objectives of companies Act, 2013.

1. To Encourage Investment in the Companies

More appropriate plans are made inorder to encourage the investment in companies.

Example

Payment of dividends, redemption of redeemable preference shares and debentures within the prescribed time, transferability of shares and repayment of public deposits.

2. To Administer the Performance of Duties

It makes sure that the individual who is responsible for the companies management perform his/her duties appropriately.

3. To Assists in Maintaining the Growth of Indian Corporate Sector

The Indian corporate sector's growth is maintained with the help of a new legal framework which is concise and manageable to have clear interpretations.

4. To Prevent Overlapping and Disputes of Jurisdiction

It helps in preventing the overlapping and disputes of jurisdictions with in the sectorial regulations.

5. To Attain the Objectives of Economic and Social Policy

This helps in attaining the objectives/goals of both economic and social policy within the framework of directive principles of state policy included in the constitution of India.

6. To Frame Minimum Standards

It assists in laying down the minimum standards/principles relating to business morals and regulations in the promotion and management of companies.

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3. Director.

Ans :

The director is defined in Section 2(34) of the Companies Act, 2013 as under:

"A director means a director appointed to the Board of a company".

Thus, a director is a person appointed as director under the provisions of the Companies Act, 2013.

The directors manage and control the overall affairs of the company. They generally confine themselves to the general business policies and overall supervision of the management of the company. The day to day working7 of the company is left to other managerial personnel. Thus, the director is a person who controls and services the overall management of company's affair. It is immaterial by what name he is called.

Following points be noted with regard to the directors:

1. Only an individual can be appointed a director. A firm, association, or a company cannot be a director of the company [Section 149(1)].
2. An individual can be appointed or re-appointed as a director only if he has been allotted a Director Identification Number [Section 152(3)].

4. Qualifications of a Director

Ans :

As regards to the qualification of directors, there is no direct provision in the Companies Act, 2013. But, according to the different provisions relating to the directors; the following qualifications may be mentioned:

1. A director must be a person of sound mind.
2. A director must hold share qualification, if the article of association provides such.
3. A director must be an individual.
4. A director should be a solvent person.
5. A director should not be convicted by the Court for any offence, etc.

5. Appointment of First Directors

Ans :

The first directors are usually named in company's articles of association and are appointed by promoters in the manner laid down in the articles of association. In case the articles of association are silent about the first directors, then the subscribers of the memorandum of association, who are individuals, shall be considered as the directors of the company. They shall hold the office until the directors are duly appointed at the first annual general meeting [Section 152(1)].

Thus, the first directors are appointed in accordance with the provisions of articles of association. And if company's articles do not provide for appointment of first directors, then as provided in section 152(1), the individual subscribers memorandum shall be deemed to be the first directors.

It is to be noted that, the provisions of section 152(1) are attracted only if there is no provision in company's articles for the appointment of first directors.

6. Discuss briefly about various duties of directors.

Ans :

1. **Duty of good faith [Section 166(2)]:** A director of a company shall act in good faith
   - in order to promote the objects of the company for the benefit of its members as a whole; and
   - in the best interest of the company, its employees, shareholders, the community, and
   - for protection of environment.

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2. Duty of due and reasonable care [Section 166(3)

A director of a company shall exercise his duties with due and reasonable care, skill and diligence, and shall exercise independent judgement.

3. Duty not to involve in conflict of interest [Section 166(4)]

A director of a company shall not involve in a situation in which he may have interest, direct or indirect, that conflicts with the interest of the company.

4. Duty not to obtain gain or advantage [Section 166(5)]

A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates.

If the director' is found guilty of making any such undue gain, then he shall be liable to pay an amount equal to that gain to the company.

7. Define Auditing.

Ans :

Introduction

The word Audit' takes its origin from the Latin 'audire' which means 'to hear'. In the leages, the auditor was a person, appointed by the owners whenever they suspected fraud, to check accounts and to hear explanations given by the persons responsible for financial transactions.

Auditing at that time was carried out to locate frauds and errors. But in 1464, an Italian named Luca Pacialo, published his treatise on the double entry system of book-keeping for the first time and also described the duties and responsibilities of an auditor. Since then, there have been noticeable changes in the scope of audit and in the duties and responsibilities of an auditor.

Further, when corporate enterprises started to grow, the result was dispersed ownership and the distinct separation of management from ownership. At the same time, institutional loans and borrowings came to play a significant role in the running of industry and business. Also, the gradual expansion of the idea of social responsibility of the State led to the introduction of the regulatory enactment in the field of trade, industry and commerce.

Definition

Auditing is concern with the verification of accounting data determining the accuracy and reliability of accounting statements and reports.

- R.K. Mantz

Auditing is an examination of accounting records undertaken with a view to establishment whether they correctly & completely reflect the transaction to which they purpose to relate.

- L.R Dicksee

According to Dicksee, "auditing can be understood as an examination of accounting records undertaken with a view to establishing whether they correctly and completely reflect the transactions to which they purport to relate. But this is not the end of the matter, in addition, the auditor also expresses his opinion on the character of the statements of accounts prepared from the accounting records so examined whether they portray a true and fair picture."

8. What do you mean by Company Meeting?

Ans :

The word "meeting" is not defined anywhere in the Companies Act. Ordinarily, a company may be defined as gathering, assembling or coming together of two or more persons (by previous notice or by mutual arrangement) for discussion and transaction of some lawful business.

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A company meeting may be defined as a concurrence or coming together of at least a quorum of members in order to transact either ordinary or special business of the company.

Essentials of Company Meetings

The essential requirements of a company meeting can be summed up as follows:

1. Two or More Persons

To constitute a valid meeting, there must be two or more persons. However, the articles of association may provide for a larger number of persons to constitute a valid quorum.

2. Lawful Assembly

The gathering must be for conducting a lawful business. An unlawful assembly shall not be a meeting in the eye of law.

3. Previous Notice

Previous notice is a condition precedent for a valid meeting. A meeting, which is purely accidental and not summoned after a due notice, is not at all a valid meeting in the eye of law.

9. What is Class Meeting.

Ans :

It is the meeting of a particular class of shareholders. Generally, the companies have to classes of shareholders, namely

(a) equity shareholders and

(b) preference shareholders.

It may be noted that at a class meeting, only the shareholders of the particular class have the right to be present

Example if the rate of dividend on preference shares is to be reduced, the meeting of preference shareholders will be called at which only the preference shareholders are entitle; to be present.

The most frequent case of holding the class meeting is that if the rights attached to the shares of any particular class of shareholders are to be varied, a separate meeting (i.e., class meeting) of that particular class of shareholders must be held and the matter should be approve: at the meeting by a special resolution [Section 48].

10. Resolutions.

Ans :

The provisions relating to resolutions (ordinary and special) have been amended by the Companies Act, 2013 and are incorporated in Section 114 of the new Act which were earlier provided in Section 189 of the Companies Act. 1956.

Meaning of resolutions

The term 'resolution' may be defined as the proposal which is voted at the meeting and accepted by the members. In other words, it is the decision taken at the meeting.

The business of a meeting is conducted in the form of resolutions. The Companies Act provides for the two kinds of resolutions, namely:

(i) Ordinary resolution, and

(ii) Special resolution.

The kind of resolution to be passed in particular case depends upon the nature of the business to be transacted, and not upon the kind of meeting at which it is passed.

Q11. What do you meant by winding up of company ?

Ans :

The term 'winding up' of a company may be defined as the proceedings by which a company is dissolved (i.e., put to an end).

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According to Prof. Gower. "Winding up of a company is the process whereby its life is ended and its property is administered for the benefit of its creditors and members. And an administrator, called a liquidator, is appointed and he takes control of the company, collects its assets, pays its debts and finally distributes any surplus among the members in accordance with their rights".

Thus, the winding up is the process of putting an end to the life of the company. And during this process, the assets of the company are disposed of, the debts of the company are paid off out of the realised assets or from the contribution of its members. If any surplus is left, it is distributed among the members in proportion to their rights in the company. The winding up of the company is also called the 'liquidation' of the company. The process of winding up begins after the Tribunal passes the order for winding up. And till such order is passed there cannot be any winding up in fact.

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UNIT II

Law of Contract: Nature and types of Contract and Essential elements of valid contract, Offer and Acceptance, Consideration, Capacity to contract and Free Consent, Legality of Object. Unlawful and illegal agreements, Contingent Contracts, Performance and discharge of Contracts, Remedies for breach of contract.

Contracts-II: Indemnity and guarantee, Contract of Agency, Sale of goods Act -1930: General Principles, Conditions & Warranties, Performance of Contract of Sale, Auction sale and E-auctions.

2.1 CONTRACT

2.1.1 Nature of Contract

Q1. Define contract ? Explain the elements of contract.

(OR)

All contracts are agreements but all agreements are not contracts.

Ans : **(Nov.-21, Aug.-21, Jan.-20, Imp.)**

Meaning of Contract

Contracts are the basis of most business transactions. The Indian Contract Act as passed in the year 1872. It is most important and basis of mercantile law. A contract is an agreement to do or not to do an act it is a legally binding agreement which is enforced by law.

Definitions of Contract

A contract is an agreement made between two or more parties which the law will enforce, Sec. 2 (h) defines a contract as an agreement enforce able by law. This definition is based on Pollock's definition which is as follows : "Every agreement and promise enforceable at law is a contract."

Sir William Anson defines a contract as "a legally binding agreement between two or more persons by which rights are acquired by one or more to acts or forbearances (abstaining from doing something) on the part of the others."

According to Salmond, a contract is "an agreement creating and defining obligations between the parties.

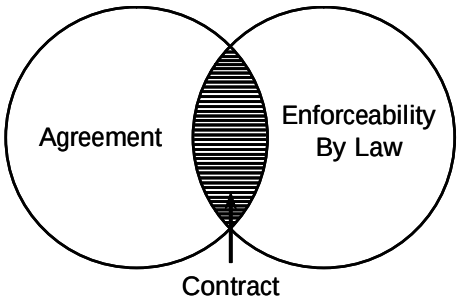
Salmond says, "Contract is an agreement creating and defining obligations between the parties."

Sec 2(h) of Indian Contract Act defines contract as "An agreement enforceable by law."

Nature of Contract

The law of contract is that branch of law which determines the circumstances in which promise made by the parties to a contract shall be legally binding on them. All of us enter into a number of contracts everyday knowingly or unknowingly. Each contract creates some right and duties upon the contracting parties.

Indian contract deals with the enforcement of these rights and duties upon the parties. Indian Contract Act, 1872 came into effect from 1st September, 1872. It extends to the whole of India except the state of Jammu and Kashmir.



Contract = Agreement + Enforceability of law

Elements of Contract

Thus from the above definitions there are two essential elements of a contract

(a) Agreement

(b) Enforceability law

(a) Agreement

According to Sec 2(E) of Indian Contract Act agreement is "Every promise or every set of

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promises forming the consideration for each other." A promise is defined in Sec 2(B) as "A proposal when accepted becomes a promise."

An agreement involves proposal or offered by one party and acceptance of the same by the other party. It requires existence of two or more persons.

Agreements = Offer + Acceptance

Examples:

(a) A invites his friend B to come and stay with him for a week. B accepts the invitation but when in comes to A, A cannot accommodate him as his wife had died the day before. B cannot claim any compensation from A as the agreement is a social one.

(b) A father promises to pay his son Rs. 100 every month as pocket allowance. Later he refuses to pay. The son cannot recover as it is a domestic agreement and there is no intention on the part of the parties to create legal relations.

(b) Enforceable by Law

An agreement to become a contract must give rise to legal obligations. The common acceptance formed and communicated between the two parties must create legal relations.

No one can unjustly create an agreement, which will be enforced by law is a contract. All agreements are not contract, only that agreement which is enforceable by law is a contract. Social, family and religious agreement never create any legal obligations and bindings. Only lawful agreements create a contract. Therefore, all contracts are agreements but all agreements are not contracts.

2.1.2 Types of Contract

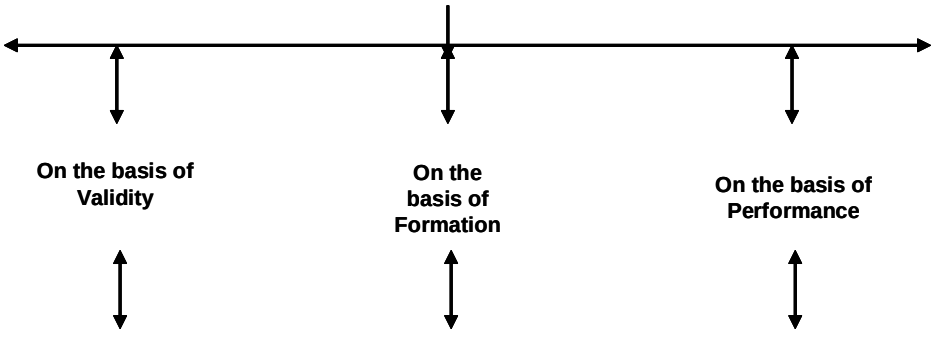
Q2. Discuss briefly about classification of contracts.

Ans : **(Jan.-20, Imp.)**

Meaning of Contract

Contracts are the basis of most business transactions. The Indian Contract Act as passed in the year 1872. It is most important and basis of mercantile law. A contract is an agreement to do or not to do an act it is a legally binding agreement which is enforced by law.

Types of Contracts



1. Valid contract	1. Express contract	1. Executed contract
2. Void contract	2. Implied contract	2. Executory contract
3. Voidable contract	3. Quasi Contracts	3. Unilateral contract
4. Void agreement		4. Bilateral contract

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A) Contract on the Basis of Validity

1. Valid contract

An agreement which has all the essential elements of a contract is called a valid contract. A valid contract can be enforced by law.

2. Voidable contract [Section 2(i)]

An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of other or others, is a voidable contract. If the essential element of free consent is missing in a contract, the law confers right on the aggrieved party either to reject the contract or to accept it. However, the contract continues to be good and enforceable unless it is repudiated by the aggrieved party.

3. Void contract [Section 2(j)]

A void contract is a contract which ceases to be enforceable by law. A contract when originally entered into may be valid and binding on the parties. It may subsequently become void.

4. Void agreement

An agreement not enforceable by law is said to be void. Such agreement does not confer any right to any of the parties to it. The agreement, in such a case, is void-ab-initio (from the very beginning). Such an agreement does not result in a contract at all.

In addition to the above there are some agreements

5. Unenforceable contracts

Where a contract is good in substance but because of some technical defect cannot be enforced by law is called unenforceable contract. These contracts are neither void nor voidable.

6. Illegal agreement

An agreement is illegal if it is forbidden by law; or is of such nature that, if permitted, would defeat the provisions of nay law or is fraudulent; or involves or implies injury to a person or property of another, or court regards it as immoral or opposed to public policy. These agreements are punishable by law. These are void-ab-initio.

"All illegal agreements are void agreements but all void agreements are not illegal."

B) Contract on the basis of Formation

1. Express contract

Where the terms of the contract are expressly agreed upon in words (written or spoken) at the time of formation, the contract is said to be express contract.

2. Implied contract

An implied contract is one which is inferred from the acts or conduct of the parties or from the circumstances of the cases. Where a proposal or acceptance is made otherwise than in words, promise is said to be implied.

3. Quasi contracts

A quasi contract is created by law. Thus, quasi contracts are strictly not contracts as there is no intention of parties to enter into a contract. It is legal obligation which is imposed on a party who is required to perform it. A quasi contract is based on the principle that a person shall not be allowed to enrich himself at the expense of another.

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C) Contract on the basis of Performance

1. Executed contract

An executed contract is one in which both the parties have performed their respective obligation.

2. Executory contract

An executory contract is one where one or both the parties to the contract have still to perform their obligations in future. Thus, a contract which is partially performed or wholly unperformed is termed as executory contract.

3. Unilateral contract

A unilateral contract is one in which only one party has to perform his obligation at the time of the formation of the contract, the other party having fulfilled his obligation at the time of the contract or before the contract comes into existence.

4. Bilateral contract

A bilateral contract is one in which the obligation on both the parties to the contract is outstanding at the time of the formation of the contract. Bilateral contracts are also known as contracts with executory consideration.

Q3. Distinguish between Void Contract and Voidable Contract.

Ans :

S.No.	Point of difference	Void contract	Voidable contract
1.	**Definition**	A contract, which ceases to be enforceable by law, becomes void when it ceases to be enforceable.	A voidable contract is an agreement which is enforceable by law at the option of one or more of the parties there to, but not at the option of the other(s).
2.	**Nature and validity**	A void contract is valid and binding upon the parties when entered into, but subsequent to its formation, it becomes unenforceable due to certain reasons.	Avoidable contract is repudiatable at the option of the aggrieved party. It remains a valid contract until it is set aside or rescinded by the party entitled to do so.
3.	**Factors responsible**	A valid contract may become void due to any supervening impossibility, change of law, a contingent contract due to emergence of an uncertain event, etc.	Coercion, undue influence, error, fraud, and misrepresentation are the main factors responsible for rendering a contract voidable.
4.	**Enforceability**	It cannot be enforced by either party. the aggrieved party.	It can be enforced or set aside at the option of
5.	**Relationship**	A void contract under no circumstances results in a voidable contract.	When a voidable contract is repudiated by the aggrieved party, it results in a void contract.
6.	**Rights of third party**	A void contract confers no rights or legal remedies to the third party. subsequent avoidance of the contract.	Rights acquired under voidable contract by an innocent third party are not wiped out by such

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Q4. What are the Differences between contract and agreement

Ans :

	Basis	Contract	Agreement
1.	**Meaning**	"An agreement unforceable by law is a contract" - U/S 2(h) of ICA, 1872	"Every promise and every set of promises, forming consideration for each other is an agreement." - U/S 2(e) ofICA, 1872.
2.	**Legal enforceability**	A contract is capable of being enforceable by law.	An agreement cannot be enforced by law.
3.	**Intention of parties**	In a contract both the parties have a common intention to enter into a legal relationship.	The intention of the parties is not to form a legal relationship in an agreement.
4.	**Consequences of Breach**	If a party commits breach of contract, the other party can sue.	An agreement does not give rise to any legal protection in case of a breach.
5.	**Kinds**	There are many kinds of contract on the basis of formation (express, implied, quasi), on the basis of performance (executed and executory) and on the basis of validity.	An agreement can be broadly classified into enforceable agreements (which are called as contracts) and un-enforceable agreements (such as void, social and domestic agreements)
6.	**Essentials of valid contract U/S 10 of ICA, 1872**	A contract consists of all ten essentials of a valid contract U/S 10 ofICA, 1872	An agreement lacks one or more essentials of a valid contract, that is why it is not enforceable by law.
7.	**Effect of Insolvency**	In case of insolvency of a party, the contract has to be performed by the official receiver/ official assignee on behalf of the insolvent party.	An agreement is devoid of any legal protection to the innocent party for insolvency of the other party.
8.	**Scope**	All contracts are agreements hence the term contract is a wider term.	All agreements may not become contracts. Agreement is a narrow term.
9.	**Constituents**	A contract constitutes all ten essentials of a valid contract U/S 10 of ICA, 1872 namely ; offer, acceptance, promise, agreement, consideration, capacity of parties, free consent, etc.	An offer when accepted becomes a promise. And an agreement is only exchange of reciprocal promises between the parties.
10.	**Example**	Joy agreed to teach on ad-hoc basis in XYZ college for a monthly salary of ? 20,000. The XYZ college duly appointed her for the session 2002-2003 with an appointment letter but later denied to pay her salary. Joy sued the XYZ college for salary and compensation as well. Held, the XYZ college was liable for salary and compensation as it was a valid contract between Joy and XYZ college.	Joy agreed to teach on ad-hoc basis in XYZ college for a monthly salary of ` 20,000. The XYZ college appointed her for the session 2002-2003 but did not issue any appointment letter for the same. After teaching for almost 3 months, she filed a case against XYZ college for non-payment of salary to her. Held, Joy could not sue XYZ college because the agreement between XYZ college and Joy was devoid of legal consequences and hence not enforceable by law. The prime reason for non-enforceability of this agreement was lack of any proof of legal enforceability.

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Q5. What are the Differences between Void Agreement of Void Contract.

Ans :

S.No.	Void Agreement	Void Contract
1)	A void agreement is void ab initio.	A void contract may be valid or void or voidable when it is made.
2)	If anything has been done or given under a void agreement, there will be no compensation.	In a void contract, if something has been done or given under it, compensation would be available.
3)	A person acquiring goods under a void agreement would get no rights over them and would not be entitled to make any further transaction in relation to them.	A person acquiring goods under a contract which becomes void later would have acquired rights over them and would be entitled to sell or pledge them before it became void.

Q6. What are the Differences between Void Agreement of Voidable Contract.

Ans :

S.No.	Void Agreement	Voidable Contract
1)	A void agreement is unenforceable by law from the very beginning.	A contract enforceable by law at the option of the aggrieved party, is a voidable contract.
2)	It is void *ab initio.*	A void contract may be valid or void or voidable when it is made.
3)	A void agreement is without any legal effect and hence cannot be enforced by either party.	A voidable contract, on the other hand, can be enforced by the party at whose option it is voidable.
4)	A void agreement is unenforceable from the very beginning.	A voidable contract becomes enforceable only when the aggrieved party at whose option the contract is voidable chooses to rescind it.
5)	The question of compensation in the event of non-performance of a void agreement does not arise, as it is unen-forceable from the very beginning.	Under a voidable contract, any person who has received any benefit must compensate or restore it to the other party.
6)	It does not affect the collateral agreements. But where the agreement is void on account of the illegality of the object and consideration, the collateral agreements will also become void.	A voidable contract does not affect collateral transaction.
7)	Third party does not acquire any rights.	A third party who purchases goods in good faith and for consideration before the contract is repudiated acquires good title of those goods.
8)	Even on the expiry of a reasonable time, it can never become a valid contract.	On the expiry of reasonable time, it may become a valid contract, if the aggrieved party does not repudiate the contract within reasonable time.
9)	The question of damages does not arise.	The aggrieved party can claim damages.

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2.1.3 Essential Elements of Valid Contract

Q7. Explain the Essential Elements of Valid Contract.

OR

What are the Essential Elements of Valid Contract.

Ans : **(Nov.-21, Aug.-21, Jan.-20, Imp.)**

According to Sec. 10, all agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object and are not expressly declared to be void. In order to become a contract, an agreement must have the following essential elements :

1. Offer and acceptance

There must be two parties to an agreement, i.e., one party making the offer and other party accepting it. The-terms of the offer must be definite and the acceptance of the offer must be absolute and unconditional. The acceptance must also be according to the mode prescribed and must be communicated to the offeror.

2. Intention to create legal relationship

When the two parties enter into an agreement, their intention must be to create legal relationship between them. If there is no such intention on the part of the parties, there is no contract between them. Agreements of a social or domestic nature do not contemplate legal relationship, as such they are not contracts.

Example: A husband promised to pay his wife a household allowance of £30 every month. Later the parties separated and the husband failed to pay the amount. The wife sued foe the allowance. Held, agreements such as these were outside the realm of contract altogether.

3. Lawful Consideration

An agreement to be enforceable by law must be supported by consideration. 'Consideration' means an advantage or behalf moving from one party to the other. It 'is the essence of a bargain. In simple words, it means 'something in return'. The agreement is legally enforceable only when both the parties give something and get something in return. A promise to do something, getting nothing in return is usually not enforceable by law.

4. Capacity of Parties – Competency

The parties to the agreement must be capable of entering into a valid contract. Every person is competent to contract if he (a) is of the age of majority, (b) is of sound mind, and (c) is not disqualified from contracting by any law to which he is subject (Secs. 11 and 12). Flaw in capacity to contract may arise from minority, lunacy, idiocy, drunkenness, etc., and status. If a party suffers from any flaw in capacity, the agreement is not enforceable except in some special cases.

5. Free Consent

It is essential to the creation of every contract that there must be free and genuine consent of the parties to the agreement. The consent of the parties is said to be free when they are of the same mind on all the material terms of the contract. The parties are said to be of the same mind when they agree about the subject-matter of the contract in the same sense and at the same time (Sec. 13). There is absence of free consent if the agreement is induced by coercion, undue influence, fraud, misrepresentation, etc. (Sec. 14)

Free consent will be absent, if the agreement is induced by,

(a) Coercion
(b) Undue influence
(c) Fraud
(d) Misrepresentation
(e) Mistake (Sec. 14).

If the agreement is violated because of any of the above first four factors then the contract is voidable and it cannot be executed by the party responsible for coercion, undue influence etc., and the other party can either accept or reject the contract as per the rules of the act.

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If the agreement is induced by the mistake of both the parties then it can be void (Sec. 20).

6. Legality of object

For the formation of a valid contract it is also necessary that the parties to an agreement must agree for a lawful object. The object for which the agreement has been entered into must not be fraudulent or illegal or immoral or opposed to public policy or must not imply injury to the person or property of another [Section 23]. If the object is unlawful for one or the other of the reasons mentioned above the agreement is void.

For example, when a landlord knowingly lets a house to a prostitute to carry on prostitution, he cannot recover the rent through a court of law.

7. Agreement not declared void.

The agreement must not have been expressly declared void by law in force in the country

Under different sections of the Contract Act, 1872, the following agreements have been said to be expressly void, viz:-

(i) Agreements made with the parties having no contractual capacity, e.g. minor and person of unsound mind (Sec. 11).

(ii) Agreements made under a mutual mistake of fact (Sec. 20).

(iii) Agreements with unlawful consideration or object (Sec. 23).

(iv) Agreements, whose consideration or object is unlawful in part (Sec. 24).

(v) Agreements having no consideration (Sec 25).

(vi) Agreements in restraint of marriage (Sec. 26).

(vii) Agreements in restraint of trade (Sec. 27).

(viii) Agreements in restraint of legal proceedings (Sec. 28).

(ix) Agreements, the meaning of which is uncertain (Sec. 29).

(x) Agreements by way of wager (Sec. 30). and

(xi) Agreements to do impossible acts (Sec. 56).

8. Certainty and possibility of performance.

Certainty: Section 29 of the Contract Act provides that "Agreements, the meaning of which is not certain or capable of being made certain, are void". In order to give rise to a valid contract the terms of the agreement must not be vague or uncertain. It must be possible to ascertain the meaning of the agreement, for otherwise, it cannot be enforced.

Possibility of Performance or Doctrine of Frustration: Section 56 lays down that "An agreement to do an act impossible in itself is void". If the act is impossible in itself, physically or legally, the agreement cannot be enforced at law. The doctrine of frustration applies when, after a contract has been entered into, some supervening event occurs that makes performance of the contract radically different from what the parties had contemplated when they entered into the contract.

9. Legal formalities.

A contract may be made by words spoken or written. As regards the legal effects, there is no difference between a contract in writing and a contract made by word of mouth. It is, however, in the interest of the parties that the contract should be in writing. There are some other formalities also which have to be compiled with in order to make an agreement legally enforceable.

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2.2 OFFER

Q8. Define offer? Explain the legal rules relating to a valid offer.

(OR)

Explain the essential elements of a valid offer.

Ans :

Meaning of Offer

An offer is a proposal made by one person to another. The person making the offer is known as offerer, proposer or promisor and the person to whom the offer is made is called the offeree, promisee or propose.

Definition of Offer / Proposal

Proposal is defined under section 2(a) of the Indian contract Act, 1872 as "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 to such act or abstinence, he is said to make a proposal/offer". Thus, for a valid offer, the party making it must express his willingness to do or not to do something. But mere expression of willingness does not constitute an offer. An offer should be made to obtain the assent of the other.

The offer should be communicated to the offeree and it should not contain a term the non compliance of which would amount to acceptance.

For example, R tells S, "I am willing to sell my machine for `9,000; Are you ready to buy ?" This is a clear offer from R to S.

Essentials of Valid Offer

The following are legal rules or essential of a valid offer,

1. Intention to Create Legal Relationship

A valid offer must be one in which the intention of the offeror should be to create a legal relationship as and when the offer is accepted. The person making the offer should intend to be bound by the acceptance (if given) by the other person i.e., acceptor. Therefore, once the acceptor accepts the offer, such acceptance will become a promise which is the foundation of an agreement.

Example

1. A invites B to dinner B accept the invitation. It does not create any legal relations, so there is no agreement.
2. A offers to sell his watch to B for Rs.200 and B agrees. There is an agreement because here the parties intend to create legal relations.
3. Three friends joined to enter a newspaper competition and agreed to share any winnings. It was held the intended to create legal relations and their agreement was therefore a contract.

Balfour vs. Balfour (1919)

In Balfour Vs. Balfour neither the husband nor the wife had an intention to enter into a legal relationship. Mr. Balfour promised to send £ ` 30 per month to his wife which de did not send, due to which the wife sued the husband. But the court did not held husband liable because it was merely a domestic agreement, therefore it never resulted into a valid contract.

2. Offer must be signified or communicated

The definition of offer U/S 2 (a) ofICA, 1872 states that a valid offer must be signified/ communicated to the other person. In fact the process of making the offer gets completed only on its communication to the other party. The communication may be made expressly or impliedly (U/S 9 of ICA, 1872). A valid offer can be accepted only when it comes to the knowledge of the person to whom it is made. Therefore, it is very essential that the person to whom the offer is made has full knowledge of that offer or in other words, the offer is properly communicated to the other. Only then can the acceptor accept the same.

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Example

Lalman Shukla vs. Gauri Dutt (1913)

"The defendant's nephew having absconded from home, he sent his servant to find out him. Later on, he offered a reward of ? 501 to any one who discovered the boy. This offer came to the knowledge of the servant only after he had already discovered the boy. In a suit filed by the servant to claim the reward, it was held that he could successfully claim the reward only on the basis of contract and in this case there was no communication of proposal to him therefore the contract was never formed. He came to know of it after he had already discovered the boy which he was already under obligation to do by the nature of his relationship (master & servant).

3. Offer must be certain and definite :

A valid offer is one, the terms of which are not abstract and vague, but are certain and definite. An offer the meaning of which is uncertain or is not clear does not constitute a valid offer. Unless the parties to the agreement are definite about the terms and conditions as well as about the legal bindings on formation of the agreement, the contract does not come into existence.

Example:

A has two motorcycles. He offers B to sell one motorcycle for Rs.27,000. It is not a valid offer because it is not clear that which motor cycle A wanted to sell.

Taylor vs. Portington (1855)

A offered to take a house on lease for three years at £ 285 per annum if the house was "put into through repair and drawing rooms handsomely decorated according to the present style." Held, the offer was too vague to result in a contractual relation

4. Offer must be made to obtain the assent of the other :

In a valid offer the offeror must make an offer to do or not to do something for the basic purpose of getting the assent or acceptance of the offeree. The statements which do not propose an understanding *i.e.* where they are not made with the purpose of getting the assent of the offeree, such statements do not constitute a valid proposal. It is rightly said.

"Acceptance is to offer what a lighted match is to a train of gunpowder. It produces something which cannot be recalled or undone."

The moment the offer is accepted, it ignites the process of formation of a contract. This is the reason, it is said that the offeror and offeree must have common intention to enter into a legal contract and must not make statements that are vague.

5. It may be specific or general:

When an offer is made to a specified person or group of persons, it is called specific offer. Such an offer can be accepted only by the person or persons to whom it is made. A general offer, on the other hand, is one, which is made to public in general and it may be accepted by any person who fulfils the conditions mentioned in it. Both specified and general offers are valid.

Example

1. M makes an offer to N to sell his bicycle for Rs.800, it is a specific offer. In this case, only N can accept it.
2. A announces in a newspaper a reward of Rs.1,000 for any one who will return his lost radio. It is general offer.

6. It must be communicated to the offeree:

An offer is effective only when it is communicated to the offeree. If an offer is not communicated to the offeree it cannot be accepted. Thus an offer, which is not communicated, is not a valid offer. It applies to both specific and general offers.

Example

A without knowing that a reward has been offered for the arrest of a particular criminal, catches the criminal and informs the police. A cannot recover the reward as he was not aware of it.

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7. It should not contain negative condition:

An offer should not contain a condition the non-compliance of which may be assumed as acceptance. An offeror cannot say that if acceptance is not communicated up to a certain date, the offer would be presumed to have been accepted. If the offeree does not reply, there is no contract, because no obligation to reply can be imposed on him, on the ground of justice no agreement because such condition cannot be imposed on the offeree. It is only a one sided offer.

Example

A wrote to B offering to sell his book for Rs.500 adding that if he didn't reply with in 5 days, the offeree would be presumed to have been accepted. There is no agreement b/c such condition can't be imposed on the offeree. It is only a one sided offer.

8. It must not contain cross offers

When two parties make similar offers to each other, in ignorance of each other's such offers are called cross-offers. The acceptance of cross-offers does not result in complete agreement.

Example

On 23rd December 2007, A wrote B to sell him 100 ton of iron at Rs.10,000 per ton. On the same day, B wrote to A to buy 100 tons of iron at Rs.10,000 per ton. There is no contract between A & B because the offers wee similar and made in ignorance of the other and so there is no acceptance of each other's offer.

Q9. Explain the classification of offer.

Ans :

1. Specific offer vs general offer

An offer is called specific or particular when it is made to a specific person or a group of persons. Such an offer can be accepted only by that person or a member of the group and by no one else, for it to turn into a contract. For instance, A offers to sell his dog to B for ` 5000. This is a specific offer as B alone can accept or reject it.

On the other hand, a general or public offer is one that is made to the world at large. Any person (i.e., competent to contract) with the notice of the offer may validly accept such an offer by complying with the terms of the offer. An advertisement addressed to the public at large is a common example of a general offer.

2. Cross-offers

'Cross-offers' refer to identical offers made by two parties to each other, neither side knowing of the other's offer when they make their own. Cross-offers do not consti-tute acceptance of each other because they tend to promote uncertainty and as such no contract is concluded. For example, A writes to B offering to sell his bike for ?5000 and B simultaneously writes to A offering to buy his bike for the same price. The two mails cross each other. If no further communication takes place in such a case, no contract can be concluded between A and B, as both sides have made offers without knowing about the offer made by the other. Also, this does not amount to acceptance of each other's offer.

3. Standing Offer

An offer that is kept open for acceptance over a period of time is termed as 'standing', 'open', or 'continuing' offer. Thus, a tender to supply goods at specified prices as and when required are of the nature of standing offer. The tenderer must supply whenever an order is placed, but he cannot insist on any order being made at all. The quantity to be supplied may or may not be specified.

4. Counter-offer

Counter-offer refers to an offer to contract on terms materially different from the terms of the offer. It is, thus, an alternative proposal made by the offeree in substitution for the original offer. When the purported acceptance of an offer contains a counter-offer, it is no acceptance at all and is corresponding to rejection of the original offer. Such a counter-offer may, however, be accepted by the original offeror and can thus give rise to legal obligations. It is important to note that a simple request as to whether or not other terms would be acceptable does not amount to a counter-offer, since such a request does not, by itself, reject an offer.

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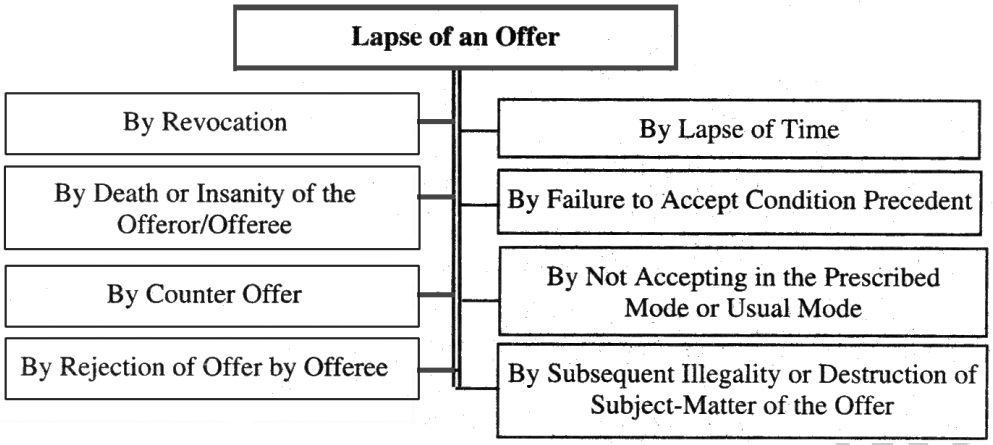
Q10. Explain briefly about lapse of an offer.

Ans :

An offer must be accepted before it lapses (i.e., comes to an end). An offer may come to end in any of the ways, which are as follows:



1. **By Revocation:** An offer lapses if the offeror revokes the offer before its acceptance by the offeree. According to Section 5 of the Indian Contract Act, a proposal may be revoked at any time before the communication of acceptance is complete as against the proposer but not afterwards.

   For example:

   i) X of Agra offers by a letter dated 1st January sent by post to sell his car to Y of Delhi for ` 1,00,000. Y accepts the offer on 7th January at 1 p.m. by a letter sent by post. Here, X may revoke his offer at any time before 1 p.m. on 7th January but not afterwards.

   ii) At an auction sale, the highest bidder can revoke his offer to buy before the fall of the hammer.

2. **By Lapse of Time:** An offer lapses if it is not accepted within the fixed time (if any prescribed in the offer) or within reasonable time (if no time is prescribed in the offer).

   For example, an offer to buy shares of a Company was made in June but the' acceptance was communicated in November. It was held that offer to buy shares had lapsed because it was not accepted within a reasonable time.

3. **By Death or Insanity of the Offeror or Offeree:** An offer lapses by the death or insanity of the offeror if the fact of his death or insanity comes to the knowledge of the acceptor before he makes his acceptance. In other words, if the offer is accepted in ignorance of the death or insanity of the offeror, there will be a valid contract. It may be noted that in English law the death of the offeror terminates the offer even if acceptance is made in ignorance of the death. An offer also comes to an end by the death or insanity of the offeree if the offeree dies or becomes insane before accepting the offer because an offer can be accepted only by the offeree and not by any other person.

4. **By Failure to Accept Condition Precedent:** An offer lapses if it is accepted without fulfilling the conditions of the offer.

   For example, X offered to sell his car to Y for ` 1,00,000 subject to the condition that Y should pay an advance of ` 20,000 before a certain date. Y accepted the offer but did not send an advance of ` 20,000. In this case, the offer has lapsed because the advance was not paid.

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5. **By Counter Offer:** An offer lapses if the counter offer is made because a counter offer amounts to rejection of the original offer. Counter means making a fresh offer instead of accepting the original offer.

   For example, X offered to sell his car to Y for ` 1,00,000. Y said that he would buy it for ` 90,000. X refused to sell for ` 90,000. Subsequently, Y offered to buy the car for `1,00,000. Here, Y's offer to buy for ` 90,000 is a counter offer which terminates the original offer. Y's second offer to buy for ` 1,00,000 is a fresh offer and not an acceptance of the original offer.

6. **By Not Accepting in the Prescribed Mode or Usual Mode:** An offer if it is not accepted in the specific manner (if any, prescribed in the offer) or in some usual and reasonable manner (if no manner has been prescribed in the offer).

   For example, X offered to sell his car to Y for ` 1,00,000 and wrote to Y "Send your acceptance by telegram". Y sent acceptance by an ordinary letter. X can reject such acceptance.

7. **By Rejection of Offer by Offeree:** An offer lapses if it is rejected by the offeree. An offer is said to be rejected if the offeree expressly rejects it or accepts it subject to certain conditions. It may be noted ihat once an offer is rejected, it cannot be revived subsequently.

8. **By Subsequent Illegality or Destruction of Subject-Matter of the Offer:** An offer lapses if it becomes illegal or the subject-matter is destroyed before its acceptance by offeree.

   For example,

   i) X of Delhi offered supply of 100 tonne of sugar to Y at Mumbai on a certain date. Before this offer is accepted by Y, the Central Government issued an order prohibiting the inter-state movement of sugar. Here, X's offer has come to an end.

   ii) X of Delhi offered to sell his car to Y of Agra for `1,00,000. Before the offer is accepted by Y, the car is destroyed by fire. Here X's offer has come to an end.

2.3 ACCEPTANCE

Q11. Define acceptance ? Explain the essential elements of a valid acceptance.

(OR)

What are the rules of an acceptance as per Indian contract act ?

(OR)

State the rules relating to a valid acceptance.

Ans : **(Imp.)**

Definition

A contract is formed when an offer is accepted. The offeree's willingness to be bound by the terms of the offer is known as "acceptance". **Section 2 (b)** of the Contract Act defines acceptance as "when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal when accepted becomes a promise". Thus acceptance is the assent or consent given to a proposal.

Acceptance may be express or implied. It is express when it is communicated by words, spoken or written or by doing some required act. It is implied when it is gathered from the surrounding circumstances or the conduct of the parties.

Example

A offers to sell his car to B for 1,00,000. B agrees to buy the car for 1,00,000. B's act is an acceptance of A's offer.

Essentials of Valid Acceptance

1. It must be given by the Offeree

An offer can be accepted only by person to whom it is made. It cannot be accepted by another person with the consent of offeror. Similarly in case of offer to the particular class it can be accepted by any member of that class.

Example: A sold his business to B without disclosing the fact to his customers. send is an order for the supply of good to A by name.

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B receives the order and executed the same. It was held that there was no contract between B and A because A never made any offer to B.

Case : (Lalman Shukla vs. Gouri Dutt)

(Refer essentials of a valid offer for details of the case)

The underlying point in the case, "Lalman Shukla vs. Gauri Dutt" was :

(i) The offer made by the master was not communicated to the servant (who traced the missing boy)

(ii) The servant found the boy because of the master-servant relationship & not because of the reward money.

(iii) The servant could not accept the offer because he was not aware of the offer so made.

2. It must be Absolute and Unconditional

In order to convert the offer into an agreement, the acceptance must be an absolute an unconditional. If the offeree imposes any condition in his acceptance, it is not a valid acceptance, but a counter offer.

Examples

(i) A offer to sell his watch to B for Rs.200 and B replies that he can buy it only for Rs. 100, there is a material variation in the acceptance. Therefore, there is no agreement as the acceptance is not absolute and unconditional.

(ii) M offer to sell his piece of land to N for Rs. 12,00,000, N accepted and enclosed Rs. 800,000 with the promise to pay the balance by the monthly installments. Held there was no contract between N and M, and the acceptance was unmodified.

3. It must be in Prescribed Manner

If the offeror in his offer has prescribed any particular manner of acceptance, it must be given according to that particular manner.

Example

A makes an offer to B and writes "if you accept the offer send your acceptance by telegram" B sends his acceptance by registered post, it is not a valid acceptance. But A should inform B that it is rejected because it is not in prescribed manner.

4. It must be Communicated to the Offeror

In order to form a contract the acceptance must be communicated to the offeror in a clear manner by the offeree or his authorize agent. Here expression of intension to accept an offer is not a valid acceptance.

Example

A proposes by letter to purchase B's house. B expresses his intension to sell it to A but does not send a reply to him. The house is sold to C, despite B's intension. He has no legal remedy to against B.

Case : (Powell vs. Lee)

Powell was one of the candidates for the post of headmaster of a school. The Board of Managers passed a resolution selecting him for the post. No communication about this decision was made to Powell by the Board. One of the members of the Board who had not been authorized to communicate this decision, acting in his individual capacity, informed Powell about his selection for the post. Subsequently, the Board of Managers met again and decided to cancel the appointment of Powell and appoint another candidate Parker, in Powell's place. Powell sued Lee, the Chairman of the Board of Managers, for the breach of contract. It was held that since the resolution passed by the Board was not communicated to Powell by the Board, or any authorized person on its behalf, it could not give rise to contract.

5. It may Express or Implied

When an acceptance is given as words spoken or written, it is called express acceptance. When it is given by conduct, it is called implied acceptance.

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Example

A wrote letter to B to sell his cycle for Rs.2000 B accepted his offer and sent a letter of acceptance to A. it is an express acceptance.

6. It must Follow the Offer

Acceptance must be given after receiving the offer. It should not precede the offer. Acceptance always follows the offer.

Example

A offers a rewards for an act and B does the act in ignorance of the offer , now B cannot claim the reward when he becomes aware of its existence.

7. It must be given within Reasonable Time

In order to be valid acceptance, it must be given at specified time allowed by offeror. If no time is mentioned, then the acceptance must be given in a reasonable time.

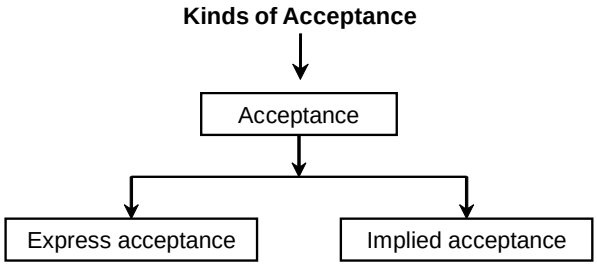
Example

M implied for certain shares in a company in june but allotment was made in November. M refuse to accept the shares, it was held that M could refuse to take shares offer has lapsed after the expiry a reasonable time.

Q12. Explain the various kinds of acceptance.

Ans :

Kinds of Acceptance



1. Express Acceptance

An acceptance expressed in words spoken or written is called as express acceptance. Where the offeree expresses his willingness verbally or in written form to give his assent to the offer so made, such an acceptance is termed as express acceptance.

Example

A called B to ask whether he wanted to buy the stock of coal, to which B agreed telephonically only. Later both met to form a contract. Held, the acceptance was expressed orally.

[An oral acceptance is a valid acceptance, provided the terms of the contract must be definite & clear.]

2. Implied Acceptance

An acceptance given not in words (spoken or written) but implied from the conduct/ behaviour of the parties, circumstances of the case or due to the previous dealing between the parties is termed as implied acceptance.

Examples

In an auction sales, at the fall of the hammer, the acceptance of the highest bid is done.

Q13. State the rules of communication and revocation of offer and acceptance with examples.

Ans :

1. Communication of an Offer

An offer or a proposal not communicated has no legal effects. There can be no acceptance of a proposal unless it is communicated. The communication of a proposal is complete as soon as it comes to the knowledge of the offered.

Example

A proposes by letter to sell a house to B at a certain price. The communication of the proposal is complete when B receives the letter.

If the offer comes to the knowledge of the offeree. Then it is for the latter to accept or reject the offer. Whether an offer has or has not come to the knowledge of the person to whom it was made, is purely a question of fact.

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When an offer is sent by post, its communication will be complete when the letter making the offer reaches the offeree. The offer is completed not at the place where it was sent but where it was received. Thus when X from Madras offers by a letter to sell his TV set to Y at Delhi, the communication of the offer will be complete only when Y receives the letter at Delhi.

2. Communication of an Acceptance

(a) As against the proposer when it is put into a course of transmission to him, so as to be out of the power of the acceptor.

(b) As against the acceptor when it comes to the knowledge of the proposer.

Example

A proposes by a letter to sell a house to B at a certain price. B accepts A's proposal by the letter sent by post. The communication of acceptance is complete when the letter is posted, as against B when the letter is received by A.

Where a letter of acceptance was duly posted but was delayed in post and the offer sought to repudiate the contract, it was held that the posting of the letter was an acceptance of the offer.

If the letter of acceptance is misdirected through the fault of the acceptor, there would be no communication of the acceptance but if the wrong address is furnished by the offerer himself. He will be bound.

3. Communication of Revocation

A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards. An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.

A proposal is revoked -

(i) by the communication of notice of revocation by the proposer to the other party;

(ii) by the lapse of the time prescribed in such proposal for its acceptance, or, if no time is so prescribed, by the lapse of a reasonable time, without communication of the acceptance;

(iii) by the failure of the acceptor to fulfill a condition precedent to acceptance; or

(iv) by the death or insanity of the proposer, if the fact of the death or insanity comes to the knowledge of the acceptor before acceptance.

2.4 CONSIDERATION

Q14. Define consideration ? Explain the importance of consideration.

Ans :

Meaning

Consideration is one of the essential elements of a valid contract. In general an agreement without consideration is void. Consideration may be defined as something in return.

Definitions

According to Pollock, Consideration is the price for which the promise others is bought and the promise thus given for value is enforceable.

According to Blackstone, "Consideration is the recompense given by the party contracting to the other".

According to Cheshire and Fifoot, "Consideration is the price paid by the plaintiff for the defendant's promise".

"A valuable consideration in the sense of the law may consist either in some right, interest, profit or benefit accruing to one party, or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other."

From the foregoing definitions it is clearly brought out that the term 'consideration' is used in the sense of 'quid-pro-quo' which means 'something in return.' This 'something' may be some benefit, right, interest or profit or it may also be some forbearance, detriment, loss or responsibility upon the other party.

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In India, the definition of consideration is contained in Section 2(d) of the Indian Contract Act, 1872. It reads: "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 promises to abstain from doing something, such act or abstinence or promise is called a consideration for the promise."

Examples

1. A agrees to sell his house to B for Rs. 10,000. Here B's promise to pay the sum of Rs. 10,000 is consideration for A's promise to sell the house; and A's promise to sell the house is the consideration for B's promise to pay Rs. 10,000.
2. A promises to pay B Rs. 1,000 at the end of 6 months, if C, who owes that sum to B, fails to pay it. B promises to grant time to C, accordingly. Here the promise of each party is the consideration for the promise of the other party.
3. A promises, for a certain sum paid to him by B to make good to B the value of his ship if it is wrecked on a certain voyage. Here A's promise is the consideration for B's payment and B's payment is the consideration for A's promise.
4. A promises to maintain B's child and B promises to pay A Rs. 1,000 yearly for the purpose. Here the promise of each party is the consideration for the promise of the other party.

Importance of Consideration

A promise without consideration is purely gratuitous and, however sacred and binding in honour it may be, cannot create a legal obligation. An analysis of any contract will show that it consists of two clearly separable parts:

(i) the promise and

(ii) the consideration for the promise. A person who makes a promise to do or abstain from doing something usually does so as a return or equivalent of some loss, damage, or inconvenience that may have been occasioned to the other party in respect of the promise. The benefit so received and the loss, damage or inconvenience so caused is regarded in law as the consideration for the promise.

Thus, generally speaking, a contract cannot be thought of without consideration. "No consideration, no contract'' is the rule of the law. The following two cases prove this point:

1. **Abdul Aziz v. Mazum Ali** (1914). In this case a person verbally promised the secretary of the Mosque Committee to subscribe Rs. 500 for rebuilding of a mosque. Later, he declined to pay the said amount. Held : There was no consideration and hence the agreement was void.
2. **Kedarnath v. Gori Mohamed** (1886). In this case the defendant had agreed to subscribe Rs. 100 towards the construction of a Town Hall at Howrah. The Secretary, on the faith of the promise, called for plans and entrusted the work to contractors and undertook liability to pay them.

The agreement was enforceable being one supported by consideration in the form of a detriment to the secretary who had undertaken a liability to the contractors on the faith of the promise made by the defendant.

Moreover, since agreement, by very definition as per section 2 (e), is a promise/(s) in exchange for a promise/(s), each promise forming consideration for the other. It will therefore be an inconsistency in itself to think of an agreement and consequently contract without consideration.

Thus, in one sentence we may sum up the importance of consideration: Except in certain cases, a contract without consideration cannot be thought of and if made, it is devoid of any legal obligation.

Q15. Discuss the the essential elements of a valid consideration.

(OR)

Discuss the legal rules as to valid consideration.

Ans :

The following legal rules must be satisfied to give rise to lawful consideration.

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1. It Must Move at the Desire of the Promisor

Consideration must pass at the desire of the promisor only, that is any act or abstinence must be done at the desire of the promisor. If it is done at the instance of a third party, or without the desire of the promisor, it will not be valid consideration. Example : a saves B's good from the fie without being asked for it. A cannot demand payment for it.

Case : (Durga Prasad vs. Baldo)

At the desire of the collector of the district. A built a market. F occupied a shop in the market built by A. Because a constructed the market, therefore F agreed to pay commission to A. F failed to pay the commission. The action brought by A to receiver the commission was dismissed on the ground that the market was built by A at the desire of the collector of the district and not at the desire of F. Hence, F was not liable for the commission.

2. It may Move from the Promisee or any Other Person

Consideration must move from the promise or any other person. Which means as long as there is consideration, it is immaterial as a to who furnishes it.

Example

An old lady, by a deed of gift, made over certain property to her daughter D, with the direction that she should pay her aunt, P (i.e., old lady's sister), a certain amount of money annually. On the same day D entered into an agreement with P to pay her the agreed amount, later D refused to pay the amount on the plea that no consideration had moved from P to D. Held, P is entitled to receive the amount since, consideration had moved from the old lady to D.

Case : (Chinnaya vs. Ramaiah)

The position in India, may be explained by referring to the case of Chinnaya V. Ramaya. In that case A, an old lady, granted an estate to her daughter (the defendant) with a direction that the daughter should pay an annuity of ` 653, to A's brothers (the plaintiffs). On the same day, the defendants made a promise with the plaintiffs that she would pay the annuity as directed by A. The defendant failed to pay the stipulated sum. In an action against her by the plaintiffs she contended that since the plaintiffs themselves had furnished no consideration, they had no right of action. The Madras High Court held that in this agreement (between the defendant and the plaintiffs), the consideration has been furnished by the defendant's mother and that is enough consideration to enforce the promise between the plaintiffs and the defendant.

3. It may be an Act, Abstinence or For bearance or a Return Promise

Consideration need not be in monetary terms. It may be an Act, abstinence or a return promise.

4. It may be Past, Present or Future

The consideration may have been received in the past or present or to be received in the future. The definition as defined in 2(d) states that it may be an act or abstinence in the past, present or future.

Example

For past consideration - A renders some services to B at B's desire. After a month B promises to compensate A for the services rendered by him. It is past consideration and if B does not pay. A can recover the promised amount.

Example

For present consideration - A receives 500 rupees in return for which he promises to deliver some goods to B. The amount received is present consideration for the promise made by A.

Example

For future consideration - L promises to deliver some goods to M, for which M promises to make payment within a month. Consideration in this case is future or executory.

5. It need not be Adequate

Consideration as defined earlier means 'something in return'. This 'something in

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return' need not be adequate. Which means something received need not be equal in value to something given. It is sufficient if consideration is present. Courts are not concerned whether the consideration received is sufficient or not.

Example

A agrees to sell his house that is worth Rs. 4,00,000 at Rs. 10,000 to B. A gives his consent freely. The agreement is a contract irrespective of the inadequacy of the consideration.

6. It Must be Real and not Illusory

Though consideration need not be adequate, it must be real and not illusory. The act promised must not be impossible and uncertain. Similarly it must not be illusory.

Example

A promises to put life into B's dead wife if B pays him 5000. A's promise is physically impossible of performance.

7. It must be something which the Promisor is not Already Bound to de

A promise to de something which one is already bound to de either in general law or under the existing contract is not good consideration. Similarly a promise to de some public duty by a public servant is not a consideration.

8. It must not be illegal, Immoral or Opposed to Public Policy

The consideration given must not be unlawful, immoral or against the public policy.

Q16. A stranger to consideration can sue, but a stranger to contract cannot sue. Comment.

Ans :

Meaning of Doctrine

According to the definition of consideration given in sec 2(d) of the Indian Contract Act 1872, the consideration in a contract can be given either by the promisee or by any other person. Such person who gives consideration on behalf of the promisee is called the **"stranger to contract"**. He cannot enforce the contract in the Court of law. Similarly the benefit of a consideration can be received by a third party. Such person is also called **"stranger to contract"**. Such person also cannot enforce the contract.

A person who is a stranger to contract is not allowed to enforce the contract because there will be no contractual relation between the stranger and the other party to contract, although he is not a stranger to consideration. Therefore, this rule is popularly known as **"The Doctrine of Privity of Contract".**

Case Example : Dunlop Pneumatic Tyre Co., Vs. Selfridge Co.,

In this case, Dunlop Co., supplied some tyres to a wholesale dealer with instructions that they should not be sold at a price less than the maximum retail price fixed by the company. Otherwise 5 pounds per tyre should be paid as damages to Dunlop Company. The wholesale dealer supplied the tyres to Selfridge Co. with the same instructions. But they sold two tyres at a lower price, so Dunlop Co. field a suit for damages. The Court of law held that a stranger to contract cannot enforce the contract. So the suit was dismissed.

It is a general law of contract that only parties to a contract may sue and be sued on that contract. A stranger to a contract cannot sue on it, though it may be made for this benefit.

This rule is known as the doctrine of privacy of contract.

It means that no one but the parties to a contract can be bound by it or be entitled under it. Thus a policy of insurance effected by the assured on his own life for the benefit of his wife cannot be sued upon by the wife.

Thus a stranger to a contract cannot sue.

This rule does not apply in the following cases:

1. In Case of Trust:

The beneficiary may enforce the contract even though he is a stranger to the contract creating the trust. A stranger can sue when he is beneficiary under an obligation amounting to trust arising out of the contract.

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Example

A sent an insured parcel to B by post. The parcel was misplaced and did not reach B, B filed a suit for compensation for no delivery of the parcel.

It was held that B was entitled to have the compensation, the agreement had created a trust in favor of B.

2. Where a Provision is Made in a Marriage Settlement

When an agreement is made in connection with marriage and a provision is made for the benefit of a person, he may take advantage of that agreement although he is not a party to it.

Example:

D agreed with P's father that he would pay Rs. 500 per month as allowance if P marries D's son. The allowance was stopped sometime after the celebration of the marriage. P sued, her father-in-law for Rs. 1500 as arrears of allowance. It was held that P could recover the money even though she was not a party to the contract.

3. Where a Provision is Made in a Partition or Family Arrangement

In such cases other members though not parties to the agreement can sue.

Example

Two brothers in a partition-deed, agreed to pay Rs. 300 in equal shares to their mother for maintenance. The brothers subsequently refused to pay the amount. On a suit it was held that the mother could enforce the promise even though she was not a party to the agreement.

4. Where the Charge is Created in Favor of a Stranger on Specific Immovable Property

A stranger to a contract can sue for the money payable to him, where the money is charged on immovable properties.

5. Where the Promisor has, by his Conduct Created Priority of Contract with the Stranger

Thus if A admits to C that he had received money from B for payment to C, posing himself as the agent of C, who can successfully recover the amount from A.

Similarly under an agreement between a tenant and his sub-tenant the latter was paying the rent directly to the landlord, the landlord was allowed to recover unpaid rent from the sub-tenant.

6. Where it is conductive to justice.

7. Contract entered into by an agent can be enforced by the principle.

Q17. "No Consideration No Contract". Explain with exceptions.

Ans :

According to Pollock, "Consideration is the price for which the promise of other is bought and the promise thus given for value is enforceable".

For instance 'C' agrees to sell a bike to 'D' for ` 15,000 In this case, cost is the consideration for D and price is the consideration for 'C'.

According to Section 2(d) "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 abstains from doing, something such act or abstinence or promise is called a consideration for the promise.

Exceptions

The general rule with respect to consideration is exnudo pacto non-oritur actio which means an agreement made without consideration is void. Sec. 25 and 185 deals with the general exceptions to this rule. Few agreements are considered to be enforceable even if they are made without consideration which are called as exceptions.

The exceptions to the general rule about agreement made without consideration is void which are as follows,

1. Love and Affection - [Sec. 25(1)]

An agreement made without consideration is valid when,

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(a) It is in written form

(b) It is registered under the law

(c) It is based on love and affection

(d) It is between parties who are in relation with each other.

Generally, a written and registered agreement on the basis of love and affection among close relatives is enforceable even though of it is without consideration.

Example

'A' out of natural love and affection makes a promise to give his daughter 'D' ` 500. A writes his promise to 'D' and registers it and this is considered as a contract. [Rajlukhy Devi Vs Bhoothnath Mookherjee]

A Hindu husband after thinking about quarrels and disagreement between himself and his wife, executed a registered document and promised to pay his wife certain amount per month for her own maintenance. In this case, the agreement was held void as the agreement is made on the basis of natural love and affection.

2. Compensation for Voluntary Services - [Sec. 25(2)]

A promise to compensate either completely or partially for a past voluntary service provided by a person is regarded as enforceable by law even without consideration. In other words, a promise to compensate a promisee, fully (or) partly who has already voluntarily done something for the promisor is enforceable even though it is without any consideration.

Example

If 'C' finds 'D's purse and gives it to him and 'D' promises to give 'C' ` 100, in such a case it is considered as a contract.

3. Promise to Pay a Time-barred Debt - [Sec.25(3)]

A promise made by a debtor to pay a time-barred debt is enforceable by law when it is presented in writing and is signed by the debtor or by his agent or usually or especially by the authorized person in that behalf. In such cases promise might be to pay the fully or partial debt and debt should be enforced by a creditor without imposing restrictions. The debt is considered as time barred debt by limitation when it remains unpaid or unclaimed for a period of three years span and this debt becomes legally irrecoverable.

Example

'A' owes ` 1500 debt to 'B' but this debt is time-barred by Limitation Act. 'A' makes a written promise to pay ` 500 to 'B' as a debt amount. This is considered as a contract.

4. Completed Gift (Sec. 25)

The gifts given by donor and accepted by the donee are considered as agreements even without consideration. In such a case, the general rule "no consideration, no contract" does not apply. As per Sec 25, nothing in Sec. 25 shall influence the validity among the donor and donee for any gift.

5. Agency (Sec. 185)

'A' consideration is not required for forming any agency.

6. Charitable Subscription

In charitable subscription a promisee on the basis of strength of the promise makes commitments i.e., the. promisee changes or modifies his position to his detriment.

2.5 CAPACITY TO CONTRACT

Q18. "Parties to a contract must be competent to contract". Explain.

(OR)

Explain the essential parties capacity to contract.

Ans : **(Imp.)**

Capacity of a party is an essential element of a valid contract, Capacity means competence of the parties to enter into contract.

According to Sec-11, every person is competent to contract who

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i) Is of the age of majority,

ii) Is of sound mind, and

iii) Is not expressly disqualified from entering into a contract by law.

Thus Section-11 declares the following persons as incompetent to contract.

1. Minors
2. Persons of unsound mind, and
3. Persons disqualified by law to contract.

1. Minors

According to the Indian Majority Act 1875, a minor is a person who has not completed 18 years of age. In the following cases, he attains majority at 21 years.

(a) Where a guardian of a minor's person or property has been appointed under the Guardians and Wards Act 1890, or

(b) Where the superintendent of a minors property is assumed by a Court of Wards.

Law relating to minor's is based on two rules, first, "Law protects minors against their own inexperience".

Second "Law should not cause unnecessary hardship to persons who deals with minors".

2. Person of Unsound Mind

A person who is of unsound mind is incapable of entering into a contract.

Contract of Persons of Unsound Mind

(a) Lunatics

A lunatic is a person who is mentally deranged due to some mental strain or other personal experience. He suffers from intermittent intervals of sanity and insanity. He can enter into contracts during the period when he is of sound mind.

(b) Idiots

An idiot is a person who has completely lost his mental power. He does not exhibit understanding of even ordinary matters. Idiocy is permanent whereas lunacy shows periodical insanity. An agreement with an idiot is void. These are similar to those entered into by a minor.

(c) Drunken or Intoxicated Person

A person who is under the influence of alcohol or any other drug, suffers from temporary incapacity to contract i.e., at the time he is drunk or intoxicated he is capable of entering into a contract. Contracts with a drunken or intoxicated person are similar to that of lunatics.

(d) Persons Expressly Declared as Incompetent to Contract

Certain persons are expressly declared as incompetent to contract by law in force. E.g. Insolvents, convicts, etc.

Similarly other persons like Alien enemies, are not good parties to enter into contracts. Foreign sovereigns and accredited representatives of a foreign state can enter into contracts and enforce them in our courts. But they cannot be sued in our courts without prior approval or sanction of the central government.

3. Persons Disqualified by Law to Contract

(i) Alien Enemies

An alien (the subject of a foreign state) is a person who is not a subject of the Republic of India.

He may be (i) An alien friend, or (ii) An alien enemy.

(ii) Foreign Sovereigns

Their diplomatic staff and accredited representatives of foreign states. They have some special privileges and generally cannot be sued unless they of their own submit to the jurisdiction of our law Courts.

(iii) Corporation

A corporation is an artificial person created by law, having a legal existence

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apart from its members. It may come into existence by a special act of the Legislature or by registration under the companies Act, 1956.

(iv) Insolvents

When a debtor is adjudged insolvent, his property vests in the official receiver or official assignee. As such the insolvent is deprived of his power to deal in that property.

(v) Convicts

A convict when undergoing imprisonment is incapable of entering into a contract. He can, however, enter into, or sue on, a contract if he is lawfully at large under a license called "ticket of leave".

Q19. Discuss the validity of contracts by minor.

(OR)

What are the special rules regarding contracts with minor.

(OR)

Write about rules regarding minor agreements.

(OR)

Discuss the contractual liability of a minor under the Indian contract act.

(OR)

State the position of minor under the contract act.

Ans : **(Imp.)**

Minors is a person who has not completed eighteen years of his or her age because a person becomes major by age only after completing eighteen years of age as per law (The Indian Majority Act 1875) A minor is not competent to contract as per sec.11 of the Indian Contract Act 1872. Any agreement made with a minor or by a minor or between two minors will become void and cannot be enforced in the courts of Law. However, certain agreements made by minors were declared as valid and enforceable by the Courts of Law in India under certain special circumstances which are as under.

1 . Agreements with minors are void-ab-initio

An agreement with a minor is not only void, but it is void from the very beginning (void-ab-initio). Any agreement to enter into an agreement with a minor also becomes void. Any amount paid to the minor cannot be recovered. Because the consideration given to a minor is considered as no consideration in law. Case Example : Mohiri Bibi Vs. Dharmodas Ghose

In this case, a lady agreed to give a loan of Rs.20,000/- to a minor by mortgaging his property. She paid Rs.8,000/- as advance. The mortgage was agreed to be executed after the payment of balance amount. But the minor did not take the balance. So she filed a suit. The Court of law held that the minor cannot be forced to mortgage his property. Moreover, the amount paid to him cannot be recovered.

2. Agreements made for the benefit of minors can be enforced by them

When an agreement is made between a major person and a minor in which the minor is the beneficiary it can be enforced by the minor but not by the major person. This ruling was given by the Honourable High court of Kerala to protect the innocent minors from the experienced actions of the majors.

Case Example

Abdul Ghaffar Vs. Piyarelal, In this case, a major person purchased goods on credit from a minor who was running a provisions stores of his deceased father. When he claimed the amount, the Court of law held that it should be paid as the promisee is a minor.

3. Agreements for the supply of necessaries of life to minors can be enforced

According to the rule of Quasi contracts, if a person supplies necessaries of life to another person who is incompetent to contract, the value of the goods or services can be recovered from his private property. This rule applies to

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minors also. Necessaries of life include not only the bare essentials of life like food, clothing and shelter but they also include a number of essential services and expenses such as education, medical service, professional training, marriage expenses, funeral expenses, any loans taken to meet any of these expenses. But they should be suitable to the standard of living of the minor.

Case Examples

(a) Robert Vs. Gray

In this case, an expert billiards player gave training to a minor from a royal family so as to make him a professional player. The Court of law allowed him to claim the training fees from the minor's property, as it was of professional training and comes under the necessaries of life.

(b) Nash Vs. Inman

In this case, a minor purchased eleven fancy waist coats from a ready-made garments shop on credit basis and the seller filed a suit to recover the price. The Court of law held that although clothing is necessary of life, fancy waist coats are not necessaries of li.fe. So the amount cannot be claimed from the minor.

4. Minor's agreement cannot be ratified

If an agreement made by a minor during his minority is revised or confirmed or ratified by him after becoming major, such agreement will not become valid, because the consideration given to a minor is void and it cannot become a valid consideration for the fresh or ratified agreement.

Case Example

Indran Rama swamy vs. Anthiappa Chettiar In this case, a person gave a loan of Rs. 5,000/- to a minor and obtained a promissory note. Later he obtained another promissory note for the same amount from the minor after he became a major. The Court of law held that the second note is also invalid. So the amount cannot be recovered.

5. Minor can plead minority at all times

If a minor enters into an agreement with a major person by-wrongly representing his age as major, such agreement also becomes void. Because a minor cannot be held liable for misrepresentation of his age.

Case example

Leslie Vs. Sheill, In this case, a minor took a loan of 400 Pounds from a major person by representing his age as full age (major) on account of his physical personality. The Court of law held that the amount cannot be recovered from the minor as far as he was a minor, although he had misrepresented his age.

6. Minor not liable for any civil torts

When a minor causes a loss to a major person by not following his instructions or committing a civil tort, the minor cannot be held liable to compensate the loss or pay damages. Even his parents cannot be held liable.

Case Example: Jennings Vs. Rundoll.

In this case, a minor took a pony (small horse) on hire at a hill station. He was instructed by the owner of the pony not to take it to the top of the hill. But the minor took it, so it fell down and died. The Court of law held that the damages cannot be claimed either from the minor or from his parents, because minors can not be held liable for civil torts.

7. A minor can become a partner

According to the rules of Indian Partnership Act, 1932, a minor can be admitted as a partner in a firm. There should be atleast two major partners in such firm. He will be eligible to share profits but not liable for any losses. His liability is limited to the extent of capital contributed by him. He may or may not continue as partner after becoming major. He should give a notice of his choice within six months of becoming major. Otherwise he is deemed as continuing as a major partner from the date of becoming major.

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8. A minor can become a share holder

A company should not allot shares to minors and other incompetent persons. But if shares are allotted to a minor by mistake, the agreement cannot be avoided by the company, because the minor becomes beneficiary. He can receive dividends. If the company goes into winding up, the arrears of calls on shares if any cannot be claimed from the miner or his parents.

Case Example : Liquidator of Pasupathi Bank Ltd. Vs. Palaniappa Mudaliar.

In this case, a Banking Company allotted shares in the name of a minor daughter of Mr. P. Mudaliar. It went into liquidation without declaring any dividends. When the liquidator claimed arrears of calls from her father, the Court of law declared that the amount cannot be claimed.

9. Minor can become an agent of a major person

A major principal can appoint a minor as his agent. Agreement made by minor agents with Third parties on behalf of their major principals will become valid but the agent will not become personally liable.

10. Any money paid to a minor cannot be recovered

Any amount paid to a minor or any goods delivered to a minor cannot be recovered except in the case of necessaries of life because any consideration given to a minor becomes nullity as per law. This rule is explained in the case Examples of

(a) Mohiri Bibi Vs. Dharmodas Ghose. (explained under rule no. 1) and

(b) Leslie Vs. Sheill (explained under rule no. 5.)

Conclusion

All these benefits are given to minors as they are very innocent persons and they should be protected from the experienced actions of major persons. Some people criticised the Indian Law towards minors in strong words as "The Courts of law have become their guardians, Judges have become their advisers and lawyers have become their servants. Therefore, the Courts will not tolerate any misuse of the privileges granted to minors.

Case Example;- Jagannath Singh Vs. Lalta Pandit

In this case, a minor agreed to take a loan of Rs. 20,000/- from a major person by mortgaging his property and took Rs. 10,000/- as advance by giving his documents. Later he claimed the documents through Court of law as the agreement becomes void. But the Court of law held that the minor should repay the money before taking back the documents, as the Court of law felt that the minor made the agreement to deceive the innocent money lender knowing fully well that such agreements become void as per law.

2.6 FREE CONSENT

Q20. What is Free Consent ? Explain the elements of free consent.

Ans :

Meaning of consent

It means an act of assenting to an offer. According to section 13, "Two or more persons are said to consent when they agree upon the same thing in the same thing in same sense." Thus, consent involves identity of minds in respect of the subject matter of the contract. In English Law, this is called '*consensus-ad-idem'.*

Meaning of Free consent

It is one of the essential elements of a valid contract as it is evidenced by section 10 which provides that all agreements are contracts if they are made by the free consent of the parties. according to section 14, consent is said to be free when it is not caused by (a) Coercion, or (b) Undue influence, or (c) Fraud, or (d) Misrepresentation, or (e) Mistake.

Definition of Free Consent

According to Section 13, " two or more persons are said to be consented when they agree upon the same thing in the same sense (Consensus-ad-idem).

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A consent is said to be free when it not caused by coercion or undue influence or fraud or misrepresentation or mistake.

Elements of Free Consent

1. Coercion (Section 15)

"Coercion" is the committing, or threatening to commit, any act forbidden by the Indian Penal Code, or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

2. Undue influence (Section 16)

"Where a person who is in a position to dominate the will of another enters into a contract with him and the transaction appears on the face of it, or on the evidence, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in the position to dominate the will of the other."

3. Fraud (Section 17)

"Fraud" means and includes any of the following acts committed by a party to a contract, or by his agent, with intent to deceive another party thereto of his agent, or to induce him to enter into the contract.

4. Misrepresentation (Section 18)

"causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement".

5. Mistake of fact (Section 20)

"Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void".

Q21. What do you understand by Coercion?

Ans :

In simple words, coercion is threat or force used by one party against another for compelling him to enter into an agreement.

According to Sec. 15 "Coercion is the committing or threatening to commit any act forbidden by the Indian Penal Code or unlawfully detaining or threatening to detain any property to the prejudice of any person what so ever, with the intention of causing any person to enter into an agreement". Meaning and scope of coercion can be clearly understood by analysing the above definition as under:

1. Committing any act forbidden by the IPC

When a person obtains consent of another by committing any act forbidden by the Indian Penal Code 1860, the consent can be said to have been obtained by coercion. The IPC has forbidden the Indian citizens from committing a number of offences like murder, suicide, kidnapping, unlawful detentions, stopping a dead body from cremation etc. So when a person obtains consent of a party to a contract by committing any of these acts, the consent is said to have been obtained by coercion. Such agreement becomes voidable.

Case Example : Ranganayakamma Vs. Aiwar Chetty

In this case, R was married in her age of 13 years and her husband died within 6 months in an accident. So her father-in-law forced her to adopt a boy of his relative as her son. The dead body of her husband was stopped from cremation until she adopted the boy. Later the Court of Law allowed her to avoid the agreement of adaptation of the boy on the ground of coercion.

2. Threatening to commit any act forbidden by IPC

If a person obtains the consent of another to a contract by threatening him that an act forbidden by the IPC would be committed, it also becomes equivalent to coercion. Such agreement can also be avoided on the ground of coercion.

Case Example : Seshamma Vs. Ch. Amiraju

In this case, the consent of Seshamma was obtained on a document of transfer of property by her husband to his younger

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brother threatening her that he would commit suicide, unless she gives her consent to the transfer of property. The property was transferred to his brother. Later Seshamma wanted to avoid the agreement of transfer on the ground of coercion. The Court of law allowed her.

3. Unlawfully detaining the property of another

When a person obtains the consent of another to a contract by detaining the property of any other person unlawfully, it will also become coercion, although such act is not forbidden by the IPC.

Case Example : Muttaiar Vs. Muttu Karuppa

In this case, an accountant of a trader obtained his consent on a No Objection Certificate for relieving him from the job unconditionally by detained the books of accounts of his business and threatening him that the books would be destroyed unless the NOC is given. The Court of Law held that the consent can be treated as obtained by coercion. So it can be avoided.

4. Threatening to detain the property of another

If a person obtains the consent of another to a contract by threatening him that his property would be detained or attached unless consent is given to an agreement, it also becomes coercion.

Case Example:

Bansraj Vs. Secretary of state of Madhya Pradesh

In this case, a business man agreed to discharge the tax arrears of his son to the State Government because secretary of the State threatened him to attach his property unless the arrears are paid. The Court of law held that the agreement was made by coercion. So it can be avoided.

5. Coercion may be direct or indirect

Coercion may be committed by one party of the contract against the other party or through a third party. Therefore, it can be direct or indirect. But as per British Law of Contracts it should be direct only but not indirect. It is known as Duress under that law.

6. Coercion may be committed any where in the world

The Indian Penal code - 1860 applies to Indian land only. Any offence committed outside the Indian boundaries is not punishable under IPC. But coercion committed either in India or outside India can make the agreement voidable if a suit is filed in India. This ruling is given in the explanation u/s 15 of the Indian Contract Act 1872.

7. Effect of Coercion

When the consent of a party to a contact is proved to have been obtained by coercion, the contract becomes voidable. It can be avoided only by the weaker party but not by the strong party. However, the ' burden of proof' falls up on the weaker party. If he fails to produce sufficient evidence through witnesses, he cannot avoid the agreement.

Q22. Define Undue Influence. Explain about Effects of Undue Influence on Consent.

Ans :

Obtaining consent of a party to a contract by using moral influence or the power of position of a party over the other is called " undue influence". This can be used only between those parties who are already having some relationship before entering into the contract.

According to Sec 16 (1) of the Indian Contract Act., "A Contract is said to be induced by undue influence where, the relations subsisting between he parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other".

Therefore, the following conditions are to be satisfied to prove that a consent in a contract was obtained by undue influence.

1. Existence of Previous Relationship

The consent of a party to contract can be obtained by the other party by undue

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influence only when a relationship exists between those parties before entering into the contract. It may be a real relationship such as the relation between parents and their children, brothers and sisters etc. or an apparent relationship such as the relation between employer and employee, master and servant, lender and borrower, etc. It may also be a fiduciary relationship such as the relation between a doctor and patient, a lawyer and client, a religious guru and his follower, a promoter of a company and his company, etc.

2. One party standing in a dominating position

A person can use undue influence over the other when he stands in a position to dominate the will of the other. Otherwise undue influence cannot be used. According to Section 16(2)," A person is deemed to be in a position to dominate the will of another where he holds a real or apparent authority, over the other or where he stands in a fiduciary relation to the other or where he makes an agreement with a person whose mental capacity is temporarily affected by reason of age, illness or mental or bodily distress ". Therefore, having a dominating position on account of any of the above mentioned relations should be proved.

3. Taking undue advantage

The Court of law accepts that the consent of a party is obtained by undue influence only if it is proved that the dominating party had tried to obtain or had obtained an unfair advantage over the other party by using his position. If the agreement appears to be reasonable, undue influence is not suspected by the Courts of law.

4. Agreement appearing to be unreasonable

Some agreements clearly appear to be unreasonable on their faces or on the evidence produced before the Court of law. In such cases the Court of law may declare the agreement as voidable.

Case Examples (a) Rani Annapurni Vs. Swaminath***

In this case, a lady approached a money lender for a loan as she was very badly in need of money. The money lender gave a loan to her at 100% interest per annum. Later she filed a suit to reduce the rate of interest. The Court of law held that the consent of the lady was obtained by undue influence. So reasonable rate of interest should be charged but not 100% p.a.

(b) Sri Ram Vs. Mandhari

In this case, a religious preacher obtained the consent of his disciple to sell his house for Rs.70, only telling him thai he will get Moksha (Salvation). The Court of law declared that the agreement can be avoided on the ground of undue influence.

(c) Sunder Kumari Vs. Kishore

In this case, a lady agreed to sell her house to her family doctor for Rs.7000/- which was having double of that value in the market. The Court of law allowed her to avoid the agreement on the ground of undue influence, on account of the relation existing between the parties and unreasonability of the consideration.

5. Agreements with "Pardanashin Women"

The law of contracts in India has provided a special place for pardanashin women. They are considered to be innocent women. Therefore, when any agreement is made with such women, the terms of the agreement should be explained to them in the presence of atleast two adult male witnesses of their family. Otherwise the agreement becomes voidable at the option of the women. According to law a 'pardanashin woman' is a woman who practices the system of seclusion strictly. Such woman will not talk to male persons outside their family and if any such situation arises, they use parda while talking to them. They concentrate on their domestic

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matters. They will not involve in commercial or political matters. Such women are recognized in India from some Brahmin families of Uttar Pradesh, Marwadi families of Rajasthan, Parsi families of Bombay, besides the Muslim families. (for whom parda is compulsory as per Islam).

Case Example : Hafeez Boo Vs. Ismail Moosaji

In this case, a lady filed a suit to avoid an agreement of sale of property on the ground of Pardapashin women's rule. But the Court of law held that a woman who fixes and collects rents, manages the property, makes purchases, appoints lawyer, goes to court of law etc. cannot be considered as a "Pardanashin woman" in the true sense of the term. So she was not allowed to avoid the agreement under the rule of pardanashin woman.

6. **Effect of undue influence :** An agreement induced by undue influence becomes voidable at the option of the party against whom the undue influence was used. The "burden of proof" falls upon the dominating party to prove that he had not used undue influence. If he fails to prove it, the agreement becomes voidable and the Court declares it as void.

Q23. What are the Differences Between Coercion and Undue Influence?

Ans :

Coercion	Undue Influence
1. It is a physical force or violence.	1. It is a moral force or force of position.
2. Committing or threatening to commit an act for bidden for the IPC amounts to coercion.	2. Dominating the will of a person by another person amounts to undue influence.
3. It is a type of offence or crime under the Indian Penal Code.	3. It is not considered as an offence under the Indian Penal code, 1860
4. It can be direct or indirect or it can be used against a party or any other person	4. It should have been used by one party against the other party of the contract
5. Its not necessary to prove that there was a previous relationship between the parties	5. It should be proved that there was a real or apparent authority or a fiduciary relation between the parties.

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Q24. Define fraud. Explain the essential elements of fraud.

Ans :

The term 'Fraud' includes all acts committed by a person with an intention to deceive another person.

Fraud is the wilful representation made by a party to a contract with the intent to deceive the other party or to induce such party to enter into a contract. It means a false statement made knowingly or without belief in its truth or recklessly without caring whether it is true or false.

Example

A person aged over 60 years and thus beyond insurable age, deliberately makes a false statement that he is 48 years old in order to take out an insurance policy. This amounts to fraud, and the insurer is entitled to avoid the policy.

According to Sec. 17 of the ICA "Fraud means and includes any of the following acts committed by a party to a contract or with his convince or by his agent, with intent to deceive another party thereto or his agent and to induce him to enter into a contract.

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

b) Active concealment of a fact by one having knowledge of the fact,

c) A promise made without any intention of performing it,

d) Any other act fitted to deceive,

e) Any such act or omission which the law specially declares to be fraudulent.

Essential Elements of Fraud

The essential elements of fraud are as follows,

(a) Party to a Contract

In a contract, fraud must be either committed by a party to a contract (or) by anyone with his connivance (or) by his agent. Therefore, the fraud committed by a stranger to the contract would not influence the validity of the contract.

(b) False Representation

There must be a false representation and it must be made with the information of its falsehood. The representation must be corrected by the party in a situation, where the representation was true at the time it was made, but before entering into the contract it becomes untrue and the party is aware about this fact. If the representation is not corrected than it contributes to fraud.

(c) Representation as to Fact

In fraud, the representation must associate/ link itself with a fact. Usually, an opinion, a statement of expression (or) intention would not contribute to fraud.

(d) Actually Deceived

The fraud is considered, when the other party who acted on representation has actually been deceived by the representation made. A situation where an attempt to deceive other party is made but the other party is not actually deceived is not considered as fraud.

Example

'A' had a defective cannon with an intention to cover up the defect, he inserted a metal plug on it. 'B' bought the cannon without checking the defect. 'B' used cannon and it bursted a result of which he refused to pay the remaining balance. In this case, 'B' was accountable to pay the remaining balance as he was not actually deceived by fraud because he would have purchased it if no deceptive plug was placed.

(e) Suffered Loss

The party which acted on the false statements is liable to suffer certain loss?

Q25. Explain briefly about Misrepresentation.

Ans :

When a person obtains the consent of another to a contract by making a false suggestion without any intention of deceiving the other party, it is known as misrepresentation.

According to section 18 of the Indian Contract Act., "Misrepresentation means and includes (i) the positive assertion in a manner not warranted by the information of the person making it, of that which is not true although he believes it to be true, (ii) any breach of duty without an intention to deceive but gains an advantage to the person omitting it (iii) innocently causing a party to an agreement to make a mistake as to the substance of the agreement".

Therefore, the following acts can be considered as acts of misrepresentation.

1. Positive Assertion

When a person makes a positive statement about the subject matter of a contact which is not true but the person making the statement believes it to be true, it becomes a misrepresentation but not fraud, because there will be no intention of deceiving the other party.

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2. Breach of duty

When a person makes a breach of duty tripwires his responsibility without any - intention to deceive the other party but gains an advantage over the breach, it also becomes misrepresentation but not fraud.

3. Causing a person to make a mistake

Sometime person may innocently cause another person to make a mistake regarding subject matter of a without any intention to deceive him. It also becomes equivalent to misrepresentation but not fraud.

Examples

a) Mr.Awants to buy the hotel of Mr.B and enquired from a friend of Mr.B regarding daily sales. He told that the sales any be around Rs.30,000 but the actual sales were Rs. 10,000 only. The statement given by Mr.B's friend becomes misrepresentation.

b) Mr X wanted to buy Mr. Y's car and met his driver to know about the worth of the car who innocently said that it may be worth Rs. 1,00,000 but its worth was Rs.60,000. It is also a misrepresentation.

4. Effect of misrepresentation

The agreement made by misrepresentation can also be avoided by the party who was misrepresented. But no damages can be claimed as in the case of fraud.

Note

There are very few case examples on misrepresentation because any such case will be filed as a case of fraud but later it is proved as a case of misrepresentation. Therefore no direct cases are found on misrepresentation.

Q26. What are the Differences between Fraud and Mis-representation

Ans :

S.No.	Fraud	S.No.	Misrepresentation
1.	Making a false suggestion to deceive a party becomes fraud	1.	Making an untrue suggestion without any intention to deceive becomes misrepresentation
2.	The person making the false suggestion should have knowledge that it is untrue	2.	The person making the suggestion should be believing that it is true
3.	Damages can be claimed for the loss suffered besides avoiding the contract	3.	Contract can be avoided but no damages can be claimed for loss
4.	The person involving in a fraud can be punished under section 420 of the Indian Penal Code.	4.	The party making a misleading statement cannot be punished under Indian Penal Code.

Q27. Define mistake. Explain the different types of mistakes.

Ans : **(Aug.-21)**

The term mistake is used in law of contract to mean - "Improper understanding about the agreement". When an agreement is made with a mistake regarding terms and conditions of agreement, there will be no consent between the parties. So the agreement becomes totally void. The mistake can be reclassified into various types as shown in following chart.

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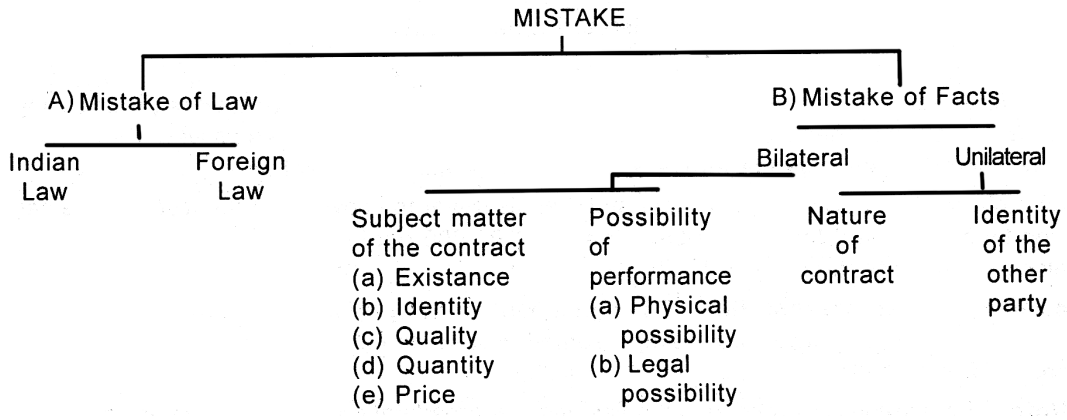

1. Mistake of law

When a person enters into an agreement without understanding the rules of law of contracts prevailing in his country, it is known as a mistake of national law. It is not excusable because of the rule "Ignorance of law is not excusable". Sometimes a person enters into an agreement with a foreign national or citizen without knowing the law of that country. It becomes a mistake of foreign law. It may be excused if it is of civil nature.

2. Mistake of Facts

When an agreement is made between two parties without understanding the terms and conditions of the agreement, it is known as a mistake of facts. It may be either bilateral mistake or unilateral mistake.

a) Bilateral mistake of facts

When an agreement is made without proper understanding in the minds of both the parties, it is known as "bilateral mistake". In such cases there will be no consent. So, it cannot be enforced in any Court of law. The bilateral mistake may be committed in respect of identity, quality, quantity, price, existence etc. of the subject matter of the contract. It may also be made regarding possibility of performance of the agreement. The impossibility may be either physical or legal. In all cases the agreement becomes void.

Examples

(a) Mr.A agreed to sell his horse to Mr.B. for Rs.5,000 but unknown to both of them the horse had died before the formation of the contract. Thus it becomes void.

(b) Mr. X supplied 100 kgs. of rice to Mr. Y telling that it is Basmati rice but the rice was not basmati. The agreement becomes void provided Mr.X was also innocent regarding quality of the subject matter.

(c) Mr. P sold a T.V. set to Mr.Q for Rs.8,000 where as its company price was Rs. 18,000. The agreement becomes void on account of bilateral mistake regarding price.

Case Example: Hankel Vs. Pape***

In this case, a trader takes a quotation for the supply of 50 rifles. But he places order by telegram "to send three rifles" but the telegraph clerk sends the message as "send the rifles". So, the seller sent 50 rifles. It was rejected by the buyer. The Court of law declared that agreement as void on the ground of bilateral mistake regarding quantity of subject matter.

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B) Unilateral mistake of fact

When a person gives his consent to a contract without understanding the terms of an agreements it is called " unilateral mistake". Such agreement can be avoided if the mistake is relating to (a) identification of the other contracting party or (b) the nature of the contract In other cases, the contract cannot be avoided.

Case Examples

(a) Baladevi Vs. Shantimuzundar

In this case, an old illiterate woman having lot of property appointed a person to manage her property but he prepared a Sale Deed as if she was selling the property to him and obtained her signature telling that it was a Letter of Authorization. He declared himself as owner. The Court of Law allowed the woman to avoid the agreement (sale deed) on the ground of unilateral mistake regarding nature of contract.

(b) Syed Vs. Bhatt

In this case the Manager of a Cinema theatre instructed his employees not to sell ticket to a Cinema critic Mr. Syed but a ticket was sold to him by mistake. Later, he was not allowed into the theatre. So, he filed a suit. The Court of Law held that the manager can avoid the agreement on the ground of unilateral mistake regarding identification of the contracting party.

Effects of mistake on contract

If the contract is made under a mistake of Indian Law, it becomes not excusable on account of the doctrine of "Ignorantia Juris non excusat". However, a mistake of foreign law may be excused if it is a civil tort in nature. A bilateral mistake makes the agreement completely void as there will be no consent of parties when no one has understood what the other party is having in his mind. However in case of unilateral mistake, one party can either avoid the contract and claim compensation or damages.

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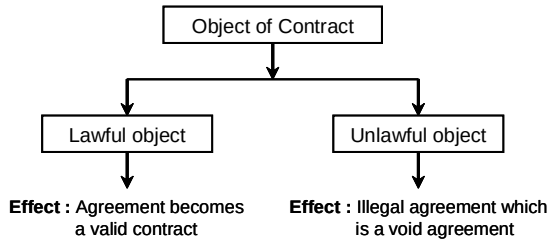
2.7 LEGALITY OF OBJECT

Q28. Under what circumstances is the object or consideration of a contract deemed unlawful? Illustrate with example.

Ans :

An agreement will not be enforceable if its object or the consideration is unlawful.



Section 10 of ICA, 1872, requires that the object of the agreement must be lawful, only those agreements become a valid contract. Therefore, legality of object is another essential element of a valid contract. Only when all the ten essentials are fulfilled in an agreement, the agreement becomes a contract and thus enforceable by law.

According to Section 23 of the Act, the consideration and the object of an agreement are unlawful in the following cases:

1. If it is Forbidden by Law

If the object or the consideration of an agreement is the doing of an act forbidden by law, the agreement is void. An act or an undertaking is forbidden by law when it is punishable by the criminal law of the country or when it is prohibited by special legislation derived from the legislature.

Examples

(i) A loan granted to the guardian of a minor to enable him to celebrate the minor's marriage in contravention of the Child Marriage Restraint Act is illegal and cannot be recovered [Srinivas v. Raja Ram Mohan (1951)].

(ii) A partnership entered into for the purpose of doing business in attack on a licence granted only to one of the partners, is void ab-initio whether the partnership was entered into before the licence was granted or afterwards as it involved a transfer of licence, which is forbidden and penalized by the Akbari Act and the rules thereunder [Velu Payaychi v. Siva Sooriam, A.I.R. (1950)].

(iii) A promises to drop a prosecution which he has instituted against B for robbery, and B promises to restore the value of the things taken. The agreement is void, as its object is unlawful.

2. If it is of such a nature that if permitted, it would defeat the provisions of any law

If the object or the consideration of an agreement is of such a nature that, though not directly forbidden by law, it would defeat the provisions of the law, the agreement is void.

Example

A's estate is sold for arrears of revenue under the provisions of an Act of the Legislature, by which the defaulter is prohibited from purchasing the estate. B, upon an understanding with A, becomes the purchaser and agrees to convey the estate to A upon receiving from him the price which B has paid. The agreement is void, as it renders the transaction, in effect, a purchase by the defaulter, and would so defeat the object of the law.

3. If it is Fraudulent

An agreement with a view to defraud other is void.

Examples

(i) A, B and C enter into an agreement for the division among them of gains acquired or to be acquired, by them by fraud. The agreement is void as its object is unlawful.

(ii) A, being an agent for a landed proprietor, agrees, for money, without the knowledge of his principal, to obtain for B a lease of land belonging to his principal. The agreement between A and B is void as it implies a fraud by concealment by A, on his principal.

4. If it involves or implies injury to the person or property of another

If the object of an agreement is to injure the person or property of another it is void.

Examples

(i) A borrowed Rs. 100 from B. He (A) executed a bond promising to work for B without pay for 2 years and in case of default agreed to pay interest at a very exorbitant rate and the principal amount at once.

Held: The contract was void [Ram Saroop v. Bansi 42 Cal. 742].

(ii) An agreement between some persons to purchase shares in a company with a view to induce other persons to believe, contrary to the fact, that there is a bona

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fide market for the shares is void [Gherulal Parekh v. Mahadeo. A.I.R. (1956)].

5. If the Court Regards it as Immoral or Opposed to Public Policy

An agreement whose object or consideration is immoral or is opposed to the public policy, is void.

Examples

(i) A let a cab on hire to B, a prostitute, knowing that it would be used for immoral purposes. The agreement is void [Pearce v. Brooks (1886)].

(ii) A, who is B's mukhtar, promises to exercise his influence, as such, with B in favour of C and C promises to pay 1,000 rupees to A. The agreement is void, because it is immoral.

(iii) A agrees to let her daughter to B for concubinage. The agreement is void, because it is immoral, though the letting may not be punishable under the Indian Penal Code.

2.7.1 Unlawful and Illegal Agreement

Q29. What is unlawful and illegal agreement? Explain the effects of illegal agreement.

Ans : **(Aug.-21)**

(i) Unlawful

An unlawful agreement is similar to a void agreement or is same like the void agreement which is not enforceable by law. It is nothing but void-ab-initio and is destitute of legal effects altogether where it influences only the immediate parties and has no further consequences.

(ii) Illegal Agreement

While an illegal agreement means an agreement which is not only void between immediate parties but also influences in the future when the collateral transactions to it becomes void with illegality.

Examples

(a) *A* lend sum of ` 10,000 to Z to help him to buy few illegal goods from *X,* an alien enemy. When Z enters into an agreement with *X,* the agreement will be illegal agreement and the agreement between Z and *A* will also become illegal, being collateral to the main transaction which is illegal. Thus, *A* cannot recover the amount from Z on the other hand, *A* could recover the amount if in case he was unaware of the purpose of loan.

(b) An agreement to commit a crime (or) tort such as an agreement to assault [Allen Vs Rescous, (1670) 2 Lev. 174] (or) an agreement to publish is liable to become illegal. [Apthorp Vs Neville & Co. (1907) 23 T.L.R 575]

"Every illegal agreement is unlawful, but every unlawful agreement need not be necessary illegal".

Even sometimes it becomes complicated to decide as to whether an agreement/act is illegal (or) unlawful because number of unlawful acts and illegal acts lie on the borderline.

However, illegal acts include the commission of a crime (or) covers an element of obvious moral turpitude and where the wicked attribute is reasonably (or) obvious or in some other way against the public policy. Criminal act means which is both forbidden by law and also which is revolting to the moral sentiments of the society.

A crime is something more than a mere disobedience to a law. Therefore, illegal agreements comprises acts which are opposed to public morals. Example, an agreement for illicit cohabitation (or) an agreement to degrade the revenue (or) commit a crime (or) an agreement that tends to endanger the public safety.

Unlawful acts on the other hand are less rigorous in effect compared to illegal acts and it is engaged in "non-criminal breach of law". It does not have any impact/ effect on public morals and does not result in the commission of crime. Unlawful acts are simply disapproved/disqualified by law on few grounds of public policy. For example, agreements in restraint of trade, marriage (or) legal proceedings and so on.

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Effects of Illegal Agreement

The general rule of law followed is that no action is permitted on an illegal agreement where, two conditions are followed for this. They are,

1. Ex Turpi Causa Non Oritur Actio

No action takes place from abase reason. The effect of this concept is that the law discourages people to enter into illegal agreements which takes place from base causes.

2. In Pari Delicto, Potior est Conditio Defendentis

In case of equal guilt, the defendant is in a better position.

Example

'X' promises to pay sum of ` 1000 to *Y* when he beats Z. When *Y* beats Z he cannot recover the amount from *X.* On the other hand, if *X* has already paid the amount to *Y* and *Y* does not beat Z then, *X* cannot recover the amount.

In case of illegal agreement, the law will not help either the parties of the agreement, as a refusal of the court to help the plaintiff in recovering the amount, the defendant who is equally guilty would benefit. But if in case, court helps the defendant to enjoy the benefit because it is not prepared to grant any relief due to illegal agreement. In fact, the count will be neutral in such cases. This neutrability tends the defendant something of to gain value.

The effects of illegality can be summed up as follows,

1. The collateral transactions to an illegal agreement becomes fraudulent with illegality and they are treated as illegal inspite of they being lawful by themselves.
2. No action can be taken against the following,
   (a) Towards recovery of money paid (or) transferred property under an illegal agreement and
   (b) For the breach of an illegal agreement.
3. In case of equal guilt in an illegal agreement. The status of defendant is better when compared with the plaintiff. The plaintiff (innocent party) can sue to recover money paid (or) property transferred in the following situations,
   (a) If he is not in pari delicato [equally guilty] with the dependent. For example, where he was about to enter into an agreement by fraud, undue influence (or) coercion.
   (b) Where he should not depend upon the illegal transaction. [Sajan Singh Vs Sardora Ali (1960)A.C. 167]
   (c) Where a substantial part of illegal transaction is not yet performed and he is truly and genuinely repentant. [Bigos Vs Boustead, (1951) All E.R. 92]

Whether Illegality is Severe or Not

A contract consists of different promises or a promise to do various acts out of which few are legal and others are illegal.

When illegal promise or act is severable from the legal one, the court will enforce the legal promise or act and reflects the illegal one. Even, the contract or promise or act cannot be separated from the legal one, the entire contract is said to be an illegal contract.

Reciprocal Promises [Section 57]

Under this, persons will do reciprocal promise first, they do few things which are legal and secondly under some circumstances, do certain illegal things. The first act of promise called as contract, while the other set of promises are called as void agreement.

Example

'*X*' and 'F enters into an agreement, where *X* promises to sell his house for ` 1,00,000 to F but Fuses it for gambling and pays the amount of ` 2,00,000 for it. First set of reciprocal promises i.e., to sell the house and pay ` 1,00,000 for it will be termed as contract and the second set of promises is for an unlawful object i.e., *Y* can use the house for gambling is a void agreement.

Alternative Promise One Branch being Illegal [Section 58]

In case of an alternative promise out of which one branch will be legal and other will be illegal and legal branch alone is enforceable in nature.

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Example

P and *Q* enters into an agreement where *P* will pay *Q* ` 5,000 for which *Q* needs to purchase other rice (or) smuggle opium. Here, valid contract is to deliver rice and void agreement is the smuggling of opium.

Agreements Void if Consideration and Objects Unlawful in Part [Section 24]

When there are different objects but only single consideration then the agreement should become void if in case any single object is also unlawful. In the same way, when there is a single object but several considerations, the agreement would becomes void if any single consideration is unlawful.

Example

A promises to superintend on behalf of Z, a legal manufacturer of Indigo and an illegal transporter of other articles. Z promises to pay *A* salary of ` 1,00,000 a year. This agreement is void because the objects of A's promise and the consideration for 'Z's promise being in part unlawful.

Q30. "All illegal agreements are void but all void agreements are not illegal". Discuss.

(OR)

Explain agreements opposed to public policy.

Ans : **(Imp.)**

Definition

The Indian Contract Act, 1872 declares certain agreements to be void. These are explained below.

Agreements Against Public Policy

The term 'public policy' is not capable of being defined with any degree of precision because 'public policy', in its nature, is highly uncertain and fluctuating. It keeps on varying with the habits and fashions of the day, with the growth of commerce and usage of trade.

In simple words, it may be said that an agreement which conflicts with morals of the time and contravenes any established interest of society, it is void as being against public policy. Thus, an agreement which tends to be injurious to the public or against the public good is void as being opposed to public. According to F. Pollock, "Agreements may offend against the public policy, or tend to the prejudice of the state in time of war (trading with the enemies, etc.), by tending to the perversion or abuse of municipal justice, (stifling prosecution, champerty, maintenance) or in private life by attempting to impose inconvenient and unreasonable restrictions on the free choice of individuals in marriage or their liberty to exercise any lawful trading or calling."

1. Agreements of Trading with Enemy

An agreement made with an alien enemy in' time of wars illegal on the ground of public policy. This is based upon one of the two reasons: either that the further performance of the agreement could involve commercial intercourse with the enemy an that the continued existence of agreement would confer upon the enemy an immediate or future benefit.

2. Agreement to Commit a Crime

Where the consideration in an agreement is to commit a crime, the agreement is opposed to public policy. The Court will not enforce such an agreement. Likewise an agreement to indemnify a person against consequences of his criminal act is opposed to public policy and hence unenforceable.

Examples

A promises to indemnify B in consideration of his beating C. The agreement is opposed to public policy.

3. Agreements in Restraint of Legal Proceedings

Sec. 28 (as amended in 1996) which deals with these agreements renders void two kinds of agreements, viz.,

(a) Agreements Restricting Enforcement of Rights : An agreement which wholly, or partially, prohibits any party from enforcing his rights under or in respect of any contract is void to that extent.

(b) Agreements Curtailing Period of Limitation: Agreements which curtail the period of limitation prescribed by the Law of Limitation are void because their object is to defeat the provisions of law.

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4. Agreements Tending to Create Interest Opposed to Duty

If a person enters into an agreement whereby he is bound to do something which is against his public or professional duty, the agreement is void on the ground of public policy.

P directs A, his agent, to buy, a certain house for him. A tells P that it cannot be bought and buys the house for himself. P may, on discovering that A has bought the house, compel A to sell it to him (P) at the price A gave for it.

5. Agreements in Restraint of Parental Rights

A father, and in his absence the mother, is the legal guardian of his/her minor child. This right of guardianship cannot be bartered away by any agreement. A father is entitled by law to the custody of his legitimate child. He cannot enter into an agreement-which is inconsistent with his duties arising out of such custody. If he enters into any such agreement, it shall be void on the ground of public policy.

6. Agreements Restricting Personal Liberty

Agreements which unduly restrict the personal freedom of the parties to it are void as being against public policy.

7. Agreements to defraud creditors or revenue authorities

An agreement the object of which is to defraud the creditors or the revenue authorities is not enforceable, being opposed to public policy. A contract by which an employee gets an expense allowance grossly in excess of the expenses actually incurred by him is illegal and a fraud on revenue authorities. Similarly, every transfer of property which is not made (i) before and in consideration of marriage, or (ii) to a purchaser in good faith and for valuable consideration, is void against the Official Receiver or Assignee, if the transferor is adjudged insolvent on a petition presented within two years of the date of the transfer.

2.8 CONTINGENT CONTRACTS

Q31. Define the term contingent contracts and wagering agreements.

Ans :

A contingent contract implies a contract, the performance of which depends on the happening or non-happening of an uncertain event, incidental to such contract. Section 31 defines a contingent contract as follows:

A 'contingent contract' is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen.

For example, A contracts to pay to B ` 10,000 if B's. house gets' burnt down, or X contracts to pay Y ` 5000 if his scooter is destroyed.

Section 30 defines wager agreements as an "Agreement between two parties where one party promises to pay money or money's worth on happening of some uncertain event in consideration of other party promise to pay on non-happening of such event".

Q32. Explain the rules relating to enforceability of contingent contract.

(OR)

Discuss the rules relating to contingent contracts.

Ans : **(Aug.-21)**

Rules Regarding Contingent Contracts

1. Sec. 32 : Contracts contingent on the event happening

Contingent contracts dependent on the happening of an uncertain future event cannot be enforced until the event has happened. If the event becomes impossible, such contracts become void.

Example :

(a) A makes a contract with B to sell a horse to B at a specified price, if C, to whom the horse has been offered, refuses to buy it. The contract cannot be enforced by law unless and until C refuses to buy the horse.

(b) A contracts to pay B a sum of money when B marries C. C dies without being married to B. The contract becomes void.

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In both the above examples, there is a condition precedent on the happening of which would arise the liability of the promisor, i.e., A.

2. Sec. 33 : Contracts contingent on the event not happening

Where a contingent contract is to be performed if a particular event does not happen, its performance can be enforced when the happening of that event becomes impossible.

Examples :

(a) A agrees to pay B a sure of money if a certain ship does not return. The ship is sunk. The contract can be enforced when the ship sinks.

(b) A agrees to sell his car to B if C dies. The contract cannot be enforced so long as C is alive.

In both the above examples, there is a condition subsequent on the happening of which would arise the liability of the promisor, i.e., A.

The fact that by supervening circumstances performance of a promise is rendered more difficult and expensive will not ordinarily excuse the promisor.

3. Sec. 34 : Contracts contingent on the future conducts of a living person.

If a contract is contingent upon how a person will act at an unspecified time, the event shall be considered to become impossible when such person does anything which renders it impossible that he should so act within any definite time, or otherwise than under further contingencies.

Example :

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

(b) A agreed to take shares in a company if the company would appoint him its sole agent at a certain place. The company went into liquidation before appointing him agent and A was entered on the list of contributories. Held, A was not liable as the contract to take shares was contingent on his appointment as agent which event never took place [Jaunpur Sugar Factory, Re (1925) All. 658].

4. Sec. 35 : Contracts contingent on the non-happening of an event with a fixed time

Contingent contracts to do or not to do anything, if a specified uncertain event happens within a fixed time, become *void* if the event does not happen or its happening becomes impossible before the expiry of that time.

Contingent contracts to do or not to do anything, if a specified uncertain event does not happen within a fixed time, may be enforced if the event does not happen or its happening becomes impossible before the expiry of that time.

Example

(a) A promises to pay B a sum of money if a certain ship returns within a year. The contract may be enforced if the ship returns within the year, and becomes void if the ship is burnt within the year.

(b) A promises to pay B a sum of money if a certain ship does not return within a year. The contract may be enforced if the ship does not return within the year, or is burnt within the year.

5. Sec. 36 : Agreements contingent on the impossible event

Contingent agreements to do or not do anything, if an impossible event happens, are void, whether or not the fact is known to the parties.

Example

(a) *A* agrees to pay B Rs. 1,000 if two straight lines should enclose a space. The agreement is void.

(b) A agrees to pay B *Rs.* 1,000 if B will marry A's daughter, C. C was dead at the time of the agreement. The agreement is void.

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Q33. Distinguish between Wagering Agreements and Contingent Contracts.

Ans :

Difference between wagering agreement and contingent contract are as follows,

S.No.	Basis of Distinction	Wagering Agreement	Contingent Contract
1.	**Reciprocal promises**	It is an agreement where mutual promises is essential for happening or not happening of an unknown event.	It is a contract where, mutual promises are not that much essential. All contingent contracts are not wagering agreements such as insurance contracts, contract of indemnity and guarantee.
2.	**Void/Valid**	Wagering agreement is a void agreement.	Contingent contract is not a void agreement /contract but it is a valid contract.
3.	**Main/Collateral**	In case of wagering contract, future event is must and necessary as future event event is the only determining aspect under this contract.	Under this, future event is collateral to the contract i.e., dependent on the future event or incidental to the contract.
4.	**Nature**	Wagering agreement is always of a contingent nature.	Contingent contract may not be always of a wagering nature.
5.	**Interest of parties**	Parties to the wagering contract are not interested in the subject matter of the agreement only they are interested to win or loose the wagering amount.	Parties to the contract are interest in the happening or non-happening of an event.
6.	**Uncertain event**	Determination of uncertain event is the major concept under wagering contract as it is the only condition of the contract.	Determining uncertain event is not the only condition of the contract.

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2.9 PERFORMANCE OF CONTRACTS

Q34. What is Performance of a Contracts? Explain the types of Performance of a Contracts.

Ans :

Tiie term 'performance of contract' means fulfilment of respective legal obligations created under the contract by both the promisor and the promisee. The parties to contract must either perform or offer to perform their respective promises unless such performance is dispensed with or excused under the provisions of the Indian Contract Act, or any other law.

When a contract is duly performed by both the parties, the contract comes to a happy ending and nothing more remains. Performance by all the parties of the respective obligations is the normal and natural mode of discharging or terminating the contract.

Types of Performance of a Contract

A contract is said to be performed in the following situations:

1. **Actual Performance:** When a party has done what he agreed to do and there is nothing left for him to do, he is said to have performed his obligation. The performance of the contract, in order to be discharged, must, however, be made in accordance with the contents of the contract.

   In simple words, the party has done what he had undertaken to do. He must have fulfilled his obligations under the contract.

2. **Offer to Perform or Tender:** If it occurs that the promisor has to perform his obligation under the contract but the promisee does not accept. This is called an attempted performance or tender. If the promisor has made an offer of performance but the offer has been refused by the offeree, then the promisor is not responsible for non-performance. An offer to perform one's obligations under a contract is known as tender. The position of the promisor is that:

   i) He is free from obligation as he has performed his part legally;

   ii) He does not lose his rights under the contract;

   iii) He is not guilty of non-performance; and

   iv) The performance is a lawful one and perfectly valid in the eyes of law.

   For example: A, the debtor, tenders money due under a debt. The result of that tender is to stop the running of interest on the amount payable but the debt is not discharged.

Q35. Explain the essentials elements performance of a contract.

Ans :

The essentials of an offer to performance or tender of performance are discussed below:

i) Unconditional: It must be unconditional. Tender is said to be unconditional when it is made in accordance with the terms of the contract.

For example, X offers to deliver 100 bales of cotton to Y if Y sells his one machine to X. It is a conditional tender and hence invalid.

ii) At Proper Time: It must be at proper time, i.e., at the stipulated time (if there is an agreement as to time) or during business hours (if there is no agreement as to time). Tender of goods or money before the due date is also not a valid tender.

iii) At Proper Place: It must be at proper place, i.e., at the stipulated place (if there is an agreement as to place) or at promisee's business place (if there is business) or at promisee's residence (if there is no business place).

iv) Reasonable Opportunity to Promisee: It must give a reasonable opportunity to the promisee of ascertaining that the goods offered are the same as the promisor is bound to deliver.

v) For Whole Obligation: It must be for the whole obligation and not for a part of the whole obligation. However, a minor deviation from the terms of the contract may not render the tender invalid.

For example, Delivery of 100.10 tonnes of wheat in a contract for 100 tonnes of wheat is a valid tender but delivery of 120 tonnes of wheat is invalid tender.

vi) To Proper Person: It must be made to the promisee or his duly authorised agent. In case of several joint promisees, a tender made to one of them has the same legal consequences as tender to all of them.

vii) Of Exact Amount and in Legal Tender: In case of tender of money, it must be of exact amount and in legal tender.

Q36. Who are the parties perform a contract?

Ans :

The promise under a contract may be performed, as the circumstances may permit, by the following:

1. **Promisor Himself:** If there is something in the contract to show that it was the intention of the parties that the promise should be performed by the promisor himself, such promise must be performed by the promisor [Section 40]. This means contracts which involve the exercise of personal skill or diligence, or which are founded on personal confidence between the parties must be performed by the promisor himself.

   For example, X promise to paint a picture for Y. The promise must be performed by X himself.

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2. **Agent:** Where personal consideration is not the foundation of a contract, the promisor or his representative may employ a competent person to perform it [Section 40],

3. **Representatives:** A contract which involves the use of personal skill or is founded on personal consideration comes to an end on the death of the promisor. As regards any other contract the legal representatives of the deceased promisor are bound to perform it unless a contrary intention appears from the contract. But their liability under a contract is limited to the value of the property they inherit from the deceased.

4. **Third Persons:** When a promise accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor. That is, performance by a stranger, accepted by the promisee, produces the result of discharging the promisor, although the latter has neither authorised nor ratified the act of the third party [Section 41],

5. **Joint Promisors:** When two or more persons have made a joint promise, then unless a contrary intention appears from the contract, all such persons must jointly fulfil the promise. If any of them dies, his legal representatives must, jointly with the surviving promisors, fulfil the promise. If all of them die, the legal representatives of all of them must fulfil the promise jointly [Section 42].

2.10 DISCHARGE OF CONTRACTS

Q37. Explain the various modes of discharges of contract.

(OR)

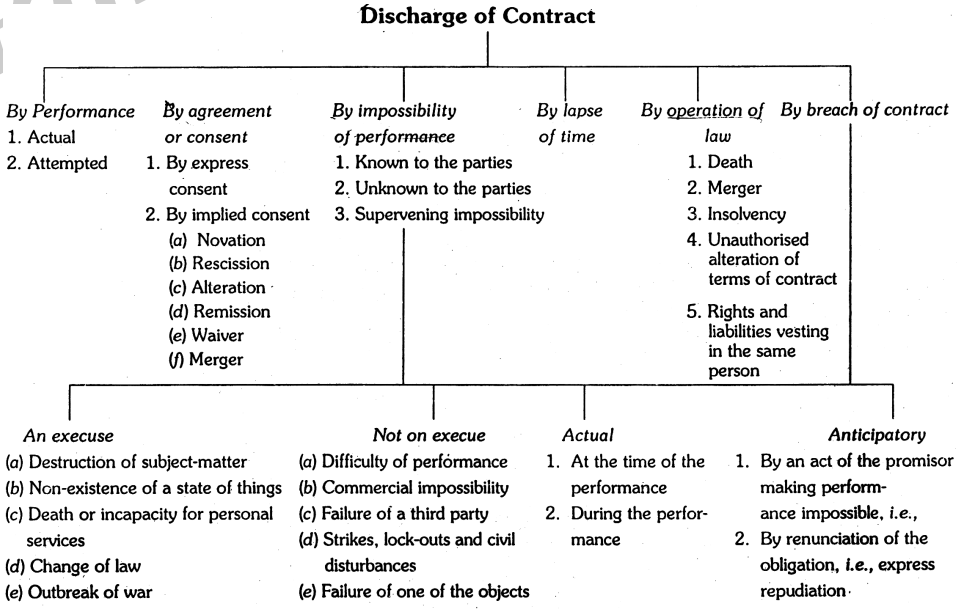
What are the various ways in which contract may be discharged. Explain.

(OR)

"Impossibility of performance is one of the mode in which a contract is discharged". Discuss

Ans : **(Imp.)**

Discharge of contract means "termination of the contractual obligations between the parties". A contract is discharged when rights and obligations created by it comes to an end.



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Modes of Discharge of Contract

A contract may be discharged in the following ways:

I. Discharge by performance

II. Discharge by agreement or consent

III. Discharge by discharge by impossibility

IV. Discharge by lapse of time

V. Discharge by operation of law

VI. Discharge by breach of contract.

I. Discharge by Performance

Discharge by performance takes place when the parties to the contract fulfill their obligations arising under the contract within the time and in the manner prescribed. In such a case, the parties are discharged and the contract comes to an end. Performance of a contract is the most usual mode of its discharge. It may be,

(i) Actual performance or

(ii) Attempted performance

i) Actual Performance

When both the parties perform their promises, the contract is said to be actually performed. Most of the contracts are discharges in this summer.

ii) Attempted Performance

When tender is not actually performed but is only an offer to perform the obligation, but the promises refuses to accept the performance. Tender is equivalent to actual performance.

II. Discharge by agreement or consent

The various cases of discharge of a contract by mutual agreement are dealt with in Secs. 62 and 63 and are discussed below :

(a) Novation (Sec. 62)

Novation takes place when (i) a new contract is substituted for an existing one between the same parties, or (ii) a contract between two parties is rescinded in on consideration of a new contract being entered into on the same terms between one of the parties md a third party. A common instance is where a creditor at the request of the debtor agrees to take mother person as his debtor in place of the original debtor. The consideration for the new contract s the discharge of the old contract. It is essential for the principle of novation to apply that there must be the mutual or tripartite consent of all the parties concerned.

Example : A owes money to B under a contract. It is agreed between A, B and C that B shall henceforth accept C as his debtor, instead of A. The old debt of A to B is at an end, and a new debt from C to B has been contracted.

(b) Rescission (See. 62)

Rescission of a contract takes place when all or some of the terms of the contract are cancelled. It may occur

(i) By mutual consent of the parties, or

(ii) Where one party fails in the performance of his obligation. In such a case, the other party may rescind the contract without prejudice to his right to claim compensation for the breach of contract.

Examples

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

(ii) A and B enter into a contract that *A* shall deliver certain goods *to B* by the 15th of this month and that B shall pay the price on the first of the next month. A does not supply the goods. B may rescind the contract and need not pay the price.

(c) Alteration (Sec. 62)

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

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Example : A enters into a contract with B for the supply of 100 bales of cotton at his godown No. 1 by the first of the next month. A and B may alter the terms of the contract by mutual consent.

(d) Remission (Sec. 63)

Remission means acceptance of a lesser fulfillment of the promise made e.g., acceptance of a lesser sum than what was contracted for in discharge of the whole of the debt. It is not necessary that there must be some consideration for the remission of the part of the debt [Hari Chand Madan Gopal v. State of Punjab, A.I.R. (1973) S.C. 381]. Sec. 63 allows the promisee to dispense with or remit the performance of the promise by the promisor, or to extend the time for performance or to accept any other satisfaction instead of performance.

Example

A owes B Rs. 5,000. A pays to B and B accepts. In satisfaction of the whole debt, Rs. 2,000 paid at the time and place at which Rs. 5,000 were payable. The whole debt is discharged.

(e) Waiver

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

(f) Merger

Merger takes places when an inferior right accruing to a party under contract merges into a superior right accruing to the same party under the same or some other contract.

III. Discharge by discharge by impossibility

If an agreement contains an undertaking to perform an impossibility, it is void ab initio.

According to Sec. 56, impossibility of performance may fall into either of the following categories.

(a) Impossibility Existing at the time of Agreement

The first paragraph of Sec. 56 lays down that "an agreement to do an act impossible in itself is void.." This is known as pre-contractual or initial impossibility. The fact of impossibility may be

(i) Know to the parties: This is known as absolute impossibility. In case of absolute impossibility, the agreement is void ab initio. Fro example, when A agrees with B to discover treasure by magic, or undertakes to put life into the dead wife of B, the dead wife of B, the agreement is void.

(ii) Unknown to the parties: Where at the time of making the contract both the parties are ignorant of the impossibility, as in the case of destruction of subject-matter to the ignorance of both the parties, the contract is void on the ground of mutual mistake. If however, the promisor alone knows of the impossibility of performance at the time of making the contract, he shall have to compensate the promisee for any loss which such promisee sustains through the non-performance of the promise (Sec. 56, para 3).

Example : A sold to B certain goods supposed to be on voyage. The goods had ceased to exist due to the perils of the sea. Held, the contract was void.

(b) Impossibility arising subsequent to the formation of contract

Impossibility which arises subsequent to the formation of a contract (which could be performed at the time when the contract was entered into) is called post-contractual or supervening impossibility. In such a case, the contract becomes void when the act becomes impossible or unlawful [Sec. 56, para 2]. Impossibility of performance of a contract, as a general rule, is no excuse for the non-performance of the contract; but where this impossibility is caused by the circumstances beyond the control of the parties, the parties are discharged from further performance of the obligation under the contract.

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(c) Discharge by Supervening Impossibility

A contract is discharged by supervening impossibility in the following cases:

1. Destruction of Subject - matter of Contract

When the subject-matter of a contract, subsequent to its formation, is destroyed without any fault of the parties to the contract, the contract is discharged.

C let music hall to T for a series of concerts for certain days. The hall was accidentally burnt down before the data of the first concert. Held, the contract was void.

2. None-existence or non-occurrence of a particular state of things

Some times, a contract is entered into between two parties on the basis of a continued existence or occurrence of a particular state of things. If there is any change in the state of things which formed the basis of the contract, or if the state of things which ought to have occurred does not occur, the contract is discharged.

Example : A and B contract to marry each other. Before the time fixed for the marriage, A goes mad. The contract becomes void.

(d) Impossibility of Performance - not an excuse

'Impossibility of performance is, as a rule, not an excuse for non-performance. In the following cases, a contract is not discharged on the ground of supervening impossibility:

1. Difficulty of Performance

A contract is not discharged by the mere fact that it has become more difficult of performance due to some uncontemplated events or delays.

Example: A sold a certain quantity of Finland timber to B to be supplied between July and September. Before any timber was supplied, war broke out in the month of August and transport was disorganised so that A could not bring any timber from Finland Held, the difficulty in getting the timber from Finland did not discharge A from performance.

2. Commercial Impossibility

A contract is not discharged merely because expectation of higher profits is not realised or the necessary raw material is available at a higher price because of the outbreak of war, or there is a sudden depreciation of currency.

3. Impossibility due to failure of a third person

Where a contract could not be performed because of the default by a third person on whose work the promisor relied. It is not discharged.

Example : A, a wholesaler, entered into a contract with B for the sale of a certain type of cloth to be produced by C, a manufacturer of that cloth. C did not manufacture that cloth. Held, A was liable to B for damages.

4. Strikes, Lock-outs and Civil Disturbance

Events such as these do not discharge a contract unless the parties have specifically agreed in this regard at the time of formation of the contract.

Example: The unloading of a ship was delayed beyond the date agreed with the shipowners owing to a strike of dock workers. Held, the shipowners were entitled to damages, the impossibility of performance being no excuse [Budget V. Binnington, (1891) Q.B. 35].

IV. Discharge by Lapse of Time

Contract must be performed within a specified period called the period of limitation. If the contract is not performed and if no action is taken by the promise with in the period of limitation, he cannot approach the court of law for remedy. The contract gets terminated.

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V. Discharge by Operation of Law

A contract may be discharged by operation of law, independent of the wishes of the parties. In the following cases a discharge by operation of law occurs.

(a) By Death

If the contract involves personal skill or ability of a person, the contract gets terminated in the event of the death of the promisor. In cases other than these involving the personal skill of the promisor, the rights and obligations are passed on to the legal representatives of the deceased person.

(b) By Merger

Merger occurs when an inferior right merges with superior right for example, when a tenant purchases the house which he had earlier taken on rent, his rights as an owner are superior to those of a tenant. Due to the merging of rights, his rights and obligations as a tenant are automatically discharged.

(c) By Insolvency

When a person is adjudged, insolvent all his prior liabilities are discharged.

(d) By Unauthorized Alterations of the Terms of a Written Agreement

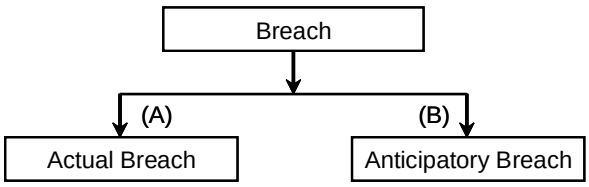
When a party to a contract makes a material alteration to the contract without the consent of the other party. The other party can avoid the contract.

(e) Because of Rights and Liabilities, Being Vested in the Same Person

Whenever the rights and liabilities under a contract get vested in the same person, the contract gets discharged, e.g., A bill getting into hands of the acceptor the other parties are discharged.

VI. Discharge by Breach of Contract

If one of the parties breaks as an obligation which the contract imposes, breach of contract occurs. Breach of contract may be actual breach or anticipatory breach. Actual breach occurs at the time of the performance of the contract where as anticipatory breach occurs before the performance becomes due.



(A) Actual Breach :

If the parties commit breach of contract, the contract gets discharged / terminated. Actual Breach can be in two ways :

(i) Breach when performance is actually due : When the performance is actually due, and the party refuses to perform, he commits. Actual Breach. The party committing the breach shall be liable for compensation to the other.

Example :

S agrees to supply 1500 units of Product XIII to R on 15th Sept, 2014. S does not supply units on that day. There is actual breach of contract by S.R can rescind the contract and also claim damages for non-performance by S.

(ii) Breach during the performance of contract: Actual breach also occurs when during the performance, the party refuses to perform the contract.

Examples:

- Suhail agreed to supply 25 tables to Rohan on 1/1/14. On 1st)an, 2014, after Suhail had delivered 15 tables, he refused to supply the balance 10 tables. Held, Suhail committed actual breach or contract.
- A, a singer, enters into a contract with 8, the manager of a theatre, to sing at his theatre two nights in every week during the next two months, and 6 engages to pay her 100 rupees for each night's performance. On the sixth night A wilfully absents herself from the theatre. B is at liberty to put an end to the contract.
- A, a singer, enters into a contract with B, the manager of a theatre, to sing at his theater two nights in every week

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during the next two months, and B engages to pay her at the rate of ? 100 for each night. On the sixth night, A willfully absents herself. With the assent of B,A sings on the seventh night. 8 has signified his acquiescence in the continuance of the contract, and cannot now put an end to it, but is entitled to compensation for damage sustained by him through A's failure to sing on the sixth night.

(B) Anticipatory Breach of Contract

When the party refuses to perform the contract before the due date of performance he is said to committing Anticipatory Breach of contract.

"An anticipatory repudiation occurs when, prior to the promised date of performance, the promisor absolutely repudiates the contract." It is an announcement by the contracting party of his intention not to fulfil the contract and that he will no longer be bound by it. This kind of anticipatory renunciation has certain effects upon the rights of the parties

Anticipatory breach can be done in two ways:

(i) Express Communication: Where the party expressly tells or intimates the other party that he shall not perform his part of the obligation on the date of performance.

Example :

A agrees to supply 10 quintals of coal to X on 25th May 2015. Before this date, A informs X that he shall not supply coal to X. This is anticipatory breach of contract.

(ii) Implied Communication: Where the party does not expressly communicates but does some act which makes his performance impossible.

2.11 Remedies for Breach of Contract

Q38. What do you understand by a breach of contract ?

Ans :

Meaning of Breach Contract

Breach of contract means a breaking of the obligation which a contract imposes. It occurs when a party to the contract without lawful excuse does not fulfill his contract and obligation or by his own act makes it impossible that should perform his obligation under it. Then the aggrieved party has a right to claim for damages.

Types of a Breach Contract

Breach of contract may be :

1. Actual Breach of contract
2. Anticipatory Breach of contract

1. Actual Breach of Contract

Actual Breach of contract occurs when the performance is due and one party fails or refuses to perform his obligation under the contract.

2. Anticipatory Breach of Contract

It occurs when a party to the executor contract declares his intention of not performing the contract before the performance is due.

Q39. Explain various Remedies for a Breach of a Contract.

Ans : **(Imp.)**

A remedy is the means given by law for enforcement of a right. When a contract is broken the injured parties have one or more of the following remedies.

1. Suit for Rescission
2. Suit for Specific Performance
3. Suit for Injunction
4. Suit for Quantum Merit
5. Suit for Damages

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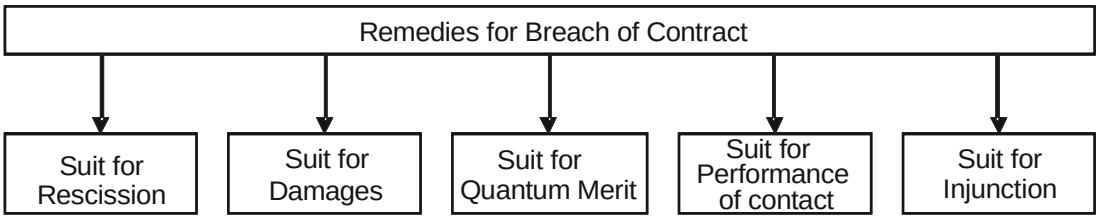

1. Suit for Rescission

When one party informs other party about his inability to perform the contract, the other party can close the contract, by filing a suit for rescission or by giving a legal notice to the other party, then the other party will not have any chance to revoke his notice of anticipatory breach on the due date. This remedy is suitable in case of anticipatory breach only.

2. Suit for Specific Performance

When a party gives a notice of anticipatory breach or causes an actual breach, the other party can file a suit for specific performance of the contract. Thus the Court of law passes an order to perform the contract without fail at any cost. However, this type of orders are not passed on the breach of contract based on personal skills (singing, dancing etc.) or personal considerations (marriage agreements) or the contracts which are very difficult to be verified (such as construction contracts). In such cases the aggrieved party would be advised to go for any other remedy (Such as claiming damages).

3. Suit for Injunction

When a party has agreed not to do something under a contract but he is doing it or attempting to do it, then the other party can file a suit and obtain a stay order. It is called "injunction". In such cases the party is restrained from doing what he had agreed not to do.

Case Example : Warner Bros. V. Nelson (Actress)

In this case an actress agreed with a film production company that she will not act in any other film until their film is released But she started acting in some other film before the release of their film. The Court of law granted Injunction Order in favour of the film producers restraining her from acting in the other film.

4. Suit for Quantum Meruit (as much as earned)

When a party stops other party from doing a work after it is partially performed, he should pay consideration for the work already done, otherwise the other party can file a suit for Quantum Meruit or as much as merited or earned. This remedy is available only in the contracts which are partially performed.

Case Example : Cort Vs. Ambergate Railway Company

In this case a railway company placed order for the supply of 3,000 chairs but they stopped the supplier from supplying the chairs after receiving delivery of 1400 chairs. Moreover they refused to pay price of the chairs already supplied. Therefore the Court of law ordered that the price of the chair should be paid (i.e. as much as due).

5. Suit for Damages

Claiming Monetary compensation for the loss suffered by the aggrieved party on the breach of a contract, is known as 'Damages'. Every party who is put to loss on account of breach of contract will have a legal right to claim damages. However the Court of law awards damages only when a loss is shown and it is assessable in terms of money. No damages can be claimed for inconvenience or reasonable delay or hurting the feelings of the other party.

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Types of Damages : The damages claimable on breach of contracts can be classified into five types as under:

(a) Ordinary Damages : When one party suffers a loss due to breach of contract by the other party, he can file a suit for damages. The amount of damages should be equivalent to the actual loss. In case of supply of goods, the difference between agreed price and the market price on the date of breach becomes ordinary damages. The right to claim ordinary damages need not be mentioned in the agreement. Separate agreement also not necessary, because it is a general legal right given by the Indian Contract Act, 1872 under its Section 73.

(b) Special Damages : Claiming agreed amount of damages on the breach of a contract is called " Special damages ". The amount of such damages is fixed between the parties at the time of entering into the contract. It may be more than the ordinary damages. However very high amount of special damages is not allowed, because such unreasonable damages will become a type of punishment or fine or penalty on the other party. Therefore special damages should be fixed reasonably. Special damages cannot be claimed in the absence of separate agreement or a special clause in the agreement. In case the ordinary damages are more than special damages, the aggrieved party can opt for ordinary damages.

(c) Vindictive Damages or Exemplary Damages : When the reputation or goodwill of a person or his family or business is damaged due to breach of a contract, any amount of damages can be claimed. Such damages are called "vindictive damages" or "Exemplary damages". But the Court of Law allow a reasonable amount of damages after verifying the facts of the case. This type of damages are allowed in India only in the following two cases :

(i) Breach of marriage agreement (By the bridegroom or his party)

(ii) Dishonour of a cheque by a Banker even after having sufficient balance in the account of the customer

(d) Nominal Damages : Sometimes one party claims damages in a Court of Law on the breach of agreement caused by the other party, even though he suffered no loss. In such cases the Court of law may either dismiss the suit or award nominal amount of damages such as Rs. 10 or 20. Such damages are known as " Nominal Damages ".

(e) Remote Damages : Damages can be claimed only for the loss suffered due to direct reasons but not for indirect reasons. Any damages claimed for distant reasons are called " Remote Damages ". Such damages are not awarded by the Courts of law.

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2.12 INDEMNITY AND GUARANTEE

Q40. What is a contract of Indemnity?

Ans :

A contract by which one party promises to save the other from ioss caused to him by the conduct of the promisor himself, or by the conduct of any other person, is called a 'contract of indemnity' (Sec. 124).

The person who promises to make good the loss is called the indemnifier (promisor) and the person whose loss is to be made good is called the indemnified or indemnity- holder (promisee).

A contract of indemnity is really a class of contingent contracts.

Examples, (a) A contracts to indemnify B against the consequences of any proceedings which C may take against B in respect of a certain sum of Rs. 200. This a contract of indemnity. (b) A and B claim certain goods from a railway company as rival owners. A takes delivery of the goods by agreeing to

compensate the railway company against loss in case B turns gut to be the true owner. There is a contract of indemnity between A and the railway company.

(c) A and B go into a shop. B says to the shopkeeper, "Let him (A) have the goods, I will see you paid." The contract is one of indemnity.

Definitiors

The definition of contract of indemnity as given in the Indian Contract Act is not exhaustive. It includes:

(a) express promises to indemnify, and

(b) cases were the loss is caused by the conduct of the promisor himself or by the conduct of any other person.

It does not include:

(a) implied promises to indemnify, and

(b) cases where loss arises from accidents and events not depending on the conduct of the promisor or any other person.

In English law, a contract of indemnity has been defined as "a promise to save another harmless from loss caused as a result of a transaction entered into at the instance of the promisor." This definition covers the loss caused by events or accidents which do not depend on the conduct of any person. The English definition is much wider in itrscope. As such the English Law in respect of indemnity is followed by the Indian Courts.

A contract of indemnity may be express or implied. An implied contract of indemnity may be inferred from the circumstances of the case or from relationship of the parties.

Example

A on the instruction of T, sold certain cattle belonging to O. O held A liable for it and recovered damages from him for selling it. Held, A could recover the loss from T as a promise by T to A for any such loss would be implied from his conduct in asking A to sell the cattle.

Sec. 69 also implies a promise to indemnify.

Q41. Explain the rights of Indemnity?

Ans :

Sec. 125 deals with rights of indemnity-holder (i.e., indemnified) when sued.

According to it, an mdemnity-holder is entitled to recover from the promisor (i.e., indemnifier)

(1) All damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies;

(2) All costs which he may be compelled to pay in bringing or defending such suits. But the indemnified should have acted as any prudent man would act under similar circumstances in his own case, or with the authority of the indemnifier ; and

(3) All sums which he may have paid under the terms of any compromise of any such suit. The compromise should not be contrary to the orders of the indemnifier and should be prudent or authorised by the indemnifier.

Q42. What is contract of Guarantee? Explain the essential features of a contract of Guarantee.

Ans :

A contract in which a promise is performed or liability of a third person is discharged (in case of his default) is termed as contract of guarantee. It includes three parties- principal debtor, creditor and surety. Principle debtor is a person in consideration of whose default, the guarantee is provided. Creditor is a person to whom the guarantee is given and surety is a person who gives the guarantee. As per the Section 126, guarantee can be either oral or written.

Example

'A' along with his friend 'B' enters into a shop and says ' C' to supply the products demanded by '5' and assures that if 'B' does not pay he will pay the amount. The statement between 'A', 'B' and 'C' is observed as contract of guarantee.

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In the above example, 'A' acts as surety, 'B' acts as a principal debtor and 'C' acts as a creditor.

Contract of guarantee is considered as a tripartite agreement which deals with principal debtor 'P', creditor 'C' and the surety '£\ The relationship between principle debtor, creditor and surety is triangular in nature and represents three different collateral contracts which are as follows,

(a) There is a contract between 'C' and 'P' where guaranteed debt emerges.

(b) There is a contract between 'S' and 'C', where 'S' guarantees to pay to 'C', the debt of 'P' in case of his default.

(c) There is a contract between '5" and 'P' where 'P' shall indemnify 'S' if 'S' pays in case of default by 'P'. This contract is considered as implied contract even though it is not expressed between the parties.

Essential features of a contract of guarantee

1. **Concurrence:** A contract of guarantee requires the concurrence of all the three parties to it, viz., the principal debtor, the creditor, and the surety.

   Example: C enters into a contract with P. S, without any communication with P, undertakes for a consideration moving from C to indemnify C against any damage that may arise from a breach of P's obligation. This does not make S a surety for P, for a person cannot become a surety without the consent of the principal debtor.

2. **Primary liability in some person :** There must be a primary liability in some person other than surety. The word 'liability' as used in the definition of guarantee (Sec. 126) means "a liability which is enforceable at law". If that liability does not exist, there cannot be a contract of guarantee. But a guarantee given for the debt of a minor is an exception to this rule.

Example

P owes a debt to C. S gives a guarantee to C for the payment of the debt after it is barred by the Law of Limitation. S pays the amount to C. He cannot recover the amount from P as there is no enforceable liability against P.

The primary liability in a contract of guarantee is that of the principal debtor. The liability of the surety is secondary. It arises only when there is a default by the principal debtor.

3. Essentials of a Valid Contract

A contract of guarantee must have all the essential elements of a valid contract. But the following two points should be noted.

(1) All the parties must be capable of entering into a valid contract, though the principal debtor may be a person suffering from incapacity to contract. In such a case, the surety is regarded as the principal debtor and is liable to pay personally even though the principal debtor (e.g., a minor) is not liable to pay.

(2) Consideration received by the principal debtor is sufficient for the surety, and it is not necessary that it must necessarily result in some benefit to the surety himself. It is sufficient if something is done or sOme promise is made for the benefit of the principal debtor. Sec. 127 lays down this rule as follows: "Anything done, or promise made for the benefit of the principal debtor may be a sufficient consideration to the surety for giving the guarantee."

Examples

(a) P requests C to sell and deliver to him goods on credit. C agrees to do so, provided S will guarantee the payment of the price of the goods. S promises to guarantee the payment in consideration of C's promise to deliver the goods. This is a sufficient consideration for S's promise.

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(b) C sells and delivers goods to P. S afterwards requests C to forbear to sue P for the debt for a year. He promises that if C does so, he will pay for the goods in default of payment by P. C agrees to forbear as requested. This is a sufficient consideration for S's promise.

(c) C sells and delivers goods to P. S, afterwards without consideration, agrees to pay for them in default of P. The agreement is void.

4. Writing not Necessary

A guarantee may be either oral or written (Sec. 126). It may be express or implied. Implied guarantee may be inferred from the course of conduct of the parties concerned. But in England a guarantee must be in writing and signed by the party to be charged.

Q43. What are the differences between contract of Indemnity and contract of Guarantee?

Ans :

Contract of indemnity	Contract of guarantee
1. There are two parties to the contract, viz., the indemnifier (promisor) and the indemnified (promisee).	1. There are three parties to the contract, viz., the creditor, the principal debtor and the surety.
2. The liability of the indemnifier to the is indemnified is primary and independent.	2. The liability of the surety to the creditor collateral or secondary, the primary liability being that of the principal debtor.
3. There is only one contract in the case of a contract of indemnity, i.e., between the and the indemnified.	3. In a contract of guarantee, there are three contracts : one between the principal indemnifier debtor and the creditor, the second between the creditor and the surety and the third between the surety and the principal debtor.
4. It is not necessary for the indemnifier to act the at the request of the indemnified.	4. It is necessary that the surety should give guarantee at the request of the debtor.
5. The liability of the indemnifier arises only on the happening of a contingency.	5. There is usually an existing debt or duty, the performance of which is guaranteed by the surety.
6. An indemnifier cannot sue a third party for loss in his own name, because there is no privity of contract. He can do so only if there is an assignment in his favour.	6. A surety, on discharging the debt due by principal debtor, steps into the shoes of creditor. He can proceed against the principal debtor in his own right.

Q44. Explain the different types of Guarantee?

Ans :

A guarantee may be in respect of a single transaction or in respect of a number of transactions.

1. Specific Guarantee

When a guarantee extends to a single transaction or debt, it is called a specific or simple guarantee. It comes to an end when the guaranteed debt is duly discharged or the promise is duly performed.

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Continuing Guarantee

When a guarantee extends to a series of transactions, it is called a continuing guarantee (Sec. 129). The liability of the surety in case of a continuing guarantee extends to all the transactions contemplated until the revocation of the guarantee.

Examples

(a) S, in consideration that C will employ P in collecting the rents of C's zamindari, promises C to be responsible to the amount of Rs. 5,000 for the due collection and payment by P of these rents. This is a continuing guarantee.

(b) S guarantees payment to C, a tea-dealer, to the amount of Rs. 10,000 for any tea he may from time to time supply to P. C supplies P with tea to the value of above Rs. 10,000 and P pays C for it. Afterwards C supplies P with tea to the value of Rs. 20,000. P fails to pay. The guarantee given by S is a continuing guarantee, and he is accordingly liable to C to the extent of Rs. 10,000.

Q45. Explain the revocation of continuing Guarantee?

Ans :

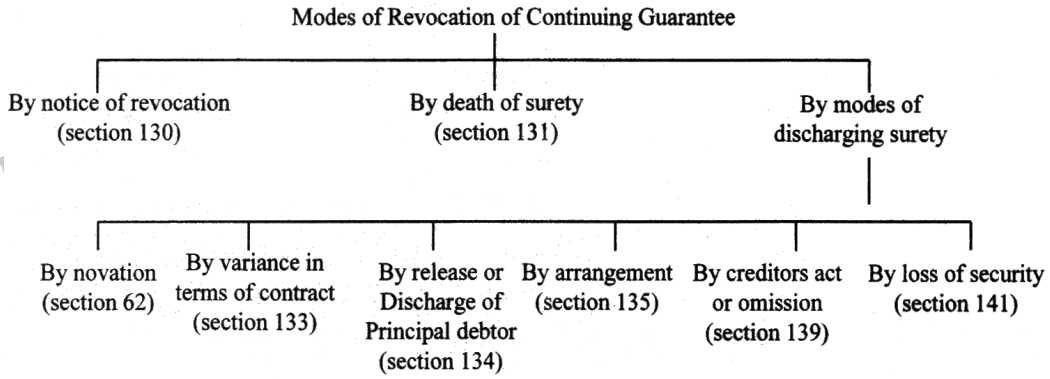
Revocation of Continuing Guarantee

The different ways in which a continuing guarantee with respect to future transaction can be revoked, are as follows,

(i) By notice of revocation (Section 130)

(ii) By death of surety (Section 131)

(iii) By modes of discharging the surety.



Figure

(i) By Notice of Revocation (Section 130)

According to section 130, by giving a notice to the creditor, a continuing guarantee with respect to the future transaction can be revoked at any time by the surety. But, in this case the surety continues to be liable for the past transactions which have already taken place in the past.

Example

'A ' guaranteed the payment of rent by *'B'* to ' *C* who let his house to *B* on rent with a condition of paying rent initially for four months and thereafter week to week. But after five months *'A'* gave notice to 'C' about revoking his guarantee. In such case, *'A'* is not liable for the rent which became due after he had revoked his guarantee.

(ii) By Death of Surety (Section 131)

In the contract of guarantee, the death of surety acts as a revocation of a continuing guarantee with respect to the future transactions which occur after the death of the surety. But the subsets's estate will continue to be liable for the past transactions which have already occurred before the death of surety.

(iii) By Modes of Discharging the Surety

The continuing guarantee is revoked in the similar way in which the surety is discharged. The different ways in which the surety is discharged are as follows,

(a) Novation (Section 62).

(b) Difference in terms of contract (Section 133).

(c) Principal debtor's released or discharge (Section 134).

(d) At the time of entry of creditors into an arrangement with the principal debtor (Section 135).

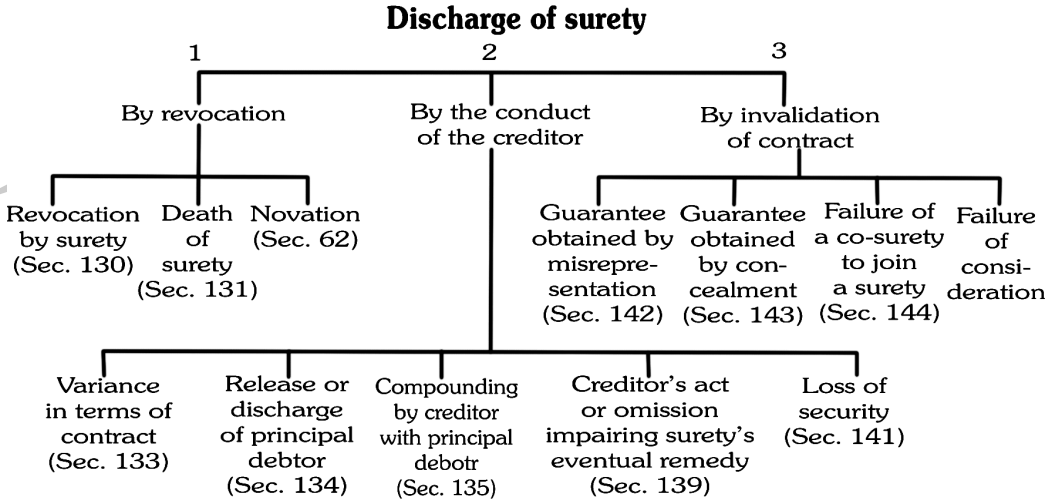
(e) The action or omission of creditor regarding the surety's impairing eventual remedy (Section 139).

(f) Loss of security (Section 141).

Q46. State the circumstances in which surety is discharged from his liability.

Ans :

A surety is said to be discharged when his liability comes to an end. The various modes of his discharge are shown in the chart given below :



1. Discharge of surety by revocation

(i) Revocation by surety by giving a notice: A specific guarantee cannot be revoked by the surety if the liability has already accrued. A continuing guarantee may at, any time, be revoked by the surety, as to future transactions, by notice to the creditor (Sec. 130). But the surety remains liable for transactions already entered into.

(ii) Revocation by death: The death of the surety operates, in the absence of any contract to the contrary, as a revocation of a continuing guarantee, so far as regards future transactions (Sec. 131).

The deceased surety's estate will not be liable for any transactions entered into between the creditor and the principal debtor after the death of the surety, even if the creditor has no notice of the death.

(iii) Revocation by novation (Sec. 62). Novation means substitution of a new contract of guarantee for an old one either between the same parties or between one of the old parties and a new party, the consideration for the new contract being the mutual discharge of the old contract. The original contract of guarantee in such a case comes to an end.

2. Discharge of surety by the conduct of the creditor

(i) Variance in terms of contract: A surety is liable for what he has undertaken in the contract. When the terms of the contract between the principal debtor and the creditor are varied without the surety's consent, the surety is discharged as to the transactions subsequent to the variance (Sec. 133). But where the guarantee is for the performance of several distinct duties or obligations or for the payment of distinct debts, a variance in the nature of one of them will not discharge the surety as to the rest. Where the guarantee is a continuing one, any such variance will discharge the surety as to the transactions subsequent to variance.

Examples:

(a) C agrees to appoint P as a salesman to sell goods at a yearly salary, upon S's becoming surety to C for P's duly accounting for money received by him as a salesman. Afterwards without S's knowledge or consent, C and P agree that P should be paid by a commission on the goods sold by him and not by a fixed salary. S is not liable for subsequent misconduct of P.

(b) C contracts to lend P Rs. 5,000 on 1st March. S guarantees repayment. C pays the amount to P on 1st January. S is discharged from his liability, as the terms of the contract have been varied.

(ii) Release or discharge of principal debtor: The surety is discharged by any contract between the creditor and the principal debtor, by which,the principal debtor is released. The surety is also discharged by any act or omission of the creditor, the legal consequence of which is discharge of the principal debtor (Sec. 134). But the surety is not discharged by operation of law.

Examples

(a) C employs P at one place on S standing surety for P. This employment is terminated. C employs P afresh at a different place, taking a security bond from another person. S is discharged.

(b) P contracts with C for a fixed price to build a house for C within a stipulated time, C supplying the necessary timber. S guarantees P's performance of the contract. C omits to supply the timber. S is discharged from his suretyship.

(iii) Compounding by creditor with principal debtor: A contract between the creditor and the principal debtor, by which the creditor makes a composition with, or promises to give time to, or not to sue, the principal debtor, discharges the surety, unless the surety assents to such contract (Sec. 135).

Example :

P purchased a motor car from C under a hire-purchase agreement on guarantee of S for the due performance of the agreement. C for valuable consideration gives P further time for payment of one of the instalments. Held, the giving of time to P discharged S from any

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further liability under the guarantee [Midland Motor Showrooms, Ltd. v. Newman, (1929) 2 K.B. 256],

But in the following cases a surety is not discharged :

(a) Where a contract to give time to the principal debtor is made by the creditor with a third person, and not with the principal debtor, the surety is not discharged (Sec. 136).

Example: *C,* the holder of an overdue bill of exchange drawn by S as surety for P and accepted by P, contracts with T to give time to P. S is not discharged.

(b) Mere forbearance on the part of the creditor to sue the principal debtor or to enforce any other remedy against him does-not, in the a' sence of any provision in the guarantee to the contrary, discharge the surety (Sec. 137).

(iv) Creditor's act or omission impairing surety's eventual remedy: If the creditor does any act which is inconsistent with the rights of the surety, or omits to do some act which his duty to the surety requires him to do, and the eventual remedy of the surety himself against the principal debtor is thereby impaired, the surety is discharged (Sec. 139).

Examples

(a) P contracts to build a ship for C for a given sum to be paid by instalments as the work reaches certain stages. S becomes surety to C for P's due performance of the contract. C, without the knowledge of S, prepays to C the last two instalments. S is discharged by this prepayment.

(b) S puts P as apprentice to C and gives a guarantee to C for P's fidelity. C promises on his part that he will, at least once a month, see P make up the cash. C omits to see this done as promised and P embezzles. S is not liable to C on his guarantee.

(c) S gives a guarantee for the fidelity of the manager of a bank. The manager indulges in some malpractices to which the directors wilfully shut their eyes. S stands discharged from the obligation by conduct of the directors.

Again if the creditor does some act which by implication releases the principal debtor from his liability, the surety is discharged.

Example: *C* let some goods to P under a hire-purchase agreement. S guaranteed the instalments payable under the agreement. On the, instalments being in arrear, C determined the contract and seized the goods, and then sued S on his guarantee. *Held,* as C had determined the contract, he could not recover from S.

(v) Loss of security: If the creditor loses or, without the consent of the surety, parts with any security given to him at the time of the contract of guarantee, the surety is discharged from liability to the extent of the value of security (Sec. 141). If there are two or more debts each secured by separate security, the surety for one of the debts is not discharged if the creditor loses or parts with the security or securities relating to other debts.

Examples:

(a) C advances to P, his tenant, Rs. 2,000 on the guarantee of S. C has also a further security for Rs. 2,000 by a pledge of P's furniture. C cancels the pledge. P becomes insolvent, and C sues S on his guarantee. S is discharged from liability to the amount of the value of the furniture.

(b) C, a creditor, whose advance to P is secured by a decree, receives also a guarantee for that advance from S. C afterwards takes P's goods in execution under the decree, and then, without the knowledge of S, withdraws the execution. S is discharged.

3. Discharge of surety by invalidation of contract

(1) Guarantee obtained by mis representa-tion. Any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid (Sec. 142).

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(2) Guarantee obtained by concealment. Any guarantee which the creditor has obtained by means of keeping silence as to material circumstances is invalid (Sec. 143).

Examples:

(a) C engages P as a clerk to collect money for him. P fails to account for some of his receipts and C, in consequence, calls upon him to furnish security for his duly accounting. S gives his guarantee for P's duly accounting. C does not acquaint S with P's previous conduct. P afterwards makes default. The guarantee is invalid.

(b) S guarantees to C payment for iron to be supplied by him to Pto the extent of 2,600 tons. P and C have privately agreed that P should pay C Rs. 630 per ton beyond the market price, such excess to be applied in liquidation of an old debt. This agreement is concealed from S. S is not liable as a surety.

(3) Guarantee on contract that creditor shall not act on it until a co-surety joins.

Where a person gives a guarantee upon a contract that a creditor shall not act upon it until another person has joined in it as co-surety, the guarantee is not valid if that other person does not join (Sec. 144). This means if the surety agrees to be only one of several co-sureties, he will not be liable unless the others execute the guarantee.

Example:

S2 signed a guarantee given to a bank which, on the face of it, was intended to be the joint and several guarantee of S_1, S_2 and S3 and S_4. S_4 did not sign and he afterwards died. The bank did not agree with S_1, S_2 and S_3 to dispense with S_4's signatures. Held, S_2 was not liable [National Provincial Bank of England v. Brackenbury, (1966) 22 T.L.R 727].

(4) Failure of consideration: Where in a contract of guarantee there-is a failure of consideration as between the creditor and the principal debtor, the surety is discharged.

2.13 CONTRACT OF AGENCY

Q47. Define agent and principal. Explain essential relationships of agent and principal.

Ans :

A person who has capacity to contract may enter into a contract with another

(i) either by himself, or

(ii) through another person. When he adopts the latter course, he is said to be acting through an 'agent'. An 'agent' is a person employed to do any act for another, or to represent another in dealings with third persons (Sec. 182).

The person for whom such act is done, or who is so represented is called the 'principal'. The function of an agent is to bring his principal into contractual relations with third persons.

This means that an agent is merely a connecting link between the principal and third parties.

Essentials of relationship of agency

There are two essentials of the relationship of agency :

1. **Agreement between the principal and the agent:** Agency depends on agreement but not necessarily on contract. As between the principal and third persons, any person may become an agent (Sec. 184). As such, even a, minor or a person of unsound mind may be an agent. The principal is, however, liable for the acts of such an agent.

   Again, no consideration is necessary to create an agency (Sec. 185). The fact that the principal has agreed to be represented by the agent is sufficient 'detriment' to the principal to support the contract of agency.

2. **Intention of the agent to act on behalf of the principal :** Whether a person does intend to act on behalf of another is a question of fact. Where a person does intend to act on behalf of another, agency may arise although the contract between the parties provides that there is no such relationship.

   P, A and T. Unless otherwise indicated,

   - P stands for principal,
   - A for agent and
   - T for third party.

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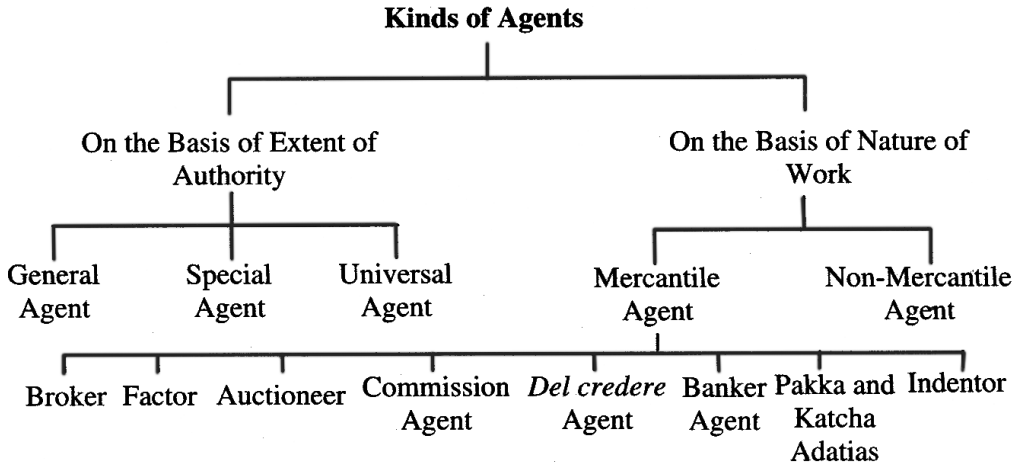
Q48. Explain the different types of agent.

Ans :

Agents are found under different names in the business world. These various kinds of agents can be classified "On the following basis:



1. On the Basis of Extent of Authority: On the basis of extent of authority, agents are of following types:

i) General Agent: A general agent is one who has authority to do all the acts (usually related to business or Trade) in the interest of his principal. A general agent has an implied authority to bind his principal by doing various acts necessary for carrying on the business of his principal.

ii) Special Agent: Special agents are those agents who are appointed for a particular task only. The agency in such cases lasts for a specific period of for a particular type of job or work.

For example, a property dealer appointed as an agent for a sale of a property is authorise his rights in regards to that property only and that too till its sale or revocation of agency by the principal.

iii) Universal Agent: Universal agent is practically a general agent with very extensive rights. A universal agent is a substitute of principal for all those transactions where in principal cannot participate. It is rare to find universal agents in business world today, however in personal life, a wife, son or a very close friend or relative could become a universal agent.

For example, when a person leaves his country for a long time, he may appoint his son as his universal agent to act on his behalf in his absence.

2. On the Basis of Nature of Work: On the basis of nature of work, agents are of following types:

i) Mercantile Agent: The term has been defined by Section 2(9) of The Sale of Goods Act as follows: "mercantile agent" means a mercantile agent having in the customary course of business as such agent authority either to sell goods, or to consign goods for the purposes of sale, or to buy goods, or to raise money on the security of goods.

Thus, "mercantile agent" is a wide term and comprises of many activities, all involving goods of the principal. There are several kinds of mercantile agents are as follows:

a) Broker: A broker is a mercantile agent who is employed to make contracts for the purchase and sale of goods for a commission called brokerage. A broker unlike a factor is not entrusted with the possession of the goods. Even the documents of title are not made over to him. His business is to find purchasers for those who wish to sell, and

sellers for those who wish to buy. His duty is to bring parties together to bargain for them in various matters. He makes contracts in the name of his principal and not in his own name. He is a mere negotiator or in senses a middleman.

b) Factor: A factor is a mercantile agent to whom possession of goods is given for sale. Generally speaking, he is a person to whom goods are consigned for sale by a merchant residing abroad, or at a distance from the point of sale. He usually sells the goods in his own name. He has ostensible authority to dispose of the goods or to do such things as are usual in the conduct of his business. He cannot barter or pledge the goods. He has a general lien for the balance of account as between himself and the principal.

c) Auctioneer: An auctioneers is a mercantile agent who is appointed to sell goods on behalf of the principal i.e., seller and for this function, an auctioneer get a reward in the form of a commission. An auctioneer conducts auction on behalf of a seller, as he is primarily the agent of the seller. However, after the sale, he also becomes of the purchaser who gives the highest bid. An auctioneer has no authority to self-the goods of his principal by private contract or contracts.

d) Commission Agent: A commission agent is a mercantile agent who in consideration of a certain commission engages to purchase or sell goods for his principal. He buys and sells goods in the market on the best terms and in his own name. His only interest in the transaction is his commission. All profits and losses accrue to the principal. A commission agent may or may not be in actual possession of the goods. His position is very similar to that of the broker.

e) Del Credere Agent: A *Del credere* agent is an agent who is in consideration of an extra remuneration guarantees to his principal the performance of the contract by the other party. This *Del Credere* commission is a higher reward than is usually given in the form of commission. He occupies the position of a guarantor as well as of an agent. But his liability is secondary and arises only on the insolvency or failure of the other party. A *Del Credere* agent is appointed generally when the principal deals with persons about whom he knows nothing. A *Del Credere* agent is the person who is not dropped out after establishing the link between principal and third person.

f) Banker Agent: Banker acts as an agent of the customer when he collects cheques or drafts or bills or buys or sells securities on behalf of his customers. He has a general lien in respect of the general balance of account. The relationship between a banker and his customer is really that of debtor and creditor. But there is a super-added obligation on the part of the banker to pay when called upon to do so by the draft or order (in the form of a cheque) of the customer. To this extent, a banker is the agent of his customer.

g) Pakka and Katcha Adatias: A Pakka Adatia is a person who guarantees the performance of the contract, not only to his principal but also to the broker on the other side. A peculiarity of Pakka adatia is that he can himself perform the contract instead of offering o the third party.

A 'katach adatia', on the other hand does not guarantee the performance of the contract. However, he guarantees the performance on the part of the principal. Thus, he will be responsible to the other broker or shroff who contracts on behalf of the other party, in case of non-performance by his principal.

h) Indentor: An indentor is commission agent, who, for a commission, procures a sale or a purchase on behalf of his principal, with a merchant in a foreign country. According to custom judicially recognised in Bombay, such as agent can charge commission at the rates mentioned in the indent.

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ii) **Non-Mercantile Agents:** There would be numerous types of agents performing non-mercantile duties for their principals. These may include:

a) Wife,

b) Estate agent,

c) Attorneys,

d) Insurance agents,

e) Legal duties by lawyers,

f) Financial duties by bankers,

g) Technical duties by engineers or architects,

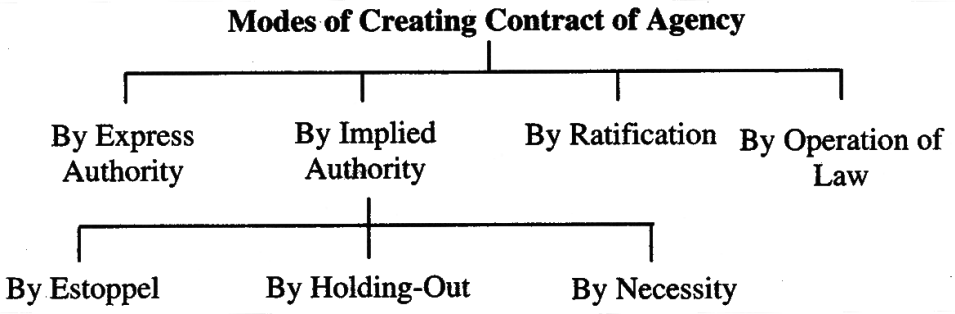
h) Solicitors,

i) Clearing and forwarding agents, etc.

Q49. Explain the various ways creation of agency.

Ans :

An agency can be created by adopting any of the modes are as follows:



1. **Agency by Express Authority [Sections 186 and 187]:** Normally, the authority given by a principal to his agent is an express authority which enables the agent to bind the principal by acts done within the scope of his authority. The agent may, in such a case, be appointed either by word-of-mouth or by an agreement in writing [Section 187], The usual form of a written contract of agency is the power of attorney (a formal instrument, by which one person empowers another to represent him, or act in his stead, for certain purposes) on a stamped paper.

2. **Agency by Implied Authority [Section 187]:** An agency which has to be understood from the conduct and behaviour of the parties is called implied agency. It is to be inferred from the circumstances of the case and things spoken or written, or the ordinary course of dealing may be accounted as circumstances of the case.

Implied Agency includes the following:

i) **Agency by Estoppel [Section 237]:** An agency is based on the principle of estoppel. The rule of estoppel can be stated as "Where a person, by his. words or conduct, has wilfully led another to believe that certain set of circumstances or facts exist, and that other person has acted on that belief, he is estopped from denying the truth of such statements. In other words, estoppel arises when one is precluded from denying the truth of anything which he has represented as a fact, although it is not a fact".

ii) **Agency by Holding-Out:** Such agency is based on the principle of holding-out which is a part of the principle of estoppel. The only distinction is that in this case some affirmative conduct by the Principal is necessary.

For example, a dealer in iron usually sent his employee to buy on credit and paid for it afterwards. On one occasion, he sent the employee with cash, who bought the iron on credit and pocketed the money. It was held that the iron merchant was liable to pay for the iron, as the previous dealings justified the seller in assuming that the Agent had authority to buy on credit. The employer's conduct in 'holding out' his employee to be his agent estops him from denying the existence of authority of the employee. However, if the Agent is held out as having only a limited authority to do acts, the Principal is not bound by an act outside the authority.

iii) **Agency by Necessity:** In certain circumstances, the law authorises a person to act as agent for another without any regard to the consent of the Principal.

For example, a wife deserted by her husband and forced to live separate from him, can pledge her husband's credit to buy all the necessaries of life according to the position of the husband even against the wish of the husband and the husband can be held liable for the same. In other cases where in order to save the property of another, one has to act before the instructions of the owner can be received, he is, by necessity, authorised to act as Agent and the consent of the owner as Principal is assumed in law. An Agent exceeds his authority, bona fide, in an emergency or the carrier of the goods acting as bailee and doing anything to protect or preserve the goods in an emergency, although there is no express authority, are the examples of implied agency by necessity.

3. **Agency by Ratification:** Ratification may be expressed or may be implied in the conduct of the person on whose behalf the acts are done. A person may act on behalf of another without his knowledge or consent. **For example,** A may act as P's agent though he has no prior authority from P. In such case; P may subsequently either accept the act of A or reject it. If he accepts the act, done without his consent; he is said to have ratified that act and it places the parties in exactly the same position in which they would have been if A had P's authority at the time he made the contract.

4. **Agency by Operation of Law:** Sometimes an agency arises by operation of law. **For example,** when a company is formed, its promoters are its agents by operation of law.

Q50. Explain the rights and duties of an agent.

Ans : **(Nov.-21)**

Rights of an Agent

The rights of an agent against the principal are as follows,

1. Right of Retainer

According to the section 217, an agent has a right to retain any amount received on behalf of the principal in the business of agency. An agent can demand for the money which is due to himself as remuneration and advances made or expenses incurred by him while performing a business.

2. Right to Receive Remuneration

An agent is liable to receive remuneration as per the custom of trade in which he has been employed. In the absence of any special contract the payment of agent is done after the completion of act. The completion of contract rely on the performance of agent.

3. Right of Lien

The lien of agent is mainly particular lien. The agent has the right to retain goods, papers and property (which are either movable or immovable) that have been received from the principal till the payment of commission, disbursements and services. It is liable only to the goods or property for which the right can be claimed. But through a

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special contract, an agent can have a general lien which extends to all the claims emerging out of the agency business.

4. Right of Indemnification

It is the right of an agent to indemnify against the outcomes of all the lawful acts performed by him in response of the authority granted to him. The right of agent to indemnify is applicable only to the lawful acts known to the agent.

5. Right of Compensation

The principal must compensate his agent when he suffers injuries by negligence of principal or when the principal does not have adequate skills.

Example

'AT employ ' T for the construction of a house, but due to some consequences ' 7'gets injured in the process of construction. In such case 'AT must compensate 'P.

6. Right of Stoppage in Transit

This right is assigned to the agent in the following two cases,

(i) When the agent has purchased goods for his principal by sustaining a personal liability then in such case the agent has the right of stoppage in transit against the principal with regard to the payment of money which he has paid or is liable to pay. This right of agent is similar to the right of unpaid seller.

(ii) When an agent is personally considered as liable to the principal for the price of good sold, then in such a case the agent is in the position of an unpaid seller to the buyer and may stop the good in transit on the insolvency of the buyer.

Duties of Agents

Based on the nature of agency the rights and duties of an agent differ. The duties of an agent are as follows,

1. Duty to Act According to the Directions Given by the Principal

An agent must act as per the directions given by the principal but if an agent does not receives any direction then he can perform as per the customs existing in performing the business of similar form at the place where he undertakes such business. It is the duty of an agent to compensate the loss caused to the principal by him and if any sought of profit is earned then he must account it. The principal has a right to terminate the agency if the agent is disobedient.

Example

'X' is a broker who is engaged in business which follows the custom of not selling the goods on credit but 'X' sells goods of ' T on credit to Z whose credits are very high. Before payment 'Z' becomes insolvent in such a case 'X' must compensate the loss to 'P.

2. Duty to Act With Reasonable Care, Skill and Diligence(Section 212)

An agent is liable to perform the agency business with competent skills which are possessed by the individuals who are employed in the same form of business. It is the duty of an agent to perform the acts, with adequate diligence. The agent must compensate the principal if he is held responsible for the direct consequences of negligence, want of skill or misconduct. But an agent is not accountable to his principal for the loss or damage which indirectly occur due to the negligence, want of skill or misconduct.

Example

'A" an agent of ' *T* holding the authority of selling goods on credit sells goods to 'Z[5] on credit, without making proper and usual enquiry regarding the solvency of 'Z'. 'Z' at the time of such sale is insolvent. In such case, 'AT must compensate '7'with regard to any loss there by incurred.

3. Duty to Render Adequate Accounts to His Principal (Section 213)

It is the duty of an agent to act on the demand of the principal and render adequate accounts to his principal.

4. Duty to Communicate With the Principal in case of Difficulty (Section 214)

An agent is liable to use adequate diligence while interacting with his principal and while receiving his instruction.

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5. Duty to Not to Deal on his Own Account

In the agency business, an agent is not liable to deal on his own. It is the duty of agent to obtain the consent of principal and inform him about all the material circumstances which he is aware of.

When an agent acts on his own, without informing his principal about the dealings in the business of agency then the principal can,

(i) Terminate the transaction, if the principal expresses that the material fact acquired by the agent have been fraudulently acquired from him or the dealings of the agent have caused damage to him.

(ii) Claim profit from agent which is earned by him from the transaction.

6. Duty to Pay the Sum Received for the Principal

It is the duty of an agent to pay back all the money received on behalf of his principal. An agent can take the advances made or expenses incurred by him while performing business and may even demand for remuneration for acting as an agent.

7. Duty to Protect and Preserve the Interests of Principal in case of his Death

An agent is liable to take all the possible measures for the protection and preservation of the interests entrusted to him when the agency has terminated by the principal's death or if the principal becomes lunatic. Agent acts as a representative of principal.

8. Duty to Not to Use the Information Acquired in the Course of Agency Against the Principal

An agent is liable to compensate the principal if he misuses the information against the principal's interest and if he suffers any losses incurred due to him. It is the responsibility of the agent to disclose necessary information which he acquires from the business of agency to his principal.

9. Duty to Not to Delegate Authority

It is the duty of the agent not to delegate his own authority to other person.

Q51. Explain the rights and duties of principal.

Ans :

The Rights and duties of principal are discussed below.

Rights of Principal

Following are the rights of principal,

1. Right to Withstand Against the Claim Made by an Agent to Indemnify the Liability Incurred by Him

If the principal can prove that agent has taken up the transaction not as an agent but as the principal then the principal can reject the claim made by an agent against the principal to indemnify the liability incurred by him in that transaction.

2. Right to Recover Secret Profits Earned by Agent During Agency

If the principal comes to know about the secret profits earned by agent from agency, then the principal gets the right to recover that profit amount from the agent. Apart from this, the agent will also have the right to claim for the commission on such secret profits.

3. Right to Get Compensated for the Damages

The damages incurred by the principal because of the negligence showed by the agent towards the instructions given by principal or in the absence of required skills, care or dedication in agent or disobedience of the rules of trade by the agent must be compensated by the agent. The principal has the right to demand compensation for all such damages).

Duties of Principal

The various duties of principal towards an agent are as follows.

1. Duty to Indemnify the Agent from the Outcomes of Acts Performed in Good Faith

If a person has appointed another person (agent) to perform one activity and the agent

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performs the assigneed activity in good faith then it becomes the duty of the employer or principal to protect the agent from the outcomes of that activity. Even though it causes harm to the rights of third party. But if a person appoints another person or agerr to perform an illegal activity and that person performs that activity then in this situation the employer is not liable tc protect the person from the outcomes of that activity as the act taken up by person is illegal.

2. Duty to Pay Commission or Other Remuneration to the Agent as per the Agreement

It is the duty of the principal to pay commis-sion or other remuneration to agent as agreed while appointing the agent.

3. Duty to Indemnify Agent from the Outcomes of Legal Acts

It is the duty of the principal to indemnify the agent from the outcomes of all the legal activities undertaken by the agent within the scope of his authority.

4. Duty to Indemnify Agent for the Harm Caused Due to the Negligence of Principal

If the negligence of the principal causes any injury/ harm to agent then the principal becomes liable to indemnify agent for such injury/harm.

Q52. Describe the various modes of termination of agency.

Ans :

Modes of Termination of Agency or Agents

The two modes available for termination of agency are,

I. Termination by the act of the parties and

II. Termination by the operation of law.

I. Termination by the Act of the Parties

Revocation by principal, revocation by agent and mutual agreement between principal and agent are the three different ways in which the act of the parties are terminated. A brief description about each of these are given below,

1. **Termination through "Revocation by Principal":** The principal has a right to revoke the agent's authority at any time but before the agent has used his authority. In order to bind the principal till the agency is revokable. In case, if the agent has started his act, then principal cannot revoke the agents authority except when the agent claimed for the breach of contract. If agency is for a continuous period then the notice of termination has to be given to the agent as well as to the third party.

2. **Termination Through "Revocation by Agent":** Agency can also be terminated through revocation by agent but a reasonable notice has to be given to the principal for such termination. If the agency is for continuous period and the agent or principal terminated the agency before the completion of that period then the respective party is responsible to compensate for that pre-termination. Revocation by principal or agent can be an implied revocation or an expressed revocation.

Example

A appointed B to give his house on rent. Later on A rented his house by himself. Here, there is an implied revocation of B's authority by A.

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3. Termination by Mutual Agreement Between Principal and Agent

An agency can be terminated by the mutual agreement between principal and agent at any time.

II. Termination by the Operation of Law

The following are the different ways in which an agency is terminated by the operation of law,

1. Death or Insanity of Principal or Agent

An agency gets terminated automatically when the agent or principal dies or becomes insane.

2. Destruction of Subject Matter

An agency comes to an end when the subject matter for the purpose of which it is created is destroyed due to some uncertain causes. For example, an agency is created to let a house. But if that house gets destroyed due to fire the agency comes to an end.

3. Dissolution of a Company

An agency comes to an end when the company with which the agency is created is dissolved.

4. Performance of the Contract

The contract of agency comes to an end with the performance of the contract. If the agency is created for some purpose and that purpose is achieved then the agency gets terminated automatically. An agency can also be terminated when the purpose of agency is impossible to achieve.

5. Insolvency of Principal or Agent

According to Section 201, the insolvency of the principal leads to the termination of agency. Termination of agency by insolvency by agent is not specified in section 201. The acceptance of the insolvency of agent can also terminate the agency.

6. Termination of Authority of Sub-agents

According to Section 210, the authority of sub agents comes to an end with the termination of agent's authority.

7. Principal or Agent Becoming an Alien Enemy

If the principal and agent belongs to two different countries and a war takes place between these countries then they will become alien enemies. In this situation, the contract of agency comes to an end.

8. Expiry of Time Period

If an agent is employed by principal for a specific period of time than that contract of agency gets terminated automatically after the completion of that specific period of time (irrespective of whether the purpose of the contract is accomplished or not).

2.14 SALE OF GOODS ACT -1930

2.14.1 General Principles

Q53. Explain the nature of contract of sale. Discuss its features.

(OR)

Explain the characteristics of contract of sale.

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Ans : **(Nov.-21, Jan.-20)**

Introduction to Contract of Sale of Goods

Laws relating to sale of goods are contained in The Sale of Goods Act, 1930.

The Sale of Goods Act. 1930 deals with the law relating to sale of goods in India. The term 'Goods' means every kind of movable property, other than Money and Actionable Claims.

Definition of Sale of Goods

According to Sec.4 of Sale of Goods Act, "A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price". A contract of sale may be absolute or conditional.

In an absolute sale, the property in the goods does not pass or conditional. In am absolute sale, the property in the goods does not pass to the buyer absolutely until certain condition is fulfilled.

Contract of sale is a general term and comprises of

a) Sale

b) Agreement to sell.

Therefore 'Sale' is nothing but an absolute sale. Wherever the transfer of the property is to take place at future time or subject to some condition to be fulfilled, the contract is an agreement to sell. An agreement to sell is a conditional sale and an agreement to sell becomes a sale when the time elapses or the condition subject to which the property in goods is to be transferred are fulfilled.

Features of Contract of Sale of Goods

The following essential elements are necessary for a contract of sale :

1. Two Parties

There must be two distinct parties, i.e., a buyer and a seller, to effect a contract of sale and they must be competent to contract. 'Buyer' means a person who buys or agrees to buy goods [Sec. 2 (1)]. 'Seller' means a person who sells or agrees to sell goods [Sec. 2 (13)]. These two terms are complimentary.

2. Goods

There must be some goods the property in which is or is to be transferred from the seller to the buyer. The goods which form the subject-matter of the contract of sale must be movable. Transfer of immovable property is not regulated by the Sale of Goods Act

3. Price

The consideration for the contract of sale, called price, must be money. When goods are exchanged for goods, it is not a sale but a barter. There is, however, nothing to prevent the consideration from being partly in money and partly in goods.

4. Transfer of general property

Transfer of general property is one of the essential elements of contract of sale. Contact of sale should be for the transfer of general property in goods and not in the special property in goods. The actual owner of the goods will have general property in goods.

5. Essential elements of a valid contract

All the essential elements of a valid contract must be present in the contract of sale.

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Q54. What are the Differences between sale and agreement to sell.

Ans **(Nov.-21)**

The difference between sale and agreement to sell are as follows,

	Basis for	Sale	Agreement to Sell
1.	**Nature**	The contract of sale is executed in nature	Agreement to sale is an executory contract in nature.
2.	**Transfer of property**	The property in the goods transfers gets passed to the buyer immediately and the seller is no more considered as the owner of the goods sold.	The property in the goods gets transferred to the buyer in the future course of time or after the fulfillment of certain condition.
3.	**Types of Goods**	Sale mainly takes place for existing and specific goods only.	Agreement to sale is mainly for future and contingent goods and sometimes even for undetermined existing goods.
4.	**Risk of Loss**	When the goods are damaged in the process of sale the loss must be incurred by the buyer even if the goods are in the goods are in the possession of the seller.	In the "agreement to sale" the loss for the damages is incurred by the seller even if the goods are under the possession of the buyer.
5.	**Consequences of breach**	Seller can sue the buyer for failure to pay the price of the goods or for the breach of contract by the buyer, even though the goods are in possession of seller.	In an agreement to sale, seller can sue buyer if there is a breach of contract by the buyer or for the damages to the goods, incurred but not for the price of the goods eventhough the goods are in the possession of the buyer.
6.	**Seller's Right to re-sale**	Seller has no right to re-sale the goods and with this act of seller the immediate buyer cannot claim the title of the goods	In the agreement to sale, the original buyer can merely sue seller for the damages and the buyer who takes the goods for possession gets only the goods title.
7.	**General and Particulars Property**	A sale is considered as a contract with additional conveyance and results in 'jus in rem' which means right against the whole world. A seller can enjoy the possession of goods and can use them as their wish.	An agreement to sale is just a contract which creates 'jus in personam' which means right against a particular individual. Seller can sue only for the damages during the breach of contract.
8.	**Insolvency of Buyer**	If the buyer becomes insolvent in a sale the official assignee/officer of receiver can only claim for the rateable dividend of the goods price and even claim for the delivery of goods from the seller	On the insolvency of buyer, the seller can refuse the delivery goods until the full payment for the goods is being made.
9.	**Insolvency of the Seller**	When seller becomes insolvent, the buyer who is also the owner can claim the receiver to deliver the goods from the official receiver or assigner.	In the agreement to sale the buyer is not liable to claim the seller for goods as the property has not been fully transferred to the buyer. Seller can only claim for the rate-ble dividends.

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2.15 Conditions and Warranties

Q55. Define the term

(a) Conditions

(b) Warranties

Ans : **(Jan.-20)**

(a) Conditions

Meaning of Condition

When a contract of sale of goods is made between a seller and buyer, they agree upon certain terms and conditions relating to the subject matter of the contract. They are known as "Stipulations" as per law. Some of them will be very important and others not so important. The most important stipulations are called **"conditions"** and less important stipulations are called **"warranties".** The seller should satisfy all the conditions without fail otherwise the buyer can repudiate (reject) the contract. But if the seller fails to satisfy the warranties, the buyer cannot repudiate the contract.

The seller should be allowed to perform the contract paying reasonable damages for the breach of warranty. A breach of condition may be viewed liberally as a breach of warranty but a breach of warranty can not be seriously viewed as a breach of condition.

Definition of Condition

'A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated'.

If a stipulation is essential to the main purpose of the contract it is called a condition.

(b) Warranties

Definition of Warranty

If the stipulation though not essential to the main purpose of the contract and is collateral to the main purpose of the contract then it is known as 'warranty'. Therefore warranty is a stipulation which is collateral to the main purpose of the contract.

In case of breach of condition, the aggrieved party can terminate the contract and in case of breach of warranty, the aggrieved party cannot terminate the contract but can claim damages. A breach of condition can be treated as a breach of warranty. But a breach of warranty can not be treated as a breach of condition.

In a contract of sale of goods conditions and warranties may be Express or Implied. Express conditions and warranties are those which are expressly, provided in the contract. Implied conditions and warranties are those which the law implies into the contract unless the parties stipulate the contrary.

Q56. Explain briefly about various implied conditions in contact of sale.

Ans :

1. Conditions as to Title

There is an implied condition on the part of the seller, that in the case of a sale, the seller has a right to sell goods and in the case of agreement to sell, he will have right to sell the goods at a later time.

Example: 'A' purchased a car from 'B' who does not have a title. After six months, C, the true owner of the car demanded it back from 'A'. 'A' had to return it to its true owner.

2. Sale of Goods by Description

When goods are sold by description, there is an implied condition that the goods shall be similar to those described.

Example: There was an auction sale of a set of napkins and table clothes described a 'dating from the seventeenth century'. X who was a dealer in antiques saw the set and purchased it. He subsequently found it to be an eighteenth century set. It was held that X could reject it.

3. Sale by Sample as Well as by Description

If the sale is by sample as well as by description, it is not sufficient that the bulk of the goods shall correspond with the sample, if the goods do not also correspond with the description. In other words, there is an implied conditions that the goods shall correspond both with the sample as well as the description.

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Example: A bartender was sold liquor by showing a sample. The sample's color was darkened black by using hair dye. It was held that, contract was voidable.

4. Conditions as to Quality and Fitness

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.

Example: X asked a car dealer to sell him a suitable car for touring purposes. The dealer supplied him the 'Buggati car', which was not suitable for the purpose. The dealer is liable for the breach of contract as to fitness because he was informed about the purpose of purchasing the car.

5. Conditions as to Merchantability

There is always an implied condition in a contract of sale that the goods purchased should be of a merchantable quality. In order to apply the implied condition as to merchantability the following requirements must be satisfied.

1. The goods should have been bought by description.
2. From a seller who deals in the goods of that description.

Example: X bought a bottle of wine. While opening its cork in normal manner, the bottle broke of and injured X's hand, X is entitled to claim damages because the bottle was not of merchantable quality.

6. Conditions as to Wholesomeness

In case of eatables and other food stuff materials, there is an implied condition as to wholesomeness. It means the goods should be fit for human consumption otherwise, the goods can not only be returned but also damages can be claimed.

Example: A bought milk from a dairy containing malaria germ and got ill. He can claim monetary compensation from the dairy to meet the medical expenses to recover from illness as well as the price.

7. Sale by Sample

In a contract of sale by sample there is a term in the contract, express or implied to sell by sample. The seller agrees or guarantees that the bulk of the goods shall be equal to the sample. The seller undertakes an obligation that the goods being sold are equal to the sample.

But the goods must be free any defect which makes them un-merchantable and which are not apparent on reasonable examination of the sample.

Example: X bought certain quantity of worst coating equal to sample. But due to latent defect, the cloth was found to be unfit for making coats. The buyer was entitled to reject the goods because. The defect was not apparent on reasonable examination of the sample.

Q57. Explain briefly about various implied warranties in contract of sale.

Ans :

A warranty is a stipulation which is collateral to the main purpose of the contract.

1. Implied Warranty of Quiet Possession

In a contract of sale there is an implied warranty that the buyer shall have and enjoy the quiet possession of goods. The implied warranty of quiet possession is a warranty against disturbance of possession.

It is an implied assurance to the buyer that he shall have the quiet possession and enjoyment of the gods sold to him without disturbances by the seller or any other person.

2. Implied Warranty of Freedom from Encumbrances

There is an implied warranty on the part of the seller that the goods are free from any charge or encumbrances. This warranty will not apply where such encumbrances are declared to the buyer when the contract is made or he has noticed them.

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3. Implied Warranty as to Quality or Fitness by Usage of Trade

A warranty as to fitness for a particular purpose may be annexed to a contract of sale by the usage of trade.

4. Warranty to Disclose the Dangerous Nature of Goods

Where a person sells goods, knowing that the goods are inherently dangerous or they are likely to be dangerous to the buyer and that if the buyer is ignorant of the probable danger, he must warm the buyer. Otherwise he is liable to pay damages.

Q58. Compare and contrast between conditions and warranties.

Ans : **(Aug.-21)**

Basis	Conditions	Warranties
1. Meaning	Condition is a stipulation as to the main purpose of the contract U/S 12(2).	Warranty is a stipulation collateral to the main purpose of the contract U/S 12(3).
2. Consequences of breach	Breach of condition can repudiate the contract.	Breach of warranty does not repudiate the contract, at the most a claim for damages can be made.
3. Scope	Condition is a wider term.	Warranty is smaller is its scope
4. Interchange-ability	U/S 13(1) a buyer can opt to treat a condition as a warranty and have a recourse to a smaller remedy of claiming compensation only.	A warranty can never be treated as a condition.
5. Example	A seller contracted to supply Basmati XI quality rice to buyer at `100 per kg. He however supplied an inferior quality rice at ` 80 per kg. The buyer may either repudiate the contract or accept it and claim compensation at ` 20 per kg.	A seller contracted to supply Basmati XI quality rice to buyer at ` 100 per kg. He supplied the agreed quality at agreed price but he delivered them late by 15 days. Held it amounted to breach of warranty and only a claim for damages could be made.
6. Compulsory Interchange-ability	U/S 13(2) where the contract of sale is not severable (divisible) and the buyer has accepted part goods, the breach of condition is to be compulsorily treated as breach of warranty.	No such compulsion exists for a warranty to be treated as a condition.

Q59. What are the situations where conditions treated as warranties.

Ans :

1. When the buyer waives off his right

U/S **13(1)** the buyer may waive his right in the following two ways.

(i) Where **he completely excuses the breach** and accepts the goods as they are and does not intend to seek damages also. This is in other words called as **affirming the contract.**

(ii) Where **he waives his right to reject the goods and repudiate the contract** and only seeks to claim damages for breach by seller.

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Example: Where seller supplied inferior quality products but buyer did not repudiate the contract and only claimed damages.

(iii) Buyer may waive off his right to repudiate the contract **by his conduct also.** Say where he does not repudiate the contract nor does he affirm the contract, but he re-sells the goods or pledges them. In such cases, **he impliedly waives off his right.**

2. When the buyer accepts goods non-severable

U/S (13)2 where the contract of sale is not severable (divisible) and the buyer accepts some part goods, the breach of any condition by seller has to be treated like breach of warranty. Hence, the buyer cannot repudiate the contract and can only claim damages.

3. Impossibility of Performance

U/S **13(3)** no condition or warranty needs to be fulfilled, when the performance is excused by law by the reason of impossibility of performance. Where the performance of contract is excused by impossibility, the buyer cannot hold the seller liable for the non-performance of condition or warranty by the seller. Infact, the buyer is deemed to have off the condition.

2.16 PERFORMANCE OF CONTRACT OF SALE

Q60. What do you mean by performance of contract of sale?

Ans :

Performance of a contract of sale means as regards the seller, delivery of the goods to the buyer, and as regards the buyer, acceptance of the delivery of the goods and payment for them, in accordance with the terms of the contract of sale (Sec. 31).

A contract of sale always involves reciprocal promises, the seller promising to deliver the goods and the buyer promising to accept and pay for them. In the absence of a contract to the contrary they are to be performed simultaneously and each party should be ready and willing to perform his promise before he can call upon the other to perform his promise.

If the contract contains any special terms as to delivery and acceptance, these must be complied with. If there are no terms in the contract to this effect, delivery of the goods and payment of the price are concurrent conditions, that is, both these must take place at the same time as in, for instance, a cash sale over a shop counter (Sec. 32).

Q61. Define delivery ? Explain different types of delivery.

Ans :

Delivery means voluntary transfer of possession of goods from one person to another [Sec. 2 (2)].

Delivery of goods sold may be made by doing anything which the parties agree shall be treated as delivery or which has the effect of putting the goods in the possession of the buyer or his agent (Sec. 33).

Delivery of goods may be actual, symbolic, or. constructive.

1. Actual delivery

Where the goods are handed over by the seller to the buyer or his duly authorised agent, the delivery is said to be actual. Delivery of goods may also be made by doing anything which has the effect of putting the goods in the possession of the buyer (Sec. 33).

2. Symbolic delivery

Where goods are ponderous or bulky and incapable of actual delivery, e.g., haystack in a meadow, the delivery may be symbolic, Handing over of the key of a warehouse to the buyer is symbolic delivery of the goods to the buyer and is as effective as actual, delivery, even though there is no change in the possession of the goods.

3. Constructive delivery or delivery by attornment

Where a third person ***(e.g.,*** a bailee) who is in possession of the goods of the seller at the time of the sale acknowledges to the buyer

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that he holds the goods on his behalf, there takes place a delivery by attornment or constructive delivery (Sec. 36 (3)]. This may happen in the following cases:

(a) Where the seller in possession of the goods agrees to hold them on behalf of the buyer.

(b) Where the buyer is in possession of the goods and the seller agrees to the buyers holding the goods as owner.

(c) Where a third person in possession of the goods acknowledges to the buyer that he holds them on his behalf.

Example

A sells to B 10 bags of wheat lying in C's godown. A gives an order to C, asking him to transfer the goods to B. C assents to such order and transfers the goods in his books to B. This is a delivery by attornment.

Q62. Explain rules associated with delivery of goods

Ans :

1. **Mode of delivery (Sec. 33):** Delivery should have the effect of putting the goods in the possession of the buyer or his duly authorised agent. Delivery of goods may be (1) actual, (2) constructive, or (3) symbolic.

2. **Delivery and payment concurrent conditions:** Delivery of the goods and payment of the price must be according to the terms of the contract. Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say, the seller shall be ready and willing to give possession of the goods to the buyer in exchange for the price and the buyer shall be ready and willing to pay the price in exchange for possession of the goods (Sec. 32).

3. **Effect of part delivery:** A delivery of part of the goods in progress of the delivery of the whole, has the same effect, for the purpose of passing the property in such goods, as a delivery of the whole. But a delivery of the goods, with an intention of severing it from the whole, does not operate as delivery of the remainder (Sec. 34).

Examples

(a) S directed the wharfinger to deliver his goods lying at the wharf to B to whom these goods had been sold. B weighed the goods and took away a part of them. Held the delivery of a part of the goods had the same effect as a delivery of the whole.

(b) S sold five bales of certain goods to B. B received one bale, paid for it and refused to accept the other four. Held, this amounted to part delivery .

4. **Buyer to apply for delivery:** Apart from any express contract, the seller of goods is not bound to deliver them until the buyer applies for delivery (Sec. 35). Where the goods are subsequently acquired by the seller, he should intimate this to the buyer and the buyer should then apply for delivery. Unless otherwise agreed, the buyer has no cause of action against the seller if he does not apply for delivery.

5. **Place of delivery:** Where the place at which delivery of the goods is to take place is specified in the contract, the goods must be delivered at that place during business hours on a working day. Where there is no specific agreement as to place, the goods sold are to be delivered at the place at which they are at the time of sale. As regards the goods agreed to be sold, they are to be delivered at the place at which they are at the time of agreement to sell, or, if not then in existence, at the place at which they are manufactured or produced [Sec. 36(1)].

6. **Time of delivery:** Where under the contract of sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time [Sec. 36 (2)]. But where the contract uses words like 'directly', 'without loss of time', or 'forthwith', quick and immediate delivery is contemplated. Demand or tender of delivery should be made at a reasonable hour. What is a reasonable hour is a question of fact [Sec. 36 (4)].

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7. **Goods in possession of a third party:** When at the time of the sale the goods are with a third party, there is no delivery by the seller to the buyer until such third party acknowledges to the buyer that he holds them on his behalf. But where the goods have been sold by the issue or transfer of any document of title to goods,

   Example a railway receipt or a bill of lading, such third party's consent is not required [Sec. 36 (3)].

8. **Cost of delivery:** Unless otherwise agreed, all expenses of and incidental to making of delivery are borne by the seller, but all expenses of and incidental to obtaining of delivery are borne by the buyer [Sec. 36 (5)].

9. **Delivery of wrong quantity (Sec. 37):** The delivery of the quantity of gooc's contracted for should be strictly according to the terms of the contract. A defective delivery entitles the buyer to reject the goods. The three different contingencies which may arise in case of a defective delivery, i.e., delivery of a wrong quantity, are:

   (a) Delivery of goods less than contracted for: Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject the goods. If he accepts them, he shall pay for them at the contract rate [Sec. 37 (1)].

   Example:

   A sells to B 2,000 gross of 200 yards reels of swing cotton. After taking delivery B finds that the length of the cotton per reel is less than 200 yards, the average being shortage of about 6 per cent. B may reject the goods. If he waives the right of rejection, he is liable to pay the price of the goods at the contract rate [Beck, etc. v. Synzmanoski, (1924) A.C. 43].)

   (b) Delivery of goods in excess of the quantity contracted for: Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may (i) accept the whole; or (ii) reject the whole ; or (iii) accept the quantity he ordered and reject the rest. If the buyer accepts the whole of the goods so delivered, he must pay for them at the contract rate [Sec. 37 (2)].

   Examples: (a) A places an order with B to supply 25 bottles of orange syrup. B sends 30. A is entitled to reject the whole, or he may accept 25 and reject the rest. If he accepts all the 30, he must pay for them at the contract rate.

   (c) Delivery of goods contracted for mixed with other goods : Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description, the buyer may accept the goods which are in accordance with the contract and reject the rest, or may reject the whole [Sec. 37 (3)].

   Examples: A contracts with B to buy 100 tons of cane sugar. A delivers to B 75 tons of cane sugar and 25 tons of beet sugar. A may either (i) accept 75 tons of cane sugar which is in accordance with the contract, and reject 25 tons of beet sugar which is of a different description, or (ii) reject the whole sugar.

10. **Instalment deliveries (Sec. 38):** Unless otherwise agreed, the seller is not entitled to deliver the goods by instalments and if he does so, the buyer is not bound to accept the goods [Sec. 38 (1)]. The parties may, however, agree that the goods are to be or may be delivered by instalments.

    Example: X bought from Y 25 tons of pepper October-November shipment. Y shipped 20 tons in November and 5 tons in December. Held, the case was governed by Sec. 38 under which the buyer of goods is not bound to accept delivery thereof by instalments, unless otherwise agreed. X could, therefore, reject the entire lot'Renter v. Sala, (1879) 48 L.J. 492).

11. **Delivery to a carrier or wharfinger:** (Sec. 39). Where, in pursuance of a contract of sale, goods are delivered to a carrier for the purpose of transmission to the buyer or to a wharfinger for safe custody, delivery of goods to them is prima facie deemed to be a delivery of the goods to the buyer (Sc. 39 (1)]. In such a case, the seller must enter into

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a reasonable contract with the carrier or wharfinger on behalf of the buyer for the safe transmission or custody of the goods. If the seller omits to do so and if the goods are destroyed, the buyer may decline to treat the delivery to the carrier or wharfinger as a delivery to himself, or may hold the seller responsible in damaged (Sec. 39 (2)]. Unless otherwise agreed, where goods are sent by the seller to the buyer by a route involving sea transit, the seller must inform the buyer in time to get the goods insured otherwise the goods will be at the seller's risk during such sea transit [Sec. 39 (3)].

Q63. Explain the rights and duties of buyer.

Ans :

Right of the buyer

1. **Right to have delivery as per contract** (Secs. 31 and 32). The first right of the buyer is to have delivery of the goods as per contract.
2. **Right to reject the goods (Sec. 37):** If the seller sends to the buyer a larger or smaller quantity of goods than he ordered, the buyer may
   (a) reject the whole,
   (b) accept the whole, or
   (c) accept the quantity he ordered and reject the rest.
3. **Right to repudiate:** (Sec. 38 (1)]. Unless otherwise agreed, the buyer of goods has a right not to accept delivery thereof by instalments. This has already been explained in detail.
4. **Right to notice of insurance [Sec. 39 (3)]:** Unless otherwise agreed, where goods are sent by the seller to the buyer by a sea route, the buyer has a right to be informed by the seller so that he may get the goods insured.
5. **Right to examine (Sec. 41):** The buyer has a right to examine the goods which he has not previously examined before he accepts them [Sec. 41 (1)]. The seller is bound to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract [Sec. 41 (2)].
6. **Rights against the seller for breach of contract.**
   (1) **Suit for damages (Sec. 57):** Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery. The measure of damages is, prima facie, the difference between the contract price and the market price at the time when they ought to have been delivered, or if no time was fixed at the time of refusal to deliver.
   (2) **Suit for price:** If the buyer has paid the price and the goods are not delivered, he can recover the amount paid.
   (3) **Suit for specific performance (Sec. 58):** The buyer may sue the seller for specific performance of the contract to sell. If the goods are specific or ascertained, the Court may, if it thinks fit, order for the specific performance of the contract.

Duties of the buyer

1. **Duty to accept the goods and pay for them in exchange for possession** (Secs. 31 and 32). It is the duty of the buyer to accept the goods and pay for them, in accordance with the terms of the contract of sale (Sec. 31). Further, the buyer must be ready and willing to pay the price in exchange for possession of the goods (Sec. 32).
2. **Duty to apply for delivery (Sec. 35):** Apart from any express contract, it is the duty of the buyer to apply for delivery.
3. **Duty to demand delivery at a reasonable hour [Sec. 36 (4)]:** It is the duty of the buyer to demand delivery at a reasonable hour.
4. **Duty to accept instalment delivery and pay for it [Sec. 38 (2)]:** Refer to point 10 of "Rules as to delivery".
5. **Duty to take risk of deterioration in the course of transit (Sec. 40):** Where the seller of goods agrees to deliver them at his own risk at a place other than where they are sold, the buyer shall take any risk of deterioration in the goods necessarily incident to the course of transit. The buyer and seller

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may, however, agree to the contrary in this regard.

Example: P sold to D a certain quantity of hoop iron. It was sent by canal at the request of the buyer, it was rusted before it reached destination. The rusting, however, was no more than what was necessarily incident to the course of transit. Held, the buyer was bound to accept the goods.

6. **Duty to intimate the seller where he rejects the goods (Sec. 43):** Unless otherwise agreed, it is the duty of the buyer to inform the seller in case he refuses to accept the goods.
7. **Duty to take delivery (Sec. 44):** It is the duty of the buyer to take delivery of the goods within a reasonable time after the tender of delivery. He becomes liable to the seller for any loss occasioned by his neglect or refusal to take delivery.
8. **Duty to pay price (Sec. 55):** Where property in goods has passed to the buyer, it is his duty to pay the price according to the terms of the contract.
9. **Duty to pay damages for non-acceptance (Sec. 56):** Where the buyer wrongfully neglects or refuses to accept and pay for the goods, he will have to compensate the seller, in a suit by him, for damages for non-acceptance.

2.17 AUCTION SALE

Q64. What is meant by Auction Sale? Explain the procedure to Auction Sale.

Ans :

A sale by auction is a public sale where different intending buyers try to outbid each other. The goods are ultimately sold to the highest bidder. The auctioneer who sells the goods by auction is an agent of the seller, i.e., the owner. His relationship with the owner of the goods is governed by the general principles of the law relating to agency.

Procedure to Auction Sales

The usual procedure in case of auction sales is as follows : The proposed auction is duly advertised and a printed catalogue of the goods together with the terms of sale is circulated. On the appointed day and time, the intending buyers assemble and the auctioneer puts the different lots to auction and invites bids from the intending buyers. Every bid is an offer. The auction goes in favour of the highest bidder. The highest bid is accepted by the auctioneer in a cutomary method, i.e., by the fall of a hammer, or by using the words "one, two, three" or "going, going, gone". The auctioneer thus "knocks down" the lot to the highest bidder. The highest bid % constitutes the offer. The fall of the hammer or other customary announcement constitutes acceptance of the offer by the auctioneer. At this stage, the contract of sale is completed. Until acceptance, any bidder may retract his bid. Quite often the auctioneer reserves a right to refuse the highest bid, at his discretion. Similarly before final acceptance of the bid or falling of the hammer, it is always open to the bidder to withdraw his bid.

Example.

D sold a car by auction. It was knocked down to K who was allowed to take it away on (i) giving a cheque for the price, and (ii) signing an agreement that ownership should not pass to him until the cheque was cleared. The cheque was not cleared; but meanwhile K had sold the car to S. Held, the property passed on the fall of the hammer and S had a good title.

Q65. State the rules regarding sale by auction.

Ans :

The law on auction sales is contained in Sec. 64 of the Sale of Goods Act. According to it in the case of a sale by auction the following rules apply:

1. Goods put up for sale lots

Where goods are put up for sale in lots, each lot is prima facie deemed to be subject of a separate contract of sale [Sec. 64 (1)].

2. Completion of sale

The sale is complete when the auctioneer announces its completion by the fail of the hammer or in some other customary manner like "one, two, three" or "going, going, gone". Until such announcement any bidder may

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retract (withdraw, revoke) his bid [Sec. 64 (2)]. If before the fall ***of*** the hammer any bidder retracts his bid, the security amount may not be forfeited.

Example

At an auction sale. C made the highest bid for an article of P. but he withdrew his bid before the fall of the hammer. P contended that there was a completed sale and C was bound bv it, Held. C's bid was an offer and it could be revoked before the fall of the hammer.

5. **Right of seller to bid:** A right to bid may be reserved expressly by or on behalf of the seller. Where such right is expressly reserved (but not otherwise), the seller or any one person on his behalf may bid at the auction [Sec. 64 (3)]. Secret employment of even one puffer (a person employed to bid at an auction to incite others and raise prices) is fraudulent unless a right to bid is expressly reserved, and even in that case, the employment of the second puffer is fraudulent.

4. **Sale not notified subject to a right to bid:** Where a sale is not notified to be subject to a right to bid on behalf of the seller, it is not lawful (i) for the seller to bid himself or to employ any person to bid at such sale, or (ii) for the auctioneer knowingly to take any bid from the seller or any such person. Any sale contravening this rule may be treated as fraudulent by the buyer [Sec. 64 (4)].

5. **Reserve price:** The sale may be notified to be subject % . reserve or. upset price [Sec. 64 (5)]. It is a price below which the auctioneer will not sell. Where the sale is subject to a reserve price, every bid is accepted conditionally on the reserve price being reached [McManus v. Fortescue, (1907) 2 K.B. 1]. But where the sale is without reserve, the goods will be sold to the highest bidder whether the sum bid is equal to the real value or not.

6. **Use of pretended bidding:** If the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer [Sec. 64 (6)].

7. **Knock out or agreement not to bid against each other:** Where a group df persons form a combination to prevent competition between themselves at an auction and arrange that only one of them will bid and that they will dispose of anything so obtained privately among themselves, such a combination is called a 'knock out' and is not illegal.

Q66. Explain the implied warranties in an auction sale.

Ans :

Implied warranties in an auction sale.

When an auctioneer sells goods, he impliedly undertakes the following obligations :

1. He warrants that he has authority to sell.
2. He also warrants that he does not know of any defect in the title of his principal.
3. He undertakes to give possession of the goods against the price paid to him.
4. He guarantees the quiet possession of the goods by the purchaser?

2.18 E-AUCTIONS

Q67. Define E-auctions. Explain the benefits of E-auctions.

Ans :

An auction is a market mechanism by which buyers make bids and sellers place offers. Auctions are characterized by the competitive and dynamic nature by which the final price is reached. Auctions, an established method of commerce for generations, deal with products and services for which conventional marketing channels are ineffective or inefficient.

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The Internet provides an infrastructure for executing auctions at lower cost with many more sellers and buyers. Individual consumers and corporations alike can participate in this rapidly growing and very convenient form of electronic commerce. Electronic auctions (e-auctions), auctions conducted online, have been in existence for several years on local area networks and were started on the Internet in 1995. Host sites on the Internet serve as brokers, offering services that enable sellers to post their goods for sale and allow buyers to bid on those items.

Although the majority of consumer goods are not suitable for auctions and are best sold through conventional sales techniques (i.e., posted-price retailing), the flexibility offered by online auction trading may offer innovative market processes. For example, instead of searching for products and vendors by visiting sellers' Web sites, a buyer may solicit offers from all potential sellers. Such a buying mechanism is so innovative that it has the potential to be used for almost all types of consumer goods, as will be shown later with the "name-your-own-price" concept.

The major characteristic of an auction is that it is based on dynamic pricing. Dynamic pricing refers to a transaction where the price is not fixed. In contrast, catalog prices are fixed, as are prices in department stores, supermarkets, and many other storefronts.

Benefits of E-Auctions to Sellers

Electronic auctions provide the following benefits to sellers:

1. Increased revenues by broadening the customer base and shortening cycle time

With e-auctions, sellers can reach the most interested buyers in the most efficient way and sell at a price equal to buyer valuation of the product. This eliminates the need to predict demand and the risk of pricing items too high or too low.

2. Optimal price setting

Sellers can make use of the information collected about price sensitivity to set prices in other fixed-price markets.

3. Disintermediation

Sellers can gain more customer dollars by offering items directly, rather than going through an expensive intermediary or by using an expensive physical auction.

4. Better Customer Relationships

Buyers and sellers have more chances and time to interact with each other, thus creating a sense of community and loyalty. Additionally, by making use of the information gathered on customer interests, sellers can improve the overall e-commerce experiences of buyers and deliver more personalized content to buyers, thus enhancing customer relationships

5. Liquidation

Sellers can liquidate large quantities of obsolete items very quickly.

Benefits of E-Auctions to Buyers

Electronic auctions provide the following benefits to buyers:

Opportunities to find unique items and collectibles.

- Chance to bargain. Instead of buying at a fixed price, buyers can use the bidding mechanism to bargain with sellers for the price they are willing to pay.
- Entertainment. Participating in e-auctions can be entertaining and exciting. The interaction between buyers and sellers may create goodwill and positive feelings. Buyers can interact with sellers as much or as little as they like.

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- Anonymity. With the help of a third party to the e-auction, buyers can remain anonymous.
- Convenience. Buyers can trade from anywhere, even with a cell phone (mobile commerce).

Limitations of E-Auctions

E-auctions have several limitations, including the following:

1. Possibility of fraud

Auction items are in many cases unique, used, or antique. Because buyers cannot see the item, they may get a defective product. Buyers can also commit fraud. Thus, the fraud rate in e-auctions is very high

2. Limited participation

Some auctions are by invitation only, whereas others are open to dealers only.

3. Security

Some of the C2C auctions conducted on the Internet are not secure, and some possible participants are scared away by the lack of security. On the other hand, some B2B auctions are conducted on highly secure private lines.

4. Software

Unfortunately, only a few "complete" or "off-the-shelf " software solutions that can support the dynamic commerce functionality required for optimizing pricing strategies and that can be easily customized to the unique requirements of a company or industry are available. In short, dynamic commerce "best practices" are still being defined within industries and will continue to evolve as new business processes emerge online.

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Cases

1. A invited B on birthday party and B promised to attend, but B did not reach the residence of A on that date while A made very good arrangement. Can A recover any damages from B ?

Ans :

A cannot recover any damages from B as the agreement was social agreement creating no legal relationship.

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2. A agrees to pay B Rs.2000 and in consideration B agrees to write for him 500 pages within 10 minutes. Is it a valid contract?

Ans :

This is not a valid contract. It is impossible to write 500 pages within 10 minutes. Sec 56 of the Indian Contract Act says that "an agreement to do an act impossible in itself is void".

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3. State, giving reasons, whether there is any contract in the following cases:
   a) Salman and Katrina promise to marry each other
   b) Anwar takes seat in a public vehicle
   c) Sharukh and Aamir agree to go to fishing
   d) Pratap invites Rana to a card party. Rana accepts the invitation.

Ans :

   a) There is a contract between Salam and Katrina
   b) There is a contract between Anwar and Public Transport Company
   c) There is no contract since there is no intention to create legal relations
   d) There is no contract since there is no intention to create legal relations

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4. Shahid agrees to bring gold from the moon by driving a car. Is the agreement valid ?

Ans :

The agreement is void, as it is impossible for Shahid to drive to the moon.

5. Ajay agrees to sell Vijay "my white horse for rupees five hundred or rupees one thousand". Is the agreement valid ?

Ans :

The agreement is not valid because the terms of the agreement are not certain; it is not definite as to which of the two prices is to be accepted.

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6. Abid sees a book displayed in a shelf of a book shop with a price tag of Rs.90. Abid tenders Rs.90 on the counter and asks for the book. The book seller refuses to sell saying that the book has already been sold to someone else and he does not have another copy of that book in the stock. Is the book seller bound to sell the book to Abid ?

Ans :

No. Display of goods with price marked there on is only an invitation for offer, and not an offer itself. Hence, the book seller is free to accept the offer or not.

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7. Parvez offered a reward of Rs.500 to anyone who would restore to him his lost dog. Musharraf found the dog and restored dog to Parvez without knowing of reward. Can Musharraf claim the reward ?

Ans :

Musharraf cannot claim the reward as he was not aware of the reward. According to the Indian Contract Act, an offer can be accepted only by a person who knows of it. As Musharraf has no knowledge of the offer of reward before finding the dog, he is not entitled to the reward. This principle was states in Lalman Vs. Guri Dutt.

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8. Waseem offered to sell his house to Pasha for Rs. 10 lakhs. Pasha accepted the offer by post. On the next day Pasha sent a telegram withdrawing the acceptance which reached Waseem before the letter. Is the revocation of acceptance is valid? Would it make any difference if both, the letter communicating acceptance and the telegram communicat-

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ing revocation of acceptance reach Waseem at the same time ?

Ans :

Yes. The revocation of acceptance is valid. If the letter of acceptance and the telegram cancelling acceptance reach at the same time, which of the two is opened first decides the issue. Usually the telegram is likely to be opened first and as such revocation of acceptance shall be valid.

9. Khusro offers by a letter to sell his television to Safi for Rs.10,000. Safi at the same time offers by a letter to buy Khusro's television for Rs.10,000. The two letters cross each other in the post. Is there a contract between Khusro and Safi ?

Ans :

No. There is no contract between A and B for both of them have made only offers, there has been no acceptance.

10. Khurram offers to sell his bike to Naveed for Rs.20,000. Naveed offers to buy it for Rs. 18,000. Khurram refuses to sell. Naveed then says to Khurram; "I accept your offer and shall purchase the bike for Rs.20,000". Is Khurram bound to sell the cycle to Naveed for Rs.20,000 ?

Ans :

Naveed's acceptance is a counter-offer. Khurram is not bound to sell the cycle. This principle was confirmed in Hyde Vs Wrench case.

11. Johnny offered a reward to any one who would rescue his wife dead or alive from burning building. A fireman risking his life brought out the wife's dead body. Is he entitled to recover the reward?

Ans :

Yes. In this case the fireman took an extra risk of endangering (putting in danger) his life, which does not fall in his normal duties in connection with rescue operations. As such the consideration is not illusory and the fireman is entitled to the reward.

12. Vivek promised to Mukesh, his newphew, a reward of Rs.2,000 if he restrains from smoking for two years. Mukesh does so. Is he entitled to the reward ?

Ans :

Yes. Mukesh is entitled to the reward from his uncle. In this case, Mukesh at the desire of Vivek restrained from smoking for two years. This is a valid consideration in the form of an act of abstinence.

13. Dharam, out of his free will offers to sell to Karam, his watch worth Rs.500 for Rs.50 only. Karam accepts the offer. On Dharam's refusal to perform his promise, Karam files a suit against him for breach of contract. Dharam pleads inadequacy of consideration for breach of consideration. Will Dharam succeed ? Decide giving reasons.

Ans :

Daram will not succeed. As long as the consideration is of some value it is not necessary that it should be adequate. That is a matter for the parties themselves to settle when entering into a contract. In this case, Dharam's offer to sell his watch to Karam for Rs. 50 has been accepted by Karam and then an agreement has been arrived at. The court will never interfere on the ground of the inadequacy of consideration unless fraud is proved or the contract is in restraint of trade.

14. Abhishek, the only son of Amitabh, fell into river and Vivek saved him. Amitabh, in gratitude, made an oral promise to pay Vivek Rs.5,000. But Amitabh died before making any payment. Vivek claims Rs.5,000 from Abhishek. Will Vivek succeed? Give reasons.

Ans :

Yes. It is a promise to pay for voluntary services. The legal representative is bound to pay as no contrary intention appears from the contract.

15. Ram and Shyam, two Hindu brothers, divided the family property between them and agreed at the time of partition that they should contribute a sum of Rs.50,000 in equal shares and invest it in the security of immovable property and pay the interest towards the

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maintenance of their mother. Can the mother compel her sons to have the amount invested as settled in her favour ?

Ans :

Yes, the mother can compel her sons to invest Rs.50,000 as per agreement and pay her the interest thereon. The rule that a stranger to a contract cannot sue is subject to exceptions in the case of trusts and family settlements.

16. Lallan, a minor student was supplied by Bhola with necessary books on credit for Rs.1,000. On Lallan's failure to pay the agreed amount, Bhola sues Lallan. Can Bhola recover Rs.1,000 ?

Ans :

Yes. Books are necessary for education. Hence, Bhola can recover Rs.1000. However, the liability of Lallan is not personal. Bhola can recover the amount from the estate or property of the minor.

17. A minor fraudulently represented to a money-lender that he was of full sage and obtained a loan of Rs.500. Does the money lender have any right of action against the minor for the money lent, or for damages for fraudulent misrepresentation ?

Ans :

No. The money-lender does not have any right of action against the minor on either of the grounds, because the rule of estoppel does not apply to a minor. Of course, if anything is traceable in the hands of the minor out of the amount of loan so obtained, the court may instruct the minor to restore that thing to the other party on equitable consideration, for "minors have no privilege to cheat men".

18. Atul, a minor, borrows Rs.5,000 from B and executes a promissory note for the amount in favour of Bharat. On his attaining majority, the minor executes another promissory note in lieu of the first, which is then cancelled. Is the second promissory note valid ?

Ans :

No, The second promissory note is not valid; for the minor's agreement being void ab initio cannot be made valid by subsequent ratification. This principle was laid down in the famous case Mohendra Vs Kailash.

19. Dhoni, a minor, lends Rs.3,000 against a bill of exchange executed in his favour. Is the borrower liable to repay the money ?

Ans :

Yes. The borrower is liable to repay the money, for the minor is allowed by the Law to take benefit under a contract. As per Law a minor can be a payee or a promisee.

20. A grocer supplies monthly rations for six months to Bunty who is aged 17 years. On Bunty's failure to pay, he sues him for realisation of his due. Will he succeed ?

Ans :

Yes, for necessaries Bunty's property is liable.

21. Aamir applied to a banker for a loan at a time when India is passing through a period of recession (depression). The banker agrees to make the loan only at an unusually high rate of interest. Aamir accepts the loan in these terms. Subsequently Aamir pleads that the contract has been procured by exercising undue influence. Will this plea succeed ?

Ans :

No. This is a transaction in the ordinary course of business and the contract is not induced by undue influence.

22. Kumble agrees to buy a motor car from Yuvraj for Rs.50,000 and pays half the purchase price in advance. Unknown to both the parties at the time of making contract, the car had been destroyed by an accident, Advise Kumble.

Ans :

Kumble is advised to treat the contract as void. He has a right to take back Rs.25,000, that is, half of the purchase price paid in advance. According to Section 20 of the Indian Contract Act, an agreement is void if both the parties to it are under a mistake as to a matter of fact essential to the agreement.

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23. Salman was suffering from some disease and was in great pain. A doctor agreed to treat him provided he signed a promissory note for Rs.8,000. Salman did so. After recovery he refused to honour the promissory note. Decide whether he can refuse.

Ans :

Yes, Salman can refuse as undue influence was used by the doctor. Salam feared that if he did not sign then the doctor may not treat him. That was the reason why she signed. This case comes under undue influence.

24. Maria, falsely representing herself as the wife of a millionaire takes a ring from a jeweller's shop for the approval of her husband. She pledges it with a pawn broker who in good faith and without notice of the fraud pays her Rs.1,000. Can the jeweller recover the ring from the pawn broker ?

Ans :

The ring cannot be recovered from the pawn broker. The jeweller intended to contract with the person present before him. He was not mistaken about his identity but only about his attributes. His intention was to sell to the person present i.e., there was consent, but it was vitiated by fraud. Hence the contract is voidable and not void. In case of a voidable contract, before it is repudiated, one can pass a good title to the pledge or purchaser in good faith. Thus, in the instant case, the pledge is valid. (Philips Vs Brooks)

25. Shah Rukh buys from Saif a painting which both believe to be the work of an old master and for which Shah Rukh pays a high price. The painting turns out to be only a modern copy. Discuss the validity of the contract ?

Ans :

The contract is absolutely void as there is mutual mistake of both the parties as to the substance or quality of the subject-matter going to the very root of the contract. In case of bilateral mistake of essential fact, the agreement is void ab initio.

26. Ajay has invited Amar for lunch. Does it create a contract between them.

Ans :

No, it does not create a contract because it is a social agreement.

27. X offers to Y 'I shall my car for Rs. 50,000 to you if you give me your horse. Y agrees in writing to buy the car but refused to deliver the horse to X. Is there any binding contract?

Ans :

There is a binding contract for first contract because there is a other and acceptance. There is no binding contract for second one because only offer is there.

28. Govind a minor who desires to become cricket player enters into a contract with a famous cricket player and agrees to pay Rs. 5000 to learn the game. Is Govind liable to pay the amount?

Ans :

Yes, GOVIND has to pay the amount why because minon is liable for necessary services rendered to him.

29. On the event of a private association a person openly declared that any body who with his acceptance marries his daughter will be paid Rs. 25,000. After certain days Mr. A married that person's daughter with his permission. Now Mr. A claims the amount of challenge from Father-in-Law, whether Mr. A will succeed.

Ans :

No not a valid offer.

Reason : No it is not a offer, the father didnot give directly to the person, so they have no right to claim.

30. Ramesh a minor who is in dire need of food and shelter as he is missing from parents. Gopal supplied the necessities to minor till his parents are traced. Gopal incurred 15,000/- expenses on minor. Parents of minor refused to pay the same claiming such expenses are not priorly accepted by them. Can gopal succeed ?

Ans :

Yes

Reason : Yes Ramesh can claim minor is also liable for necessaries.

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Short Question & Answers

1. Define contract.

Ans :

Meaning of Contract

Contracts are the basis of most business transactions. The Indian Contract Act as passed in the year 1872. It is most important and basis of mercantile law. A contract is an agreement to do or not to do an act it is a legally binding agreement which is enforced by law.

Definitions of Contract

A contract is an agreement made between two or more parties which the law will enforce, Sec. 2 (h) defines a contract as an agreement enforce able by law. This definition is based on Pollock's definition which is as follows : "Every agreement and promise enforceable at law is a contract."

Sir William Anson defines a contract as "a legally binding agreement between two or more persons by which rights are acquired by one or more to acts or forbearances (abstaining from doing something) on the part of the others."

According to Salmond, a contract is "an agreement creating and defining obligations between the parties.

Salmond says, "Contract is an agreement creating and defining obligations between the parties."

Sec 2(h) of Indian Contract Act defines contract as "An agreement enforceable by law."

2. What are the Differences between Void Agreement of Void Contract?

Ans :

S.No.	Void Agreement	Void Contract
1)	A void agreement is void ab initio.	A void contract may be valid or void or voidable when it is made.
2)	If anything has been done or given under a void agreement, there will be no compensation.	In a void contract, if something has been done or given under it, compensation would be available.
3)	A person acquiring goods under a void agreement would get no rights over them and would not be entitled to make any further transaction in relation to them.	A person acquiring goods under a contract which becomes void later would have acquired rights over them and would be entitled to sell or pledge them before it became void.

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3. What are the Differences between Void Agreement of Voidable Contract.

Ans :

S.No.	Void Agreement	Voidable Contract
1)	A void agreement is unenforceable by law from the very beginning.	A contract enforceable by law at the option of the aggrieved party, is a voidable contract.
2)	It is void *ab initio.*	A void contract may be valid or void or voidable when it is made.
3)	A void agreement is without any legal effect and hence cannot be enforced by either party.	A voidable contract, on the other hand, can be enforced by the party at whose option it is voidable.
4)	A void agreement is unenforceable from the very beginning.	A voidable contract becomes enforceable only when the aggrieved party at whose option the contract is voidable chooses to rescind it.
5)	The question of compensation in the event of non-performance of a void agreement does not arise, as it is unenforceable from the very beginning.	Under a voidable contract, any person who has received any benefit must compensate or restore it to the other party.
6)	It does not affect the collateral agreements. But where the agreement is void on account of the illegality of the object and consideration, the collateral agreements will also become void.	A voidable contract does not affect collateral transaction.
7)	Third party does not acquire any rights.	A third party who purchases goods in good faith and for consideration before the contract is repudiated acquires good title of those goods.
8)	Even on the expiry of a reasonable time, it can never become a valid contract.	On the expiry of reasonable time, it may become a valid contract, if the aggrieved party does not repudiate the contract within reasonable time.
9)	The question of damages does not arise.	The aggrieved party can claim damages.

4. Define offer?

Ans :

Meaning of Offer

An offer is a proposal made by one person to another. The person making the offer is known as offerer, proposer or promisor and the person to whom the offer is made is called the offeree, promisee or propose.

Definition of Offer / Proposal

Proposal is defined under section 2(a) of the Indian contract Act, 1872 as "when one person signifies to another his willingness to do or to abstain from doing anything with a view to obtaining the

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assent of that other to such act or abstinence, he is said to make a proposal/offer". Thus, for a valid offer, the party making it must express his willingness to do or not to do something. But mere expression of willingness does not constitute an offer. An offer should be made to obtain the assent of the other.

The offer should be communicated to the offeree and it should not contain a term the non compliance of which would amount to acceptance.

For example, R tells S, "I am willing to sell my machine for `9,000; Are you ready to buy ?" This is a clear offer from R to S.

5. Explain the classification of offer.

Ans :

1. Specific offer vs general offer

An offer is called specific or particular when it is made to a specific person or a group of persons. Such an offer can be accepted only by that person or a member of the group and by no one else, for it to turn into a contract. For instance, A offers to sell his dog to B for ` 5000. This is a specific offer as B alone can accept or reject it.

On the other hand, a general or public offer is one that is made to the world at large. Any person (i.e., competent to contract) with the notice of the offer may validly accept such an offer by complying with the terms of the offer. An advertisement addressed to the public at large is a common example of a general offer.

2. Cross-offers

'Cross-offers' refer to identical offers made by two parties to each other, neither side knowing of the other's offer when they make their own. Cross-offers do not consti-tute acceptance of each other because they tend to promote uncertainty and as such no contract is concluded. For example, A writes to B offering to sell his bike for ?5000 and B simultaneously writes to A offering to buy his bike for the same price. The two mails cross each other. If no further communication takes place in such a case, no contract can be concluded between A and B, as both sides have made offers without knowing about the offer made by the other. Also, this does not amount to acceptance of each other's offer.

3. Standing Offer

An offer that is kept open for acceptance over a period of time is termed as 'standing', 'open', or 'continuing' offer. Thus, a tender to supply goods at specified prices as and when required are of the nature of standing offer. The tenderer must supply whenever an order is placed, but he cannot insist on any order being made at all. The quantity to be supplied may or may not be specified.

4. Counter-offer

Counter-offer refers to an offer to contract on terms materially different from the terms of the offer. It is, thus, an alternative proposal made by the offeree in substitution for the original offer. When the purported acceptance of an offer contains a counter-offer, it is no acceptance at all and is corresponding to rejection of the original offer. Such a counter-offer may, however, be accepted by the original offeror and can thus give rise to legal obligations. It is important to note that a simple request as to whether or not other terms would be acceptable does not amount to a counter-offer, since such a request does not, by itself, reject an offer.

6. Define acceptance.

Ans :

Definition

A contract is formed when an offer is accepted. The offeree's willingness to be bound by the terms of the offer is known as "acceptance". **Section 2 (b)** of the Contract Act defines acceptance as "when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal when accepted becomes a promise". Thus acceptance is the assent or consent given to a proposal.

Acceptance may be express or implied. It is express when it is communicated by words, spoken or written or by doing some required act. It is implied when it is gathered from the surrounding circumstances or the conduct of the parties.

Example

A offers to sell his car to B for 1,00,000. B agrees to buy the car for 1,00,000. B's act is an acceptance of A's offer.

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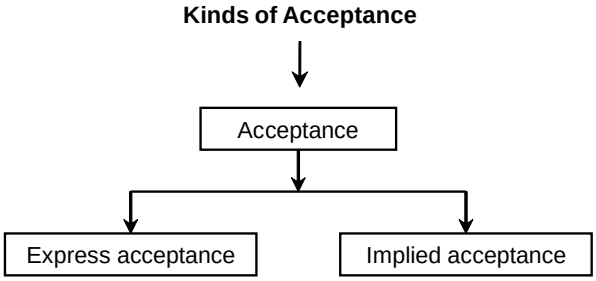
7. Various kinds of acceptance.

Ans :

Kinds of Acceptance



1. Express Acceptance

An acceptance expressed in words spoken or written is called as express acceptance. Where the offeree expresses his willingness verbally or in written form to give his assent to the offer so made, such an acceptance is termed as express acceptance.

Example

A called B to ask whether he wanted to buy the stock of coal, to which B agreed telephonically only. Later both met to form a contract. Held, the acceptance was expressed orally.

[An oral acceptance is a valid acceptance, provided the terms of the contract must be definite & clear.]

2. Implied Acceptance

An acceptance given not in words (spoken or written) but implied from the conduct/ behaviour of the parties, circumstances of the case or due to the previous dealing between the parties is termed as implied acceptance.

Examples

In an auction sales, at the fall of the hammer, the acceptance of the highest bid is done.

8. Define consideration.

Ans :

Meaning

Consideration is one of the essential elements of a valid contract. In general an agreement without consideration is void. Consideration may be defined as something in return.

Definitions

According to Pollock, Consideration is the price for which the promise others is bought and the promise thus given for value is enforceable.

According to Blackstone, "Consideration is the recompense given by the party contracting to the other".

According to Cheshire and Fifoot, "Consideration is the price paid by the plaintiff for the defendant's promise".

"A valuable consideration in the sense of the law may consist either in some right, interest, profit or benefit accruing to one party, or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other."

From the foregoing definitions it is clearly brought out that the term 'consideration' is used in the sense of 'quid-pro-quo' which means 'something in return.' This 'something' may be some benefit, right, interest or profit or it may also be some forbearance, detriment, loss or responsibility upon the other party.

In India, the definition of consideration is contained in Section 2(d) of the Indian Contract Act, 1872. It reads: "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 promises to abstain from doing something, such act or abstinence or promise is called a consideration for the promise."

Examples

1. A agrees to sell his house to B for Rs. 10,000. Here B's promise to pay the sum of Rs. 10,000 is consideration for A's promise to sell the house; and A's promise to sell the house is the consideration for B's promise to pay Rs. 10,000.

2. A promises to pay B Rs. 1,000 at the end of 6 months, if C, who owes that sum to B, fails to pay it. B promises to grant time to C, accordingly. Here the promise of each party is the consideration for the promise of the other party.

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9. What is Free Consent

Ans :

Definition of Free Consent

According to Section 13, " two or more persons are said to be consented when they agree upon the same thing in the same sense (Consensus-ad-idem).

A consent is said to be free when it not caused by coercion or undue influence or fraud or misrepresentation or mistake.

Elements of Free Consent

1. Coercion (Section 15)

"Coercion" is the committing, or threatening to commit, any act forbidden by the Indian Penal Code, or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

2. Undue influence (Section 16)

"Where a person who is in a position to dominate the will of another enters into a contract with him and the transaction appears on the face of it, or on the evidence, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in the position to dominate the will of the other."

3. Fraud (Section 17)

"Fraud" means and includes any of the following acts committed by a party to a contract, or by his agent, with intent to deceive another party thereto of his agent, or to induce him to enter into the contract.

4. Misrepresentation (Section 18)

"causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement".

10. Define Undue Influence.

Ans :

According to Sec 16 (1) of the Indian Contract Act., "A Contract is said to be induced by undue influence where, the relations subsisting between he parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other".

Therefore, the following conditions are to be satisfied to prove that a consent in a contract was obtained by undue influence.

1. Existence of Previous Relationship

The consent of a party to contract can be obtained by the other party by undue influence only when a relationship exists between those parties before entering into the contract. It may be a real relationship such as the relation between parents and their children, brothers and sisters etc. or an apparent relationship such as the relation between employer and employee, master and servant, lender and borrower, etc. It may also be a fiduciary relationship such as the relation between a doctor and patient, a lawyer and client, a religious guru and his follower, a promoter of a company and his company, etc.

2. One party standing in a dominating position

A person can use undue influence over the other when he stands in a position to dominate the will of the other. Otherwise undue influence cannot be used. According to Section 16(2)," A person is deemed to be in a position to dominate the will of another where he holds a real or apparent authority, over the other or where he stands in a fiduciary relation to the other or where he makes an agreement with a person whose mental capacity is temporarily affected by reason of age, illness or mental or bodily distress ". Therefore, having a dominating position on account of any of the above mentioned relations should be proved.

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3. Taking undue advantage

The Court of law accepts that the consent of a party is obtained by undue influence only if it is proved that the dominating party had tried to obtain or had obtained an unfair advantage over the other party by using his position. If the agreement appears to be reasonable, undue influence is not suspected by the Courts of law.

11. What are the Differences Between Coercion and Undue Influence?

Ans :

Coercion	Undue Influence
1. It is a physical force or violence.	1. It is a moral force or force of position.
2. Committing or threatening to commit an act for bidden for the IPC amounts to coercion.	2. Dominating the will of a person by another person amounts to undue influence.
3. It is a type of offence or crime under the Indian Penal Code.	3. It is not considered as an offence under the Indian Penal code, 1860
4. It can be direct or indirect or it can be used against a party or any other person	4. It should have been used by one party against the other party of the contract
5. Its not necessary to prove that there was a previous relationship between the parties	5. It should be proved that there was a real or apparent authority or a fiduciary relation between the parties.

12. Essential Elements of Fraud

Ans :

(a) Party to a Contract

In a contract, fraud must be either committed by a party to a contract (or) by anyone with his connivance (or) by his agent. Therefore, the fraud committed by a stranger to the contract would not influence the validity of the contract.

(b) False Representation

There must be a false representation and it must be made with the information of its falsehood. The representation must be corrected by the party in a situation, where the representation was true at the time it was made, but before entering into the contract it becomes untrue and the party is aware about this fact. If the representation is not corrected than it contributes to fraud.

(c) Representation as to Fact

In fraud, the representation must associate/link itself with a fact. Usually, an opinion, a statement of expression (or) intention would not contribute to fraud.

(d) Actually Deceived

The fraud is considered, when the other party who acted on representation has actually been deceived by the representation made. A situation where an attempt to deceive other party is made but the other party is not actually deceived is not considered as fraud.

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Example

'A' had a defective cannon with an intention to cover up the defect, he inserted a metal plug on it. 'B' bought the cannon without checking the defect. 'B' used cannon and it bursted a result of which he refused to pay the remaining balance. In this case, 'B' was accountable to pay the remaining balance as he was not actually deceived by fraud because he would have purchased it if no deceptive plug was placed.

13. What are the Differences between Fraud and Mis-representation

Ans :

S.No.	Fraud	S.No.	Misrepresentation
1.	Making a false suggestion to deceive a party becomes fraud	1.	Making an untrue suggestion without any intention to deceive becomes misrepresentation
2.	The person making the false suggestion should have knowledge that it is untrue	2.	The person making the suggestion should be believing that it is true
3.	Damages can be claimed for the loss suffered besides avoiding the contract	3.	Contract can be avoided but no damages can be claimed for loss
4.	The person involving in a fraud can be punished under section 420 of the Indian Penal Code.	4.	The party making a misleading statement cannot be punished under Indian Penal Code.

14. Types of Performance of a Contract

Ans :

A contract is said to be performed in the following situations:

1. **Actual Performance:** When a party has done what he agreed to do and there is nothing left for him to do, he is said to have performed his obligation. The performance of the contract, in order to be discharged, must, however, be made in accordance with the contents of the contract.

   In simple words, the party has done what he had undertaken to do. He must have fulfilled his obligations under the contract.

2. **Offer to Perform or Tender:** If it occurs that the promisor has to perform his obligation under the contract but the promisee does not accept. This is called an attempted performance or tender. If the promisor has made an offer of performance but the offer has been refused by the offeree, then the promisor is not responsible for non-performance. An offer to perform one's obligations under a contract is known as tender. The position of the promisor is that:

   i) He is free from obligation as he has performed his part legally;

   ii) He does not lose his rights under the contract;

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iii) He is not guilty of non-performance; and

iv) The performance is a lawful one and perfectly valid in the eyes of law.

For example: A, the debtor, tenders money due under a debt. The result of that tender is to stop the running of interest on the amount payable but the debt is not discharged.

15. Meaning of Breach Contract

Ans :

Breach of contract means a breaking of the obligation which a contract imposes. It occurs when a party to the contract without lawful excuse does not fulfill his contract and obligation or by his own act makes it impossible that should perform his obligation under it. Then the aggrieved party has a right to claim for damages.

Types of a Breach Contract

Breach of contract may be :

1. Actual Breach of contract
2. Anticipatory Breach of contract

1. Actual Breach of Contract

Actual Breach of contract occurs when the performance is due and one party fails or refuses to perform his obligation under the contract.

2. Anticipatory Breach of Contract

It occurs when a party to the executor contract declares his intention of not performing the contract before the performance is due.

16. Contract of sale.

Ans :

According to Sec.4 of Sale of Goods Act, "A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price". A contract of sale may be absolute or conditional.

In an absolute sale, the property in the goods does not pass or conditional. In am absolute sale, the property in the goods does not pass to the buyer absolutely until certain condition is fulfilled.

Contract of sale is a general term and comprises of

a) Sale

b) Agreement to sell.

Therefore 'Sale' is nothing but an absolute sale. Wherever the transfer of the property is to take place at future time or subject to some condition to be fulfilled, the contract is an agreement to sell. An agreement to sell is a conditional sale and an agreement to sell becomes a sale when the time elapses or the condition subject to which the property in goods is to be transferred are fulfilled.

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17. Differences between sale and agreement to sell.

Ans :

Basis for	Sale	Agreement to Sell
1. Nature	The contract of sale is executed in nature	Agreement to sale is an executory contract in nature.
2. Transfer of property	The property in the goods transfers gets passed to the buyer immediately and the seller is no more considered as the owner of the goods sold.	The property in the goods gets transferred to the buyer in the future course of time or after the fulfillment of certain condition.
3. Types of Goods	Sale mainly takes place for existing and specific goods only.	Agreement to sale is mainly for future and contingent goods and sometimes even for undetermined existing goods.
4. Risk of Loss	When the goods are damaged in the process of sale the loss must be incurred by the buyer even if the goods are in the goods are in the possession of the seller.	In the "agreement to sale" the loss for the damages is incurred by the seller even if the goods are under the possession of the buyer.
5. Consequences of breach	Seller can sue the buyer for failure to pay the price of the goods or for the breach of contract by the buyer, even though the goods are in possession of seller.	In an agreement to sale, seller can sue buyer if there is a breach of contract by the buyer or for the damages to the goods, incurred but not for the price of the goods eventhough the goods are in the possession of the buyer.

18. Compare and contrast between conditions and warranties.

Ans :

Basis	Conditions	Warranties
1. Meaning	Condition is a stipulation as to the main purpose of the contract U/S 12(2).	Warranty is a stipulation collateral to the main purpose of the contract U/S 12(3).
2. Consequences of breach	Breach of condition can repudiate the contract.	Breach of warranty does not repudiate the contract, at the most a claim for damages can be made.
3. Scope	Condition is a wider term.	Warranty is smaller is its scope
4. Interchange-ability	U/S 13(1) a buyer can opt to treat a condition as a warranty and have a recourse to a smaller remedy of claiming compensation only.	A warranty can never be treated as a condition.

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19. Auction Sale.

Ans :

A sale by auction is a public sale where different intending buyers try to outbid each other. The goods are ultimately sold to the highest bidder. The auctioneer who sells the goods by auction is an agent of the seller, i.e., the owner. His relationship with the owner of the goods is governed by the general principles of the law relating to agency.

Procedure to Auction Sales

The usual procedure in case of auction sales is as follows : The proposed auction is duly advertised and a printed catalogue of the goods together with the terms of sale is circulated. On the appointed day and time, the intending buyers assemble and the auctioneer puts the different lots to auction and invites bids from the intending buyers. Every bid is an offer. The auction goes in favour of the highest bidder. The highest bid is accepted by the auctioneer in a cutomary method, i.e., by the fall of a hammer, or by using the words "one, two, three" or "going, going, gone". The auctioneer thus "knocks down" the lot to the highest bidder. The highest bid % constitutes the offer. The fall of the hammer or other customary announcement constitutes acceptance of the offer by the auctioneer. At this stage, the contract of sale is completed. Until acceptance, any bidder may retract his bid. Quite often the auctioneer reserves a right to refuse the highest bid, at his discretion. Similarly before final acceptance of the bid or falling of the hammer, it is always open to the bidder to withdraw his bid.

20. Define E-auction.

Ans :

An auction is a market mechanism by which buyers make bids and sellers place offers. Auctions are characterized by the competitive and dynamic nature by which the final price is reached. Auctions, an established method of commerce for generations, deal with products and services for which conventional marketing channels are ineffective or inefficient.

The Internet provides an infrastructure for executing auctions at lower cost with many more sellers and buyers. Individual consumers and corporations alike can participate in this rapidly growing and very convenient form of electronic commerce. Electronic auctions (e-auctions), auctions conducted online, have been in existence for several years on local area networks and were started on the Internet in 1995. Host sites on the Internet serve as brokers, offering services that enable sellers to post their goods for sale and allow buyers to bid on those items.

Although the majority of consumer goods are not suitable for auctions and are best sold through conventional sales techniques (i.e., posted-price retailing), the flexibility offered by online auction trading may offer innovative market processes. For example, instead of searching for products and vendors by visiting sellers' Web sites, a buyer may solicit offers from all potential sellers. Such a buying mechanism is so innovative that it has the potential to be used for almost all types of consumer goods, as will be shown later with the "name-your-own-price" concept.

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UNIT III

Negotiable Instruments Act - 1881: Negotiable Instruments- Promissory Note, Bills of Exchange, & Cheque, Parties to negotiable instruments, Types of endorsements, Holder- Holder in due course, Dishonour and discharge of negotiable Instruments, Offences by the companies.

3.1 Negotiable Instruments Act 1881

Q1. What is Negotiable Instruments ? Explain the features of Negotiable Instruments.

Ans : **(Nov.-21, Aug.-21, Jan.-20, Imp.)**

Meaning and Definition of Negotiable Instruments

The word negotiable means 'transferable by delivery', and the word instrument means 'a written document by which a right is created in favour of some person'. Thus, the term "negotiable instrument" literally means "a written document transferable by delivery".

According to Section 13 (1) of the Negotiable Instruments Act, "A negotiable instrument means a promissory note, bill of exchange, or cheque payable either to order or to bearer". "A negotiable instrument may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees" [Section 13(2)].

According to Thomas, "A negotiable instrument is one which is, by a legally recognized custom of trade or bylaw:

1) Transferable by delivery or by endorsement and delivery;
2) Without notice to the party liable, in such a way that the holder of it for the time being may sue upon it in his own name; and
3) The property in it passes to a *bona fide* transferee for value free from equities and free from any defect in the title of the person from whom he obtained it".

This means that a person taking an instrument 'Bona fide', and 'For value', known as a holder in due course, gets a good title even though the title of the transferor may be defective.

It declares that to be negotiable they must be made payable in any of the following forms:

1) Payable to Order

A note, bill, or cheque is payable to order which is expressed to be 'payable to a particular person or his order'. For example:

i) Pay A,
ii) Pay A or order,
iii) Pay to the order of A,
iv) Pay A and B,
v) Pay A or B.

These are various forms in which an instrument may be made payable to order. But it should not contain any words prohibiting transfer, e.g., 'Pay to A, only' or "Pay to A and none else" is not treated as 'payable to order' and therefore such a document shall not be treated as negotiable instrument because its negotiability has been restricted.

2) Payable to Bearer

'Payable to bearer' means 'payable to any person whosoever bears it'. A note, bill, or cheque is payable to bearer which is expressed to be so payable or on which the only or last endorsement is an endorsement in blank. Thus, a note, bill, or cheque in the form "Pay to A or bearer", or "Pay A, B or bearer", or "Pay bearer" is payable to bearer.

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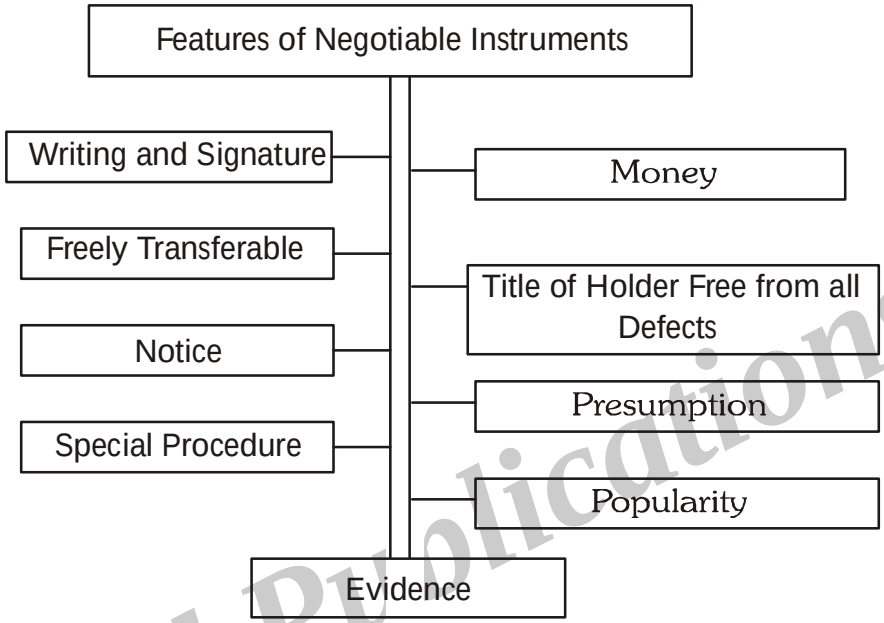
Also, where an instrument is originally 'payable to order', it may become 'payable to bearer' if endorsed in blank by the payee. For example, a cheque is payable to A. A endorses it merely by putting his signature on the back and delivers it to B with the intention of negotiating it (without making it payable to B or B's order). In the hands of B, the cheque is a bearer instrument.

Features of Negotiable Instruments

Features of negotiable instruments are as follows:



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1) Writing and Signature

Negotiable instruments must be written and signed by the parties according to the rules relating to Promissory Notes, Bills of Exchange, and Cheques. Demand Drafts are also construed as Negotiable Instruments in the limiting case as they have the same property as negotiable instruments.

2) Money

Negotiable instruments are payable by legal tender money of India. The liabilities of the parties of Negotiable Instruments are fixed and determined in terms of legal tender money.

3) Freely Transferable

The property in a negotiable instrument is freely transferable. They can be transferred from one person to another by a simple process. In the case of order instruments, two things are required for a valid transfer - endorsement (i.e., signature of the holder) and delivery. In case of bearer instruments, it is transferable by mere delivery. Any instrument may be made non-transferable by using suitable words, e.g., "Pay to X only".

4) Title of Holder Free from all Defects

A person taking an instrument 'bona fide' and 'for value' or the transferee of a Negotiable Instrument, when he fulfils certain conditions, known as a holder in due course, gets the instrument free from all defects in the title of the transferor. The holder in due course gets a good title to the instrument even in cases where the title of the transferor is defective. He is not in any way affected by any defect in the title of the transferor or of any prior party.

5) Notice

It is not necessary to give notice of transfer of a Negotiable Instrument to the party liable to pay. The transferee can sue m his own name.

6) Presumptions

A negotiable instrument is always subject to certain presumptions. They will be applicable unless contrary is proved. For example, it is presumed that there is consideration. It is not necessary to write in a promissory note the words "for value received" or similar expressions because the payment of consideration is presumed. The words are usually included to create additional evidence of consideration.

7) Special Procedure

A special procedure is provided for suits on promissory notes and bills of exchange. A decree can be obtained much more quickly than it can be in ordinary suits.

8) Popularity

Negotiable Instruments are popular in commercial transactions because of their easy negotiability and quick remedies.

9) Evidence

A document which fails to qualify as a Negotiable Instrument may nevertheless be used as evidence of the fact of indebtedness. For example, P writes to Q "I. O. U. ` 1,500". This is not a promissory note but the document can be used as evidence to show that P is indebted to Q for ` 1,500.

Q2. Explain the different types of Negotiable Instruments?

Ans : **(Aug.-21)**

1) Bearer Instrument

A promissory note, bill of exchange, or cheque is payable to bearer if either of the following two conditions is fulfilled :

i) It must be expressed to be so payable, or

ii) The only or last endorsement must be an endorsement in blank.

iii) A promissory note cannot be made payable to the bearer.

iv) A bill of exchange cannot be made payable to bearer on demand. [Section 31 of the Reserve Bank of India Act, 1934].

v) A bearer instrument can be transferred by mere delivery.

Example

"Pay to R or bearer"

2. Order Instrument

A promissory note, bill of exchange, or cheque is payable to order if either of the following two conditions is fulfilled :

i) It must be expressed to be payable to order, or

ii) It must be expressed to be payable to a particular person and it must not contain words which prohibit transfer or indicate an intention that it shall not be transferable.

Note :

An order instrument can be transferred by an endorsement on it and then its delivery.

Example :

"Pay to R or order"

"Pay to the order of R"

"Pay to R"

3. Inland Instrument [Section 11]

A promissory note, bill of exchange, or cheque is an inland instrument if both the following conditions are fulfilled :

i) It must be drawn in India,

ii) It must be payable in India, or it must be drawn upon any person resident in India.

Note :

i) Protest of inland a bill is optional

ii) An inland instrument remains inland even if it has been endorsed in a foreign country.

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Examples :

i) "A bill drawn in Delhi on a merchant in Agra and accepted payable in London."

ii) "A bill drawn in Delhi on a merchant in London and accepted payable in Agra."

4. Foreign Instrument [Section 12]

An instrument which is not an inland instrument is deemed to be a foreign instrument.

Note :

Foreign bills must be protested for dishonour if such protest is required by the law of the place where they are drawn [Section 104].

Examples :

i) "A bill drawn in Delhi on a merchant in London and accepted payable in London."

ii) 'A bill drawn in London on a merchant in Agra and accepted payable in Agra.

5. Ambiguous Instruments [Section 17]

An ambiguous bill means an instrument which can be constructed either as a promissory note or a bill of exchange. Its holder may at his option treat it either as promissory note or a bill.

Once he exercise his option, the instrument shall be hence forward treated accordingly.

Examples :

i) "A bill drawn by an agent acting within his authority upon his principal."

ii) "A bill drawn upon a fictitious person".

6. Inchoate Stamped Instruments

[Section 20]

Inchoate Stamped Instrument is one which is an incomplete instrument.

Where one person signs and delivers to another a paper stamped, in accordance with the law relating to negotiable instrument then in force in India, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount : Provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder.

Notes :

i) The principal of this rule is one of estoppel.

ii) The signer is liable if the following conditions are fulfilled :

a) The blanks must be filled in and the instrument must be completed.

b) The instrument must have been delivered to the transfere.

c) The instrument must be stamped one and the stamp affixed must be sufficient to cover the amount filled in the instrument.

iii) A holder in due course can recover in excess of the amount intended to be paid by the signer provided the amount is covered by the stamp affixed on the instrument.

iv) The provisions of his Section cannot be applied to a cheque which is not required to be stamped.

Examples :

"One not mentioning the amount payable or one without payment".

7. Instruments Payable on Demand [Section 19 and 21]

Instruments payable on demand means the instruments in which no time for payment is mentioned. A cheque is always payable on demand. A promissory note on till of exchange is payable on demand :

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i) When no time for payment is specified, or

ii) When it is expressed to be payable on demand, or at sight or on presentation.

Notes :

i) 'At sight' and presentation means on demand.

ii) An instrument payable on demand may be presented for payment at anytime.

Example :

i) "I promise to pay B ` 500".

ii) "I promise to pay B ` 500 on demand."

iii) "Pay B ` 500 at sight."

iv) "Pay B ` 500 on presentation."

8. Time Instrument

Time instruments mean the instruments in which time for payment is mentioned.

A promissory note or bill of exchange is a time instrument when it is expressed to be payable :

i) After a specified period,

ii) On a specific day,

iii) After sight,

iv) On the happening of event which is certain to happen.

v) The expression 'after sight' means :

a) In a promissory note, after presentation for sight.

b) In a bill of exchange, after acceptance or noting for non-acceptance or protest for non-acceptance [Section 21].

vi) A cheque cannot be a time instrument because the cheque is always payable on demand.

Examples :

i) "I promise to pay B ` 500 after 3 months."

ii) "I promise to pay ` 500 on 1st Jan., 1998."

iii) "I promise to pay B ` 500 after sight."

iv) "I promise to pay B ` 500 after C's death.

9. Accommodation Bills

An accommodation bill means a bill which is drawn, accepted without consideration.

i) The accommodated party cannot , after he has paid the amount of the bill, recover the amount from any person who became a party to the bill for his accommodation.

ii) The person who becomes the holder of such a bill in good faith and for consideration, after maturity, may recover the amount from any prior party [Section 59].

Example :

X who needs funds, draws a bill on Y who accepts the bill and gets the bill discounted with his banker and on due date remits the requisite amount to Y to enable him to meet the bill; such a bill is an accommodation bill.

10. Fictitious Bill

A fictitious bill is a bill in which the name of the drawer or the payee or both is fictitious. When both the drawer and payee of a bill are fictitious persons, the acceptor is liable to a holder in due course if the holder in due course can show that the signature of the supposed drawer and that of the first endorser (payee) are in the same handwriting [Section 42].

Example :

i) A bill drawn upon X in favour of P and the drawer is a fictitious person.

ii) X drawn a bill upon Y in favour of Z who is a fictitious person.

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11. Documentary Bill

A documentary bill means a bill to which the documents of title to the goods (i.e., Railways Receipt, Bill of Lading) and other documents are attached.

12. Clean Bill

A clean bill means a bill to which no document relating to the goods (for the transaction of which the bill is being drawn) is attached.

13. Escrow [Section 46]

A negotiable instrument which is delivered conditionally or for a special purpose as a collateral security or for safe custody only and not for the purpose of transferring absoultely the property therein, is called 'Escrow'.

The liability to pay in case of an escrow does not arise if conditions agreed upon are not fulfilled or the purpose for which the instrument was delivered is not satisfied. This however, does not affect rights of a holder in due course.

14. Bills in Sets or Set Bills [Sections 132 and 133]

Bills of exchange drawn in parts are called bills in sets. Provisions relating to 'Bills in Set Bills' are :

i) Each part must be numbered

ii) Each part must contain a provision that it shall continue to be payable only so long as the other parts remain unpaid.

iii) Each part must contain reference to the other parts.

iv) Each part must be signed and delivered by the drawer.

v) All the parts of the whole set need not be accepted.

vi) When a person accepts or endorses different parts of the bill in favour of different persons, he and the subsequent endorsers of each part are liable on such parts if it were a separate bill.

vii) As between holders in due course of different parts of the same set, he who first acquired title to his part is entitled to the other parts and the money represented by the bill. [Section 133].

3.2 PROMISSORY NOTE

Q3. Define Promissory Note. Explain the characteristics of Promissory Note.

Ans : **(Nov.-21, Aug.-21, Jan.-20, Imp.)**

Meaning and Definition of Promissory Note [Section 4]

According to Section 4 of Negotiable Instruments Act, 1881, "A 'promissory note' is an instrument in writing (not being a bank note or a currency note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of a certain person, or to the bearer of the instrument".

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The person who makes the promissory note and promises to pay is called the maker. The person to whom the payment is to be made is called the payee.

Specimen of Promissory Note

` 10,000

Hyderabad

July 10, 2014

Three months after date, I promise to pay Shri Ramesh (Payee) or to his order the sum of Rupees Ten Thousand, for value received.

To,

Shri Ramesh,

B-20, Green Park,

New Delhi.

Stamp

Sd/- Raju

(Maker)

Promissory Note Payable after Date with Interest

Mumbai July 25, 2014

On month after date I promise to pay Ravi Naik or to his order the sum of Rupees one thousand only, with interest @ 12% per annum until payment.

` 1,000

Ram Laxman

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For example, A signs instrument in the following terms:

1) "I promise to pay B or order ` 500."

2) "I acknowledge myself to be indebted to B in ` 1,000 to be paid on demand, for value received."

3) "Mr. B, I owe you (I O U) ` 1,000."

4) "I promise to pay B ` 500 and all other sums that shall be due to him."

5) "I promise to pay B ` 500, first deducting thereout any money which he may owe me."

6) "I promise to pay B ` 500 seven days after my marriage with C."

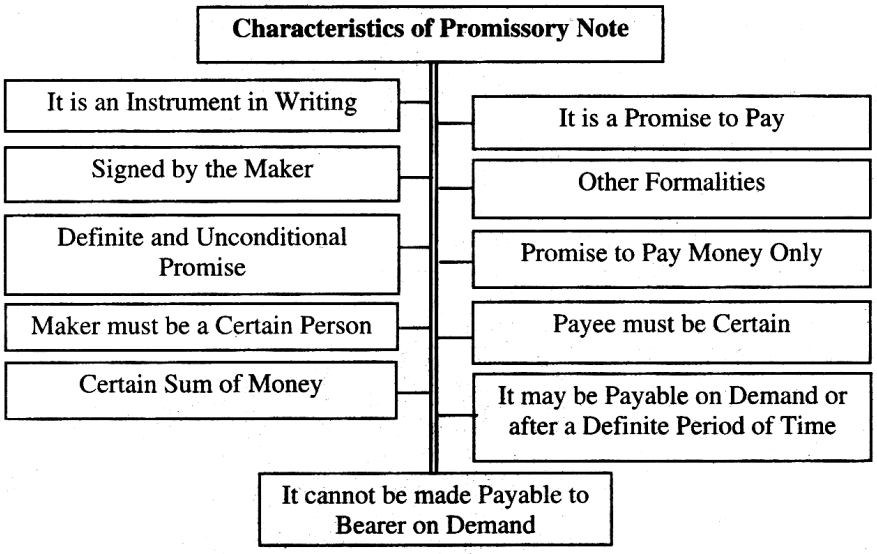
7) "I promise to pay B ` 500 and D's death, provided D leave me enough to pay that sum."

8) "I promise to pay B ` 500 and to deliver to him my black horse on 1st January next."

The instruments respectively numbered as (1) and (2) are promissory notes. The instruments numbered (3), (4), (5), (6), (7) and (8) are not promissory notes.

Characteristics of Promissory Note

Characteristics of promissory note are as follows :



1) It is an Instrument in Writing

A mere verbal promise to pay is not a promissory note. The promise should be in writing. The writing may be in ink or pencil, or printing, engraving, or lithographing. It may be in any form, it will be a promissory note so long as it satisfies the other requirements of Section 4.

In other words, an oral promise does not make a promissory note since it is not an instrument.

2) It is a Promise to Pay

There must be an express undertaking or promise to pay. A mere acknowledgement of indebtedness or implied undertaking by the use of the word 'debt' or 'pro-note' is not sufficient and it does not constitute a promissory note.

3) Signed by the Maker

The instrument must be signed by the maker, otherwise it is incomplete and of no effect. Even if it is written by the maker himself and his name appears in the body of the instrument, his signature must be there. Signature means the writing of a person's name in order to authenticate and give effect to the contract contained in the instrument. It is, at the same time, essential that the mind of the signer must accompany the signature.

4) Other Formalities

The other formalities regarding number, place, date, consideration, etc., though usually found given in the promissory notes but are not essential in law. The date of instrument is not material unless the amount is made payable at a certain time after date. Even in such a case, omission of date does not invalidate the instrument if the date of execution can be independently ascertained and proved. The words "value received" is also unnecessary. But a promissory note must be properly stamped as required by the Indian Stamps Act. Each stamp must also be properly cancelled.

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5) Definite and Unconditional Promise

The promise must be definite and unconditional. It may be noted that a promise to pay is not conditional if it depends upon an event which is certain to happen but the time of its occurrence may be uncertain.

6) Promise to Pay Money Only

The payment to be made under the instrument must be in the legal tender money of India. If the instrument contains a promise to pay something other than money or something in addition to money, it cannot be a promissory note.

7) Maker must be a Certain Person

The instrument itself must indicate with certainty who is the person or are the persons engaging him or themselves to pay.

In case a person signs in an assumed name, he is liable as a maker because a maker is taken as certain if from his description sufficient indication follows about his identity. Where there are two or more makers, they may bind themselves jointly or jointly and severally.

8) Payee must be Certain

Like the maker, the payee of promissory note must also be certain on the face of the instrument.

A note is valid even if the payee is misnamed or indicated by his official designation only (Section 5) provided he can be ascertained by evidence. It may be made payable to two or more payees jointly or it may be made payable in the alternative to one of two, or one or some of several payees. Thus, alternatives payees are permissible in law. But it must be made payable to order originally.

9) Certain Sum of Money:

The sum payable must be certain or capable of being made certain. Where rate of interest is specified, the sum shall be deemed to be certain. But, expressions like 'market rate of interest' do not make the amount certain since the market rate may vary with the source of borrowing, purpose of borrowing, financial standing of the borrower, and so on. However, a promissory note containing an undertaking to pay the amount 2% above the 'bank rate' (i.e. the rate at which RBI lends to commercial banks) at a given point of time.

10) It may be Payable on Demand or After a Definite Period of Time:

The expression 'on demand' means payable immediately or forthwith.

11) It cannot be Made Payable to Bearer on Demand:

The Reserve Bank of India Act, 1934 prohibits issue of such promissory notes excepted by the Reserve Bank of India itself or the Central Government.

Q4. Explain the parties involved in Promissory Note.

Ans :

Parties to promissory note are as follows :

1) Maker

Maker is the person who promises to pay the amount stated in the note. He is the debtor.

2) Payee

Payee is the person to whom the amount of the note is payable, i.e., the creditor.

3) Holder

He is either the payee or the person to whom the note may have been endorsed.

3.3 BILLS OF EXCHANGE

Q5. Define Bills of Exchange. Explain the parties involved in Bills of Exchange.

Ans : **(Aug.-21, Jan.-20, Imp.)**

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 (Sec. 5).

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Parties to a bill, There are three parties to bill of exchange, viz., the drawer, the drawee and the payee.

1. Drawer

The person who gives the order to pay or who makes the bill is called the drawer.

2. Drawee

When the drawee accepts the bill, he is called the acceptor (or) drawee.

3. Payee

The person to whom the payment is to he made is called the payee.

Where the payee named in a bill is a fictitious or non-existing person, the bill is treated as payable to bearer. In some cases the drawer and the payee, or when a principal draws on his agent, the drawer and the drawee may be one and the same person.

The drawer or the payee who is in possession of the bill is called the holder. The holder must present the bill to the drawee for his acceptance.

When the holder indorses the bill, note or cheque, he is called the indorser. The person to whom the bill, note or cheque is indorsed is called the indorsee.

When in the bill or in any indorsement thereon the name of any person is given in addition to the drawee to be referred to in case of need, such person is called a drawee in case of need (Sec. 7). The name of the drawee in case of need may be given in the bill by the drawer at the time when it is drawn or by some subsequent indorser. The resort is to be had to the 'drawee in case of need' only when the bill is dishonoured by non-acceptance or non-payment.

Specimen of a bill of exchange

Shyam of Delhi buys goods on credit from Krishan of Mumbai for Rs. 500 to be paid 3 months after date. Krishan buys goods from Ram of Delhi for Rs. 500 on similar terms. Now Krishan may order Shyam to pay the sum of Rs. 500 to Ram. The order will be a bill of exchange.

Rs. 500 Mumbai, Jan. 10, 2007

Three months after date pay to Ram or order the sum of five hundred rupees, for value received.

To

Shyam

235, Subhash Marg,

Delhi-110006

			Stamp
In case of need with	Accepted		
Canara Bank, Delhi	Shyam	Sd/-	Krishan

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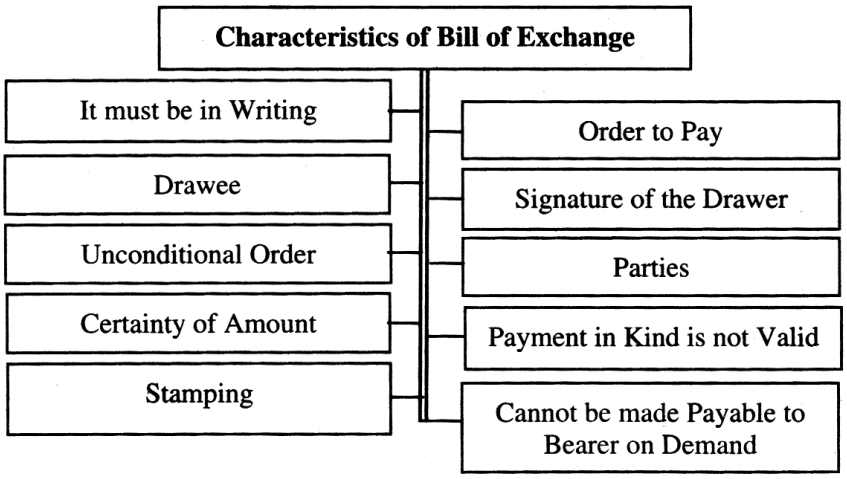
Q6. Explain the characteristics of Bills of Exchange.

Ans :

Characteristics of Bills of Exchange

Characteristics of bill of exchange are as follows



1) **It must be in Writing**

The bill of exchange must be in writing.

2) **Order to Pay**

There must be an order to pay. It is of the essence of the bill that its drawer orders the drawee to pay money to the payee. The term 'order' does not mean command. Any request or direction or other words, which show an intention of the drawer to cause a payment being made by the drawee is sufficient. Politeness may be admissible but excessive politeness may prompt one to disregard it as an order.

3) **Drawee**

A bill, in order to be perfect, must indicate a drawee who should be called upon to accept or pay it.

4) **Signature of the Drawer**

The drawee must sign the instrument. The instrument without the proper signature will be inchoate (unclear or unfounded or undeveloped) and hence ineffective. It is permissible to add the signature at any time after the issue of the bill.

5) **Unconditional Order**

This order must be unconditional, as the bill is payable at all events. It is absolutely necessary for the drawer's order to the drawee to be unconditional. The order must not make the payment of the bill dependent on a contingent event. A conditional bill of exchange is invalid.

6) **Parties**

The drawer, the drawee (acceptor), and the payee - the parties to a bill are to be specified in the instrument with reasonable certainty.

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7) **Certainty of Amount**

The sum must be certain.

8) **Payment in Kind is not Valid**

The medium of payment must be money and money only. The distinctive order to pay anything in kind will vitiate the bill.

9) **Stamping**

A bill of exchange, to be valid, must be duly stamped as per the Indian Stamp Act.

10) **Cannot be made Payable to Bearer on Demand**

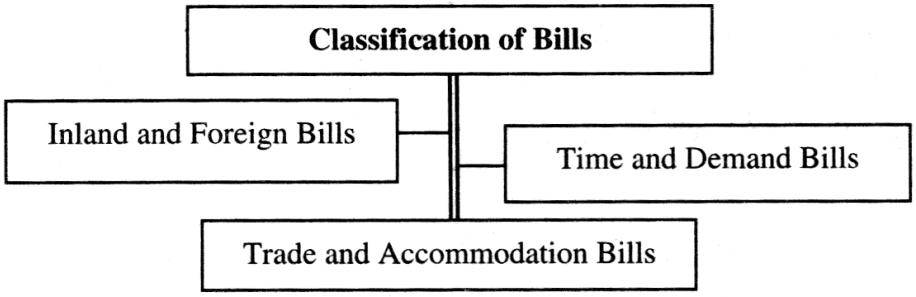
A bill of exchange as originally drawn cannot be made payable to the bearer on demand.

Q7. Explain the classification of Bills.

Ans :

Classification of Bills

Bills can be classified as follows :



1) Inland and Foreign Bills [Section 11 and 12]: Inland and foreign bills are as follows:

i) Inland Bill: A bill is termed as an inland bill if:

a) It is drawn in India on a person residing in India whether payable in or outside India; or

b) It is drawn in India on a person residing outside India but payable in India.

For example,

a) A bill is drawn by a merchant in Kolkata on a merchant in Delhi. It is payable in Mumbai. The bill is an inland bill.

b) A bill is drawn by a merchant in Kolkata on a merchant in Delhi. It is accepted for payment in Japan. The bill is an inland bill.

c) A bill is drawn by a Delhi merchant on a person in London but is made payable in India. The bill is an inland bill.

ii) Foreign Bill: A bill, which is not inland bill, is a foreign bill. Thus, following are foreign bills:

a) A bill drawn in India on a person residing outside India and made payable outside India.

b) A bill drawn outside India and made payable in India.

c) A bill drawn outside India on any person residing outside India.

d) A bill drawn outside India on a person residing in India.

e) A bill drawn outside India and made payable outside India.

2) Time and Demand Bills:

Time and demand bills are as follows:

i) Time Bill

A bill payable after a fixed time is termed as a time bill. A bill payable "after date" is a time bill.

ii) Demand Bill

A bill payable at sight or on demand is termed as a demand bill.

3) Trade and Accommodation Bills:

Trade and accommodation bills are as follows:

i) Trade Bill

A bill drawn and accepted for a genuine trade transaction is termed as "trade bill".

ii) Accommodation Bill:

A bill drawn and accepted not for a genuine trade transaction but only to provide financial help to some party is termed as an "accommodation bill".

For example, A is in need of money for three months. He induces his friend B to accept a bill of exchange drawn on him for ` 1,000 for three months. The bill is drawn and accepted. The bill is an "accommodation bill". A may get the bill discounted from his bankers immediately, paying a small sum as discount. Thus, he can use the funds for three months and then just before maturity he may remit the money to B, who will meet the bill on maturity.

In the above example A is the "accommodated party" while B is the "accommodating party:

Q8. What do you understand by a acceptance of a bill under the negotiable instrument Act 1881 and what are the modes of acceptance ?

Ans :

Acceptance of a Bill

The bill of exchange is presented before the drawee for his acceptance. It is necessary for the drawee to sign the bill as this would convey the meaning that the drawee has accepted the bill and has agreed to make the payment on due date then only a bill is said to be accepted by the acceptor/ drawee.

Rules for Valid Acceptance

The following are some of the rules which are essential for a valid acceptance,

1. Acceptance Must be Given on the Bill

The drawee should accept the bill by signing his name on the face or backside of the bill conveying that he has accepted the bill. It is optional for the drawee to write the word 'accepted' but it is mandatory for him to sign the bill. Giving signature on the separate paper will not amount to proper acceptance.

2. A Bill must be Accepted Personally or by Agent

In order to make a bill valid, it should be duly signed by the drawee or by his authorized agent. Otherwise, it would be an invalid acceptance.

3. Delivery of the Bill to Holder after Acceptance

In order to make the acceptance valid, the bill must be handed over to the holder after making the acceptance or else the acceptance would be invalid.

The following bills need no acceptance as they are termed to be the accepted bill,

(i) A bill of exchange payable on demand.

(ii) A bill payable on a specified date.

The following are some of the bills which needs acceptance,

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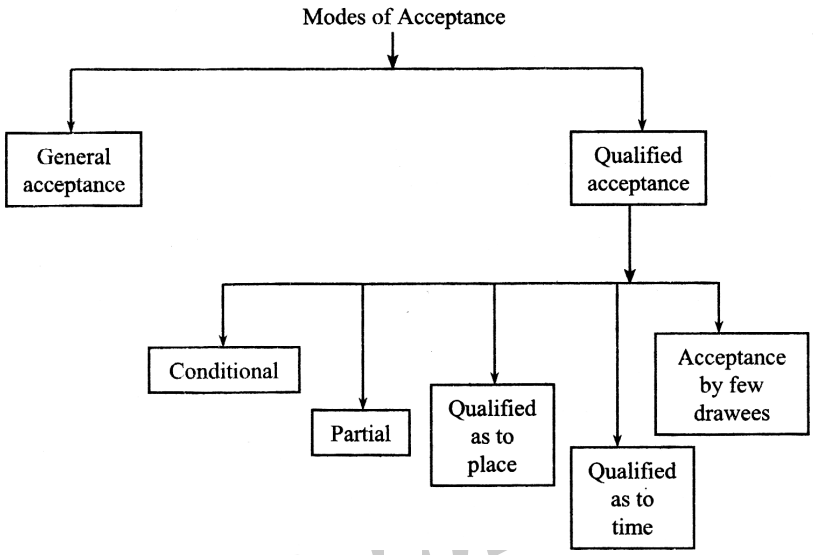
(a) A bill including terms and conditions must be presented for acceptance of the drawee before the payment of bill.

(b) A bill payable after some time that is a bill must be presented at a specified time to fix the date of payment and then it must be represented for acceptance of the drawee.

Modes of Acceptance

An acceptance of bill can be general or qualified.



Figure

1. General Acceptance

When a drawee does not include any terms and conditions on qualification regarding acceptance of the bill, such an acceptance of bill is considered to be general or absolute. When an acceptance is not complete, then the holder of the bill may consider the bill as dishonoured.

2. Qualified Acceptance

Qualified acceptance is the one, where a bill is accepted with certain conditions or qualifications and the effect of the bill gets changed from the way it had been originally drawn. The holder of the bill may not accept the qualified acceptance and may consider the bill as dishonoured by non acceptance. But when the holder of the bill accepts the qualified acceptance, such acceptance binds only him and not the other parties, if the parties do not consent to such qualified acceptance.

An acceptance is qualified in the following cases,

(i) Conditional

Acceptance is qualified with respect to a condition.

Example : Accepted payable when a cargo consigned to Leela is sold.

(ii) Partial

A part payment is made on the sum ordered.

Example : A bill drawn for 1,000 and accepted for 300 only.

(iii) Qualified as to Place

(a) The pay has to be done at a specified place and at the same time other place is treated as a general acceptance.

(b) If the bill is paid or accepted only at a particular place and no where else is treated as a qualified acceptance.

Example : 'Accepted payable at Bank of India only' is a qualified acceptance and accept payable at Bank of India is a general acceptance.

(iv) Qualified as to Time

Where the payment is made at a time, other than the time mentioned in the bill.

Example : 'A bill drawn 3 months after due date and 'Accepted payable 6 months after due date'.

(v) Acceptance by Few Drawees

Acceptance by few drawees but not all where a bill is drawn on other names but it is accepted on/ by them.

Example : A bill drawn on X, Y and Z (not partners), but accepted by X only.

Q9. Distinguish between Bills of exchange and promissory note.

Ans :

Difference between Bills of Exchange and Promissory Note

	Basic of Difference	Bills of Exchange	Promissory Note
1.	**No. of Parties**	There are three parties - the drawer, the drawee, and the payee.	There are two parties - the maker and the payee.
2.	**Promise/Order**	A bill contains un unconditional order to pay.	A note contains an unconditional promise to pay.
3.	**Nature of Liability**	The liability of the drawer of a bill is secondary and conditional.	The liability of the maker of a note is primary and absolute.
4.	**Debtor / Creditor**	The drawer of a bill is the creditor who directs the drawee (his debtor) to pay.	The maker of a note is the debtor and he himself undertakes to pay.
5.	**Identity of Pay or and payee**	In a bill, the drawer and the payee may be one and the same person.	A note cannot be made payable to the maker himself.
6.	**Acceptance**	A bill payable after sight or after a certain period must be accepted by the drawee before it is presented for payment.	A note requires no acceptance as it is signed by the person who is liable to pay.
7.	**Payable to Bearer**	It can be payable to bearer. It cannot be drawn as payable to bearer on demand.	It cannot be payable to bearer.
8.	**Immediate Relation**	The drawer of the bill stands in immediate relation with the acceptor and not the payee.	The maker of a note stands in immediate relation with the payee.
9.	**Notice of Dishonour**	Notice of dishonour must be given to all the persons (including drawer) who are to be made liable to pay.	Such notice is not required to be given to the maker.
10.	Protest for Dishonour	It requires the protesting for dishonour.	It does not require any protesting.

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3.4 CHEQUE

Q10. Define Cheque. Explain the characteristics of Cheque.

Ans : **(Jan.-20, Imp.)**

Meaning and Definition of Cheque [Section 6]

Section the Negotiable Instruments Act, 1881 defines a cheque as "a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand". A cheque is also, therefore, a bill of exchange with two additional qualifications:

1) It is always drawn on a specified banker.

2) It is always payable on demand.

All cheques are bills of exchange but bills are not cheques. A cheque must have all the essential requisites of a bill of exchange. It must be signed by the drawer. It must contain an unconditional order on a specified banker to pay a certain sum of money to or to the order of a specified person or the bearer of the cheque. But it does not require acceptance as it is intended for immediate payment.

Specimen of Cheque

Date.....

PAY .....

.....OR BEARER

RUPEES .....

.....

₹

A/c No.		L.F		INTLS.	

STATE BANK OF INDIA
Kapoorthala Bagh,
Lucknow - 226020

"ll473792ll" 226002025

Characteristics of Cheque

Characteristics of cheque are as follows:

1) Written Instrument

A cheque must be an instrument in writing. Regarding the writing materials to be used, law does not lay down any restrictions and therefore cheque may be written either with pen, typewriter or may be printed.

2) Unconditional Order

A cheque must contain an unconditional order. It is, however, not necessary that the word order or its equivalent must be used to make the document a cheque. Generally, the order to bank is expressed by the word "pay". If the word "please" precedes "pay" the document will not be regarded as invalid merely on this account.

3) Drawn On a Specified Banker Only

A cheque must be drawn on a specified banker. To avoid any mistake, the name and address of the banker should be specified.

4) Certain Sum of Money

The order must be only for the payment of money and that too must be specified. Thus, orders asking the banker to deliver securities or certain other things cannot be regarded as cheques. Similarly, an order asking the banker to pay a specified amount with interest, the rate of interest not specified, is not a cheque as the sum payable is not certain.

5) Payee to be Certain

A cheque to be valid must be payable to a certain person. "Person" should not be understood in a limited sense including only human beings. The term in fact includes "legal persons" also. Thus, instruments drawn in favour of a body corporate, local authorities, clubs, institutions, etc., are valid instruments being payable to legal persons.

6) Payable on Demand

A cheque to be valid must be payable on demand and not otherwise. Use of the words "on demand" or their equivalent is not necessary. When the drawer asks the banker to pay and does not specify the time for its payment, the instrument is payable on demand.

7) Date of Cheques

The drawer of a cheque is expected to date it before it leaves his hands. A cheque without a date is considered incomplete and is returned unpaid by the banks.

The drawer can date a cheque with the date earlier or later than the date on which it is drawn. A cheque bearing an earlier date is antedated and the one bearing the later date is called post-dated.

A post-dated cheque cannot be honoured, except at the personal risk of the bank's manager, till the date mentioned. A post-dated cheque is as much negotiable as a cheque for which payment is due, i.e., the transferee of a post-dated cheque, like that of the cheque on which payment is due, acquires a better title than its transferor, if he is a holder in due course. A cheque that bears a date earlier than six months is a stale cheque and cannot be claimed for.

Q11. Explain the parties involved in cheque.

Ans :

Parties to Cheque

Parties of cheque are as follows :

1. Drawer

Drawer is the person who draws the cheque, i.e., the depositor of money in the bank.

2. Drawee

Drawee is the drawer's banker on whom the cheque has been drawn.

3. Payee

Payee is the person who is entitled to receive the payment of a cheque.

Q12. What do you mean by crossing of a cheque. Explain different types of crossing.

Ans :

Marking of cheque refers to the writing on the cheque by the drawee banker that the marked cheque would be honoured at the time, when they are made ready for the payment. The custom with bankers related to marking of cheques does not equate to acceptance. The impact of marking of cheque as good by drawee banker is that drawer has no right to counter demand the payee for receiving money.

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So far, India has never experienced the practice of marking of cheques. The drawee banker can make cheques good by marking at the instance of,

1. The drawer
2. The holder
3. The collecting banker.

1. Marking at Drawer's Instance

When a cheque is marked at drawer's instance as 'good' it means that the drawee banker posses/ holds sufficient funds which would fulfill the cheque conditions at the time of its payment. If the drawer issues this type of cheque, then later on he won't be able to cancel it.

The banker can exercise his right to dishonour other cheque, if honouring of those cheque makes the account insufficient to meet cheques which are marked good.

2. Marking at Holder's Instance

Marking at holder's instance to the cheque as 'good' means that it is a notice to the holder with respect to the adequate fund in the hands of banker at the time of marking. The banker holds the right of cancelling the cheque, if the drawer withdraws the funds or stops the payment of cheque at the time of its maturity.

3. Marking at Collecting Banker's Instance

Marking at collecting banker's instance is considered as 'constructive payment' as this type of cheque is to be honoured when being presented which is next clearing. Crossing of Cheques

There are two kinds of cheques. They are,

(i) Open cheque and

(ii) Crossed cheque.

(i) Open Cheque

A cheque which can be withdrawn at the counter of the bank is called 'open cheque'. The open cheque includes greater levels of risk. If the holder loses it, then the finder can easily withdraw the amount. If the payment of cheque is not cancelled then the finder of cheque can misuse the holder's cheque. Therefore, in order to avoid the misuse of cheque by the finder crossing of cheque is being introduced.

(ii) Crossed Cheque

This type of cheque has two parallel transverse lines with or without the words "and company" can be drawn. The payment of this type of cheque is acquired merely with the help of a banker. Crossing generally ensures safety as the payment made by the drawee banker to the bearer can be easily found out as to which party has received the amount from this crossed cheque. In this type of cheque, if it is paid only through a banker it would give safety measures to the owner and thereby make it compulsory to the holder to present the cheque by way of "quarter of known respectability and credit".

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Types of Crossing

The following are the types of crossings of cheques They are,

(a) General crossing

(b) Special crossing.

(c) Restrictive crossing

(d) Not negotiable crossing (Sec. 130).

(a) General Crossing

A cheque is said to be crossed if it bears the following,

(i) The words 'and company' or any acronym if any is written between two parallel transverse lines and includes the words "not negotiable" (or)

(ii) Two parallel transverse lines which may or may not include the words 'not negotiable' (Sec. 123). When cheque is crossed then the drawee banker is liable to pay when it is presented by banker (Sec. 126, Para-1).

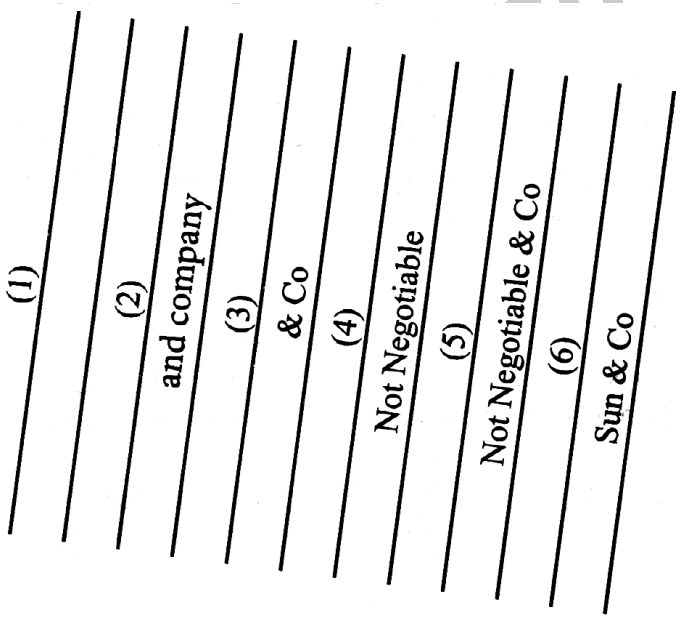

Fig (1): Specimen of General Crossing

(b) Special Crossing

According to (Sec. 124) a cheque is said to have special crossing, when a cheque bears across its face along with the name of a banker the words 'not negotiable'. In case of special crossing transverse lines are not required. The payment of this cheque can be received only through a banker if his name exist on the face of the cheque or between the transverse lines. According to (Sec. 126, Para-2) the special crossing cheque drawn on banker shall pay to only that banker on whose name it is drawn or to his agent for collection.

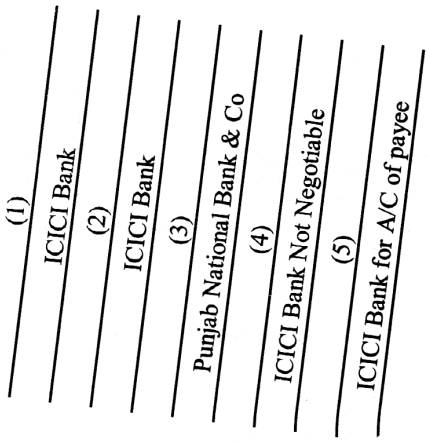

Fig (2): Specimens of Special Crossing

(c) Restrictive Crossing

This type of crossing has been followed by commercial and banking institutions. The words which are added to this type of crossing are "A/C Payee" to the general or special crossing. The words 'A/C payee' gives instructions to the collecting banker that amount received on cheque is to be credited to the account of the payee. If the collecting banker wrongly credits the amount to different person then he is liable to pay to the owner of the cheque.

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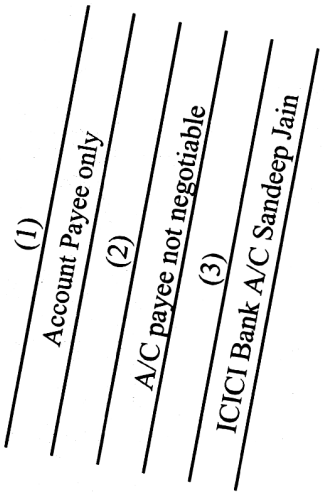

Fig (3): Specimens of Restrictive Crossing

(d) Not Negotiable Crossing (Sec. 130)

The words 'not negotiable' on a crossed cheque implies that the title of the transferee of such a cheque may not be better than that of its transferor. The added words in the cheque 'not negotiable' means the further transferability of cheque is possible but cannot exercise the essential features of negotiability. The holder who posses the cheque marked as 'not negotiable' is completely responsible for that cheque.

Example

W gave a cheque crossed 'not negotiable' in blank and that blank cheque has been given to his assistant to fill up the amount and the payee's name. The assistant (M) filled the amount more than of what was being told in the cheque and it was sent to P to clear the payment to M. It was held that (M) had no better title and also 'P' had no better title over the cheque issued and ' W is not liable for such situations.

Q13. Differences between general crossing and special crossing

Ans :

General Crossing	Special Crossing
1. In general crossing, a cheque bears two parallel transverse lines across its face, either with or without the words not negotiable between them.	1. In special crossing, a cheque bears the banker's name along with the two parallel transverse lines.
2. Two parallel transverse lines are necessary.	2. Two parallel transverse lines are not necessary
3. When a cheque is crossed, payment is made only through a banker.	3. When a cheque is crossed, payment is made only to a specified banker whose name is mentioned on the cheque or to any of its agents.

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Q14. Explain the significance of crossing of a cheque.

Ans :

Significance of Crossing of a Cheque

Significance of crossing of a cheque is as follows:

1) Security of Payment

Crossed cheque ensures the actual payee to receive the money. Since the money is transferred to the payee through bank account so there is no chance of fraud.

2) Safer

Since the payment is done through bank account so crossed cheque is much safer.

3) Reduce Fraud and Cheating

Basically crossed cheque is made to reduce fraud and cheating in trarsaction.

4) To Reduce Risk

If a crossed cheque is lost even then there will be no chance of losing the money as it takes time to encash. Thus it reduces risk.

5) Heavy Transaction

Crossed cheque is an easier and safer way of transactions. So heavy transactions can be made through crossed cheque.

6) Instrument of Proving

This kind of cheque is used as provable document. At the time of necessity it can be submitted to the court.

7) Conversion

With the permission of the drawer any crossed cheque may be converted into normal cheque. So conversion is another advantage of crossed cheque.

8) Low Cost

No one can encash the crossed cheque except the actual payee. So the holder of the crossed cheque may send anybody to the bank with it to transfer it to the holder's bank account.

9) Creation of Loan Deposit

Since it is compulsory to submit the crossed cheque into the bank, so it creates loan deposits.

10) Easy to Maintenance

Since crossed cheque is very safe so it can easily be transferred from one place to another.

11) Role in Foreign Trade

Generally the transactions in foreign trade are done with crossed cheque so the significance of this cheque in foreign trade is vast.

Q15. Distinguish between cheque and bills of exchange.

Ans :

Difference between Cheque and Bills of Exchange

	Basic of Difference	Cheque	Bills of Exchange
1.	**Drawer**	It is always drawn on a bank.	It is usually drawn on some person or firm.
2.	**Payable on Demand**	It is always payable on demand	It may be payable on demand or on the expiry of a fixed period.
3.	**Acceptance**	It does not require an acceptance	It requires an acceptance of the drawee.
4.	**Stamp**	It does not require a stamp	It must be properly stamped.
5.	**Grace Period**	It is payable immediately on demand without any days of grace	In the case of a time bill of exchange, three days of grace are allowed from the due date, within which the payment can be made.
6.	**Payable to Bearer on Demand**	A cheque drawn "payable to bearer' on demand shall be valid	A bill payable on demand can never be drawn payable to bearer.
7.	**Crossing**	It can be crossed.	It cannot be crossed.
8.	**Notice of Dishonour**	Notice of dishonour is not required	Notice of dishonour is usually required.
9.	**Countermanded**	The payment of cheque may be counter-manded by the drawer.	The payment of a bill cannot be countermanded.

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Q16. Distinguish between cheque and promissory note.

Ans :

Difference between Cheque and Promissory Note

	Basic of Difference	Cheque	Promissory Note
1.	**Drawer**	It is always drawn on a bank.	It is usually drawn on some person or firm.
2.	**Payable on Demand**	It is always payable on demand	It may be payable on demand or on the expiry of a fixed period.
3.	**Stamp**	It does not require a stamp	It must be properly stamped.
4.	**Payabel to Bearer on Demand**	A cheque drawn "payable to bearer" on demand shall be valid.	A bill payable on demand can never be drawn payable to bearer.
5.	**Crossing**		It can be crossed. It cannot be crossed.
6.	**Countermanded**	The paymentof cheque may be counter-manded by the drawer.	The payment of a bill cannot be countermanded.
7.	**Acceptance**	It does not require acceptance.	It must be accepted by the Drawee.

Q17. Discuss under what conditions a cheque is dishonoured.

Ans : **(Nov.-20)**

When the drawee is unable to make payment on the due date then the cheque becomes 'bounced' or 'dishonoured'.

I) Liability of Drawee on Dishonour of a Cheque (Sec. 31)

If the following three conditions are met, then the drawee is liable to compensate drawer on account of any loss or damage resulted because of the non-payment,

(i) If the drawee posses adequate funds of the drawer in his hands.

(ii) If the funds are properly matched to such payment.

(iii) If the drawee has to make payment by cheque.

II) Liability of Drawer on Dishonour of a Cheque (Sec. 138)

Dishonour of a cheque by drawer leads to imprisonment for 1 year or by imposing fine which should be more than the cheque amount (i.e., double the amount) or both depending on the fulfillment of the following conditions,

(i) If the cheque given to the holder consists of legally enforceable debt or fulfillment of any other liability.

(ii) If the cheque is returned back by the banker on account of inadequate funds in the drawer's a/c.

(iii) Eventhough the cheque has been presented to the bank within its validity or within six months of the cheque received to the bank, whichever is earlier but the holder did not get payment.

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(iv) If the payee after receiving unpaid cheque from the bank, gives a written notice to the drawer about the non-payment of cheque and demands for payment of the said amount within fifteen days of the receipt of information from bank.

(v) If the drawer fails to make payment after receiving notice from the payee, regarding payment of the said amount to payee within fifteen days on receiving the said notice.

a) Cases in Which a Bank Must Refuse to Honour a Customer's Cheque

(i) Stop Payment

On receiving stop payment order from the customer, the bank has the right to reject the customer's cheque.

(ii) Garnishee Order

The bank refuses to honour customer's cheque on receiving Garnishee order (i.e., prohibiting order) from any court.

(iii) Death

On receiving the death notice of the customer.

(iv) Insolvency

On receiving the insolvency notice of the customer.

(v) Insanity

On receiving the insanity notice of the customer.

(vi) Assignment

On receiving the notice of assignment regarding the credit balance of the customer.

(vii) Defect in Title

In case, the bank has a valid reason to proof that the holder of the cheque hold defective title.

(viii) Loss of Cheque

On receiving the loss of cheque notice from the customer.

(ix) Material Alteration

When the bank finds any material alteration change in the cheque without his customer's signature on such alteration / changes.

(x) Different Signature

When the signature does not match with the specimen of the customer given in bank.

(xi) Notice of Closure

On receiving notice of closure of the account.

(xii) Irregular Endorsement

On account of irregular endorsement.

Under the above circumstances the bank may refuse to honour customer's cheque.

b) Cases in Which a Banker May Refuse to Honour a Customer's Cheque

Under the following circumstances, the banker may refuse to honour customer's cheque,

(i) Insufficient Funds

When funds are inadequate in the account than the cheque's amount.

(ii) Funds Not Applicable

On account of non-applicability of funds in the customer's account.

(iii) Presented at Different Branch

If the customer has an account at one branch and the cheque being presented at another branch.

(iv) Presentment After Banking Hours

If cheque is presented during non-banking hours.

(v) State Cheque

If the cheque is presented after its validity or after six months from the date of its issue.

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(vi) Post Dated Cheque

If the cheque is not presented prior to actual date of its payment.

(vii) Undated Cheque

If the cheque is submitted without specifying the date at which it is issued.

3.5 ENDORSEMENTS

Q18. What is Endorsements. Explain the essentials of a valid Endorsement.

Ans :

Endorsement [Section 15]

The process of transferring an instrument is called an endorsement. According to Section 15, when the maker or of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto or so signs for the same purpose a stamped paper intended to be completed as negotiable instrument, he is said to endorse the same, and is called the endorser. Thus, endorsement is signing a negotiable instrument for the purpose of negotiation.

The person making the endorsement is called an 'endorser' and the person to whom the instrument is endorsed is called an 'endorsee'.

Essentials of a Valid Endorsement

Essential requirements of a valid endorsement are as follows:

1. It must be on the instrument. The endorsement may be on the back or face of the instrument and if no space is left on the instrument, it may be made on a separate paper attached to it called allonage. It should usually be in ink.

2) It must be made by the maker or holder of the instrument. A stranger cannot endorse it.

3) It must be signed by the endorser. Full name is not essential. Initials may suffice. Thumb-impression should be attested. Signature may be made on any part of the instrument.

4) It may be made either by the endorser merely signing his name on the instrument (it is a black endorsement) or by any word showing an intention to endorse or transfer the instrument to a specified person (it is a blank endorsement) or by any words showing an intention to endorse or transfer the instrument to a specified person (it is an endorsement in full). No specific form of words is prescribed for an endorsement. But intention to transfer must be present.

5) It must be completed by delivery of the instrument. The delivery must be made by the endorser himself or by somebody on his behalf with the intention of passing property therein. Thus where a person endorses an instrument to another and keeps it in his papers where it is found after his death and then delivered to the endorsee, the latter gets no right on the instrument.

6) If delivery is conditional endorsement is not complete until the condition is fulfilled.

7) It must be an endorsement of the entire bill. A partial endorsement, i.e., which puroorts to transfer to the endorsee a part only of the amount payable does not operate as a valid endorsement.

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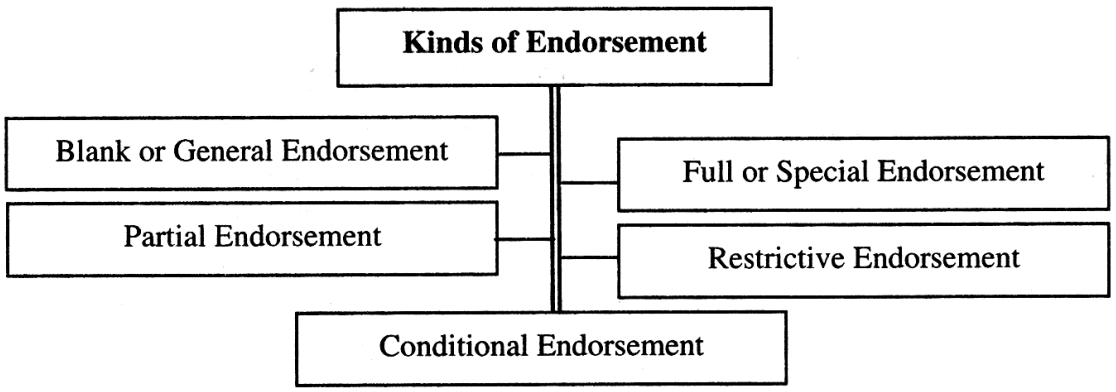
3.5.1 Types of Endorsements

Q19. Explain the different types of Endorsement.

Ans : **(Nov.-21, Jan.-20)**

Kinds of Endorsement

An endorsement may be of the following kinds:



1) Blank or General Endorsement [Section 16(1)]

A blank or general endorsement is one in which the endorser simply puts down his signature. The effect of such an endorsement is to make the cheque a bearer cheque. The property in the cheque can now be transferred by mere delivery, no endorsement being required. Thus, an order cheque can be made a bearer cheque by putting down a blank endorsement.

2) Full or Special Endorsement [Section 16(1)]

If an endorser signs his name and adds a direction to pay the amount mentioned in the instrument to, or to the order of, a specified person, the endorsement is said to be in full. Thus, an endorsement 'Pay Ram or order', 'Pay to Ram' followed in both the cases by the signature of the endorser is an endorsement in full.

3) Partial Endorsement [Section 56]

When an endorsement purports to transfer to the endorsee a part only of the amount of the instrument, the endorsement is said to be partial. A partial endorsement does not operate as a negotiation of the instrument.

4) Restrictive Endorsement

An endorsement is said to be restrictive when it prohibits or restricts the further negotiability of the instrument. It merely entitles the holder of the instrument to receive the amount on the instrument for a specific purpose.

The endorser may, by express words, restrict or exclude the right of further negotiation or may merely constitute the endorsee an agent to endorse the instrument, or to receive its contents for the endorser or for some other specified person [Section 50].

5) Conditional Endorsement [Section 52]

This endorsement limits or negatives the liability of the endorser. It differs from restrictive endorsement, which restricts the negotiability of the instrument but does not in any way limit or negative the liability of the endorser. A conditional endorsement may be in any of the following forms:

i) "Sans recourse"

In this case, the endorser expressly excludes his own liability for dishonour of the instrument towards the endorsee or any subsequent holder. This he does by writing the words "sans recourse or without recourse to me" after the name of the endorsee. Endorsee may refuse to take an instrument with such an endorsement.

ii) Facultative

If the endorser, by express words increases his liability or gives up some of his rights under the negotiable instrument, the endorsement is termed as facultative.

iii) "Sans frais"

Where the endorser does not want the endorser or any subsequent holder of the instrument, to incur any expense on his account on the instrument, the endorsement is 'sansfrais'.

iv) Liability Dependent upon a Contingency

The endorser may make the endorsement in such a way that his liability depends upon happening of a specified event, which may never happen. In case the event becomes impossible to happen, the liability of the endorsee will be at an end.

3.6 Holder - Holder in Due course

Q20. Define :

(a) Holder

(b) Holder in Due course

Ans : **(Nov.-21)**

a) Holder or Indorser [Section 8]

The person is said to be a holder of negotiable instrument who is legally entitled to possess the instrument, in his name and to get its payment on due date or on demand, as the case may be. Thus, the holder is either the original payee or indorsee.

According to Section 8 holder means a person:

1) Who is entitled in his own name to the possession of the instrument, and

2) Who has also the right to receive or recover the amount due thereon from the parties thereto.

Thus, Holder means the bearer of the bearer instrument and the endorsee or payee of the order instrument. He must be a de jure holder and not a de facto holder. He should be the owner thereof at law, whatever is his position in equity. It may be noted that under English Law, actual possession of the instrument is essential to be a holder but such physical possession is not necessary under the Negotiable Instruments Act.

b) Holder in Due Course [Section 9]

Section 9 of the Act define holder in due course as any person who:

1) For valuable consideration,

2) Becomes the possessor of a negotiable instrument payable to bearer or the endorsee or payee thereof,

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3) Before the amount mentioned in the document becomes payable, and

4) Without having sufficient cause to believe that any defect existed in the title of the person from whom he derives his title.

Q21. Explain the qualifications and preveliges of a holder in due course.

Ans :

Qualifications of Holder in Due Course

In order to Becalled a 'holder in due course' a person must possess the following qualifications:

1) He must be a 'Holder'

He must have right to possess the instrument in his own name and to recover or receive payment thereof from the parties liable to pay.

2) He must be a 'Holder for Consideration'

The holder must have given lawful consideration in acquire the instrument. In case if some one gets a cheque as a gift, he can not become holder in due course of that cheque. Thus a person, who gets an instrument without consideration, can not enforce it as a holder in due course.

3) He must Acquire the Instrument before Maturity:

The holder must have acquired the instrument at or before the date of maturity. In case he acquires it after the date of maturity, he will not get better title than that of transferor.

However, an accommodation bill can be negotiated even after the date of maturity with all benefits of a holder in due course to the transferee. In case of instrument payable on demand, e.g. cheque ne must have got it with in reasonable period of time of its issue.

4) Holder must take Negotiable Instrument Complete and Regular on the Face of it

The holder in due course must take the negotiable instrument complete and regular on it is face. He must examine its form, contents and material defects in the instrument such as defects regarding name of drawer, date, stamp duty, etc.

5) Holder must Take the Instrument in Good Faith

The holder must take the instrument in good faith without any negligence. But good faith, regarding title of transferor, on the pan of the holder is not sufficient. Rather, he must have taken it without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

The circumstances leading to suspicion may be related to blank acceptance, incomplete bill, tom pieces of the bill pasted together, and improper endorsement, etc. In all such cases, he must exercise reasonable care and due caution as to be on safe side.

Privileges of a Holder in Due Course

Privileges of holder in due course are as follows:

1) Instrument Cleansed of all Defects

Once a negotiable instrument passes through the hands of a holder in due course, it gets cleansed of its defects provided the holder was himself not a party to the fraud or illegality which affected the instrument in some stage of its journey. Thus any defect in the title of the transferor will not affect the rights of the holder in due course even if he had knowledge of the prior defect provided he himself is not a party to the fraud.

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2) Rights not Affected in Case of an Inchoate Instrument

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

3) All Prior Parties Liable

All prior parties to the instrument (the maker or drawer, acceptor and intervening endorsers) 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

Where both 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 endorser are in the same hand, for the bill being payable to the drawer's order the fictitious drawer must endorse the bill before he can negotiate it.

5) No Effect of Conditional Delivery

Where a negotiable instrument 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.

6) Instrument Obtained by Unlawful Means or for Unlawful Consideration

The person liable to pay on a negotiable instrument cannot, as against a holder in due course, contend that he had lost it, or that it was obtained from him by means of an offence or fraud or for an unlawful consideration.

7) Every Holder is a Holder in due Course

The law presumes that every holder is a holder in due course, although the presumption is rebuttable.

8) Estoppel against Denying Original Validity of Instrument

The maker of a promissory note, the drawer of a bill of exchange or cheque and the acceptor of a bill of exchange for the honour of the drawer cannot, in a suit thereon by a holder in due course, deny the validity of the instrument as originally made or drawn.

9) Estoppel against Denying Capacity of Payee to Endorse

The maker of a promissory note and acceptor of a bill of exchange payable to order cannot, in a suit thereon by a holder in due course, deny the payee's capacity at the date of the note or bill, to endorse the same.

10) Endorser not Permitted to Deny the Capacity of Prior Parties

The endorser of a negotiable instrument cannot, in a suit thereon by a subsequent holder, deny the signature or capacity to contract of any prior party to the instrument.

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Q22. Distinguish between holder and holder in due course.

Ans :

Difference between a Holder and a Holder in Due Course

	Basic of Difference	Holder	Holder in Due Course
1.	**Consideration**	He may become the possessor or payee of an instrument even without consideration.	He acquires possession for consideration
2.	**Before Maturity**	He need not become the possessor before the maturity of the instrument.	He must become the possessor before the maturity of the instrument.
3.	**Good Faith**	He need not become the possessor in good faith.	He must become the possessor in good faith, i.e., without having sufficient cause to believe that any defect existed in the transferos's title.
4.	**Right to have Better Title than that of Transferor**	He cannot have a better title than that of transferor.	He can have a better title than that of transferor.
5.	**Right to Enforce Right against all Prior Parties**	He cannot enforce his right against all the prior parties. He can recover the amount from a person who has signed it and also from the transferor from whom he obtained	He can enforce his rights against all the prior parties.
6.	**Privileges**	He does not enjoy all the privieleges available to holder in due course.	He enjoys some privileges under the Act, e.g., under Sections 20, 36, 42, 43, 46, 58, 120, 121.

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3.7 Dishonour and Discharge of Negotiable Instruments

Q23. Explain the Dishonour of Negotiable Instruments.

Ans : **(Imp.)**

A negotiable instrument may be dishonoured by:

a) Non-acceptance, or

b) Non-payment.

a) Dishonour of a Bills of Exchange by Non-Acceptance [Section 91]

Bill of exchange is dishonoured by non-acceptance in any one of the following ways:

1) If the drawee does not accept the bill within forty-eight hours from the time of presentment though it is duly presented for acceptance;

2) If there are several drawees (who are not partners) and all of them do not accept;

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

4) When the draweee is incompetent to contract;

5) When the drawee gives a qualified acceptance;

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

If a draweee in case of need is mentioned in a bill, the bill is not deemed to be dishonoured unless it is dishonoured by such drawee in case of need also.

b) Dishonour by Non-Payment [Section 92]

A negotiable instrument is dishonoured by non-payment in the following cases:

a) The maker of the promissory note, acceptor of the bills of exchange, or the drawee of the cheque makes default in the payment upon being duly required to pay the same.

b) When the bill remains unpaid at or after maturity in those cases where it is not required to be presented for payment.

i) Notice of Dishonour [Section 93]

When a negotiable instrument is dishonoured, the holder must give a notice of dishonour to all the parties whom he wants to make liable on the instrument. If he fails to do so, except in cases when notice of dishonour may be excused, all the prior parties liable thereon are discharged of their liability.

Notice of dishonour means formal communication of the fact of dishonour. It is given to the party sought to be made liable and, therefore, it serves as a warning to the person to whom the notice is given that he could now be made liable.

ii) Notice by Whom

Notice of dishonour may be given by the holder or by any of the parties on the instrument to the prior parties.

iii) Notice to Whom

Notice of dishonour must be given to all the prior parties whom the holder seeks to make liable. Such notice need not be given to the maker of a note, acceptor of a bill or drawee of a cheque who remain liable on it.

iv) Form of Notice [Section 94]

The notice of dishonour may be oral or in writing and may be sent by post. It may be in any form but it must inform the party to whom it is given that the instrument has been dishonoured. It must be given within a reasonable time at the place of business or residence of the party for whom it is intended.

c) Noting and Protesting

Noting is a convenient method of authenticating the fact of dishonour.

Where an instrument is dishonoured, the holder, besides giving the notice, should get the bill or promissory note 'noted' by the notary public. The notary public presents the instrument, notes down in his register the date of its dishonour and the reason, if any, given by the acceptor.

If the instrument has been expressly dishonoured, the reason why the holder treats it as dishonoured, and the notary's charges should be mentioned. 'Noting' must be made within a reasonable time after dishonour.

The holder may cause such dishonour to be noted by the notary public upon the instrument or upon a paper attached thereto or partly upon each. Every notary is required to have and use a seal, and an act can only be deemed a notarial act if it is done by a notary under his signature and official seal.

However, noting is not compulsory in the case of an inland bill or note, but foreign bills must be protested, if so required by the law of the place where drawn.

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When a promissory note or bills of exchange has been dishonoured by non-acceptance or non-payment, the holder may, within a reasonable time, cause such dishonour to be noted and certified by a Notary Public. Such certificate is called 'protest'.

Q24. Explain the different modes of discharge of parties to a negotiable instrument. What is the difference between discharge of an instrument and discharge of party to an instrument ?

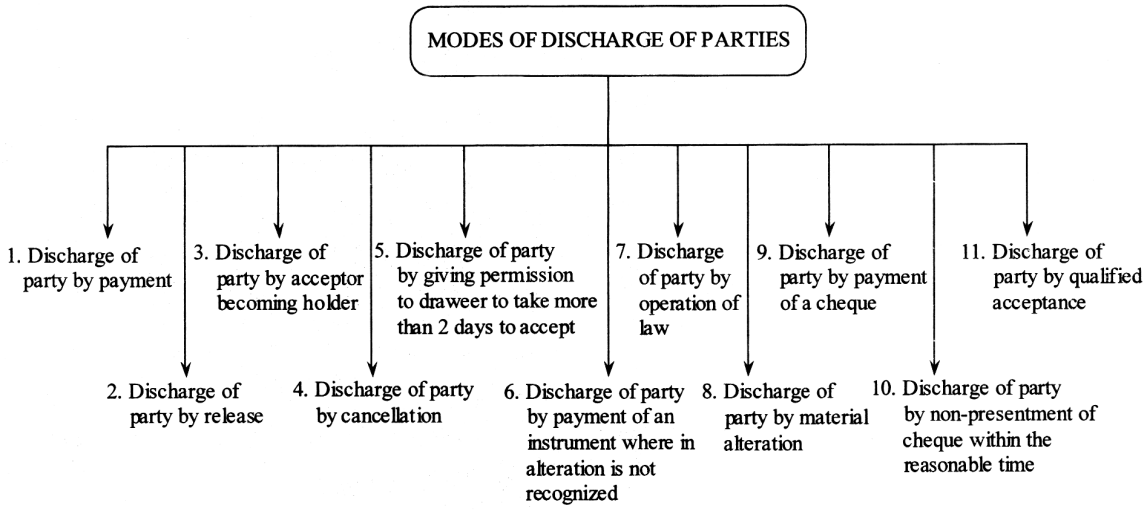
Ans :

Discharge of Parties

Discharge of parties means the parties are discharged from their liabilities towards an instrument. Except the party who got discharged from their liabilities, the other parties to an instrument continue with their liabilities.

Modes of Discharge of Parties

There are various modes by which party gets discharged from his/her liability. The following figure depicts the various modes of discharge of party.



Figure

1. Discharge of Party by Payment [Section 82(c)]

All the parties to a negotiable instrument gets discharged from their obligations when the maker, acceptor or endorser clears the payment to the holder of the instrument in good faith.

2. Discharge of Party by Release [Section 82(b)]

When the holder of a negotiable instrument formally gives up his rights against any specific party to the instrument, then that particular party gets discharged from his/her liability towards the holder of an instrument.

3. Discharge of Party by Acceptor Becoming Holder of an Instrument on or After Maturity [Section 90]

When the acceptor of bill of exchange becomes a holder of bill of exchange which was negotiated on or after maturity then all the rights of the acceptor after that will be terminated. This termination of right takes place through 'Negotiation back'.

4. Discharge of Party by Cancellation [Section 82(a)]

When the holder of a negotiable instrument cancels the name of any of the parties liable to him then the liabilities of that party along with the liabilities of other parties who are getting a title from that party will get discharged. According to the principle of law of guarantee, the discharge of principal debtor discharges even surety. In the same way, all the parties to an instrument gets discharged with the cancellation of the name of an acceptor or maker and operates on the discharge of instrument.

5. Discharge of Party by Permitting Drawee to Take More Than 2 Days to Accept the Bill [Section 83]

When the holder of a bill of exchange permits the drawee to take more than 2 days of time for accepting the bill, then all the prior parties who are showing disagreement to such permission gets discharged from their liabilities towards the holder.

6. Discharge of Party by Payment of Instrument where in Alteration is not Recognized [Section 89]

The party who is liable to pay the amount mentioned in the altered instrument gets discharged from his liabilities,

(a) If the payment is made within the reasonable time and

(b) If the alterations that are made on the instrument are unrecognizable.

7. Discharge of Party by Operation of Law

A party can be discharged by the operation of law. The following are the situations wherein, the party is getting discharged by operation of law,

(a) According to the law of the insolvency, the negotiable instrument is discharged when the party to an instrument is proved as insolvent by the court.

(b) According to the law of the limitation act, the instrument gets discharged when the time period specified for the collection of due amount crosses its expiry date.

8. Discharge of Party by Material Alteration [Section 87]

If any material alteration is made in the negotiable instrument then the party belonging to such instrument is discharged from his liability. If the alteration is done by endorsee then in this situation the liability of endorser towards endorsee is discharged.

9. Discharge of Party by the Payment of a Cheque which is Payable to Order or Payable to Bearer by Drawer or Banker [Section 85]

(a) If a cheque is payable to order appears to be endorsed by the payee or on behalf of the payee then the drawee gets discharged from his duties by making the payment within the reasonable time. Therefore, the banker is protected, if he makes the payment of the cheque by doing forgery on behalf of the payer.

(b) In case of cheque payable to bearer the drawee gets discharged from his liabilities by making the payment within a reasonable time.

10. Discharge of Party by Non-Presentment of Cheque within the Reasonable Time [Section 84]

In case of cheque the drawer gets discharged to the percentage of loss incurred by him if,

(a) The drawer incurs loss due to the non-presentment of cheque on time and

(b) The drawer fails to present cheque for payment within the reasonable time period.

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11. Discharge of Party by Qualified Acceptance [Section 86]

When the holder of a bill of exchange choose to take a qualified acceptance, then all the prior parties who does not give their consent to such qualified acceptance are discharged from their liabilities.

Q25. Distinguish between discharge of an instrument and discharge of a party.

Ans :

Difference between DFischarge of an Instrument and Discharge of a Party

	Basic of Difference	Discharge of an Instrument	Discharge of a Party
1.	**When Takes Place**	When the party who is ultimately liable, is discharged from liability.	When any party or parties to an instrument is/are discharged.
2.	**Negotiability**	The instrument ceases to be negotiable.	The instrument continues to be negotiable.
3.	**Extinguishment of all Rights of Action**	All rights of action under the instrument are completely extinguished.	All rights of action under the instrument are not completely extinguished.
4.	**Discharge of All Parties**	Discharge of an instrument means discharge of all parties.	Discharge of a party does not mean discharge of all parties.

3.8 OFFENCES BY THE COMPANIES

Q26. What do you understand by Offences by Companies?

Ans :

1. If the person contravening an order made under Sec. 3 is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

   Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

2. Not with standing anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any Director, Manager, Secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

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Short Question & Answers

1. What is Negotiable Instruments ?

Ans :

Meaning and Definition of Negotiable Instruments

The word negotiable means 'transferable by delivery', and the word instrument means 'a written document by which a right is created in favour of some person'. Thus, the term "negotiable instrument" literally means "a written document transferable by delivery".

According to Section 13 (1) of the Negotiable Instruments Act, "A negotiable instrument means a promissory note, bill of exchange, or cheque payable either to order or to bearer". "A negotiable instrument may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees" [Section 13(2)].

According to Thomas, "A negotiable instrument is one which is, by a legally recognized custom of trade or bylaw:

1) Transferable by delivery or by endorsement and delivery;

2) Without notice to the party liable, in such a way that the holder of it for the time being may sue upon it in his own name; and

3) The property in it passes to a *bona fide* transferee for value free from equities and free from any defect in the title of the person from whom he obtained it".

This means that a person taking an instrument 'Bona fide', and 'For value', known as a holder in due course, gets a good title even though the title of the transferor may be defective.

2. Define Promissory Note.

Ans :

According to Section 4 of Negotiable Instruments Act, 1881, "A 'promissory note' is an instrument in writing (not being a bank note or a currency note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of a certain person, or to the bearer of the instrument".

The person who makes the promissory note and promises to pay is called the maker. The person to whom the payment is to be made is called the payee.

For example, A signs instrument in the following terms:

1) "I promise to pay B or order ` 500."

2) "I acknowledge myself to be indebted to B in ` 1,000 to be paid on demand, for value received."

3) "Mr. B, I owe you (I O U) ` 1,000."

4) "I promise to pay B ` 500 and all other sums that shall be due to him."

5) "I promise to pay B ` 500, first deducting thereout any money which he may owe me."

6) "I promise to pay B ` 500 seven days after my marriage with C."

7) "I promise to pay B ` 500 and D's death, provided D leave me enough to pay that sum."

8) "I promise to pay B ` 500 and to deliver to him my black horse on 1st January next."

3. Explain the parties involved in Promissory Note.

Ans :

Parties to promissory note are as follows :

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1) Maker

Maker is the person who promises to pay the amount stated in the note. He is the debtor.

2) Payee

Payee is the person to whom the amount of the note is payable, i.e., the creditor.

3) Holder

He is either the payee or the person to whom the note may have been endorsed.

4. Define Bills of Exchange.

Ans :

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 (Sec. 5).

Parties to a bill, There are three parties to bill of exchange, viz., the drawer, the drawee and the payee.

1. Drawer

The person who gives the order to pay or who makes the bill is called the drawer.

2. Drawee

When the drawee accepts the bill, he is called the acceptor (or) drawee.

3. Payee

The person to whom the payment is to he made is called the payee.

Where the payee named in a bill is a fictitious or non-existing person, the bill is treated as payable to bearer. In some cases the drawer and the payee, or when a principal draws on his agent, the drawer and the drawee may be one and the same person.

The drawer or the payee who is in possession of the bill is called the holder. The holder must present the bill to the drawee for his acceptance.

When the holder indorses the bill, note or cheque, he is called the indorser. The person to whom the bill, note or cheque is indorsed is called the indorsee.

5. Distinguish between Bills of exchange and promissory note.

Ans :

Difference between Bills of Exchange and Promissory Note

Basic of Difference	Bills of Exchange	Promissory Note
1. **No. of Parties**	There are three parties - the drawer, the drawee, and the payee.	There are two parties - the maker and the payee.
2. **Promise/Order**	A bill contains un unconditional order to pay.	A note contains an unconditional promise to pay.

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3.	**Nature of Liability**	The liability of the drawer of a bill is secondary and conditional.	The liability of the maker of a note is primary and absolute.
4.	**Debtor / Creditor**	The drawer of a bill is the creditor who directs the drawee (his debtor) to pay.	The maker of a note is the debtor and he himself undertakes to pay.
5.	**Identity of Pay or and payee**	In a bill, the drawer and the payee may be one and the same person.	A note cannot be made payable to the maker himself.
6.	**Acceptance**	A bill payable after sight or after a certain period must be accepted by the drawee before it is presented for payment.	A note requires no acceptance as it is signed by the person who is liable to pay.
7.	**Payable to Bearer**	It can be payable to bearer. It cannot be drawn as payable to bearer on demand.	It cannot be payable to bearer.
8.	**Immediate Relation**	The drawer of the bill stands in immediate relation with the acceptor and not the payee.	The maker of a note stands in immediate relation with the payee.
9.	**Notice of Dishonour**	Notice of dishonour must be given to all the persons (including drawer) who are to be made liable to pay.	Such notice is not required to be given to the maker.
10.	Protest for Dishonour	It requires the protesting for dishonour.	It does not require any protesting.

6. Characteristics of Cheque.

Ans :

Characteristics of cheque are as follows:

1) Written Instrument

A cheque must be an instrument in writing. Regarding the writing materials to be used, law does not lay down any restrictions and therefore cheque may be written either with pen, typewriter or may be printed.

2) Unconditional Order

A cheque must contain an unconditional order. It is, however, not necessary that the word order or its equivalent must be used to make the document a cheque. Generally, the order to bank is expressed by the word “pay”. If the word “please” precedes “pay” the document will not be regarded as invalid merely on this account.

3) Drawn On a Specified Banker Only

A cheque must be drawn on a specified banker. To avoid any mistake, the name and address of the banker should be specified.

4) Certain Sum of Money

The order must be only for the payment of money and that too must be specified. Thus, orders asking the banker to deliver securities or certain other things cannot be regarded as cheques. Similarly,

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an order asking the banker to pay a specified amount with interest, the rate of interest not specified, is not a cheque as the sum payable is not certain.

5) Payee to be Certain

A cheque to be valid must be payable to a certain person. "Person" should not be understood in a limited sense including only human beings. The term in fact includes "legal persons" also. Thus, instruments drawn in favour of a body corporate, local authorities, clubs, institutions, etc., are valid instruments being payable to legal persons.

7. What is Endorsements.

Ans :

Endorsement [Section 15]

The process of transferring an instrument is called an endorsement. According to Section 15, when the maker or of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto or so signs for the same purpose a stamped paper intended to be completed as negotiable instrument, he is said to endorse the same, and is called the endorser. Thus, endorsement is signing a negotiable instrument for the purpose of negotiation.

8. Holder.

Ans :

The person is said to be a holder of negotiable instrument who is legally entitled to possess the instrument, in his name and to get its payment on due date or on demand, as the case may be. Thus, the holder is either the original payee or indorsee.

According to Section 8 holder means a person:

1) Who is entitled in his own name to the possession of the instrument, and

2) Who has also the right to receive or recover the amount due thereon from the parties thereto.

Thus, Holder means the bearer of the bearer instrument and the endorsee or payee of the order instrument. He must be a de jure holder and not a de facto holder. He should be the owner thereof at law, whatever is his position in equity. It may be noted that under English Law, actual possession of the instrument is essential to be a holder but such physical possession is not necessary under the Negotiable Instruments Act.

9. Holder in Due course.

Ans :

Section 9 of the Act define holder in due course as any person who:

1. For valuable consideration,
2. Becomes the possessor of a negotiable instrument payable to bearer or the endorsee or payee thereof,
3. Before the amount mentioned in the document becomes payable, and
4. Without having sufficient cause to believe that any defect existed in the title of the person from whom he derives his title.

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10. Distinguish between holder and holder in due course.

Ans :

Basic of Difference	Holder	Holder in Due Course
1. **Consideration**	He may become the possessor or payee of an instrument even without consideration.	He acquires possession for consideration
2. **Before Maturity**	He need not become the possessor before the maturity of the instrument.	He must become the possessor before the maturity of the instrument.
3. **Good Faith**	He need not become the possessor in good faith.	He must become the possessor in good faith, i.e., without having sufficient cause to believe that any defect existed in the transferos's title.
4. **Right to have Better Title than that of Transferor**	He cannot have a better title than that of transferor.	He can have a better title than that of transferor.
5. **Right to Enforce Right against all Prior Parties**	He cannot enforce his right against all the prior parties. He can recover the amount from a person who has signed it and also from the transferor from whom he obtained	He can enforce his rights against all the prior parties.
6. **Privileges**	He does not enjoy all the privieleges available to holder in due course.	He enjoys some privileges under the Act, e.g., under Sections 20, 36, 42, 43, 46, 58, 120, 121.

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UNIT IV

Business Environment: Industrial Policy, Five Year Planning, Foreign Direct Investment (FDI), Fiscal Policy- Latest Union Budget- Reforms Undertaken by the government, Monetary Policy, Banking Sector Reforms.

4.1 Business Environment

Q1. Define Business Environment.

Ans :

Meaning of Environment

Environment is the sum of all living and non-living things that surround an organism or group of organisms. Environment includes all elements, factors and conditions that have some impact on the growth and development of certain organism. Environment includes both biotic and abiotic factors that have influence on observed organism.

Meaning of Business Environment

Environment of a business means the external forces influencing the business decisions. They can be forces of economic, social, political and technological. These forces are beyond the control of the business. The success of every business depends on adapting itself to the environment within which it functions. For example, when there is change in the government policies, the business firm has to make necessary changes to adapt it to the new policies. Similarly, a change in technology may render the existing products obsolete. It has seen that the introduction of computer has replaced the typewriters; the color television has made the black and white television out of fashion. Again a change in the fashion or customers taste and preferences may shift the demand in the market for a particular product. All these aspects are external factors that are beyond the control of the business. So the business units must have to adapt themselves to these kind of changes, in order to survive and succeed in the competitive world

Business environment is an environment in which business is carried out. Business environment encompasses all those factors that affect a company's operations; including customers, competitors, suppliers, distributors, industry trends, substitutes, regulations, government activities, the economy, demographics, social and cultural factors, innovations and technological developments.

An example of a business environment is a business office, such as an insurance office because they carry out the business of selling insurance policies to people.

Definitions of Business Environment

According to Barry M. Richman and Melvgtt Copen, "Business environment consists of factors that are largely if not totally, external and beyond the control of individual industrial enterprise and their managements. These are essentially the 'givers' within which firms and their management must operate in a specific country and they vary, often greatly, from country to country".

According to William F. Glucck, "Business environment as the process by which strategists monitor the economic, governmental, market, supplier, technological, geographic and social settings to determine opportunities and threats to their firms".

Q2. Explain the features of business environment.

Ans :

Understanding environment within which the business is to operate is very important for successful business. Some of the features of business environment are as follows:

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(i) Totality of External Forces

Business environment is the sum total of all things external to business firms and, as such, is aggregative in nature.

(ii) Specific and General Forces

Business environment includes both specific and general forces. Specific forces (such as investors, customers, competitors and suppliers) affect individual enterprises directly and immediately in their day-to-day working. General forces (such as social, political, legal and technological conditions) have impact on all business enterprises and thus may affect an individual firm indirectly only.

(iii) Dynamic Nature

Business environment is dynamic in nature. It keeps on changing whether in terms of technological improvement, shifts in consumer preferences or entry of new competition in the market.

(iv) Uncertainty

Business environment is largely uncertain as it is very difficult to predict future happenings, especially when environment changes are taking place too frequently as in the case of information technology or fashion industries.

(v) Relativity

Business environment is a relative concept since it differs from country to country and even region to region. Political conditions in the USA, for instance, differ from those in China or Pakistan. Similarly, demand for sarees may be fairly high in India whereas it may be almost non-existent in France.

(vi) Multi-faceted

Business environment changes are frequent and depend on knowledge and existence of business person. Changes may be viewed differently bu different individuals. It may be an opportunity for some or a threat for others.

Q3. Explain the importance of business environment.

Ans :

There is a close and continuous interaction between the business and its environment. This interaction helps in strengthening the business firm and using its resources more effectively. As stated above, the business environment is multifaceted, uncertain, and dynamic in nature which has a far-reaching impact on the survival and growth of the business. To be more specific, proper understanding of various aspects of business environment such as social, political, legal and economic helps the business in the following ways:

(i) First Mover Advantage

Early identification of opportunities helps an enterprise to be the first to exploit them instead of losing them to competitors. For example, Maruti Udyog became the leader in the small car market because it was the first to recognize the need of small cars in India.

(ii) Identification of Threats

Identification of possible threats helps in taking corrective and improving measures to survive the competition. For instance; if an Indian firm finds that a foreign multinational is entering the Indian market, it can meet the threat by adopting measures like, by improving the quality of the product, reducing cost of the production, engaging in aggressive advertising, and so on.

(iii) Coping with Rapid Changes

All types of enterprises are facing increasingly dynamic environment. In order to effectively cope with these significant changes, firms must understand and examine the environment and develop suitable course of action.

(iv) Improving Performance

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

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(v) Giving Direction for Growth

The interaction with the environment leads to opening up new frontiers of growth for the business firms. It enables the business to identify the areas for growth and expansion of their activities.

(vi) Meeting Competition

It helps the firms to analyze the competitors' strategies and formulate their own strategies accordingly in order to cope with the rapidly increasing competition.

(vii) Image Building

Environmental under-standing helps the business organizations in improving their image by showing their sensitivity to the environment within which they are working. For example, in view of the shortage of power, many companies have set up Captive Power Plants (CPP) in their factories to meet their own requirement of power and saving to loss of energy in transmission.

(viii) Continuous Learning

Environmental analysis makes the task of managers easier in dealing with business challenges. The managers are motivated to continuously update their knowledge, understanding and skills to meet the predicted changes in realm of business.

Q4. Explain the goals of the business environment

Ans :

1. Knowledge of Information

By studying the business environment, we can know the changes of business. This information is very useful for any business. Every businessman should aware current environment of business. With this, he can think the future of his business in such environment.

2. Basis of Decisions

One of the main goals of the business environment is that it can provide all the information which is needed for taking good decisions. Suppose, you completed your internal business environment study. With this study, you can take decision relating to purchase, sale, salary and price because you know your competitor, you know your suppliers and you know your customers.

3. Helpful in making of Policies

For making good business policies, we need to know and scan business through business environment.

4. Technological Planning

Today, technology is changing very first. So, you have to study technological environment. With this, you can make better technological planning of your business.

5. Survive in the Business

Sometime industry may face recession. Production may be unlimited but sales will be limited. Only that business will survive who estimate this entire situation in advance through business environment study.

Q5. Explain the nature of business environment.

Ans :

The nature of business environment helps to understand the following:

1. Economic System

The different kinds of economic systems influence the business in different ways. It is essential for a businessman and business firm to know about the role of capitalists, socialist and mixed economy.

2. Interrelatedness

The different factors of business environment are co-related. For example, let us suppose that there is a change in the import-export policy with the coming of a new government.

In this case, the coming of new government to power and change in the import-export policy are political and economic changes respectively. Thus, a change in one factor affects the other factor.

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3. Economic Policy

Economic policy has its own importance in business environment and it has an important place in business. The business environment helps to understand government policies such as, export-import policy, price policy; monetary policy, foreign exchange policy, industrial policy etc. have much effect on business.

4. Uncertainty

Nothing can be said with any amount of certainty about the factors of the business environment because they continue to change quickly. The professional people who determine the business strategy take into consideration the likely changes beforehand. But this is a risky job. *For example,* technical changes are very rapid. Nobody can anticipate the possibility of these swift technical changes. Anything can happen, anytime. The same is the situation of fashion.

5. Market Conditions

It is necessary for an enterprise to have the knowledge of market structure and changes taking place in it. The knowledge about increase and decrease in demand, supply, monopolistic practices, government participation in business etc., is necessary for an enterprise.

6. Totality of External Forces

Business environment is the sum totals of all those factors/forces which are available outside the business and over which the business has no control. It is the group of many such forces that is why, its nature is of totality.

7. Specific and General Forces

The forces present outside the business can be divided into two parts-specific and general.

8. Internal Environment

It is very much important for business enterprise to understand its internal environment, such as business policy, organization structure etc. In such case an effective management information system will help to predict the business environmental changes.

9. Complexity

Environment comprises of many factors. All these factors are related to each other. Therefore, their individual effect on the business cannot be recognized. This is perhaps the reason which makes it difficult for the business to face them.

10. Relativity

Business environment is related to the local conditions and this is the reason as to why the business environment happens to be different in different countries and different even in the same country at different places.

11. Dynamic Nature

As is clear that environment is a mixture of many factors and changes in some or the other factors continue to take place. Therefore, it is said that business environment is dynamic.

Q6. Explain the classificaion of Business Environment.

Ans :

Business environment may be defined as the set of external and internal factors which affects the decisions of business. Business Environment is of two types

1. Micro Environment of Business/Internal Environment of Business
2. Macro Environment of Business/External Environment of Business

1. The Micro Environment of Business/ Internal Environment of Business

These are powers which are deeply related with company and company can control these type of environment by improving its capacity and efficiency.

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1. Suppliers

Suppliers are the persons who supply raw material to company.

2. Customers

Customers are the persons who buy goods from company.

3. Market Intermediaries

Market intermediaries are those person who helps company to sell its products.

4. Financial Intermediaries

Financial intermediaries are those institutions who provide loan, credit and advance to company.

5. Competitors

Competitors are those who also sell same product of company.

6. Public

Public is those group of people who can buy or who can show their interest to buy the products of company.

2. The Macro Environment of Business/ External Environment of Business

Macro environment of business means all external factors which affects company and its business and there is no control of company on these factors.

1. Economic Environment

In economic environment, we can include govt. Budget, import and export policies, economic system and economic conditions.

2. Political and Governmental Environment

In political and government environment, we can include legislature's decisions, executive's decisions and judiciary decision which affect company's business.

3. Socio cultural Environment

Socio-cultural environment includes morality, religion, education, health of peoples and family importance.

4. Natural Environment

In natural environment, we can include season, place elements, natural resources etc.

5. Demographic Environment

In demographic environment, we can include size of population, growth rate of population, age composition, sex composition and family size.

6. Technological Environment

In technological environment, we can include e-commerce technology, online payment, Internet technology, mobile banking and 3G technology and all other new technology which affect company's business.

7. International Environment

In international environment, we can include rules and regulation of WTO, WB and MNC's affect on our company's business.

Q7. What are the Factors inflencing Business Environment?

Ans :

a) Social Environment

The social environment of business includes social factors like customs, traditions, values, beliefs, poverty, literacy, life expectancy rate etc. The social structure and the values that a society cherishes have a considerable influence on the functioning of business firms.

For example, during festive seasons there is an increase in the demand for new clothes, sweets, fruits, flower, etc. Due to increase in literacy rate the consumers are becoming

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more conscious of the quality of the products. Due to change in family composition, more nuclear families with single child concepts have come up. This increases the demand for the different types of household goods. It may be noted that the consumption patterns, the dressing and living styles of people belonging to different social structures and culture vary significantly.

b) Political Environment

This includes the political system, the government policies and attitude towards the business community and the unionism. All these aspects have a bearing on the strategies adopted by the business firms. The stability of the government also influences business and related activities to a great extent. It sends a signal of strength, confidence to various interest groups and investors. Further, ideology of the political party also influences the business organization and its operations. You may be aware that Coca-Cola, a cold drink widely used even now, had to wind up operations in India in late seventies. Again the trade union activities also influence the operation of business enterprises.

Most of the labour unions in India are affiliated to various political parties. Strikes, lockouts and labour disputes etc. also adversely affect the business operations. However, with the competitive business environment, trade unions are now showing great maturity and started contributing positively to the success of the business organization and its operations through workers participation in management.

c) Legal Environment

This refers to set of laws, regulations, which influence the business organizations and their operations. Every business organization has to obey, and work within the framework of the law. The important legislations that concern the business enterprises include :

i) Companies Act, 1956

ii) Foreign Exchange Management Act, 1999

iii) The Factories Act, 1948

iv) Industrial Disputes Act, 1972

v) Payment of Gratuity Act, 1972

vi) Industries (Development and Regulation) Act, 1951

vii) Prevention of Food Adulteration Act, 1954

viii) Essential Commodities Act, 2002

ix) The Standards of Weights and Measures Act, 1956

x) Monopolies and Restrictive Trade Practices Act, 1969

xi) Trade Marks Act, 1999

xii) Bureau of Indian Standards Act, 1986

xiii) Consumer Protection Act, 1986

xiv) Environment Protection Act

xv) Competition Act, 2002

d) Technological Environment

Technological environment include the methods, techniques and approaches adopted for production of goods and services and its distribution. The varying technological environments of different countries affect the designing of products. For example, in USA and many other countries electrical appliances are designed for 110 volts. But when these are made for India, they have to be of 220 volts.

In the modern competitive age, the pace of technological changes is very fast. Hence, in order to survive and grow in the market, a business has to adopt the technological changes from time to time. It may be noted that scientific research for improvement and innovation in products and services is a regular activity in most of the big industrial organizations. Now a days infact, no firm can afford to persist with the outdated technologies.

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e) Demographic Environment

This refers to the size, density, distribution and growth rate of population. All these factors have a direct bearing on the demand for various goods and services. For example a country where population rate is high and children constitute a large section of population, then there is more demand for baby products. Similarly the demand of the people of cities and towns are different than the people of rural areas. The high rise of population indicates the easy availability of labour. These encourage the business enterprises to use labour intensive techniques of production. Moreover, availability of skill labour in certain areas motivates the firms to set up their units in such area. For example, the business units from America, Canada, Australia, Germany, UK, are coming to India due to easy availability of skilled manpower. Thus, a firm that keeps a watch on the changes on the demographic front and reads them accurately will find opportunities knocking at its doorsteps.

f) Natural Environment

The natural environment includes geographical and ecological factors that influence the business operations. These factors include the availability of natural resources, weather and climatic condition, location aspect, topographical factors, etc. Business is greatly influenced by the nature of natural environment. For example, sugar factories are set up only at those places where sugarcane can be grown. It is always considered better to establish manufacturing unit near the sources of input. Further, government's policies to maintain ecological balance, conservation of natural resources etc. put additional responsibility on the business sector.

Q8. Explain the objectives of Business Environmental.

Ans :

Objectives of the Business Environment

1. To achieve growth

It is the primary objective of business environment. It should grow in all directions over a period of time. An enterprise which remains stagnant for long is presumed to suffer from an organic defect.

The strategies adopted to achieve growth are:

i) Add more products in the market.

ii) Integration forward or backward.

iii) Increase market share.

iv) Diversify into new areas.

v) Expand markets.

vi) Cut costs and increase productivity.

2. **To make profit**

Profit is the backbone of any business enterprise. It is the excess of income over expense. Profit is the main motivator, strong sustainer and judicious allocator of resources, objective indicator of efficient productivity and a solid basis for growth, expansion and survival. It enables a businessman to realize his other objectives. For examples, hospitals, schools, charitable institutions and government agencies are not basically concerned with the acquisition of profits. The non-profit enterprise customarily relies on gifts, endowments, receipts from money-rising projects, subsides or taxes for sustenance. The basic objective of these establishments is the provision of a service which is socially desirable and useful.

3. **Quality product and services**

This is one of the major objectives of business environment. Those who insisted on and

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persisted in quality survived competition and stayed ahead of others in the market. Persistent quality earns brand loyalty, which is a vital ingredient of success.

4. **Challenging**

Business offers vast scope and poses formidable challenges. Success in a business venture speaks of the abilities of individuals and manage failure, their inability and incompetence. The real worth of an individual is tested more in business than in any other profession.

5. **Power**

Business has vast resources such as money, materials, men and know-how. These resources confer enormous economic and political power on owners and managers of business venture.

6. **Service to society**

Business is a part of society and has several obligations towards it. Some of them are:

i) Providing safe and quality goods at reasonable prices.

ii) Providing employment opportunities.

iii) Patronizing cultural and religious activities.

iv) Maintaining and protecting ecology.

7. Market leadership

To earn market leadership is yet another objective of business. To earn a niche for oneself in the market, innovation is the key factor. Innovation may be in product, advertising, distribution, finance or in any other field.

8. Employee satisfaction and development: The Chinese proverb says, "If you want to plan for a year, plant corn. If you want to plan for thirty years, plant a tree. But if you want to plan for 100 years plant a men". Carrying for employee satisfaction and their development has been one of the objectives of enlightened business enterprises.

4.2 INDUSTRIAL POLICY

Q9. Define Industrial Policy. Explain the objectives of Industrial Policy.

Ans : **(Nov.-20)**

Introduction

The industrial policy means the procedures, principles, policies rules and regulations which control the industrial undertaking of the country and pattern of industrialization. It explains the approach of Government in context to the development of industrial sector. In India the key objective of the economic policy is to achieve self-reliance in all sectors of the economy and to develop socialistic pattern of society.

The industrial policy in the pre-reform period i.e. before1991 put greater emphasis on the state intervention in the field of industrial development. These policies no doubt have resulted into the creation of diversified industrial structure but caused a number of inefficiencies, distortions and rigidities in the system. Thus during late 70's and 80's, Government initiated liberalization measures in the industrial policy framework. The drastic liberalization measures were however, carried out in 1991.

New industrial policy was applied on 24th July 1991. There were many amendments in this industrial policy. New industrial policy is very different from old industrial policy.

Objectives of Industrial Policy

Following are the important objectives of industrial polices,

1. To increase the overall growth rate of industrial sector through the process of industrialization.
2. To promote balanced regional development and the employment opportunities.
3. To widen the scope of government which helps in regulating the industry.

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4. To optimally utilize the scarce resources of the country which must ensure the growth and the economic development of the country.
5. It also aims at achieving the socialistic pattern of society, industrial development, economic growth and self-sustained economy.
6. It strives towards the removal of poverty and protection of small-scale sector.
7. To remove the regional differences during its development and to improve the establishment of large and growing cooperative sector.
8. To expand the public sector for achieving socialism.

Thus, the objectives of industrial policies helps in the achievement of the growth, development and progress of the industrial sector by following the rules, regulations, policies as put forth by the government of India.

Q10. Explain the important elements related to Industrial Policy.

Ans :

1. Industrial Licensing

(i) Industrial licensing policy and procedures have also been liberalized from time to time. A full realization of the industrial potential of the country calls for a continuation of this process of change.

(ii) Major policy initiatives and procedural reforms are called for in order to actively encourage and assist Indian entrepreneurs to exploit and meet the emerging domestic and global opportunities and challenges.

(iii) The bedrock of any such package of measures must be taken to the attainment of technological dynamism and international competitiveness requires that enterprises to be enabled to respond swiftly to fast-changing external conditions that have become characteristic of today's industrial world.

(iv) Government policy and procedures must be geared to assist entrepreneurs in their efforts.

(v) The system of reservation for public sector undertakings has been evolved towards the those of greater flexibility and private sector enterprise has been gradually allowed to enter into many of these areas on a case by case basis.

(vi) This calls for bold and imaginative decisions designed to remove restraints on capacity creation, which at the same time, ensure that overriding national interests are not jeopardized.

(vii) Thus industrial licensing will henceforth be abolished for all industries, except those specified, irrespective of the levels of investment.

2. Foreign Technology and Investment

Foreign investment in India is regulated by the Government from the very beginning. Therefore, for any foreign investment or technology, prior approval of the Government is necessary which leads to unnecessary delays.

Thus, the new industrial policy prepares a list of high invest priority and high technology in which automatic approval will be given for direct foreign investment up to 51 percent equity.

Such clearance will be available if foreign equity covers the foreign exchange requirement for imported capital goods. Moreover, in order to provide access to international markets, majority foreign equity holding up to 51 per cent equity will be allowed for trading companies primarily engaged in export activities.

Apart from this, a special Empowered Board would be constituted to negotiate with various large international firms and approve direct foreign investment in selected areas.

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Regarding the foreign technology agreements automatic approval will be given in identified high priority industries up to a lump sum payment of Rs. 1 crore, 5 per cent royalty for domestic sales and 8 per cent for exports, subject to total payments of 8 per cent of sales over a period of ten years from the date of agreement or seven years from commencement of production.

3. Public Sector

The public sector has been the centre to the philosophy of our development. But in spite of its huge investment, public sector enterprises could yield a very low rate of return on capital investment. Numerous, public sector undertakings are incurring losses regularly. Thus, in a bid to face the situation, the Government should restructure the potentially viable units. This priority area is for future growth of PSEs included-essential infrastructure, technology development, exploration and exploitation of minerals and oil, products with strategic consideration etc.

Moreover, the new policy has now reduced the list of industries under public sector to 8 as against 17 industries reserved in 1956 policy. The new industrial policy also states that the government will raise the strength of those public sector units included in the list of reserved industries.

The Government also reviews the existing public sector undertakings. Industries earning higher profits will be provided with much higher degree of management autonomy through MoU. Apart from all this, the government has also taken a decision to disinvest the equity shares of selected public units.

4. MRTP Limit

Under the MRTP Act, firms having assets over a certain size of Rs. 100 crores since 1985 were classified as MRTP firms. These firms were allowed to start only selected industries on a case by case approval. But now the Government has realized that the MRTP limit has become deleterious in its effect on industrial growth.

Therefore, new policy states that the pre-enter scrutiny of investment decisions by the MRTP companies will no longer be required.

Emphasis should be on controlling and regulating-the monopolistic, restrictive and unfair trade practices. Moreover, provisions of the MRTP Act will be strengthened to enable the MRTP commission to take appropriate action in respect of these practices.

5. Location Policy Liberalized

Regarding the location of industries in cities of less than 1 million populations, no industrial approval is required from the centre. In cities, with more than 1 million populations, industries other than those of non-polluting in nature will be located outside 25 km. of its periphery.

6. Abolition of Phased Manufacturing Programme

To increase the pace of indigenization, phased manufacturing programme was enforced. The new policy has totally abolished such programmes as the Government, feels, due to substantial reforms of trade policy and devaluation of rupee, there is no need to enforce such programmes.

7. Removal of Mandatory Convertibility Clause

Banks and financial institutions have financed a large part of industrial investment that has followed a mandatory convertibility clause. This has provided no option to convert loans into equity this was an un-warranted threat to private firm. The new industrial policy has removed this system.

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Q11. Explain the main features of 1948 industrial policy. Discuss the objectives of industrial policy resolution 1956.

Ans : **(Nov.-20)**

I) Industrial Policy Resolution of 1948

Industrial policy of 1948 constitutes the first industrial policy of a country which was declared by the Indian government on April 6, 1948.

Main Features of the Industrial Policy of 1948

1. Acceptance of the Importance of Both Private and Public Sectors

The industrial policy resolution of 1948 has given equal importance to both the sectors of an economy [private and public sector]. It has broadened the scope of operation of the state.

2. Division of the Industrial Sector

The resolution of 1948 classified industries into four categories which includes:

(i) Industries that are managed and controlled by a state.

(ii) Mixed sector

(iii) Industries that are under the government control and

(iv) The private enterprises.

(i) Industries that are Managed and Controlled by a State

Three types of industries namely, Arms and Ammunition, Atomic energy and Rail Transport were included under this category.

(ii) Mixed Sector

It consists of six industries. They are as follows, Coal, iron, and steel, aircraft manufacturing, ship building. Telegraph and wireless apparatus and mineral oil.

(iii) Industries that are under Government Control

The government realized the importance of the following industries and had emphasized on their regulation and control.

(iv) The Private Enterprises

The industries which were not included in the above three categories were included under the control of the private enterprises.

3. Role of Small and Cottage Industries

The 1948 policy accepted the role of small and cottage industries for the development of industrial sector. These industries were established for the exploitation of employment opportunities and for using local resources.

4. Other Important Features of the Industrial Policy

Industrial policy helps in identifying the role of foreign capital for bringing the industrial development of the economy.

II) Industrial Policy Resolution of 1956

Industrial policy of 1948 brought so many changes in the Indian economy. Some of the them include the transformation of India into a Republic Nation, the emergence of the First Five Year Plan, significant importance was laid down on the public sector, establishment of the socialistic pattern of the society and the existence of both private and public sector etc. All such changes led to the development of a new resolution which is called as the Industrial Policy Resolution of 1956. This policy was declared on 30 April. 1956.

The following were the objectives of Industrial Policy Resolution of 1956.

(a) To make the process of industrialization faster in India.

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(b) To broaden the base of public sector.

(c) To take the effective measures for the development of heavy and capital goods industries.

(d) To strive for the achievement of the economic growth of the country.

(e) To build, grow and to expand the co-operative sector.

(f) Promoting the role of private sector industries.

(g) To prevent the economy from the concentration of economic power, monopolies to only few hands.

(h) Improving small-scale, medium and cottage industries and to achieve balanced economic development.

(i) This policy aims at industrial development through the active participation of labours in management affairs and also in promoting and maintaining the culture of industrial peace.

The Industrial Policy of 1956 acts as an important policy to bring drastic improvements in industrial sectors. This policy is considered as, 'Magna Carta' for Indian industry till the emergence industrial policy of 1991.

Classification of Industries

The industries are categorized under the following three heads,

1. Schedule "A"
2. Schedule "B" and
3. Schedule "C".

Even though, such classification was initiated in 1956 but it tends to be followed by the subsequent industrial policies.

List of industries which are grouped under schedule 'A', schedule 'B' and schedule 'C' are as follows,

Schedule 'A'	Schedule 'B'	Schedule 'C'
Schedule 'A' industries are classified into '17' industries They are as follows ,	Schedule 'B' industries consists of 12 industries. They are as follows,	The industries which do not come under schedule 'A' and 'B' were included under schedule 'C'
1. Atomic energy	1. Ferro alloys and tools, steels	These Industries are owned by private sector.
2. Iron and steel schedule 'A'	2. Aluminium and other non-ferrous	
3. Heavy castings	3. Other minerals excluding minor	
minerals defined under Mineral Concession Rules, 1949, sec 'B'		

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4. Arms and ammunition	4. Antibiotics and other essential drugs	
5. Coal and lignite related to chemical industries such as Drugs, Dyestuffs, plastics, etc.	5. Basic and intermediate products	
6. Heavy machinery	6. Fertilisers	
7. Mineral oils	7. Carbonisation of coal	
8. Railway transport	8. Antibiotics and other essential drugs.	
9. Heavy electrical plant	9. Sea port	
10. Air - transport	10. Road transport	
11. Ship - building	11. Chemical pulp	
12. Mining of ores such as iron ore, chrome ore, gold, diamonds etc.	12. Synthetic rubber	
13. Mining and processing of elements such as Tin, lead, copper, zinc etc.		
14. Aircraft		
15. Minerals as per atomic energy order, 1953.		
16. Generation and distribution of electricity		
17. Telephone cables, telegraph etc.		
Industries listed above were state - owned.	Industries listed above were owned by mixed - sector (i.e., by both public and private sectors).	

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The industrial policy resolution of 1956 was responsible for bringing positive results to the industrialization approach.

(a) It mainly strives for the maintenance of balanced regional development. By properly maintaining the regional development, the rapid industrial growth can be ensured.

(b) It was intended for the generation of sufficient manpower ensuring the development of industries and for maintaining industrial peace by developing cordial relationship with private, public, large, medium and small scale sectors.

(c) Small sectors were given permission to establish some of the industries that were grouped under the schedule 'A' of 1956 industrial policy so as to promote small-scale sectors.

(d) Priority was given to small-scale sector and were protected by providing,

(i) Specially designed incentive system

(ii) Direct subsidies and

(iii) Differential tax rates.

Q12. Explain the New Industrial Policy of 1991.

Ans : **(Aug.-21, Nov.-20)**

Historical Perspective

In 1948, immediately after Independence, Government introduced the Industrial Policy Resolution. This outlined the approach to industrial growth and development. It emphasized the importance to the economy of securing a continuous increase in production and ensuring its equitable distribution. After the adoption of the Constitution and the socio-economic goals, the Industrial Policy was comprehensively revised and adopted in 1956. To meet new challenges from time to time, it was modified through statements in 1973, 1977 and 1980.

The Industrial Policy Resolution of 1948 was followed by the Industrial Policy Resolution of 1956, which had as its objective the acceleration of the rate of economic growth and the speeding up of industrialization as a means of achieving a socialist pattern of society. In 1956, capital was scarce and the base of entrepreneurship not strong enough. Hence the 1956 Industrial Policy Resolution gave primacy to the role of the State to assume a predominant and direct responsibility for industrial development.

The Industrial Policy Statement of 1973, inter alia, identified high priority industries where investment from large industrial houses and foreign Companies would be permitted. The Industrial Policy Statement of 1977 laid emphasis on decentralization and on the role of small-scale, tiny and cottage industries.

The Industrial Policy Statement of 1980 focused attention on the need for promoting competition in the domestic market, technological up gradation and modernization. The policy laid the foundation for an increasingly competitive export base and for encouraging foreign investment in high-technology areas. This found expression in the Sixth Five-Year Plan, which bore the distinct stamp of Mrs Indira Gandhi. It was Mrs Gandhi who emphasized the need for productivity to be the centralxoncern in all economic and production activities.

These policies created a climate for rapid industrial growth in the country. Thus, on the eve of the Seventh Five-Year Plan a broad-based infrastructure had been built up. Basic industries had been established. A high degree of self-reliance in a large number of items—raw materials, intermediates, and finished goods had been achieved. New growth centres of industrial activity had emerged, as had a new generation of entrepreneurs. A large number of engineers, technicians and skilled workers had also been trained.

The Seventh Plan recognized the need to consolidate on these strengths and to take initiatives to prepare Indian industry to respond effectively to the emerging challenges. A number of policy and procedural changes were introduced in 1985 and 1986 under the leadership of Mr Rajiv Gandhi aimed at increasing productivity, reducing costs and improving quality. The accent was on opening the domestic market to increased competition and readying our industry to stand on its own in the face of international competition. The public sector was freed from a number of constraints and given a larger measure of autonomy. The technological and managerial modernization of industry was pursued as the key instrument for increasing productivity and improving our competitiveness in

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the world. The net result of all these changes was that Indian industry grew by an impressive average annual growth rate of 8.5 per cent in the Seventh Plan period.

Government is pledged to launching reinvigorated struggle for social and economic justice, to end poverty and unemployment and to build a modem, democratic, socialist, prosperous and forward-looking India. Such a society can be built if India grows as part of the world economy and not in isolation.

Government provides enhanced support to the small-scale sector so that it flourishes in an environment of economic efficiency and continuous technological upgradation. Foreign investment and technology collaboration will be welcome to obtain higher technology, to increase exports and to expand the production base.

The Industrial Policy announced on July 24, 1991 heralded the economic reforms in India and sought to drastically alter the industrial scenario in our country. The most visible sign of the country's economic crisis in early 1991 was:

i) Extremely low foreign exchange reserves of Rs. 2400 crore (just enough to buy from abroad only three weeks requirements.)

ii) Inflation was as high as 13.5%

This policy expanded the scope of the private sector by opening up most of the industries for the private sector and did away with the entry and growth restrictions. The most important initiatives are with respect to the virtual scrapping of industrial licensing and registration policies, an end to the monopoly law and a welcoming approach to foreign investments.

Aims of Industrial Policies 1991

The main aim of this policy was to unshackle the country's industrial economy from the cobwebs of unnecessary bureaucratic control, introduce liberalization with a view to integrate the Indian economy with the world economy, to remove restrictions on direct foreign investment and also to free the domestic entrepreneur from the restrictions of MRTP Act. Besides, the policy aims to shed the load of the public enterprises which have shown a very low rate of return or are incurring losses over the years.

Q13. Explain the features of New Industrial Policy of 1991.

Ans :

The salient features of this policy are as follows:

1. Except some specified industries (security and strategic concerns, social reasons, environmental issues, hazardous projects and articles of elitist consumption) industrial licensing would be abolished.
2. Foreign investment would be encouraged in high priority areas up to a limit of 51 per cent equity.
3. Government will encourage foreign trading companies to assist Indian exporters in export activities.
4. With a view to injecting the desired level of technological dynamism in Indian industry, the government will provide automatic approval for technology agreements related to high priority industries.
5. Relaxation of MRTP Act (Monopolies and Restrictive Practices Act) which has almost been rendered non-functional.
6. Dilution of foreign exchange regulation act (FERA) making rupee fully convertible on trade account.
7. Disinvestment of Public Sector Units shares.
8. Closing of such public sector units which are incurring heavy losses.
9. Abolition of C.C.I and wealth tax on shares.
10. General reduction in customs duties.

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11. Provide strength to those public sector enterprises which fall in reserved areas of operation or in high priority areas.

12. Constitution of special boards to negotiate with foreign firms for large investments in the development of industries and import of technology.

Q14. Explain the highlights of new industrial policy 1991.

Ans :

1. Distinctive Objectives of New Industrial Policy (NIP), 1991: NIP had two distinctive objectives compared to the earlier industrial policies :

i) Redefinition of Concept of Self-Reliance

NIP redefined the concept of economic self-reliance. Since 1956 till 1991, India had always emphasized on Import Substitution Industrialization (ISI) strategy to achieve economic-self reliance. Economic self-reliance meant indigenous development of production capabilities and producing indigenously all industrial goods, which the country would demand rather than importing from outside. The goal of economic self-reliance necessitated the promotion of ISI strategy. It helped to built up the vast base of capital goods, intermediate goods and basic goods industries over a period of time. NIP redefined economic self-reliance to mean the ability to pay for imports through foreign exchange earnings through exports and not necessarily depending upon the domestic industries.

ii) International Competitiveness

NIP emphasized the need to develop indigenous capabilities in technology and manufacturing to world standards. None of the earlier industrial policies, either explicitly or implicitly, had made reference to international technology and manufacturing capabilities in the context of domestic industrial development (Ministry of Commerce and Industry, 2001). For the first time, NIP explicitly underlined the need for domestic industry to achieve international competitiveness.

To achieve these objectives, among others, NIP initiated changes in India's industrial policy environment, which gained momentum gradually over the decade. The important elements of NIP can be classified as follows :

1. Public Sector De-Reservation and Privatization through Dis-Investment

Till 1991, Public Sector was assigned a pre-eminent position in Indian Industry to enable it to achieve "commanding heights of the economy" under the Industrial Policy Resolution (IPR), 1956. Accordingly, areas of strategic importance and core sectors were exclusively reserved for public sector enterprises. Public enterprises were accorded preference even in areas where private investments were possible.

Since 1991, the public sector policy consists of :

i) Reduction in the number of industries reserved for public sector

Now only two industries (atomic energy and railway transport) are reserved for the Public Sector. They are known as "Annexure I" industries (Ministry of Commerce and Industry, 2001). The essence of government's Public Sector Undertakings (PSUs) policy since 1991 has been that government should not operate any commercial enterprises. The policy emphasized to bring down

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government equity in all non-strategic PSUs to 26 percent or lower, restructure or revive potentially viable PSUs, close down PSUs, which cannot be revived and fully protect the interests of workers. Government's withdrawal from non-core sectors is indicated on considerations of long-term efficient use of capital, growing financial un-viability and the compulsions for these PSUs to operate in an increasingly competitive and market oriented environment (Disinvestment Commission, 1997).

ii) Implementation of Memorandum of Understanding (MOU)

As a part of the measures to improve the performance of public enterprises, more and more of public sector units have been brought under the purview of Memorandum of Understanding (MoU) system. A memorandum of understanding is a performance contract, a freely negotiated document between the Government and a specific public enterprise.

iii) Referral to BIFR

Many sick public sector units have been referred to the Board for Industrial and Financial Reconstruction (BIFR) for rehabilitation or, where necessary, for winding up.

iv) Manpower Rationalization

In order to make manpower rationalization Voluntary Retirement Scheme (VRS) has been introduced in a number of PSUs to shed the surplus manpower.

v) Private Equity Participation

PSUs have been allowed to raise equity finance from the capital market. This has provided market pressure on PSUs to improve their performance.

vi) Disinvestment and Privatization

Disinvestment and privatization of existing PSUs has been adopted to improve corporate efficiency, financial performance and competition amongst PSUs. It involves transfer of Government holding in PSUs to the private shareholders.

2. Industrial Delicensing

The removal of licensing requirements for industries, domestic as well as foreign, commonly known as "de-licensing of industries" is another important feature of NIP. Till the 1990s, licensing was compulsory for almost every industry, which was not reserved for the public sector. This licensing system was applicable to all industrial enterprises having investment in fixed assets (which include land, buildings, plant & machinery) above a certain limit. With progressive liberalization and deregulation of the economy, industrial license is required in very few cases. Industrial licenses are regulated under the Industries (Development and Regulation) Act 1951. At present, industrial license is required only for the following :

i) Industries retained under compulsory licensing (five industries are reserved under this category).

ii) **Manufacture of items reserved for small scale sector by larger units**

An industrial undertaking is defined as small scale unit if the capital investment does not exceed Rs. 10 million (approximately $ 222, 222). The Government has reserved certain items for exclusive manufacture in the small-scale sector. Non small-scale units can manufacture items reserved for the small-scale sector if they undertake an obligation to export 50 percent of the production after obtaining an industrial license.

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iii) When the proposed location attracts locational restriction

Industrial undertakings to be located within 25 kms of the standard urban area limit of 23 cities having a population of 1 million as per 1991 census require an industrial license.

Thus, excluding these, investors are free to set up a new industrial enterprise, expand an industrial enterprise substantially, change the location of an existing industrial enterprise and manufacture a new product through an already established industrial enterprise. The objective of industrial delicencing would be to enable business enterprises to respond to the fast changing external conditions. Entrepreneurs will be free to make investment decisions on the basis of their own commercial judgment. This will facilitate the technological dynamism and international competitiveness. Further industries will have freedom to take advantage of 'economies of scale' as well as 'economies of scope' in the current industrial policy environment.

3. Amendment of Monopolies and Restrictive Trade Practices (MRTP) Act, 1969

An important objective of India's earlier industrial policies was to prevent emergence of private monopolies and concentration of economic power in a few individuals. Accordingly, Monopolies and Restrictive Trade Practices (MRTP) Act, 1969 was enacted and MRTP Commission was set up as a permanent body to periodically review industrial ownership, advice the government to prevent concentration of economic power, investigate monopolistic trade practices and inquire into restrictive trade practices, which are prejudicial to public interest. An MRTP firm was mainly defined in terms of asset size. An MRTP company had to obtain prior approval of the government for setting up a new enterprise as well as for expansion. However, MRTP Act was applicable only to private sector companies.

Since 1991 MRTP Act has been restructured and pre-entry restrictions have been removed with regard to prior approval of the government for the establishment of a new undertaking, expansion, amalgamation, merger, take over, and appointment of directors of companies. The asset restriction and market share for defining an MRTP firm has been done away with. MRTP Act is now applicable to both private and public sector enterprises and financial institutions. Today only restrictive trade practices of companies are monitored and controlled. The MRTP act has been replaced by the Competition Act, 2002. This law aims at upholding competition in the Indian market. The competition commission has been established in 2003 which mainly control the practice that have an adverse impact on competition.

4. Liberalized Foreign Investment Policy

India's earlier industrial policies welcomed FDI but emphasized that ownership and control of all enterprises involving foreign equity should be in Indian hands. The Balance of Payments (BoP) difficulties in the mid 1960s forced the country to adopt a more restrictive approach towards FDI through the setting up of a Foreign Investment Board, which classified industries into two groups: banned and favored for foreign technical collaboration and FDI. The number of industries for foreign investment was steadily narrowed down and by 1973 there were only 19 industries where FDI was permitted (Kucchal, 1983).

The enactment of FERA, 1973 marked the beginning of the most restrictive phase of India's foreign investment policy. The NIP radically reformed foreign investment policy to attract foreign investment. The important foreign investment policy measures are as follows :

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i) Repeal of FERA, 1973

FERA, 1973 has been repealed and Foreign Exchange Management Act (FEMA) has come into force with effect from June 2000 (RBI, 2003). Investment and returns can be freely repatriated except where the approval is subject to specific conditions such as lock-in period on original investment, dividend cap, foreign exchange neutrality, etc. as specified in the sector specific policies. The condition of 'dividend balancing' was withdrawn for dividends declared. A foreign investor can freely enter, invest and operate industrial enterprises in India,

ii) Dilution of Restrictions on Foreign Direct Investment (FDI)

FDI is allowed in all sectors including the services sector except atomic energy and railway transport. FDI in small scale industries is allowed up to 24 percent equity. Use of brand names/trade marks is allowed. Further, FDI up to 100 percent is allowed under the automatic route in all activities/sectors except the following which require prior approval of the Government :

- Sectors prohibited for FDI;
- Activities/items that require an industrial license;
- Proposals in which the foreign collaborator has an existing financial/ technical collaboration in India in the same field;
- Proposals for acquisitions of shares in an existing Indian company in financial service sector and where Securities and Exchange Board of India (substantial acquisition of shares and takeovers) regulations, 1997 is attracted;
- All proposals falling outside notified sectoral policy/CAPS under sectors in which FDI is not permitted.

Thus most of the sectors fall under the automatic route for FDI.

5. Foreign Technology Agreement

The automatic approvals for technology agreement are allowed to industries within specified parameters. Indian companies are free to negotiate the terms of technology transfer with their foreign counterparts according to their own commercial judgment.

6. Dilution of Protection to Small Scale Industries (SSI) and Emphasis on Competitiveness

SSIs enjoyed a unique status in Indian economy due to its diversified presence across the country and thereby utilizing resources and skills, which would have otherwise remained unutilized. Due to their potential to generate large-scale employment, produce consumer goods of mass consumption, alleviate regional disparities, etc., industrial policies protected the sector for its growth. The principal protective measures for SSI comprised :

i) Demarcating SSI from the rest of industry through a definition under the IDR Act, 1951,

ii) Concessional credit from the banking system,

iii) Fiscal concessions,

iv) Exemption from industrial licensing and labor legislations,

v) Preferential access to scarce raw materials, both domestic and imported,

vi) Market support from the government through reservation of products for government purchase and price preferences, and

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vii) Reservation of products for exclusive manufacturing in SSIs and restrictions on the growth of output and capacity in the large-scale sector for products reserved for SSI manufacturing. These policy measures protected SSIs from both internal and external competition.

However, since 1991 the protective emphasis of SSI policy has undergone dilution. In August 1991, government of India brought out an exclusive policy for SSI. The policy marked: (i) the beginning of an end to protective measures to small industry and (ii) promotion of competitiveness by addressing the basic concerns of the sector namely technology, finance and marketing.

Subsequently, the number of items reserved exclusively for small industry manufacturing has been gradually brought down. This policy has lost its relevance to a large extent because though these products could not be manufactured by large enterprises domestically, they can be imported from abroad due to the removal quantitative and non-quantitative restrictions on most imports by April 1, 2001 (Ministry of Finance, 2002).

Concession element in lending rates for small industry has been largely withdrawn during the 1990s (RBI, 2003). The number of products reserved exclusively for purchase from small industry by the government has been reduced to 358 items from 409 items. Measures have been adopted to improve technology and export capabilities of SSIs. Thus the overall promotion orientation of SSI has shifted from protection towards competitiveness.

4.3 Five Year Planning

Q15. What is Five Year Planning

Ans :

Five year planning was initiated in India to achieve rapid economic development. The first meeting of the planning commission of India was initiated by Jawahar Lai Nehru in 1950. Thus, the First Five year plan started from the year 1951 upto 1956.

Economic planning is usually categorized into two broad categories.

- Economic Planning aiming at transforming or converting the developmental promises into practice in underdeveloped countries. (Third world countries)
- Economic planning in socialist countries. Economic growth is the major thrust of economic planning in India. It is the primary objective of Indian five year plans. High priority to economic growth in India is justified when viewed from the context of a long period stagnation in the 19th and early 20lh centuries. Indian economy received a major push under British rule due to massive drain of its wealth. During this period European countries developed, but India suffered underdevelopment. Therefore, when India got independence, the decision makers mainly focused on the aspect of economic growth and laid it down as the primary objective of five year plans .

Q16. What are the various five year plans in India?

Ans :

First Five year Plan (1951 - 56)

- It was based on Harrod-Domar Model.
- Influx of refugees, severe food shortage & mounting inflation confronted the country at the onset of the first five year Plan.

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- The Plan Focussed on agriculture, price stability, power and transport
- It was a successful plan primarily because of good harvests in the last two years of the plan. Objectives of rehabilitation of refugees, food self sufficiency & control of prices were more or less achieved.

Second Five year Plan (1956 - 61)

- Simple aggregative Harrod Domar Growth Model was again used for overall projections and the strategy of resource allocation to broad sectors as agriculture & Industry was based on two & four sector Model prepared by Prof. P C Mahalanobis. (Plan is also called Mahalanobis Plan).
- Second plan was conceived in an atmosphere of economic stability. It was felt agriculture could be accorded lower priority.
- The Plan Focussed on rapid industrialization-heavy & basic industries . Advocated huge imports through foreign loans.
- The Industrial Policy 1956 was based on establishment of a socialistic pattern of society as the goal of economic policy.
- Acute shortage of forex led to pruning of development targets , price rise was also seen (about 30%) vis a vis decline in the earlier Plan & the 2nd FYP was only moderately successful.

Third Five year Plan (1961 - 66)

- At its conception, it was felt that Indian economy has entered a "takeoff stage". Therefore, its aim was to make India a 'self-reliant' and 'self-generating' economy.
- Based on the experience of first two plans (agricultural production was seen as limiting factor in India's economic development) , agriculture was given top priority to support the exports and industry.
- The Plan was thorough failure in reaching the targets due to unforeseen events - Chinese aggression (1962), Indo-Pak war (1965), severe drought 1965-66. Due to conflicts the approach during the later phase was shifted from development to defence & development.

Three Annual Plans (1966 - 69)

- Failure of Third Plan that of the devaluation of rupee(to boost exports) along with inflationary recession led to post ponement of Fourth FYP. Three Annual Plans were introduced instead. Prevailing crisis in agriculture and serious food shortage necessitated the emphasis on agriculture during the Annual Plans.
- During these plans a whole new agricultural strategy was implemented. It involving wide-spread distribution of high-yielding varieties of seeds, extensive use of fertilizers, exploitation of irrigation potential and soil conservation.
- During the Annual Plans, the economy absorbed the shocks generated during the Third Plan.
- It paved the path for the planned growth ahead.

Fourth Five year Plan (1969 - 74)

- Refusal of supply of essential equipments and raw materials from the allies during Indo Pak war resulted in twin objectives of " growth with stability " and "progressive achievement of self reliance " for the Fourth Plan.
- Main emphasis was on growth rate of agriculture to enable other sectors to move forward . First two years of the plan saw record production. The last three years did not measure up due to poor monsoon. Implementation of Family Planning Programmes were amongst major targets of the Plan.

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- Influx of Bangladeshi refugees before and after 1971 Indo-Pak war was an important issue along with price situation deteriorating to crisis proportions and the plan is considered as big failure.

Fifth Five year Plan (1974-79)

- The final Draft of fifth plan was prepared and launched by D.P. Dhar in the backdrop of economic

  crisis arising out of run-away inflation fuelled by hike in oil prices and failure of the Govt. takeover of the wholesale trade in wheat.

- It proposed to achieve two main objectives: 'removal of poverty' (Garibi Hatao) and 'attainment of self reliance'

- Promotion of high rate of growth, better distribution of income and significant growth in the domestic rate of savings were seen as key instruments

- Due to high inflation, cost calculations for the Plan proved to be completely wrong and the original public sector outlay had to be revised upwards. After promulgation of emergency in 1975, the emphasis shifted to the implementation of Prime Ministers 20 Point Programme. FYP was relegated to the background and when Janta Party came to power in 1978, the Plan was terminated.

Rolling Plan (1978 - 80)

- There were 2 Sixth Plans. Janta Govt. put forward a plan for 1978-1983 emphasising on employment, in contrast to Nehru Model which the Govt criticised for concentration of power, widening inequality & for mounting poverty . However, the government lasted for only 2 years. Congress Govt. returned to power in 1980 and launched a different plan aimed at directly attacking on the problem of poverty by creating conditions of an expanding economy.

Sixth Five year Plan (1980 - 85)

- The Plan focussed on Increase in national income, modernization of technology, ensuring continuous decrease in poverty and unemployment through schemes for transferring skills(TRYSEM) and seets(IRDP) and providing slack season employment (NREP), controlling population explosion etc. Broadly , the sixth Plan could be taken as a success as most of the target were realised even though during the last year (1984-85) many parts of the country faced severe famine conditions and agricultural output was less than the record output of previous year.

Seventh Five year Plan (1985 - 90)

- The Plan aimed at accelerating food grain production, increasing employment opportunities & raising productivity with focus on 'food, work & productivity'.

- The plan was very successful as the economy recorded 6% growth rate against the targeted 5% with the decade of 80's struggling out of the' Hindu Rate of Growth'.

Eighth Five year Plan (1992 - 97)

- The eighth plan was postponed by two years because of political uncertainty at the Centre Worsening Balance of Payment position, rising debt burden, widening budget deficits, recession in industry and inflation were the key issues during the launch of the plan.

- The plan undertook drastic policy measures to combat the bad economic situation and to undertake an annual average growth of 5.6% through introduction of fiscal & economic reforms including liberalisation under the Prime Minister ship of Shri P V Narasimha Rao.

- Some of the main economic outcomes during eighth plan period were rapid economic growth (highest annual growth rate so far – 6.8 %), high growth of agriculture and allied

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sector, and manufacturing sector, growth in exports and imports, improvement in trade and current account deficit. High growth rate was achieved even though the share of public sector in total investment had declined considerably to about 34%.

Ninth Five year Plan (1997- 2002)

- The Plan prepared under United Front Government focussed on "Growth With Social Justice & Equality " Ninth Plan aimed to depend predominantly on the private sector – Indian as well as foreign (FDI) & State was envisaged to increasingly play the role of facilitator & increasingly involve itself with social sector viz education , health etc and infrastructure where private sector participation was likely to be limited. It assigned priority to agriculture & rural development with a view to generate adequate productive employment and eradicate poverty.

Tenth Five year Plan (2002 - 2007)

- Recognizing that economic growth cant be the only objective of national plan, Tenth Plan had set 'monitorable targets' for few key indicators (11) of development besides 8 % growth target. The targets included reduction in gender gaps in literacy and wage rate, reduction in Infant & maternal mortality rates, improvement in literacy, access to potable drinking water cleaning of major polluted rivers, etc. Governance was considered as factor of development & agriculture was declared as prime moving force of the economy. States role in planning was to be increased with greater involvement of Panchayati Raj Institutions. State wise break up of targets for growth and social development sought to achieve balanced development of all states.

Eleventh Five year Plan (2007 - 2012)

- Eleventh Plan was aimed "Towards Faster & More Inclusive Growth "after UPA rode back to power on the plank of helping Aam Aadmi (common man).
- India had emerged as one of the fastest growing economy by the end of the Tenth Plan. The savings and investment rates had increased , industrial sector had responded well to face competition in the global economy and foreign investors were keen to invest in India. But the growth was not perceived as sufficiently inclusive for many groups , specially SCs , STs & minorities as borne out by data on several dimensions like poverty, malnutrition, mortality, current daily employment etc .
- The broad vision for 11th Plan included several inter related components like rapid growth reducing poverty & creating employment opportunities , access to essential services in health & education, specially for the poor, extension if employment opportunities using National Rural Employment Guarantee Programme , environmental sustainability , reduction of gender inequality etc. Accordingly various targets were laid down like reduction in unemployment(to less than 5 % among educated youth) & headcount ratio of poverty (by 10 %), reduction in drop out rates, gender gap in literacy infant mortality, total fertility , malnutrition in age group of 0-3 (to half its present level), improvement in sex ratio, forest & tree cover, air quality in major cities, ensuring electricity connection to all villages & BPL households (by 2009) & reliable power by end of 11th Plan , all weather road connection to habitations with population 1000& above (500 in hilly areas) by 2009, connecting every village by telephone & providing broad band connectivity to all villages by 2012.

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- The Eleventh Plan started well with the first year achieving a growth rate of 9.3 per cent, however the growth decelerated to 6.7 per cent rate in 2008-09 following the global financial crisis. The economy recovered substantially to register growth rates of 8.6 per cent and 9.3 per cent in 2009-10 and 2010-11 respectively. However, the second bout of global slowdown in 2011 due to the sovereign debt crisis in Europe coupled with domestic factors such as tight monetary policy and supply side bottlenecks, resulted in deceleration of growth to 6.2 per cent in 2011-12. Consequently, the average annual growth rate of Gross Domestic Product (GDP) achieved during the Eleventh Plan was 8 per cent, which was lower than the target but better than the Tenth Plan achievement. Since the period saw two global crises - one in 2008 and another in 2011 – the 8 per cent growth may be termed as satisfactory. The realised GDP growth rate for the agriculture, industry and services sector during the 11th Plan period is estimated at 3.7 per cent, 7.2 per cent and 9.7 per cent against the growth target of 4 per cent, 10-11 per cent and 9-11 per cent respectively.
- The Eleventh Plan set a target of 34.8 per cent for domestic savings and 36.7 per cent for investment after experiencing a rising level of domestic savings as well as investment and especially after emergence of structural break during the Tenth Plan period. However, the domestic savings and investment averaged 33.5 per cent and 36.1 per cent of GDP at market prices respectively in the Eleventh Plan which is below the target but not very far. Based on the latest estimates of poverty released by the Planning Commission, poverty in the country has declined by 1.5 percentage points per year between 2004-05 and 2009-10.The rate of decline during the period 2004-05 to 2009-10 is twice the rate of decline witnessed during the period 1993-94 to 2004-05. Though the new poverty count based on Tendulkar Formula has been subject of controversy , it is believed by the Committee that whether we use the old method or the new , the decline in percentage of population below poverty line is almost same.
- On the fiscal front , the expansionary measures taken by the government to counter the effect for global slowdown led to increase in key indicators through 2009-10 with some moderation thereafter.
- The issue of Price Stability remained resonating for more than half of the Plan period. Inability to pass on burden on costlier imported oil prices might have constrained the supply of investible funds in the government's hand causing the 11th Plan to perform at the levels below its target.

Q17. Explain briefly about 12th five year plan.

Ans :

The Twelve Plan commenced at a time when the global economy was going through a second financial crisis, precipitated by the sovereign debt problems of the Eurozone which erupted in the last year of the Eleventh Plan. The crisis affected all countries including India. Our growth slowed down to 6.2 percent in 2011-12 and the deceleration continued into the first year of the Twelfth Plan, when the economy is estimated to have grown by only 5 percent . The Twelfth Plan therefore emphasizes that our first priority must be to bring the economy back to rapid growth while ensuring that the growth is both inclusive and sustainable. The broad vision and aspirations which the Twelfth Plan seeks to fulfil are reflected in the subtitle: 'Faster, Sustainable, and More Inclusive Growth'. Inclusiveness is to be achieved through poverty reduction, promoting group equality and regional balance, reducing inequality, empowering people etc whereas sustainability includes ensuring

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environmental sustainability ,development of human capital through improved health, education, skill development, nutrition, information technology etc and development of institutional capabilities, infrastructure like power telecommunication, roads, transport etc.

Apart from the global slowdown, the domestic economy has also run up against several internal constraints. Macro-economic imbalances have surfaced following the fiscal expansion undertaken after 2008 to give a fiscal stimulus to the economy. Inflationary pressures have built up. Major investment projects in energy and transport have slowed down because of a variety of implementation problems. Some changes in tax treatment in the 2012–13 have caused uncertainty among investors. These developments have produced a reduction in the rate of investment, and a slowing down of economic growth.

The policy challenge in the Twelfth Plan is, therefore, two-fold. The immediate challenge is to reverse the observed deceleration in growth by reviving investment as quickly as possible. This calls for urgent action to tackle implementation constraints in infrastructure which are holding up large projects, combined with action to deal with tax related issues which have created uncertainty in the investment climate. From a longer term perspective, the Plan must put in place policies that can leverage the many strengths of the economy to bring it back to its real Growth potential.

Immediate priority is to revive the investor sentiment along with next short term action of removing the impediments to implementation of projects in infrastructure, especially in the area of energy which would require addressing the issue of fuel supply to power stations, financial problems of discounts and clarity in terms of New Exploration Licensing Policy (NELP)

Although planning should cover both the activities of the government and those of the private sector, a great deal of the public debate on planning in India takes place around the size of the public sector plan. The Twelfth Plan lays out an ambitious set of Government programmes, which will help to achieve the objective of rapid and inclusive growth. In view of the scarcity of resources, it is essential to take bold steps to improve the efficiency of public expenditure through plan programmes. Need for fiscal correction viz tax reforms like GST , reduction of subsidies as per cent of GDP while still allowing for targeted subsidies that advance the cause of inclusiveness etc . and managing the current account deficit would be another chief concerns.

Achieving sustained growth would require long term increase in investment and savings rate . Bringing the economy back to 9 per cent growth by the end of the Twelfth Plan requires fixed investment rate to rise to 35 per cent of GDP by the end of the Plan period. This will require action to revive private investment, including private corporate investment, and also action to stimulate public investment, especially in key areas of infrastructure especially, energy, transport, water supply and water resource management. Reversal of the combined deterioration in government and corporate savings has to be a key element in the strategy.

4.4 Foreign Direct Investment (FDI)

Q18. What is Foreign Direct Investment (FDI). Explain the importance of FDI.

Ans : **(Jan.-20)**

Meaning of Foreign Direct Investment

Foreign Direct Investment refers to the process whereby residents of one country (the home country) acquire ownership of assets for the purpose of controlling the production, distribution and other activities of a firm in another country (the host country).

Definitions

According to the IMF, "FD1 is the category of international investment that reflects the objective of obtaining a lasting interest by a resident entity in one economy in an enterprise resident in another

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economy. The lasting interest implies the existence of a long-term relationship between the direct investor and the enterprise and a significant degree of influence by the investor on the management of the enterprise".

According to UNCTAD, "FD1 as 'an investment involving a long-term relationship and reflecting a lasting interest and control by a resident entity in one economy (foreign direct investor or parent enterprise) in an enterprise resident in an economy other than that of the FDI enterprise, affiliate enterprise or foreign affiliate. FDI implies that the investor exerts a significant degree of influence on the management of the enterprise resident in the other economy. Such investment involves both the initial transaction between the two entities and all subsequent transaction between them among foreign affiliates, both incorporated and unincorporated. Individuals as well as business entities may undertake FDP".

Importance of Foreign Direct Investment

The Importance of Foreign Direct Investment can be summarized as follows:

1. Foreign Direct Investment (FDI) in economic term is own and investments made by foreign parties in a country.
2. Foreign expertise can be an important factor in improving the existing technical processes in the country.
3. Advances in technology and process it improves the competitiveness of countries in the domestic economy.
4. FDI can improve the quality of products and processes in a particular sector, increased attempts to better human resource.
5. FDI can create jobs, in an effort to increase productivity, skilled and semi-skilled workers needed.
6. Further reduce unemployment and thus reduce social problems.
7. Expertise transfer, research and development require the fees to the high cost of developing the technology.

Q19. Explain the advantages and disadvantages of FDI.

Ans :

Advantages of Foreign Direct Investment

Foreign Direct Investment has the following advantages:

1. Raising the Level of Investment

Foreign investment can fill the gap between desired investment and locally mobilized savings. Local capital markets are often not well developed. Thus, they cannot meet the capital requirements for large investment projects. Besides, access to the hard currency needed to purchase investment goods not available locally can be difficult. FDI solves both these problems at once as it is a direct source of external capital. It can fill the gap between desired foreign exchange requirements and those derived from net export earnings.

2. Up-gradation of Technology

Foreign investment brings with it technological knowledge while transferring machinery and equipment to developing countries. Production units in developing countries use out-dated equipment and techniques that can reduce the productivity of workers and lead to the production of goods of a lower standard.

3. Improvement in Export Competitiveness

FDI can help the host country improve its export performance. By raising the level of efficiency and the standards of product quality, FDI makes a positive impact on the host country's export competitiveness. Further, because of the international linkages of MNCs, FDI provides to the host country better access to foreign markets. Enhanced export possibility contributes to the growth of the host economies by relaxing demand side constraints on growth. This is important for

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those countries which have a small domestic market and must increase exports vigorously to maintain their tempo of economic growth.

4. Employment Generation

Foreign investment can create employment in the modern sectors of developing countries. Recipients of FDI gain training of employees in the course of operating new enterprises, which contributes to human capital formation in the host country.

5. Benefits to Consumers

Consumers in developing countries stand to gain from FDI through new products, and improved quality of goods at competitive prices.

6. Resilience Factor

FDI has proved to be resilient during financial crisis. For instance, in East Asian countries such investment was remarkably stable during the global financial crisis of 1997-98. In sharp contrast, other forms of private capital flows like portfolio equity and debt flows were subject to large reversals during the same crisis. Similar observations have been made in Latin America in the 1980s and in Mexico in 1994-95. FDI is considered less prone to crises because direct investors typically have a longer-term perspective when engaging in a host country. In addition to risk sharing properties of FDI, it is widely believed that FDI provides a stronger stimulus to economic growth in the host countries than other types of capital inflows. FDI is more than just capital, as it offers access to internationally available technologies and management know-how.

7. Revenue to Government

Profits generated by FDI contribute to corporate tax revenues in the host country.

Disadvantages Of Foreign Direct Investment FDI is not an unmixed blessing. Governments in developing countries have to be very careful while deciding the magnitude, pattern and conditions of private foreign investment. Possible disadvantages of foreign investment are the following:

1. When foreign investment is competitive with home investment, profits in domestic industries fall, leading to fall in domestic savings.
2. Contribution of foreign firms to public revenue through corporate taxes is comparatively less because of liberal tax concessions, investment allowances, disguised public subsidies and tariff protection provided by the host government.
3. Foreign firms reinforce dualistic socio-economic structure and increase income inequalities. They create a small number of highly paid modern sector executives. They divert resources away from priority sectors to the manufacture of sophisticated products for the consumption of the local elite. As they are located in urban areas, they create imbalances between rural and urban opportunities, accelerating flow of rural population to urban areas.
4. Foreign firms stimulate inappropriate consumption patterns through excessive advertising and monopolistic market power. The products made by multi-nationals for the domestic market are not necessarily low in price and high in quality. Their technology is generally capital-intensive which does not suit the needs of a labour-surplus economy.
5. Foreign firms able to extract sizeable economic and political concessions from competing governments of developing countries. Consequently, private profits of these companies may exceed social benefits.

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6. Continual outflow of profits is too large in many cases, putting pressure on foreign exchange reserves. Foreign investors are very particular about profit repatriation facilities.

7. Foreign firms may influence political decisions in developing countries. In view of their large size and power, national sovereignty and control over economic policies may be jeopardized. In extreme cases, foreign firms may bribe public officials at the highest levels to secure undue favours. Similarly, they may contribute to friendly political parties and subvert the political process of the host country.

Q20. What are the factors determining FDI.

Ans :

1. Size of the Market

Large developing countries provide substantial markets where the consumers demand for certain goods far exceed the available supplies. This demand potential is a big draw for many foreign-owned enterprises. In many cases, the establishment of a low cost marketing operation represents the first step by a multinational into the market of the country. This establishes a presence in the market and provides important insights into the ways of doing business and possible opportunities in the country.

2. Political Stability

In many countries, the institutions of government are still evolving and there are unsettled political questions. Companies are unwilling to contribute large amounts of capital into an environment where some of the basics political questions have not yet been resolved.

3. Macro-economic Environment

Instability in the level of prices and exchange rate enhance the level of uncertainty, making business planning difficult. This increases the perceived risk of making investments and therefore adversely affects the inflow of FDI.

4. Legal and Regulatory Framework

The transition to a market economy entails the establishment of a legal and regulatory framework that is compatible with private sector activities and the operation of foreign owned companies. The relevant areas in this field include protection of property rights, ability to repatriate profits, and a free market for currency exchange. It is important that these rules and their administrative procedures are transparent and easily comprehensive.

5. Access to Basic Inputs

Many developing countries have large reserves of skilled and semi-skilled workers that available for employment at wages significantly lower than in developed countries. This provides an opportunity for foreign firms to make investments in these countries to cater to the export market. Availability of natural resources such as oil and gas, minerals and forestry products also determine the extent of FDI.

Q21. Discuss the impact of FDI on economy.

Ans :

Impact of FDI on Economy

FD1 has a wider impact on an economy as it increases the level of GDP and exports which in turn increases the per capita income and forex reserves. It possess superior technology so that it can compete with other countries. It acts as a capital source for the host country so that the economic conditions of the country can be improved to a great extent.

Impact on Local Industry

(a) FDI helps in raising the level of productivity and increasing the national income of the host country.

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(b) It improves the quality of products and services offered to the consumers and keeps them at a reasonable price.

(c) It increases the competitive spirit among the local industries.

(d) It acts as a major tool for local industry to become Original Equipment Manufacturer (OEM).

Impact on Employment

(i) It had created employment opportunities by setting software and outsourcing industries (provided employment to more than 5,00,000 employees).

(ii) Provided efficient manner for recruiting people.

(iii) It covers various areas for jobs such as manufacturing, telecommunication, advertising, media and services etc.

Impact on the Consumer

Consumers are the beneficiary targets of FDIs. They can avail benefits like the product purchases at the affordable prices in all the segments. Such as Electronics, Computers, ACs, Automobiles, Soft drinks and so on.

It also improves the country's balance of payments position and can also bring improvements in the level of foreign reserves of the country. India can also improve its operating size and the size of the markets by identifying the issues and deficiencies in the government and the working conditions of the economy.

4.5 Fiscal Policy

Q22. Define Fiscal Policy. What are the objectives of fiscal policy?

Ans : **(Imp.)**

Introduction

Fiscal policy is the government spending and taxation that influences the economy. Elected officials should coordinate with monetary policy to create healthy economic growth.

Fiscal policy reflects the priorities of individual lawmakers. They focus on the needs of their constituencies. These local needs overrule national economic priorities. As a result, fiscal policy is hotly debated, whether at the federal, state, county or municipal level.

Definition

According to Arthur Smithies, fiscal policy aims primarily at controlling aggregate demand and leaves private enterprise its traditional field- the allocation of resources among alternative us.

Objectives of a Fiscal Policy

The various objectives of fiscal policy are given below:

1. To achieve desirable price level

The stability of general prices is necessary for economic stability. The maintenance of a desirable price level has good effects on production, employment and national income. Fiscal policy should be used to remove; fluctuations in price level so that ideal level is maintained.

2. To achieve desirable consumption level

A desirable consumption level is important for political, social and economic consideration. Consumption can be affected by expenditure and tax policies of the government. Fiscal policy should be used to increase welfare of the economy through consumption level.

3. To achieve desirable employment level

The efficient employment level is most important in determining the living standard of the people. It is necessary for political stability and for maximization of production. Fiscal policy should achieve this level.

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4. To achieve desirable income distribution

The distribution of income determines the type of economic activities the amount of savings. In this way, it is related to prices, consumption and employment. Income distribution should be equal to the most possible degree. Fiscal policy can achieve equality in distribution of income.

5. Increase in capital formation

In under-developed countries deficiency of capital is the main reason for under-development. Large amounts are required for industry and economic development. Fiscal policy can divert resources and increase capital.

6. Degree of inflation

In under-developed countries, a degree of inflation is required for economic development. After a limit, inflationary be used to get rid of this situation.

Q23. What are the different Types of Fiscal Policy?

Ans :

There are two main types of fiscal policy: expansionary and contractionary.

1. Expansionary fiscal policy

Expansionary fiscal policy, designed to stimulate the economy, is most often used during a recession, times of high unemployment or other low periods of the business cycle. It entails the government spending more money, lowering taxes, or both. The goal is to put more money in the hands of consumers so they spend more and stimulate the economy.

2. Contractionary fiscal policy

Contractionary fiscal policy is used to slow down economic growth, such as when inflation is growing too rapidly. The opposite of expansionary fiscal policy, contractionary fiscal policy raises taxes and cuts spending.

Q24. Explain the Tools of Fiscal Policy.

Ans :

1. Taxation

That includes income, capital gains from investments, property, sales or just about anything else. Taxes provide the major revenue source that funds the government. The downside of taxes is that whatever or whoever is taxed has less income to spend on themselves.

That makes taxes unpopular. Find out how the U.S. federal budget is funded in Federal Income and Taxes.

2. Government Expenditure

That includes subsidies, transfer payments including welfare programs, public works projects and government salaries. Whoever receives the funds has more money to spend. That increases demand and economic growth.

Q25. What are the Advantages and Disadvantages of Fiscal Policy?

Ans :

Advantages

1. Unemployment Reduction

When unemployment is high, the government can employ an expansionary fiscal policy. This involves increasing spending or purchases and lowering taxes. Tax cuts, for example, mean people have more disposable income, which according to Princeton University, should lead to increased demand for goods and services. To meet the growing demand, the private sector will increase production, creating more job opportunities in the process.

2. Budget Deficit Reduction

A country has a budget deficit when its expenditures exceeds revenue. Since the economic effects of this deficit include

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increased public debt, the country then can pursue a contraction fiscal policy. It will, therefore, reduce public spending and increase taxes rates to raise more revenue and ultimately lower the budget deficit.

3. Economic Growth Increase

The various fiscal measures a country employs facilitate expansion of the national economy. For example, when the government reduces tax rates, businesses and individuals will have a greater incentive to invest and steer the economy forward. To boost the U.S. economy during the Great Recession in 2008, for instance, the government enacted the Economic Stimulus Act of 2008, which provided a range of fiscal measures, including tax incentives to encourage business investment.

Disadvantages

1. Conflict of Objectives

When the government uses a mix of expansionary and contractionary fiscal policy, a conflict of objectives can occur. If the national government wants to raise more money to increase its spending and stimulate economic growth , it can issue bonds to the public. Since government bonds offer a range of benefits to buyers, individuals and businesses will buy them heavily. According to the Michigan Institute of Technology, the private sector consequently will have little money left to invest. With reduced investment activity, the economy can slow down.

2. Inflexibility

There are usually delays in the implementation of fiscal policy, because some proposed measures may have to go through legislative processes. A good demonstration of implementation delays is illustrated by the Great Recession.

Q26. Explain the various tools of fiscal policy.

Ans :

The various tools of fiscal policy are:

1. Expansionary

The decrease in personal income taxes increases disposable income and thus increases consumption spending. The business tax cut increases investment spending, and the increase in government spending increases government demand. The government cuts business and personal income taxes and increases its own spending.

2. Contractionary

Business income and personal disposable income decrease because of the tax increases, thus reducing consumption and investment spending. Government demand is unchanged. The government increases the personal income tax, Social Security tax and corporate income tax. Government spending stays the same.

3. Expansionary

Higher government spending without a corresponding rise in tax receipts increases aggregate demand in the economy. Government spending goes up while taxes remain the same.

4. Contractionary

Reduction in government spending results in a decrease in aggregate demand. Increases in taxes on consumers reduce disposable income and consumptions, and increased business taxes will reduce investment. The decrease in both consumption and investment will reduce aggregate demand. The government reduces the wages of its employees while raising taxes on consumers and businesses. Other government spending remains the same.

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Q27. Discuss the various Suggestions for Reforms in fiscal policy in India.

Ans :

Suggestions for Reforms in fiscal policy in India.

- Improving tax Administration to raise Larger Revenue
- Reducing Subsidies
- Downsizing of government
- Privatization Reprioritize plan schemes
- Agricultural taxation
- Reduction of non- development expenditure
- Progressive tax structure
- Public Sector Performance to be Improved
- Check on Black Money.

Q28. State the defects involved in industrial licensing.

Ans :

The government of India initiated the industrial licensing program for better management, control and rapid development of industries in India. It also aimed to curb monopoly and restricted concentration of wealth in India.

However the industrial licensing in India suffered with several defects like lack of implementation, no follow-up mechanism, contradicting objectives and others.

These defects (or) criticisms can be dealt in detail as follows,

1. Cumbersome and Time Consuming Process

A major defect of industrial licensing is that the process for acquiring an industrial license is quite cumbersome and time consuming process. The license application needs to be thoroughly checked and examined by various agencies and Government Ministries, like Ministry of Company Affairs, Ministry of Economic Affairs, which specifically deals with certain aspects. This has discouraged genuine entrepreneurs from establishing their new industrial units.

2. Excessive Control

The government has introduced excessive control and regulatory procedures for assessing and clearing the existing projects. For instance, the project license application needs to be cleared by Capital Goods Committee, Controller of Capital Goods, R.B.I., Controller of Exports and Imports and so on.

3. Dutt Committee Report

The Dutt committee highlighted some major defects in the process of industrial licensing. It pointed out that too many licenses were issued to private sector in the areas which were previously reserved for the public sector. For example, in case of machine tool industry, only 9 licenses were granted to HMT (public company) whereas, more than 226 licenses were issued to private players.

4. Little or No Follow-up

Government authorities have been criticized for little or no follow-up verify that the approved projects follow the provisions of Industries (Development and Regulation) Act. 1951. Two important aspects that have been overlooked were.

Firstly, a letter of intent lapses if the grantee does not implement it within a period of two years. The statistical records have shown that by the end of 1986, 7442 letter of intent were issued, out of which only 2,234 were transformed into industrial licences, 3884 are yet to be implemented and the remaining were lapsed.

Secondly, big industrial houses are producing goods in excess of the quantity permitted to

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them, however no punitive action has been initiated against them. Example, Crompton Greaves has a license to produce 18,000 metal case plugs. However, in 1979 it had produced 224,207 sets. Likewise Hindustan Lever produced 1,62,278 tonnes of soap by exceeding the permitted limit of 70,018 tonnes of soap.

5. Contradiction in Objectives

The objectives of the industrial policy such as promoting of small scale industries, entrepreneurial development, balanced regional development, restriction of concentration of economic power, export-promotion, import sub-section and so on have a significant impact on industrial licensing.

6. Unchecked Growth of Large Industrial Houses

A major defect of industrial licensing is that it helped large industrial houses (only monopolists) to grow and further expand their business. The Monopolies Enquiry Commission (1965) noted that these industrial houses, gained majority of the licenses granted by the government.

For example, new license for manufacturing automotive tyres was issued to an existing industrial house (i.e.,) Tata Automobiles Limited - the manufactures of Ceat Tyres instead of issuing it to new entrepreneurs, or specifically to a foreign investor.

7. Only Ideological Instrument

A common criticism against industrial licensing is that it has merely used as an ideological tool for improving the social welfare rather than a promoting tool for the growth and development of a mixed economy.

Thus, with the aforementioned criticisms, it has been observed that the industrial licensing suffered from major defects and limitations which in turn influences the new Foreign investments in India. Rigid and stringent laws like MRTP act and FERA forced the multinational corporations like coca-cole, IBM etc., to wind-up their operations in India.

4.6 Latest Union Budget

Q29. Highlight the Union Budget of 2019 - 2020.

Ans :

The Union Budget for 2019-20 was announced by Ms Nirmala Sitharaman, Minister for Finance and Corporate Affairs, Government of India, in Parliament on July 05, 2019. India is all set to become US$ 3 trillion economy by the end of FY20. The budget focusses on reducing red tape, making best use of technology, building social infrastructure, digital India, pollution free India, make in India, job creation in Micro, Small and Medium Enterprises (MSMEs) and investing heavily in infrastructure.

Total expenditure for 2019-20 is budgeted at Rs 2,786,349 crore (US$ 417.95 billion), an increase of 14.09 per cent from 2018-19 (budget estimates).

Highlights of Union Budget 2019-20

Overview of the economy

- India was a US$ 1.85 trillion economy in 2014 and it has reached US$ 2.7 trillion in five years, the fastest growing major economy and the sixth largest economy in world, compared to 11th largest in 2013-14.
- Metro rail network of 657 km has become operational in the country.
- India target to become US$ 5 trillion economy in the next five years and might become a US$ 10 trillion economy in the next eight years thereafter.
- The Indian economy grew at 6.8 per cent in 2018-19 and fourth quarter growth slumped to 5.8 per cent which was a 17 per cent quarter low.

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- Movement of cargo on Ganga is estimated to rise four times in next four years.

Major Expenditure Items

- Total capital expenditure will be Rs 876,209 crore for 2019-20.
- Centrally sponsored schemes have been allocated Rs 331,610 crore in 2019-20.
- Defence budget is Rs 305,296 crore for the first time in 2019-20.
- Amount of Rs 174,300 crore has been approved for pension in the budget 2020.
- The government has allocated Rs 184,220 crore, Rs 79,996 crore and Rs 37,478 crore for Food, fertiliser and Petroleum subsidies respectively.

Labour and Youth Welfare

- National Sports Education Board to be setup under Khelo India to prepare youth for new age skills, Artificial Intelligence, 3D Printing, Virtual Reality etc.
- National Research Foundation to be established to fund, coordinate and promote R&D.
- Rs 400 crore provided for 'World Class Institutions' for FY20
- "Study in India" to bring foreign students to higher educational institutions
- The Government of India has decided to extend the pension benefit to about three crore retail traders & small shopkeepers whose annual turnover is less than Rs 1.5 crore under "Pradhan Mantri Karam Yogi Maandhan Scheme.

Support for Farmers

- Government is planning to form 10,000 new Farmer Producer Organizations, to ensure economies of scale for farmers over the next five years.
- Government will work with State Governments to allow farmers to benefit from e-NAM (National Agriculture Market).
- Government might replicate "one count: Zero Budget Farming" model which can help in doubling our farmers' income in time for our 75th year of Independence.
- The focus of the government is on the "Pradhan Mantri Matsya Sampada Yojana" (PMMSY) for addressing critical gaps in the value chain, including infrastructure, modernization, traceability, production, productivity, post-harvest management, and quality control.

Infrastructure

- Ministry of Railways have been allocated Rs 94,071 crore in 2019-20.
- The government has suggested the investment of Rs 5,000,000 crore for railways infrastructure between 2018-2030.
- Metro rail network has reached to 657 Km.
- Operating ratio improved by 95 per cent in 2019-20.
- Government has announced to invest Rs 10,000,000 crore in infrastructure over the next five years
- To upgrade 1,25,000 kms of road length over the next five years, the estimated cost of Rs 80,250 crore is envisaged under Pradhan Mantri Gram Sadak Yojana-III (PMGSY)
- 30,000 kms of PMGSY roads have been built using Green Technology, Waste Plastic and Cold Mix Technology.
- Government has ensured power availability to states at affordable rates through model – One Nation, One Grid.
- Government has proposed to permit investments made by Foreign Institutional Investor's (FIIs)/Foreign Portfolio Investments (FPIs) in debt securities issued by Infrastructure Debt Fund.

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- Road - Bharatmala phase 2 going to be launched to develop the state road networks.
- Government has finalised the model tendency law- promotion of rental housing.

Micro, Small and Medium Enterprises (MSMEs) and Traders

- Government has proposed granting of loans up to Rs 1 crore for MSMEs within 59 minutes through a committed online portal. Under the Interest Subvention Scheme for MSMEs, Rs 350 crore has been allocated for FY 2019-20
- Government will create a payment stage for MSMEs to enable filing of bills and payment thereof on the platform itself.
- The Government e-Marketplace (GeM) is being extended to all Central Public Sector Enterprises (CPSEs), providing more opportunities for MSMEs to sell their products.

Tax Proposals

- Individual taxpayers with annual income up to Rs 500,000 will get full tax rebate and hence will not be required to pay any tax.
- Tax Deducted at Source (TDS) of 2 per cent on cash withdrawal exceeding Rs 1 crore in a year from a bank account to promote less cash economy
- Effective tax rate for individuals having taxable income above Rs 2 crore has been increased.
- Limit for applicability of lower corporate tax rate of 25 per cent increased from Rs 250 crore to Rs 400 crore.
- Enhanced interest deduction up to Rs 350,000 for purchase of an affordable house.
- The government increased income tax surcharge for HNIs (high net worth individuals) earnings more than Rs 2 crore a year. Those earning between Rs 2-5 crore will have shell out 3 per cent more, with surcharge rate being increased from 15 per cent to 25 per cent. Those earning above Rs 5 crore will have to shell out a surcharge of 37 per cent, from current 15 per cent.
- No charges or Merchant Discount Rate (MDR) on specified digital mode of payments. These modes are to be compulsorily provided by large businesses.
- The government announced Rs 150,000 income tax deduction on interest paid on loans for purchase of electric vehicles.
- Sabka Vishwas Legacy Dispute Resolution Scheme proposed for quick closure of service tax and excise related litigations.
- To increase Special Additional Excise duty and Road and Infrastructure Cess each by one rupee a litre on petrol and diesel.
- It also proposed to increase custom duty on gold and other precious metals from 10 per cent to 12.5 per cent.
- Scheme of faceless electronic tax assessment
- Aadhaar and PAN to be interchangeable and permit those who do not have PAN to file Income Tax returns by only citing their Aadhaar number.
- Taxpayers having annual turnover of less than Rs 5 crore can now file quarterly returns.
- Fully automated GST refund module shall be implemented.
- An electronic invoice system is proposed that will eventually eliminate the need for a separate e-way bill.

4.6.1 Reforms Undertaken by the Government

Q30. Explain the policy of the government of India towards foreign investment.

Ans :

India has adopted a very restrictive policy towards foreign capital and technology. Foreign collaboration was allowed only in more important

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areas and where the requirement of technology is high. In some other areas, import of technology was considered because of certain advantages if exports were assured for the period of 5 to 10 years and such exports should have appropriate schemes.

The following are the lists of industries given by the government,

(a) (i) Foreign investment may be approved.

(ii) Only foreign collaboration without foreign investment may be allowed.

(b) No foreign collaboration (financial or technical) was considered necessary.

FERA regulates the trading, commercial and industrial activities of NRI's and foreign companies in India. In order to perform any trading, commercial and industrial activities in India by foreign companies, they should obtain the permission from RBI

New Policy

The industrial policy statement of July 24, 1991 has liberalised the Indian Policy towards foreign investment and technology from official controls. As the opportunities for the promotion of foreign investment has increased in India which in turn those opportunities should be utilized effectively by the enterprises. The majority of foreign equity in many industries with automatic approval was allowed by the new policy against the gover nment policy.

The automatic approval route means that foreign investors have to intimate the RBI within 30 days of their investment and within 30 days of issuing any shares. Foreign investment in many industries is allowed for automatic approval route which means no prior approval of the government or RBI is required.

Till December 1996, the Industrial Policy statement of July 1991 was mentioned only 36 industries in the Annexure III which were allowed for automatic approval of FD1 upto 51 percent of the total equity. As a result the automatic route has been expanded very significantly and industries are categorized on the basis of upper limit of foreign equity participation, namely.

1. Industries in which FDI does not exceeds 25 percent
2. Industries in which FDI does not exceeds 50 percent
3. Industries in which FDI does not exceeds 51 percent
4. Industries in which FDI does not exceeds 74%
5. Industries in which upto 300% foreign equity is permissible.

FII Investments

From 1992 onwards, the Indian stock exchanges were opened for FII investments which had in turn increased the portfolio investment.

"Portfolio investment means cross-border transac-tions and positions related to debt or equity securities and those securities which are not a part of direct investment or reserve assets.

FIIs in India includes overseas pension funds, mutual funds, investment trusts, banks, university funds, nominee companies, banks etc. From many Emerging Market Economies (EMEs) India is one of them to receive huge portfolios.

Euro/ADR Issues

Indian companies can gain access for entering into foreign capital markets by issuing global depository receipts and Foreign Currency Convertible Bonds (FCCBs).

A depository receipt refers to a US Dollar denominated negotiable certificate, which is used to represent the Indian denominated equity shares of a local company which can be traded in the local stock exchanges.

Mergers and Acquisitions

Mergers and acquisitions became popular in India on account of liberalization, privatisation, MRTP restrictions on mergers and acquisitions etc.

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For the formulation and achievement of market entry and competitive strategy, foreign MNCs are undergoing mergers and acquisitions.

Evaluation of New Policy

A new industrial policy has helped India in acquiring the foreign capital to develop infrastructure and economic development of the country by granting liberalization in India.

Important Sectors/Industries of Investment

It came into effect from January 1991 to September 2006, the following sectors/industries can avail 60% of the FDI: Electrical equipment, transportation, services sector, food processing, drugs and pharmaceuticals and other metallurgical industries.

Sources of FDI to India

The important sources of FDI to India are the US, the Netherlands, Japan, France, Mauritius. UK, Switzerland etc.

India occupies second position in obtaining FDI among the developing countries.

4.7 Monetary Policy

Q31. Define Monetary Policy. What are the objectives of Monetary Policy?

Ans : **(Nov.-21, Jan.-20, Imp.)**

Meaning of Monetary Policy

Monetary policy refers to the process by which the monetary authority of a country controls the supply of money, often targeting a rate of interest to attain a set of objectives oriented towards the growth and stability of the economy.

Definitions of Monetary Policy

Many economists have given various definitions of monetary policy. Some prominent definitions are as follows:

According to Prof. Harry Johnson, "Monetary policy is a policy employing the central banks control of the supply of money as an instrument for achieving the objectives of general economic policy is a monetary policy."

According to A.G Hart, "Monetary policy is a policy which influences the public stock of money substitute of public demand for such assets of both that is policy which influences public liquidity position is known as a monetary policy."

Objectives Of Monetary Policy

The objectives of a monetary policy in India are similar to the objectives of its five year plans. In a nutshell planning in India aims at growth stability and social justice. After the Keynesian revolution in economics, many people accepted significance of monetary policy in attaining following objectives:

i) To ensure the Rapid Economic Growth

It is the most important objective of a monetary policy. The monetary policy can influence economic growth by controlling real interest rate and its resultant impact on the investment. If the RBI opts for a cheap or easy credit policy by reducing interest rates, the investment level in the economy can be encouraged. This increased investment can speed up economic growth. Faster economic growth is possible if the monetary policy succeeds in maintaining income and price stability.

ii) To helps for Price Stability

All the economics suffer from inflation and deflation. It can also be called as Price Instability. Both inflations are harmful to the economy. Thus, the monetary policy having an objective of price stability tries to keep the value of money stable. It helps in reducing the income and wealth inequalities. When the economy suffers from recession the monetary policy should be an 'easy money policy' but when there is inflationary situation there should be a 'dear money policy'.

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iii) To assists for Exchange Rate Stability

Exchange rate is the price of a home currency expressed in terms of any foreign currency. If this exchange rate is very volatile leading to frequent ups and downs in the exchange rate, the international community might lose confidence in our economy. The monetary policy aims at maintaining the relative stability in the exchange rate. The RBI by altering the foreign exchange reserves tries to influence the demand for foreign exchange and tries to maintain the exchange rate stability.

iv) To assists for Balance of Payments (BOP) Equilibrium

Many developing countries like India suffer from the Disequilibrium in the BOP. The Reserve Bank of India through its monetary policy tries to maintain equilibrium in the balance of payments. The BOP has two aspects i.e. the 'BOP Surplus' and the 'BOP Deficit'. The former reflects an excess money supply in the . domestic economy, while the later stands for stringency of money. If the monetary policy succeeds in maintaining monetary equilibrium, then the BOP equilibrium can be achieved.

v) To ensure the Full Employment

The concept of full employment was much discussed after Keynes's publication of the "General Theory" in 1936. It refers to absence of involuntary unemployment. In simple words 'Full Employment' stands for a situation in which everybody who wants jobs get jobs. However it does not mean that there is Zero unemployment. In that senses the full employment is never full. Monetary policy can be used for achieving full employment. If the monetary policy is expansionary then credit supply can be encouraged. It could help in creating more jobs in different sector of the economy.

vi) To ensure the Neutrality of Money

Economist such as Wicksted, Robertson has always considered money as a passive factor. According to them, money should play only a role of medium of exchange and not more than that. Therefore, the monetary policy should regulate the supply of money. The change in money supply creates monetary disequilibrium. Thus monetary policy has to regulate the supply of money and neutralize the effect of money expansion. However this objective of a monetary policy is always criticized on the ground that if money supply is kept constant then it would be difficult to attain price stability.

vii) To support for Equal Income Distribution

Many economists used to justify the role of the fiscal policy is maintaining economic equality. However in recent years economists have given the opinion that the monetary policy can help and play a supplementary role in attainting an economic equality. Monetary policy can make special provisions for the neglect supply such as agriculture, small-scale industries, village industries, etc. and provide them with cheaper credit for longer term. This can prove fruitful for these sectors to come up. Thus in recent period, monetary policy can help in reducing economic inequalities among different sections of society.

Q32. Explain different types of Monetary Policy?

Ans :

1. Inflation targeting

Under this policy approach the target is to keep inflation, under a particular definition such as Consumer Price Index, within a desired range.

The inflation target is achieved through periodic adjustments to the Central Bank interest rate target. The interest rate used is

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generally the interbank rate at which banks lend to each other overnight for cash flow purposes. Depending on the country this particular interest rate might be called the cash rate or something similar.

The interest rate target is maintained for a specific duration using open market operations. Typically the duration that the interest rate target is kept constant will vary between months and years. This interest rate target is usually reviewed on a monthly or quarterly basis by a policy committee.

Changes to the interest rate target are made in response to various market indicators in an attempt to forecast economic trends and in so doing keep the market on track towards achieving the defined inflation target.

2. Price level targeting

Price level targeting is similar to inflation targeting except that CPI growth in one year over or under the long term price level target is offset in subsequent years such that a targeted price-level is reached over time, e.g. five years, giving more certainty about future price increases to consumers. Under inflation targeting what happened in the immediate past years is not taken into account or adjusted for in the current and future years.

3. Monetary' aggregates

In the 1980s, several countries used an approach based on a constant growth in the money supply. This approach was refined to include different classes of money and credit (MO, Ml etc.). While most monetary policy focuses on a price signal of one form or another, this approach is focused on monetary quantities.

4. Fixed exchange rate

This policy is based on maintaining a fixed exchange rate with a foreign currency. There are varying degrees of fixed exchange rates, which can be ranked in relation to how rigid the fixed exchange rate is with the anchor nation.

Under a system of fiat fixed rates, the local government or monetary authority declares a fixed exchange rate but does not actively buy or sell currency to maintain the rate. Instead, the rate is enforced by non-convertibility measures (e.g. capital controls, import/export licenses, etc.). In this case there is a black market exchange rate where the currency trades at its market/unofficial rate.

Under a system of fixed-convertibility, currency is bought and sold by the central bank or monetary authority on a daily basis to achieve the target exchange rate. This target rate may be a fixed level or a fixed band within which the exchange rate may fluctuate until the monetary authority intervenes to buy or sell as necessary to maintain the exchange rate within the band. Under a system of fixed exchange rates maintained by a currency board every unit of local currency must be backed by a unit of foreign currency (correcting for the exchange rate). This ensures that the local monetary base does not inflate without being backed by hard currency and eliminates any worries about a run on the local currency by those wishing to convert the local currency to the hard (anchor) currency.

These policies often abdicate monetary policy to the foreign monetary authority or government as monetary policy in the pegging nation must align with monetary policy in the anchor nation to maintain the exchange rate. The degree to which local monetary policy becomes dependent on the anchor nation depends on factors such as capital mobility, openness, credit channels and other economic factors.

5. Gold standard

The gold standard is a system under which the price of the national currency is measured in units of gold bars and is kept constant by the government's promise to buy or sell gold

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at a fixed price in terms of the base currency. The gold standard might be regarded as a special case of "fixed exchange rate" policy, or as a special type of commodity price level targeting.

The minima! gold standard would be a long-term commitment to tighten monetary policy enough to prevent the price of gold from permanently rising above parity. A full gold standard would be a commitment to sell unlimited amounts of gold at parity and maintain a reserve of gold sufficient to redeem the entire monetary base.

Today this type of monetary policy is no longer used by any country, although the gold standard was widely used across the world between the mid-19th centuries through 1971. Its major advantages were simplicity and transparency. The gold standard was abandoned during the Great Depression, as countries sought to reinvigorate their economies by increasing their money supply. The Bretton Woods system, which was a modified gold standard, replaced it in the aftermath of World War II. However, this system too broke down during the Nixon shock of 1971.

Q33. Explain different tools of Monetary Policy?

Ans :

1. Monetary base

Monetary policy can be implemented by changing the size of the monetary base. Central banks use open market operations to change the monetary base. The central bank buys or sells reserve assets (usually monetary instruments such as bonds) in exchange for money on deposit at the central bank. Those deposits are convertible to currency. Together such currency and deposits constitute the monetary base which is the general liabilities of the central bank in its own monetary unit. Usually other banks can use base money as a fractional reserve and expand the circulating money supply by a larger amount.

2. Reserve requirements

The monetary authority exerts regulatory control over banks. Monetary policy can be implemented by changing the proportion of total assets that banks must hold in reserve with the central bank. Banks only maintain a small portion of their assets as cash available for immediate withdrawal; the rest is invested in illiquid assets like mortgages and loans. By changing the proportion of total assets to be held as liquid cash, the Federal Reserve changes the availability of loan able funds. This acts as a change in the money supply. Central banks typically do not change the reserve requirements often because it creates very volatile changes in the money supply due to the lending multiplier.

3. Discount window lending

Discount window lending is where the commercial banks/and other depository institutions, are able to borrow reserves from the Central Bank at a discount rate. This rate is usually set below short term market rates. This enables the institutions to vary credit conditions (i.e., the amount of money they have to loan out), thereby affecting the money supply. It is of note that the Discount Window is the only instrument which the Central Banks do not have total control over.

By affecting the money supply, it is theorized, that monetary policy can establish ranges for inflation, unemployment, interest rates and economic growth. A stable monetary environment is created in which savings and investment can occur, allowing for the growth of the economy as a whole.

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4. Interest rates

The contraction of the monetary supply can be achieved indirectly by increasing the nominal interest rates. Monetary authorities in different nations have differing levels of control of economy- wide interest rates. One cannot set independent targets for both the monetary base and the interest rate because they are both modified by a single tool open market operations; one must choose which one to control. In other nations, the monetary authority may be able to mandate specific interest rates on loans, savings accounts or other monetary assets. By raising the interest rate(s) under its control, a monetary authority can contract the money supply, because higher interest rates encourage savings and discourage borrowing. Both of these effects reduce the size of the money supply.

5. Currency board

A currency board is a monetary arrangement that pegs the monetary base of one country to another, the anchor nation. As such, it essentially operates as a hard fixed exchange rate, whereby local currency in circulation is backed by foreign currency from the anchor nation at a fixed rate. Thus, to grow the local monetary base an equivalent amount of foreign currency must be held in reserves with the currency board. This limits the possibility for the local monetary authority to inflate or pursue other objectives. The principal rationales behind a currency board are threefold:

i) To import monetary credibility of the anchor nation;

ii) To maintain a fixed exchange rate with the anchor nation;

iii) To establish credibility with the exchange rate (the currency board arrangement is the hardest form of fixed exchange rates outside of dollarization).

In theory, it is possible that a country may peg the local currency to more than one foreign currency; although, in practice this has never happened (and it would be a more complicated to run than a simple single-currency currency board). A gold standard is a special case of a currency board where the value of the national currency is linked to the value of gold instead of a foreign currency.

Q34. What are the various challenges of monetary of policy.

Ans :

1. Financial markets are unperturbed; with the flattening of yield curves, the compression of risk spreads and the search for yields continues unabated.

2. Global imbalances have actually increased with no fears of hard landing, but with some sense of readying for a bumpy soft landing. Movements in major exchange rates are not reflecting fundamentals in an environment of generalized elevation in asset prices and abundant liquidity.

3. Strong global economic growth could be accompanied by emerging pressures on core inflation. The challenge facing us is to judge the compatibility of the current pace of growth with non-accelerating inflation. In the event of a judgment that the current growth momentum is more cyclical than structural, the stance of monetary policy would need to reflect sensitivity to the inevitability of a downturn. On the other hand, the judgment that structural factors predominate would warrant a different policy stance.

4. An overriding concern faced by the Reserve Bank is the persistently high growth of bank credit, with attendant worries relating to the quality of bank credit The sharp increase in credit to sectors such as housing, commercial real estate and retail loans have also been worrisome on account of the vulnerability of banks to credit concentration risks.

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5. It is difficult to arrive at a clear judgment as to what rate of credit growth is too high in relation to potential growth.

6. Some of the models integrate policy behavior with the banking system, the demand for a broad monetary aggregate, and a rich array of goods and financial market variables, providing a more complete understanding of the monetary transmission mechanism. Weak economic assumptions and large models corqbine to reveal difficulties with sorting out policy effects that other approaches fail to bring out.

Q35. Discuss briefly about theory of comparative advantage and FDI. What are the entry strategies for foreign investors.

Ans :

Theory of Comparative Advantage and FDI

Theory of comparative advantage deals with gaining comparative advantage over other countries in terms of production technique, craftsman skills, physical resources and mode of transportation.

According to David Ricardo, a country is said to have gained "competitive advantage" when the country produces only those products in which it is efficient and capable of producing them to the best extent. While producing the products, the essential aspects include are,

(a) Product attributes for gaining greatest comparative advantage or

(b) Attributes of least comparative disadvantage.

According to David Ricardo, a country must possess the natural resources, labour, technology, managerial efficiencies.

According to Porter, the International competitiveness can be attained by the factors i.e., Production resources, demand conditions, related and supporting industries and firm strategy.

Entry Strategies for Foreign Investors

Starting Operations in India

A foreign company can establish its operations in India by adopting any one of the following available modes,

1. As an Indian Company

A foreign company can either undergo joint ventures or can establish wholly owned subsidiary by incorporating its subsidiary as per the norms laid down by the Company's Act 1956.

2. Joint Venture with an Indian Partner

A foreign company can have joint venture with an Indian partner and can avail the following benefits as,

(i) Well established distribution and marketing channels of Indian partner reduces its distribution and promotion costs.

(ii) Financially sound assistance from Indian partners.

3. As a Foreign Company

A foreign company can have its operations in India by way of.

(a) Liaison office/representative office

(b) Project office and

(c) Branch office.

(a) Liaison office / representative Office

Liaison office is an intermediate source for forming communication between the head office and the company's subsidiary located in India.

(b) Project Office

Foreign company can set up its project offices, if it has to undertake its operations in India or in some other host country.

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(c) Branch Office

A foreign companies performing manufacturing and trading operations can set up its branch office in India under the following situations,

(i) Export/Import of goods.

(ii) Offering consulting services.

FDI also benefits developing countries to improve the standards of the country by encouraging exports and foreign investment.

4.8 Banking Sector Reforms

Q36. What are the various Banking Sector Reforms in India?

Ans : **(Jan.-20, Nov.-20, Imp.)**

An efficient banking structure can promote greater amount of investment which can help to achieve a faster growth of the economy. In India, the year 1991 saw a drastic change in the economic policy of government. Liberalization, privatization, globalization emerged as vital parameters of growth and development. But at that time India was facing macro economic crisis.

1. The economy was growing at very low rate.
2. There were high non performing assets.
3. The customer service was unsatisfactory.
4. Banking system was not sound enough.
5. Poor financial condition of commercial banks.
6. The banks were lagging behind international standards in terms of computer technology, accounting standards and capital adequacy etc.

So government of India appointed a high level committee headed by Shri M. Narsinham, a former governor of the reserve bank of India. Government of India set up two committees.

1. Narsinham committee on financial sector reform in 1991.
2. Narsinham committee on banking sector reform in 1998.

1. Narsinham committee on financial sector reform in 1991.

Recommendation of Narsinham committee on financial sector reform in 1991

i) Reduction in CRR and SLR

The Narsinham committee recommended reduction in CRR and SLR with a view to increase credit creation capacity of banks. SLR to be reduced to 25% over a period of five years and CRR from 15% to 5.5%.

ii) Abolition of direct credit programmes

Narsinham committee recommended abolition of direct credit programme gradually. The priority sector should include farmers, tiny sectors, cottage industries, rural artisans and weaker sections.

iii) Deregulate and lowering interest rate

Narsinham committee recommended prime lending rate which will be the minimum lending rate by the banks.

iv) Adoption of uniform accounting practices

Narsinham committee recommended transparency regarding bank balance sheets and making full disclosures.

v) Establishment of special tribunal (asset reconstruction fund)

Tiwari committee suggested to set up special tribunal to speed up the process of recovery of loan and asset

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reconstruction fund should be set up to take off bad and doubtful debts from banks and financial institution at discount.

vi) Reconstitution of banking system

Narsinham committee recommended reconstitution of banking system in a pattern of;

(a) 3 or 4 large banks of international character.

(b) 8 to 10 national banks with branches through out country engaged in universal banking.

(c) Local banks with operation in specified region.

(d) Rural banks should be confined to rural areas to provide agricultural finance.

vii) Abolition of branch licensing

Narsinham committee recommended abolition of branch licensing and leaving the matter of opening and closing of branch to individual banks. In case of nationalized banks 3 tier structures of head office, zonal office and branch is favored, local banks may have 2 tier and SBI may have 4 tier system.

viii) Computerization

On the recommendation of Rangrajan committee the Narsinham committee favored computerization.

ix) Ending of dual control

Duality of control by RBI and Ministry of finance should be ended. Only RBI should have control over the banks.

x) Capital adequacy norms

Narsinham committee recommended bank of international standards in phased manner. A capital adequacy ratio of 4% to be achieved by March 1993 and 8% by March 1996.

xi) Non performing assets

An asset is classified as Non Performing Assets if due in the form of principal and interest are not paid by the borrower for a period of 180 days. However, with a view to moving toward international best practices and to ensure greater transparency it has been decided to adopt the 90 days overdue norm for identification of Non Performing Assets from the year ending March 31, 2004. The committee recommended that assets should be classified into 4 categories; Standard, sub standard, doubtful, loss assets.

xii) Development financial institutions

Narsinham committee recommended regarding financial institutions that

(a) Capital market should be liberalized.

(b) The RBI should set up a new agency to supervise financial institutions.

2. Narsinham committee on banking sector reform in 1998.

In 1998 the government appointed yet another committee under the chairmanship of Mr. Narsimham. It is better known as the Banking Sector Committee. It was told to review the banking reform progress and design a programme for further strengthening the financial system of India. The committee focused on various areas such as capital adequacy, bank mergers, bank legislation, etc.

It submitted its report to the Government in April 1998 with the following recommendations.

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(i) Strengthening Banks in India

The committee considered the stronger banking system in the context of the Current Account Convertibility 'CAC'. It thought that Indian banks must be capable of handling problems regarding domestic liquidity and exchange rate management in the light of CAC. Thus, it recommended the merger of strong banks which will have 'multiplier effect' on the industry.

(ii) Narrow Banking

Those days many public sector banks were facing a problem of the Non-performing assets (NPAs). Some of them had NPAs were as high as 20 percent of their assets. Thus for successful rehabilitation of these banks it recommended 'Narrow Banking Concept' where weak banks will be allowed to place their funds only in short term and risk free assets.

(iii) Capital Adequacy Ratio

In order to improve the inherent strength of the Indian banking system the committee recommended that the Government should raise the prescribed capital adequacy norms. This will further improve their absorption capacity also. Currently the capital adequacy ration for Indian banks is at 9 percent.

(iv) Bank ownership

As it had earlier mentioned the freedom for banks in its working and bank autonomy, it felt that the government control over the banks in the form of management and ownership and bank autonomy does not go hand in hand and thus it recommended a review of functions of boards and enabled them to adopt professional corporate strategy.

(v) Review of banking laws

The committee considered that there was an urgent need for reviewing and amending main laws governing Indian Banking Industry like RBI Act, Banking Regulation Act, State Bank of India Act, Bank Nationalization Act, etc. This upgradation will bring them in line with the present needs of the banking sector in India.

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Short Question & Answers

1. Define Business Environment.

Ans :

Meaning of Environment

Environment is the sum of all living and non-living things that surround an organism or group of organisms. Environment includes all elements, factors and conditions that have some impact on the growth and development of certain organism. Environment includes both biotic and abiotic factors that have influence on observed organism.

Meaning of Business Environment

Environment of a business means the external forces influencing the business decisions. They can be forces of economic, social, political and technological. These forces are beyond the control of the business. The success of every business depends on adapting itself to the environment within which it functions. For example, when there is change in the government policies, the business firm has to make necessary changes to adapt it to the new policies. Similarly, a change in technology may render the existing products obsolete. It has seen that the introduction of computer has replaced the typewriters; the color television has made the black and white television out of fashion. Again a change in the fashion or customers taste and preferences may shift the demand in the market for a particular product. All these aspects are external factors that are beyond the control of the business. So the business units must have to adapt themselves to these kind of changes, in order to survive and succeed in the competitive world

Business environment is an environment in which business is carried out. Business environment encompasses all those factors that affect a company's operations; including customers, competitors, suppliers, distributors, industry trends, substitutes, regulations, government activities, the economy, demographics, social and cultural factors, innovations and technological developments.

An example of a business environment is a business office, such as an insurance office because they carry out the business of selling insurance policies to people.

Definitions of Business Environment

According to Barry M. Richman and Melvgtt Copen, "Business environment consists of factors that are largely if not totally, external and beyond the control of individual industrial enterprise and their managements. These are essentially the 'givers' within which firms and their management must operate in a specific country and they vary, often greatly, from country to country".

2. Goals of the business environment.

Ans :

1. Knowledge of Information

By studying the business environment, we can know the changes of business. This information is very useful for any business. Every businessman should aware current environment of business. With this, he can think the future of his business in such environment.

2. Basis of Decisions

One of the main goals of the business environment is that it can provide all the information which is needed for taking good decisions. Suppose, you completed your internal business environment study. With this study, you can take decision relating to purchase, sale, salary and price because you know your competitor, you know your suppliers and you know your customers.

3. Helpful in making of Policies

For making good business policies, we need to know and scan business through business environment.

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4. Technological Planning

Today, technology is changing very first. So, you have to study technological environment. With this, you can make better technological planning of your business.

3. Industrial Licensing.

Ans :

(i) Industrial licensing policy and procedures have also been liberalized from time to time. A full realization of the industrial potential of the country calls for a continuation of this process of change.

(ii) Major policy initiatives and procedural reforms are called for in order to actively encourage and assist Indian entrepreneurs to exploit and meet the emerging domestic and global opportunities and challenges.

(iii) The bedrock of any such package of measures must be taken to the attainment of technological dynamism and international competitiveness requires that enterprises to be enabled to respond swiftly to fast-changing external conditions that have become characteristic of today's industrial world.

(iv) Government policy and procedures must be geared to assist entrepreneurs in their efforts.

(v) The system of reservation for public sector undertakings has been evolved towards the those of greater flexibility and private sector enterprise has been gradually allowed to enter into many of these areas on a case by case basis.

(vi) This calls for bold and imaginative decisions designed to remove restraints on capacity creation, which at the same time, ensure that overriding national interests are not jeopardized.

4. features of New Industrial Policy of 1991.

Ans :

The salient features of this policy are as follows:

1. Except some specified industries (security and strategic concerns, social reasons, environmental issues, hazardous projects and articles of elitist consumption) industrial licensing would be abolished.

2. Foreign investment would be encouraged in high priority areas up to a limit of 51 per cent equity.

3. Government will encourage foreign trading companies to assist Indian exporters in export activities.

4. With a view to injecting the desired level of technological dynamism in Indian industry, the government will provide automatic approval for technology agreements related to high priority industries.

5. Relaxation of MRTP Act (Monopolies and Restrictive Practices Act) which has almost been rendered non-functional.

6. Dilution of foreign exchange regulation act (FERA) making rupee fully convertible on trade account.

7. Disinvestment of Public Sector Units shares.

5. What is Five Year Planning

Ans :

Five year planning was initiated in India to achieve rapid economic development. The first meeting of the planning commission of India was initiated by Jawahar Lai Nehru in 1950. Thus, the First Five year plan started from the year 1951 upto 1956.

Economic planning is usually categorized into two broad categories.

- Economic Planning aiming at transforming or converting the developmental promises into practice in underdeveloped countries. (Third world countries)
- Economic planning in socialist countries. Economic growth is the major thrust of economic planning in India. It is the primary objective of Indian five year plans. High priority to economic growth in India is justified

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when viewed from the context of a long period stagnation in the 19th and early 20lh centuries. Indian economy received a major push under British rule due to massive drain of its wealth. During this period European countries developed, but India suffered underdevelopment. Therefore, when India got independence, the decision makers mainly focused on the aspect of economic growth and laid it down as the primary objective of five year plans .

6. Foreign Direct Investment.

Ans :

Meaning of Foreign Direct Investment

Foreign Direct Investment refers to the process whereby residents of one country (the home country) acquire ownership of assets for the purpose of controlling the production, distribution and other activities of a firm in another country (the host country).

Definitions

According to the IMF, "FD1 is the category of international investment that reflects the objective of obtaining a lasting interest by a resident entity in one economy in an enterprise resident in another economy. The lasting interest implies the existence of a long-term relationship between the direct investor and the enterprise and a significant degree of influence by the investor on the management of the enterprise".

According to UNCTAD, "FD1 as 'an investment involving a long-term relationship and reflecting a lasting interest and control by a resident entity in one economy (foreign direct investor or parent enterprise) in an enterprise resident in an economy other than that of the FDI enterprise, affiliate enterprise or foreign affiliate. FDI implies that the investor exerts a significant degree of influence on the management of the enterprise resident in the other economy. Such investment involves both the initial transaction between the two entities and all subsequent transaction between them among foreign affiliates, both incorporated and unincorporated. Individuals as well as business entities may undertake FDP".

7. Define Fiscal Policy.

Ans :

Fiscal policy is the government spending and taxation that influences the economy. Elected officials should coordinate with monetary policy to create healthy economic growth.

Fiscal policy reflects the priorities of individual lawmakers. They focus on the needs of their constituencies. These local needs overrule national economic priorities. As a result, fiscal policy is hotly debated, whether at the federal, state, county or municipal level.

Definition

According to Arthur Smithies, fiscal policy aims primarily at controlling aggregate demand and leaves private enterprise its traditional field- the allocation of resources among alternative us.

8. Explain the Tools of Fiscal Policy.

Ans :

1. Taxation

That includes income, capital gains from investments, property, sales or just about anything else. Taxes provide the major revenue source that funds the government. The downside of taxes is that whatever or whoever is taxed has less income to spend on themselves.

That makes taxes unpopular. Find out how the U.S. federal budget is funded in Federal Income and Taxes.

2. Government Expenditure

That includes subsidies, transfer payments including welfare programs, public works projects and government salaries. Whoever receives the funds has more money to spend. That increases demand and economic growth.

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9. Define Monetary Policy.

Ans :

Meaning of Monetary Policy

Monetary policy refers to the process by which the monetary authority of a country controls the supply of money, often targeting a rate of interest to attain a set of objectives oriented towards the growth and stability of the economy.

Definitions of Monetary Policy

Many economists have given various definitions of monetary policy. Some prominent definitions are as follows:

According to Prof. Harry Johnson, "Monetary policy is a policy employing the central banks control of the supply of money as an instrument for achieving the objectives of general economic policy is a monetary policy."

According to A.G Hart, "Monetary policy is a policy which influences the public stock of money substitute of public demand for such assets of both that is policy which influences public liquidity position is known as a monetary policy."

10. Different types of Monetary Policy?

Ans :

1. Inflation targeting

Under this policy approach the target is to keep inflation, under a particular definition such as Consumer Price Index, within a desired range.

The inflation target is achieved through periodic adjustments to the Central Bank interest rate target. The interest rate used is generally the interbank rate at which banks lend to each other overnight for cash flow purposes. Depending on the country this particular interest rate might be called the cash rate or something similar.

The interest rate target is maintained for a specific duration using open market operations. Typically the duration that the interest rate target is kept constant will vary between months and years. This interest rate target is usually reviewed on a monthly or quarterly basis by a policy committee.

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4. Fixed exchange rate

This policy is based on maintaining a fixed exchange rate with a foreign currency. There are varying degrees of fixed exchange rates, which can be ranked in relation to how rigid the fixed exchange rate is with the anchor nation.

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UNIT V

Business Regulations and Environment Laws:

(a) Consumer Protection Act 1986, IT Act 2000, Competition Act 2002, Intellectual Property Rights.

(b) Environmental Law- Water, Air pollution, Green Tribunal in protecting Environment.

5.1 CONSUMER PROTECTION ACT 1986

Q1. Define the terms :

(1) Consumer, (2) Person,

(3) Goods, (4) Services

Ans :

1. Consumer [Sec. 2(1)].

'Consumer' means any person, who –

(i) Buys any goods for a consideration (a) Which has been paid or promised or partly paid and partly promised, or (b) Under any system of deferred payment. The use of such goods must be made with the approval of the buyer.

'Consumer' does not include a person who obtains goods for resale or for any commercial purpose.

'Commercial purpose' does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self employment.

(ii) Hires or avails of any service for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment. 'Consumer' also includes any beneficiary of such services other than the person who hires or avails of such services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment. Further such services must be availed of by the beneficiary with the approval of the hirer but does not include a person who avails of such services for any commercial purpose.

2. Good [Sec. 2(1)]

It means goods as defined in the Sale of Goods Act, 1930. According to Sec. 2(7) of the Sale of Goods Act, 1930, goods means : "Every kind of movable property other than actionable claims and money, and includes stocks and shares, growing crops, grass and things attached to or forming part of land which are agreed to be served before sale or under the contract of sale."

3. Person [Sec. 2(1)(m)]

'Person' includes -

(i) A firm whether registered or not ;

(ii) A hindu undivided family ;

(iii) A co-operative society ;

(iv) Every other association of persons whether registered under the Societies Registration Act, 1860 or not.

4. Service[Sec.2(1)(o)]

It means service of any description which is made available to potential users. It includes provision of facilities in connection with (a) banking, (b) financing, (c) insurance, (d) transport, (e) processing, (f) supply of electrical or other energy, (g) board or lodging or both, (h) house construction, (i) entertainment, amusement or other purveying of news or other information.

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The expression 'service' includes in its scope provision of facility in connection with telephone provided by Telecommunication Department and houses and plots by the Housing & Development Board.

'Service' however does not include the rending of any service free of charge or under a contract of personal service.

Q2. What are the objectives of Consumer Protection Act, 1986 ?

Ans : **(Nov.-21)**

Consumer protection is a type of protection which is provided to the consumers against the effect of malpractices of the marketers and firms and the social evils such as corruption, ill treatment, exploitation, unhygienic working conditions, injurious manufactures, deceitful market practices including black marketing, overcharging, misguidance by advertising, mislabelling, misuse of trademarks, patents etc.

Consumer protection specifies the protection provided to the consumers against the adverse market conditions such as price hikes, black marketing etc. The three important aspects of consumer protection include,

(i) Physical protection of consumers

(ii) Protection of consumer's economic interest

(iii) Protection of public interest.

Objectives of Consumer Protection Act, 1986

Some of the objectives of Consumer Protection Act, 1986 are listed down below.

1. To Protect Consumer Rights

Consumer protection act aims at protecting and promoting the rights of consumers like,

(i) The right to have awareness regarding the quantity, quality, competency, standard and price of goods or services in order to protect the consumers from unfair trade practices.

(ii) The right to hear and get assurance that forums will give attention to the consumer interests.

(iii) Right concerning consumer education.

(iv) The right to get protection against hazardous goods and services which may cause harm to the life and property of consumer.

(v) The right to have access to goods and services at competitive prices and

(vi) The right to get redressal against the restrictive trade practices, unfair trade practices or unethical exploitation of consumers.

2. To Provide Quasi-Judicial Redressal Agencies and Commission for Fast Redressal of Consumer Disputes

The consumer protection act aims at providing fast and easy redressal to consumer disputes and for doing this quasi-judicial redressal agencies are established at central, state and district level. These quasi-judicial agencies and commission are required to possess knowledge about the principles of natural justice and have power,

(i) To provide reliefs of some type and

(ii) To reward consumer with compensation where ever desirable.

Penalties are imposed if rules laid down by the quasi- judicial machinery are disobeyed.

3. To Protect the Interest of Consumers

The consumer protection act aims at giving better protection to the consumers interest. For doing this, consumer protection act makes provision for setting up consumer councils and other bodies to settle the disputes of consumers and other related matters.

4. To Setup Consumer Protection Councils

In order to protect consumer rights and consumer interest, consumer protection councils are set up at central and state levels.

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Q3. Discuss briefly about Rights of Consumer.

Ans :

Rights of Consumer

Consumers play a vital role in the economic system of a nation because in the absence of effective demand that emanates from them, the economy virtually collapses. Mahatma Gandhi said, "A consumer is the most important visitor on our premises. He is not dependent on us, we are on him. He is not an interruption to our work, he is the purpose of it.

We are not doing a favour to a consumer by giving him an opportunity. He is doing us a favour by giving us opportunity to serve him. But, of late, unfortunately cheating by way of overcharging, black marketing, misleading advertisements, etc. has become the common practice of greedy sellers and manufacturers to make unreasonable profits.

In this context, it is the duty of the government to confer some rights on consumers to safeguard their interests.

Consumer Rights

1. Right to Safety

The right to be protected against goods which are hazardous to life and property.

2. Right to Information

The right to be informed about the quality, quantity, purity, price and standards of goods.

3. Right to Choose

The right to be assured access to a variety of products at competitive prices, without any pressure to impose a sale, i.e., freedom of choice.

4. Right to be Heard

The right to be heard and assured that consumer interests will receive due consideration at appropriate forums.

5. Right to Seek Redressal

The right to get relief against unfair trade practice or exploitation.

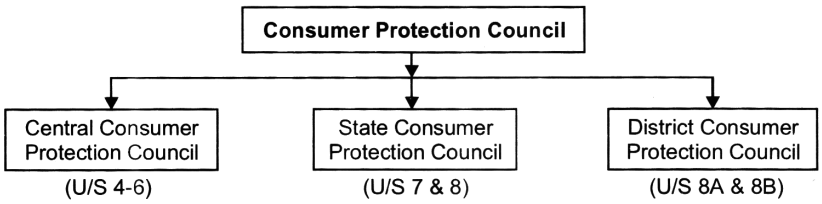
6. Right to Education

The right to be educated about rights of a consumer.

Q4. Explain in detail the consumer protection councils.

Ans :

Consumer Protection Councils are the advisory bodies which have been established at three levels- Central. State & District levels. These bodies have been set up for promoting and protecting the interests of the consumers. These councils have been entrusted the task of protecting the rights of the consumers.



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The interests of consumers are sought to be promoted and protected under the Act by establishment of Consumer Protection Councils at the central, state and district levels These Councils are advisory bodies. The Consumer Protection Act, 1986 comprising of sections 4 to 8B deals with Consumer Protection Councils.

A) Central Consumer Protection Council

Establishment of Central Consumer Protection Council (Section 4).

Section 4 provides that the Central Government shall by notification establish a council to be known as the Central Consumer Protection Council (hereinafter referred to as the Central Council) which shall consist of the following members, viz ;

(a) The Minister in charge of consumer affairs who shall be its Chairman

(b) Such number of other official or non-official members representing such interests as may be prescribed.

The membership has been thus left to the rule making power of the Government. The Consumer Protection Rules were promulgated in 1987. As per the Consumer Protection Rules, the Central Council shall consist of 150 members and the term of the Council shall be 3 years.

Meetings of Councils (Section 5)

Section 5 of the Act provides that the Central Council shall meet as and when necessary but at least one meeting shall be held every year. The Central Council shall meet at such time and place as the Chairman may think fit and shall observe such procedure in regard to the transaction of its business as may be prescribed.

Objectives of Central Council (Section 6)

Section 6 states the objects of the Central Council as being promotion and protection of the rights of the consumers. These rights are

(a) The right to be protected against the marketing of goods which are hazardous to life and property:

(b) The right to be informed about the quality, quantity, potency, purity, standard and price of goods so as. to protect the consumer against unfair trade practices;

(c) The right to be assured, wherever possible, access to a variety of goods at competitive price;

(d) The right to be heard and to be assured that consumers' interests will receive due consideration at appropriate forums;

(e) The right to seek redressal against unfair trade practices or unscrupulous exploration of consumers ; and

(f) The right to consumer eduction. (Section 6)

Section 6 of the Act spells out these objects and charges the Central Council with the responsibility of fulfilling these objects.

B) State Consumer Protection Council

Section 7 provides for the establishment of State Consumer Protection Councils by any State Government (by notification) to be known as Consumer Protection Council for (name of the state). The State Council shall consist of a Minister incharge of Consumer Affairs in the State Government who shall be its Chairman and such number of other official or non-official members representing such interests as may be prescribed by the State Government.

The State Council shall meet as and when necessary but not less than two meetings shall be held every year. The procedure to be observed in regard to the transaction of its business at such meetings shall be prescribed by the State Government.

As per section 8, the objects of the State Consumer Protection Councils are described in section 7 to be same as those of the Central Council, namely the points, enumerated in section 6.

C) The District Consumer Protection Council

As per newly inserted Section-8A, the State Govt, shall by notification, establish for every district a council to be known as District Protection Council. It shall consist of the following members :

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(a) The collector of the district, shall be its chairman.

(b) Such number of other members official or non-official as may be prescribed by State Govt.

The District Council shall meet as and when necessary but not less than two meetings shall be held every year.

Objectives of District Council (Sec. 8B)

The objective of every district council shall be to promote and protect within the district the rights of the consumers laid down in clauses (a) to if) of section 6.

How to file a Complaint

Procedure for filing complaints and seeking redressal are simple and speedy. A complaint should contain the following information

(a) Any allegation in writing made by a complainants (s) regarding certain grievances as provided under Section 2(1) (c) of the Act; and the facts relating to complaint and when and where it arose;

(b) The name, description and the address of the complainant or authorised agent;

(c) The name (s) description and address of the opposite party/parties, as the case may be ;

(d) The documents, if any, and affidavit in support of the allegations contained in the complaint.

(e) The relief (compensation, etc.) asked for by complainant.

(f) Complaint should be signed by the complainant (s) or his authorised agent.

(g) Prescribed fee for filing a complaint before Consumer Redressal Forum is to be deposited;

(h) Complaint can be presented before the Consumer Redressal Forum by complainant/authorised agent in person ;

(i) Also the complaint can be sent by registered post in order to be filed before Consumer Redressal Forum.

It has been held that the complaint filed without entire facts and pleadings, poorly drafted and even not corroborated with any documents in support of the case, the Commission should proceed in the case in the interest of justice.

Q5. Explain briefly about consumer redressal agencies.

Ans :

The Consumer Dispute Redressal Machinery

is a THREE-TIER, QUASI-JUDICIAL MACHINERY for speedy and inexpensive redressal of consumer grievances and disputes. The Consumer Dispute Redressal Machinery is an easy redressal alternative for the consumers than the ordinary process of the civil court which is a very expensive and time consuming litigation process.

It is clear that the Legislature while legislating intended to provide affordable and accessible machinery to an aggrieved consumer so that a consumer should be in position to seek adjudication on the subject-matter of dispute. The only condition to be fulfilled is that on the date when the consumer dispute has arisen and a complaint is filed before the Consumer Dispute Redressal Forum, the cause of action should not have become time-barred under the Limitation Act.

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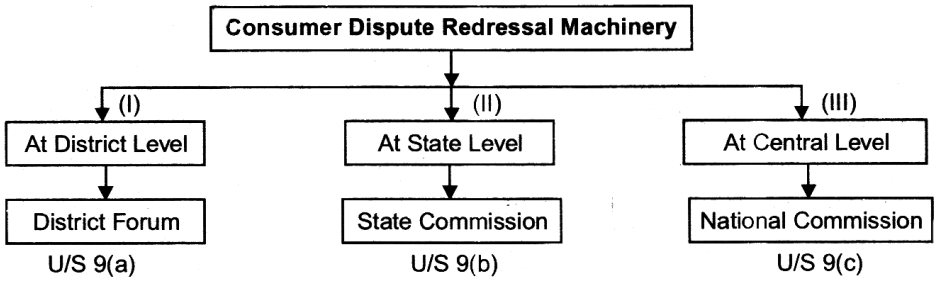

Q6. Discuss briefly about District Forum.

(OR)

Explain the working and composition of District Forum.

Ans :

Composition (Sec. 10). Each District Forum shall consist of:

(a) A person who is, or has been, or is qualified to be a District Judge, who shall be its President;

(b) 2 other members, one of whom shall be a woman, who shall have the following qualifications, namely,

(i) Be not less than 35 years of age.

(ii) Possess a bachelor's degree form a recognised university,

(iii) Be persons of ability, integrity and standing, and have adequate knowledge and experience of at least 10 years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration'.

Further a person shall be disqualified for appointment as a member, if he:

(a) Has been convicted and sentenced to imprisonment for an offence which, in the opinion of the State Government, involves moral turpitude ; or

(b) Is an undischarged insolvent ; or

(c) Is of unsound mind and stands so declared by a competent court ; or

(d) Has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government ; or

(e) Has, in the opinion of the State Government, such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as a member ; or

(f) Has such other disqualifications as may be prescribed by the State Government. [This clause has been substituted by Consumer Protection (Amendment) Act, 2002.]

Appointment on the recommendation of Selection Committee

Every appointment shall be made by the State Government on the recommendation of a selection committee consisting of the following, namely,

(i) President of the State Commission—Chairman.

(ii) Secretary, Law Department of the State—Member.

(iii) Secretary incharge of the Department dealing with consumer affairs in the State—Member.

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Where the President of the State Commission is, by reason of absence or otherwise, unable to act as Chairman of the Selection Committee, the State Government may refer the matter to the Chief Justice of the High Court for nominating a sitting Judge of that High Court to act as Chairman.

Term of office

Every member of the District Forum shall hold office for a term of 5 years or up to the age of 65 years, whichever is earlier. He shall not be eligible for re-appointment. However, a member shall be eligible for re-appointment for another term of 5 years or up to the age of 65 years, whichever is earlier, subject to the condition that he fulfils the qualifications and other conditions for appointment and such reappointment is also made on the basis of the recommendation of the Selection Committee.

Resignation

A member may resign his office in writing under his hand addressed to the State Government. On such resignation being accepted, his office shall become vacant. The vacancy so caused may be filled by appointment of a person possessing the qualifications mentioned above in relation to the category of the member who has resigned.

Salary and terms of condition of service

The salary or honorarium and other allowances payable to, and the other terms and conditions of service of, the members of the District Forum shall be prescribed by the State Government. However, the appointment of a member on whole-time basis shall be made by the State Government on the recommendation of the President of the State Commission taking into consideration such factors as may be prescribed including the work-load of the District Forum. [Inserted by the Consumer Protection (Amendment) Act, 2002).

Jurisdiction (Sec. 11)

The District Forum shall have jurisdiction to entertain complaints where the value of the goods or services and the compensation, if any, claimed does not exceed Rs. 20,00,000. This is however subject to other provisions of this Act.

A complaint shall be instituted in a District Forum within the local limits of whose jurisdiction,—

(a) The opposite party (i.e., the person who answers complaint or claim) or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries on business or has a branch office, or personally works for gain, or

(b) Any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office or personally works for gain, provided that in such case either the permission of the State Commission is given or the opposite parties who do not reside or carry on business or have a branch office or personally works for gain, as the case may be, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.

Powers of the District Forum

The District Forum shall have the same powers as are vested in District Court under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely.

(i) The summoning and enforcing attendance of any defendant or witness and examining the witness on oath ;

(ii) The discovery and production of any document or other material object producible as evidence ;

(iii) The reception of evidence on affidavits ;

(iv) The requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source ;

(v) Issuing of any commission for the examination of any witness ; and

(vi) Any other matter which may be prescribed.

Every proceeding before the District Forum shall be deemed to be a judicial proceeding within the meaning of Secs. 193 and 228 of the Indian Penal Code, 1860 and the District Forum shall be deemed to be a Civil Court for the purposes of Sec. 195, and Chapter XXVI of the Code of Criminal Procedure, 1973.

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Where the complainant is a consumer, the provisions of Rule 8 of Order I of the First Schedule to the Code of Civil Procedure, 1908 shall apply subject to the modification that every reference therein to a suit or decree shall be construed as a reference to a complaint or the order of the District Forum thereon.

Q7. Explain the composition and working of state commission as a redressal agency under the consumer protection act 1986.

Ans :

The State Commission – Secs. 16 to 19

Composition [Sec. 16 as amended by the Consumer Protection (Amendment) Act, 2002]. Each State Commission shall consist of:

(a) A person who is or has been a Judge of a High Court, appointed by the State Government, who shall be its President. However, no appointment under this Clause shall be made except after consultation with Chief Justice of the High Court.

(b) Not less than 2 and not more than such number of members as may be prescribed and one of whom shall be a woman who shall have the following qualifications, namely,

(i) be not less than 35 years of age ;

(ii) possess a bachelor's degree from a recognised university ; and

(ii) Be person of ability, integrity and standing and have adequate knowledge and experience of at least 10 years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration.

However, not more than 50 per cent of the members shall be from amongst persons having a judicial background.

The expression "persons having a judicial background" shall mean person having knowledge and experience for at least a period of 10 years as presiding officer at the district level court or any tribunal at equivalent level.

Further a person shall be disqualified for appointment as a member, if he

(a) Has been convicted and sentenced to imprisonment for an offence which, in the opinion of the State Government, involves moral turpitude ; or

(b) Is an undercharged insolvent ; or

(c) Is of unsound mind and stands so declared by a competent court ; or

(d) Has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government ; or

(e) Has, in the opinion of the State Government, such financial or other interest, as is likely to affect prejudicially the discharge by him of his functions as a member ; or

(f) Has such other disqualifications as may be prescribed by the State Government.

Every appointment under Sec. 16 shall be made by the State Government on the recommendation of a Selection Committee consisting of the following members, namely.

(i) President of the State Commission ... Chairman.

(ii) Secretary of the Law Department of the State ... Member.

(iii) Secretary in charge of the Department dealing with Consumer Affairs in the State... Member.

Jurisdiction [Sec. 17 (1)]

The State Commission shall have jurisdiction

(a) To entertain - (i) complaints where the value of the goods or services and compensation, if any, claimed exceeds Rs. 20 lakh but does not exceed Rs. 1 crore; and (ii) appeals against the orders of any District Forum within the State; and

(b) To call for the records and pass appropriate order in any consumer dispute which is pending before or has been decided by a District Forum within the State where it appears to the State Commission that such

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District Forum (i) has exercised a jurisdiction not vested in it by law, or (ii) has failed to exercise a jurisdiction so vested, or (iii) has acted in exercise of its jurisdiction illegally or with material irregularity.

A complaint shall be instituted in a State Commission within the limits of whose jurisdiction,

(a) The opposite party or each of the opposite parties, where there are more than one at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office or personally works for gain ; or

(b) Any of the opposite parties where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries on business or has a branch office or personally works for gain, provided that in such case either the permission of the State Commission is given or the opposite parties who do not reside or carry on business or have a branch office or personally work for gain, as the case may be, acquiesce in such institution ; or

(c) The cause of action, wholly or in part, arises [Inserted by the Consumer Protection (Amendment) Act, 2002].

Transfer of cases [New Sec. 17-A as inserted by the Consumer Protection (Amendment) Act, 2003], On the application of the complainant or of its own motion, the State Commission may, at any stage of the proceeding, transfer any complaint pending before the District Forum to another District Forum within the State if the interest of justice so requires.

Circuit Benches [New Sec. 17-B as inserted by the Consumer Protection (Amendment) Act, 2002]. The State Commission shall ordinarily function in the State Capital but may perform its functions at such other place as the State Government may, in consultation with the State Commission, notify in the Official *Gazette,* from time to time.

Procedure (Sec. **18).** The provisions of Secs. **12, 13** and **14** and the rules made thereunder for the disposal of complaints by the District Forum shall, with such modifications as may be necessary, be applicable to the disposal of disputes by the State Commission.

Appeal (Sec. **19).** Any person aggrieved by an order made by the State Commission may prefer an appeal against such order to the National Commission within a period of 30 days from the late of the order. The National Commission may entertain an appeal after the expiry of this period :t 30 days if it is satisfied that there was sufficient cause for to filing the appeal within that period.

Further no appeal by a person, who is required to pay any amount in terms of an order of the State Commission, shall be entertained by the National Commission unless the appellant has deposited in the prescribed manner 50 per cent of the amount or Rs. 35,000 whichever is less.

Hearing of appeal [Sec. 19-A inserted by the Consumer Protection (Amendment) Act, 2002). An appeal filed before the State Commission or the National Commission shall be heard as expeditiously as possible and an endeavour shall be made to finally dispose of the appeal within a period of 90 days from the date of its admission.

No adjournment shall be ordinarily granted by the State Commission or the National Commission as the case may be, unless sufficient cause is shown and the reasons for grant of adjournment have been recorded in writing by such Commission.

Q8. Explain the formation and role of national commission in consumer protection Act 1986.

Ans :

National Consumer Disputes Redressal Commission (National Commission - Secs. 20 To 23)

Composition [Sec. 20 as amended by the Consumer Protection (Amendment) Act, 2002[. The National Commission shall consist of

(a) A person who is or has been a Judge of the Supreme Court, to be appointed by the Central Government, who shall be its President. However, no appointment under this Clause shall be made except after consultation with the Chief Justice of India ;

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(b) Not less than 4 and not more than such number of members, as may be prescribed and one of whom shall be a woman who shall have the following qualifications, namely,

(i) be not less than 35 years of age ;

(ii) possess a bachelor's degree from a recognised university ; and

(iii) be persons of ability, integrity and standing and have adequate knowledge and experience of at least 10 years in dealing with problems relating to economics, law, commence, accountancy, industry, public affairs or administration.

However, not more than 50 per cent of the members shall be from amongst the persons having a judicial background.

The expression 'persons having a judicial background' shall mean persons having knowledge and experience for at least a period of 10 years as a presiding officer at the district level court or any tribunal at equivalent level.

Further a person shall be disqualified for appointment, if he

(a) Has been convicted and sentenced to imprisonment for an offence which, in the opinion of the Central Government, involves moral turpitude ; or

(b) Is an undischarged insolvent ; or

(c) Is of unsound mind and stands so declared by a competent court ; or

(e) Has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government ; or

(d) Has, in the opinion of the Central Government, such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as a member ; or

(f) Has such other disqualifications as may be prescribed by the Central Government.

Every appointment referred to above shall be made by the Central Government on the recommendation of a Selection Committee consisting of the following, namely,

(a) A person who is a judge of the Supreme Court to be nominated by the

-Chairman Chief Justice of India

(b) The Secretary in the Department of Legal Affairs in the Government of

- Member India

(c) Secretary of the Department dealing with Consumer Affairs in the

- Member/ Government of India

Place of the National Commission

The office of the National Commission shall be located in the Union Territory of Delhi (Rule 5 of the Consumer Protection Rules, 1957).

Jurisdiction (Sec. 21). Subject to the other provisions of this Act, the National Commission shall have jurisdiction-

(1) To entertain (i) complaints where the value of the goods or services and compensation, if any, claimed exceeds Rs. 1 crore, and (ii) appeals against the orders of any State Commission ; and

(2) To call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission (i) has exercised a jurisdiction not vested in it by law, or (ii) has failed to exercise a jurisdiction so vested, or (iii) has acted in the exercise of its jurisdiction illegally or with material irregularity.

Appeal (Sec. 23). Any person, aggrieved by an order made by the National Commission in exercise of its powers, may prefer an appeal against such order to the Supreme Court within a period of 30 days from the date of the order. The Supreme Court may entertain an appeal after the expiry of this period of 30 days if it is satisfied that there was sufficient cause for not filing the appeal within that period.

Further no appeal by a person who is required to pay any amount in terms of an order of the -National Commission shall be entertained by the Supreme Court unless that person has deposited in the prescribed manner 50 per cent of that amount or Rs. 50,000, whichever is less.

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Finality of orders (Sec. 24). Every order of a District Forum, the State Commission or the National Commission shall, if no appeal has been preferred against such order under the provisions of this Act, be final.

Secs. 24-A and 24-B which have been inserted by the Consumer Protection (Amendment) Act, 2002 deal with 'limitation period' and 'administrative control' respectively.

Enforcement of orders of the District Forum, the State Commission or the National Commission [Sec. 25 as substituted by the Consumer Protection (Amendment) Act, 2002]. Where an interim order made under this Act is not complied with, the District Forum or the State Commission or the National Commission, as the case may be, may order the property of the person, not complying with such order to be attached.

No such attachment shall remain in force for more than 3 months at the end of which, if the non-complacence continues, the property attached may be sold and out of the proceeds thereof, the District Forum or the State Commission or the National Commission may award such damages as it thinks fit to the complainant and shall pay the balance, if any, to the party entitled thereto.

5.2 INFORMATION TECHNOLOGY ACT 2000

Q9. What are the objectives and scope of the Information Technology Act 2000 ?

Ans : **(Aug.-21, Jan.-20, Nov.-20, Imp.)**

Introduction

Information technology is one of the important law relating to Indian cyber laws. It had passed in Indian parliament in 2000. This act is helpful to promote business with the help of internet. It also set of rules and regulations which apply on any electronic business transaction.

Due to increasing crime in cyber space, Govt. of India understood the problems of internet user and for safeguarding the interest of internet users, this act was made.

Objectives

The following are its main objectives and scope :

1. It is objective of I.T. Act 2000 to give legal recognition to any transaction which is done by electronic way or use of internet.
2. To give legal recognition to digital signature for accepting any agreement via computer.
3. To provide facility of filling document online relating to school admission or registration in employment exchange.
4. According to I.T. Act 2000, any company can store their data in electronic storage.
5. To stop computer crime and protect privacy of internet users.
6. To give legal recognition for keeping books of accounts by bankers and other companies in electronic form.
7. To make more power to IPO, RBI and Indian Evidence act for restricting electronic crime.

Scope of IT Act

Every electronic information is under the scope of I.T. Act 2000 but following electronic transaction is not under I.T. Act 2000

1. Information technology act 2000 is not applicable on the attestation for creating trust via electronic way. Physical attestation is must.
2. I.T. Act 2000 is not applicable on the attestation for making will of any body. Physical attestation by two witnesses is must.
3. A contract of sale of any immovable property.
4. Attestation for giving power of attorney of property is not possible via electronic record.

Provisions

There are 13 chapters in law and all provision is included in this chapters.

1. Chapter II

Any contract which is done by subscriber. If he signs the electronic agreement by digital signature. Then it will be valid.

In case bank, the verification of digital signature can be on the basis of key pair.

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2. Chapter III

This chapter explains the detail that all electronic records of govt. are acceptable unless any other law has any rules regarding written or printed record.

3. Chapter IV

This chapter deals with receipts or acknowledgment of any electronic record. Every electronic record has any proof that is called receipt and it should be in the hand who records electronic way.

4. Chapter V

This chapter powers to organization for securing the electronic records and secure digital signature. They can secure by applying any new verification system.

5. Chapter VI

This chapter states that govt. of India will appoint controller of certifying authorities and he will control all activities of certifying authorities.

"Certifying authority is that authority who issues digital signature certificate."

6. Chapter VII

In this chapter powers and duties of certifying authority is given. Certifying authority will issue digital signature certification after getting Rs. 25000. If it is against public interest, then C.A. can suspend the digital signature certificate.

7. Chapter VIII

This chapter tells about the duties of subscribers regarding digital signature certificate . It is the duty of subscriber to accept that all information in digital signature certificate that is within his knowledge is true.

8. Chapter IX

If any body or group of body damages the computers , computer systems and computer networks by electronic hacking , then they are responsible to pay penalty upto Rs. 1 crore. Fore judgment this govt can appoint education officer.

9. Chapter X

Under this chapter, cyber regulation appellate tribunal can be established. It will solve the cases relating to orders of adjudicating officers.

10. Chapter XI

For controlling cyber Crime, Govt. can appoint cyber regulation advisory committee who will check all cyber crime relating to publishing others information. If any fault is done by anybody, he will be responsible for paying Rs. 2 lakhs or he can get punishment of 3 years living in jail or both prison and penalty can be given to cyber criminal.

11. Chapter XII

Police officers have also power to investigate dangerous cyber crime under IPC 1860, Indian Evidence Act 1872 and RBI Act 1934.

Q10. Explain the advantages and dis-advantages of Information Technology Act.

Ans : **(Nov.-20, Imp.)**

Advantages

1. Helpful to promote e-commerce

- Email is valid
- Digital signature is valid.
- Payment via credit card is valid.
- Online contract is valid

Above all things validity in eye of Indian law is very necessary. After making IT act 2000 , all above things are valid and these things are very helpful to promote e-commerce in India.

2. Enhance the corporate business

After issuing digital signature, certificate by Certifying authority, now Indian corporate business can enhance.

3. Filling online forms

After providing facility, filling online forms for different purposes has become so easy.

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4. High penalty for cyber crime

Law has power to penalize for doing any cyber crime. After making of this law, nos. of cyber crime has reduced.

Disadvantages

1. Infringement of copyright has not been included in this law.
2. No protection for domain names.
3. The act is not applicable on the power of attorney, trusts and will.
4. Act is silent on taxation.
5. No, provision of payment of stamp duty on electronic documents.

Q11. Define Digital Signature.

Ans :

Definition

A digital signature is basically a way to ensure that an electronic record or document (e-mail, spreadsheet, text file, etc.) is authentic. The Act contains the following provisions in relation to digital signature:

1. Any subscriber may authenticate an electronic record by affixing his digital signature.
2. The authentication of the electronic record shall be effected by the use of the asymmetric crypto system and hash function which envelop and transform the initial electronic record into another electronic record.
3. Any person by the use of a public key of the subscriber can verify the electronic record.
4. The private key and the public key are unique to the subscriber and constitute a functioning key pair.

Representations upon issuance of Digital Signature Certificate (Sec. 36). A Certifying authority while issuing a Digital Signature Certificate shall certify that—

(a) It has complied with the provisions of this Act and the rules and regulations made there under;

(b) It has published the Digital Signature Certificate or otherwise made it available to such person relying on it and the subscriber has accepted it ;

(c) The subscriber holds private key corresponding to the public key, listed in the Digital Signature Certificate ;

(i) The subscriber holds a private key which is capable of creating a digital signature;

(ii) The public key to be listed in the certificate can be used to verify a digital signature affixed by the private key held by the subscriber ;

(d) The subscriber's public key and private key constitute a functioning key pair ;

(e) The information contained in the Digital Signature Certificate is accurate ; and

(f) It has no knowledge of any material fact, which if included in the Digital Signature Certificate would adversely affect the reliability of the representations in clauses (a) to (d).

Suspension of Digital Signature Certificate (Sec. 37). The Certifying Authority which has issued a Digital Signature Certificate may suspend this Certificate –

(a) On receipt of a request to that effect from-

(i) The subscriber listed in the Digital Signature Certificate ; or

(ii) Any person duly authorised to act on behalf of that subscriber ;

(b) If it is of opinion that the Digital Signature Certificate should be suspended in public interest.

A Digital Signature Certificate shall not be suspended for a period exceeding 15 days unless the subscriber has been given an opportunity of being heard in the matter.

On suspension of a Digital Signature Certificate, the Certifying Authority shall communicate the same to the subscriber.

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Revocation of Digital Signature Certificate (Sec. 38). A Certifying Authority may revoke a Digital Signature Certificate issued by it -

(a) Where the subscriber or any other person authorised by him makes a request to that effect.

or

(b) Upon the death of the subscriber ; or

(c) Upon the dissolution of the firm or winding up of the company where the subscriber is a firm or a company.

The Certifying Authority may also revoke a Digital Signature Certificate which has been issued by it at any time, if it is of opinion that-:

(a) A material fact represented in the Digital Signature Certificate is false or has been concealed.

(b) A requirement for issuance of the Digital Signature Certificate was not satisfied.

(c) The Certifying Authority's private key or security system was compromised in a manner materially affecting the Digital Signature Certificate's reliability.

(d) The subscriber has been declared insolvent or dead or where a subscriber is a firm or a company, which has been dissolved, wound-up or otherwise ceased to exist.

Q12. Write briefly about the issue of digital signature certificate.

Ans :

Digital signature certificates are the certificates that are used to verify one's identity when he/she is doing any business or transactions on the Internet. These certificates are issued by a trusted third party called as Certificate Authority or Certification Authority (CA). A digital certificate contains the user's name, a serial number, a copy of the certificate holder's public key (which is useful for message encryption and digital signature generation), expiration data and also the digital signatures of the CA (so as to verify the identity of CA). The digital signatures usually conform to X.509 standard.

In order to issue the digital signature, the clarifying authority shall comply with the provisions of Section 35 of the Act along with the following,

(i) The certifying authority provides the digital signature certificate only when the subscriber summits the application provided by certifying authority. This application need to be approved by certifying authority for the issue of certificate.

(ii) The authority shall not issue any interim Digital Signature Certificate.

(iii) In order to generate the digital signature certificate, the certifying authority may look for the receipt of an authorized subscriber who made request for,

a) New Digital Signature Certificates or

b) Digital Signature Certificates renewal.

(iv) In case, if the Digital Signature Certificate is suspended or revoked, if is to be ensure that the certificate must contain the information which is sufficient enough to identify the repositories wherein suspension of the certificate will be listed.

(v) The subscriber identity method used for issuing the Digital Signature Certificate shall be specified under the certification practice statement. More importantly, it is accountable to the approval of the controller when the license is applied.

(vi) The certification authority provides a person a new Digital Signature Certificate based on the another Originating Digital Certificate. Thereafter, the certifying authority that issued a new digital signature certificate may investigate to figure out if it is obligatory to suspend or revoke the newly issued digital signature certificate.

(vii) The certifying authority allows the subscriber to verify the contents of the Digital Signature Certificate before it is accepted by subscriber.

(viii) Upon the acceptance of issued digital signature certificate by the subscriber, the certifying authority will keep a copy of the certificate in a repository.

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(ix) After issuing the certificate to subscriber, if the authority finds any facts that may affect the reliability or validity of issued certificate, then it will be immediately informed to the subscriber.

(x) A designated expiry date is must for all the issued Digital Signature Certificate.

Q13. Discuss briefly about E-governance.

Ans :

Where any law provides that information or any "other matter shall be in writing or in the typewritten or printed form, such requirement shall be deemed to have been satisfied if such information or matter is

a) Rendered or made available in an electronic form ; and

b) Accessible so as to be usable for a subsequent reference.

Legal recognition of electronic signatures (Sec. 5). Where any law provides that information or any other matter shall be authenticated by affixing the signature or any document shall be signed or bear the signature of any person, such requirement shall be deemed to have been satisfied, if such information or matter is authenticated by means of electronic signature affixed.

Use of electronic records and electronic signatures in Government and its agencies (Sec. 6). Where any law provides for -

1. The filing of any form, application or any other document with any office, authority, body or agency owned or controlled by the appropriate Government in a particular manner ;

2. The issue or grant of any licence, permit, sanction or approval by whatever name called in a particular manner;

3. The receipt or payment of money in a particular manner, Such requirement shall be deemed to have been satisfied if such (a) filing, (b) issue, (c) grant, (d) receipt or payment is effected by means of electronic form as may be prescribed by the appropriate Government.

The appropriate Government may, by rules, prescribe.

(i) The manner and format in which such electronic records shall be filed, created or issued ;

(ii) The manner or method of payment of any fee or charges for filing, creation or issue of any electronic record under clause (1).

Delivery of services by service provider (Sec. 6A)

1. The appropriate Government may, for the purposes of this Chapter and for efficient delivery of services to the public through electronic means authorise, by order, any service provider to set-up, maintain and upgrade the computerised facilities and perform such other services as it may specify by notification in the Official Gazette.

2. The appropriate Government may also authorise any service provider authorised under sub-section (1) to collect, retain and appropriate such service charges, as may be prescribed by the appropriate Government for the purpose of providing such services, from the person availing such service.

3. Subject to the provisions of sub-section (2), the appropriate Government may authorise the service providers to collect, retain and appropriate service charges under this section notwithstanding the fact that there is no express provision under the Act, rule, regulation or notification under which the service is provided to collect, retain and appropriate e-service charges by the service providers.

4. The appropriate Government shall, by notification in the Official Gazette, specify the scale of service charges which may be charged and collected by the service providers under this section:

Provided that the appropriate Government may specify different scale of service charges for different types of services.

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Retention of electronic records (Sec. 7)

Where any law provides that documents, records or information shall be retained for any specific period, then, that requirement shall be deemed to have been satisfied if such documents, records or information are retained in the electronic form, if

(a) The information contained therein remains accessible so as to be usable for a subsequent reference;

(b) The electronic record is retained in the format in which it was originally generated, sent or received or in a format which can be demonstrated to represent accurately the information originally generated, sent or received ;

(c) The details which will facilitate the identification of the origin, destination, date and time of despatch or receipt of such electronic record are available in the electronic record.

Audit of documents, etc., maintained in electronic form (Sec. 7A). Where in any law for the time being in force, there is a provision for audit of documents, records or information, that provision shall also be applicable for audit of documents, records or information processed and maintained in the electronic form.

Publication of rules, regulations, etc., in Electronic Gazette (Sec. 8). Where any law provides that any rule, regulation, order, bye-law, notification or any other matter shall be published in the Official Gazette, then, such requirement shall be deemed to have been satisfied if such rule, regulation, order, bye-law, notification or any other matter is published in the Official Gazette or Electronic Gazette.

Electronic Gazette means the Official Gazette published in the electronic form (Sec. 2 (1) (t)]. Where any rule, regulation, order, bye-law, notification or any other matter is published in the Official Gazette or Electronic Gazette, the date of publication shall be deemed to be the date of the Gazette which was first published in any form.

Q14. Explain in detail the penalties imposed u/s 43 of the IT act 2000.

Ans : **(Nov.-20)**

Sections 43 to 47 provide for Penalties Compensation and Adjudication incase of contravention of various offences committed under the Act. The provisions are explained below:

1. **Penalty and compensation for damage to computer, computer system, etc. (Sec. 43):** If any person without permission of the owner or any other person who is incharge of a computer, computer system or computer network, commits any of the following acts he shall be liable to pay damages by way of compensation not exceeding one crore rupees to the person so affected.

   (a) Accesses or secures access to such computer, computer system or computer resource;

   (b) Downloads, copies or extracts any data, computer data base or information from such computer, computer system or computer network including information or data held or stored in any removable storage medium;

   (c) Introduces or causes to be introduced any computer contaminant or computer virus into any computer, computer system or computer network;

   (d) Damages or causes to be damaged any computer, computer system or computer network, data, computer data base or any other programmes residing in such computer, computer system or computer network;

   (e) Disrupts or causes disruption of any computer, computer system or computer network;

   (f) Denies or causes the denial of access to any person authorised to access any computer, computer system or computer network by any means;

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(g) Provides any assistance to any person to facilitate access to a computer, computer system or computer network in contravention of the provisions of this Act, rules or regulations made thereunder;

(h) Charges the services availed of by a person to the account of another person by tempering with or manipulating any computer, computer system, or computer network.

(i) Destroys, deletes or alters any information residing in a computer resource or diminishes its value or utility or affects it injuriously by any means.

(j) Steal, conceals, destroys or alters or causes any person to steal, conceal, destroy or alter any computer source code used for a computer resource with an intention to cause damage.

2. Penalty for failure to furnish information, return, etc. (Sec. 44): If any person who is required under this Act or any rules or regulations made thereunder to-

(a) Furnish any document, return or report to the Controller or the Certifying Authority, fails to furnish the same, he shall be liable to a penalty not exceeding one lakh and fifty thousand rupees for each such failure;

(b) File any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time exceeding therefor in the regulations, he shall be liable to a penalty not exceeding five thousand rupees for every day during which such failure continues;

(c) Maintain books of account or records, fails to maintain the same, he shall be liable to a penalty not exceeding ten thousand rupees for every day during which the failure continues.

3. Residuary penalty (Sec. 45)

Whoever contravenes any rules or regulations made under this Act, for the contravention of which no penalty has been separately provided, shall be liable to pay a compensation not exceeding twenty-five thousand rupees to the person affected by such contravention or a penalty not exceeding twenty-five thousand rupees.

4. Power to adjudicate (Sec. 46):

(i) For the purpose of adjudging under the Act, whether any person has committed a contravention of any of the provisions of this Act or of any rule, regulation, direction or order made thereunder which renders him liable to pay penalty or compensation the Central Government shall, subject to the provisions of sub-section(3), appoint any officer not below the rank of a Director to the Government of India or an equivalent officer of a State Government to be an adjudicating officer for holding an inquiry in the manner prescribed by the Central Government.

The adjudicating officer appointed as above shall exercise jurisdiction to adjudicate matters in which the claim for injury or damage does not exceed rupees five crore:

Provided that the jurisdiction in respect of the claim for injury or damage exceeding rupees five crore shall vest with the competent court."

(ii) The adjudicating officer shall, after giving the person referred to in sub-section(1), a reasonable opportunity for making representation in the matter and if, on such inquiry, he is satisfied that the person has committed the contravention, he may impose such penalty or award such compensation as he thinks fit in accordance with the provisions of that section.

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(iii) No person shall be appointed as an adjudicating officer unless he possesses such experience in the field of Information Technology and legal or judicial experience as may be prescribed by the Central Government.

(iv) Where more than one adjudicating officers are appointed, the Central Government shall specify by order the matters and places with respect to which such officers shall exercise their jurisdiction.

5. Factors to be taken into account by the adjudicating officer: While adjudging the quantum of compensation under the Act, the adjudicating officer shall have due regard to the following factors, namely.

(a) The amount of gain of unfair advantage, wherever quantifiable made as a result of the default;

(b) The amount of loss caused to any person as a result of the default;

(c) The repetitive nature of the default.

5.3 COMPETITION ACT 2002

Q15. Define the following terms are used in competition act 2002 :

(a) Acquisition

(b) Agreement

(c) Consumer

(d) Enterprise

(e) Goods

(f) Person

(g) Service

Ans :

(a) Acquisition

[Sec. 2 (a)]. It means, directly or indirectly, acquiring or agreeing to acquire-

(i) shares, voting rights or assets of any enterprise; or

(ii) control over management or control over assets of any enterprise.

(b) Agreement

[Sec. 2 (b)]. It includes any arrangement or understanding or action in concert,

(i) whether or not, such arrangement, understanding or action is formal or in writing; or

(ii) whether or not, such arrangement, understanding or action is intended to be enforceable by legal proceedings.

The element of mutuality is inherent in the word agreement. A mere direction or recommendation by one party not warranting acceptance of any obligation (whether legal or moral) by the other party cannot constitute an agreement.

Agreements contemplated under the Competition Act may be horizontal agreements and vertical agreements.

Horizontal agreements are agreements among competitors engaged in the same activity. For *example,* the agreements between producers or between wholesalers or between retailers, dealing in similar kind of products.

Vertical agreements are agreements between non-competing undertakings. For *example,* the agreements between manufacturers of components, manufacturers of products, between producers and wholesalers or between producers, wholesalers and retailers.

(c) Consumer

[Sec. 2 (f)]. 'Consumer' means any person who-

(i) buys any goods for a consideration which has been paid or promised, or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for resale or for any commercial purpose;

(ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly

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promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for any commercial purpose.

It is noteworthy that the definition of consumer is substantially the same as given to the expression under Section (d) of the Consumer Protection Act, 1986 with some variations.

(d) Enterprise

[Sec. 2 (h)]. It means a person or a department of the Government, who or which is, or has been or is proposed to be, engaged in any activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services, of any kind, or in investment, or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, either directly or through one or more of its units or divisions or subsidiaries (whether such unit or division or subsidiary is located at the same place where the enterprise is located or at a different place or at different places, but does not include any activity of the government relatable to the sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defence and space.

Explanation : for the purposes of this clause,

(a) 'activity' includes profession or occupation ;

(b) 'article' includes a new article and 'service' includes a new service ;

(c) 'unit' or 'division', in relation to an enterprise, includes—

(i) a plant or factory established for the production, storage, supply, distribution, acquisition or control of any article or goods ;

(ii) any branch or office established for the provision of any service.

(e) Goods

[Sec. 2 (i)]. 'Goods' means goods as defined in the Sale of Goods Act, 1930 and includes-

(A) products manufactured, processed or mined;

(B) debentures, stocks and shares after allotment;

(C) in relation to goods supplied, distributed or controlled in India, goods imported into India.

All moveable property, stocks and shares, growing crops, trade marks, copyrights, patent rights, goodwill, electricity, water, gas are goods. But any actionable claim and money are not covered under the meaning of goods.

(f) Person

[Sec. 2 (*l*)]. 'Person' includes–

(i) an individual ;

(ii) a Hindu undivided family ;

(iii) a company ;

(iv) a firm ;

(v) an association of persons or a body of individuals, whether incorporated or not, in India or outside India ;

(vi) any corporation established by or under any Central, State or Provincial Act or a Government company as defined in Sec. 617 of the Companies Act, 1956 ;

(vii) any body corporate incorporated by or under the laws of a country outside India ;

(viii) a co-operative society registered under any law relating to co-operative societies;

(ix) a local authority ; and

(x) every artificial juridical person, not falling within any of the preceding sub-clauses.

(g) Service

[Sec. 2 (u)]. 'Services' means service of any description which is made available to potential users. It includes the provision of

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services in connection with business of any industrial or commercial matters such as accounting, banking, communication, education, financing, insurance, chit funds, real estate, transport, storage, material treatment, processing, supply of electrical or other energy, boarding, lodging, entertainment, amusement, construction, repair, conveying of news or information and advertising.

Q16. What are the objectives of competition act 2002?

Ans :

Objective of the Competition Act, 2002

An Act, keeping in view of the economic development of the country, was laid down to provide for an establishment of a commission with the following object:

- to prevent practices having adverse effect on competition,
- to promote and sustain competition in markets,
- to protect the interests of consumers,
- to ensure freedom of trade carried on by other participants in markets in India and - for matters connected therewith or incidental thereto.

Q17. Explain the Features of Competition Act, 2002.

Ans :

The focus of the new law is towards the following areas affecting competition namely:

1. Prohibition of certain agreements, which are considered to be anti-competitive in nature

Such agreements [namely tie in arrangements, exclusive dealings (supply and distribution), refusal to deal and resale price maintenance] shall be presumed as anti-competitive if they cause or are likely to cause an appreciable adverse effect on competition within India.

2. Prohibition of Abuse of dominant position

If an enterprise by imposing unfair or discriminatory conditions or limiting and restricting production of goods or services or indulging in practices resulting in denial of market access or through in any other mode are prohibited.

3. Regulation of combinations

Regulation of combinations which cause or are likely to cause an appreciable adverse affect on competition within the relevant market in India is also considered to be void.

4. Entrust

Competition Commission of India the responsibility of undertaking competition advocacy, awareness and training about competition issues.

Q18. Explain briefly about competition commission in India.

Ans :

Establishment of Commission (Section 7)

Section 7 provides for the establishment of the Competition Commission of India. The Commission shall be a body corporate by the aforesaid name having perpetual succession and a common seal with power to acquire, hold and dispose of property and to contract and shall sue or be sued. The place of head office of the Commission shall be decided by the Central Government. Further, the Commission may establishment offices at other places in India.

Composition of Commission (Section 8)

The Commission shall consist of the Chairperson and not less than two and not more than six other Members, to be appointed by the Central Government. The Chairperson and every other Member shall be a person of ability, integrity and standing and who has special knowledge of, and such professional experience of not less then 15 years in international trade, economics, business, commerce, law, finance, accounting, management,

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industry, public affairs or competition matters, including competition law and policy, which in the opinion of the Central Government, may be useful to the Commission. The Chairperson and other members shall be whole time members.

Selection Committee for Chairperson and other Members of the commission (Section 9)

The Chairperson and other Members of the Commission shall be appointed by the Central Government from a panel of names recommended by a Selection Committee consisting of

(a)	the Chief Justice of India or his nominee	---	Chairperson;
(b)	the Secretary in the Ministry of Corporate	---	Member;
(c)	Affairs the Secretary in the Ministry of Law and Justice	---	Member;
(d)	two experts of repute who have special knowledge of, and professional experience in international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs or competition matters including competition law and policy.	---	Members.

The term of the Selection Committee and the manner of selection of panel of names shall be such as may be prescribed.

Term of office of Chairperson and other Members (Section 10)

The Chairperson and every other Member shall hold office for a term of five years from the date on which he enters upon his office and shall be eligible for re-appointment. However, no Chairperson or other Member shall hold office as such after he has attained the age of sixty-five years.

Resignation, removal and suspension of Chairperson and other members (Section 11)

The Chairperson or any other Member may, by notice in writing under his hand addressed to the Central Government, resign his office.

Restriction on employment of Chairperson and other Members in certain cases (Section 12)

The Chairperson and other Members shall not, for a period of two years from the date on which they cease to hold office, accept any employment in, or be connected with the management or administration of, any enterprise which has been a party to a proceeding before the Commission.

Administrative powers of Chairperson (Section 13)

The Chairperson shall have the powers of general superintendence, direction and control in respect of all administrative matters of the Commission. The Chairperson may also delegate such of his powers relating to administrative matters of the Commission, as he may think fit, to any other Member or officer of the Commission.

Salary and allowances and other terms and conditions of service of Chairperson and other Members

(Section 14)

The salary, and the other terms and conditions of service, of the Chairperson and other Members, including travelling expenses, house rent allowance and conveyance facilities, sumptuary allowance (expenses of living) and medical facilities.

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Vacancy, etc. not to invalidate proceedings of Commission (Section 15)

Appointment of Director General, etc. (Section 16)

The Central Government may, by notification, appoint a Director General for the purposes of assisting the Commission in conducting inquiry into contravention of any of the provisions of this Act and for performing such other functions as are, or may be, provided by or under this Act.

The number of other Additional, Joint, Deputy or Assistant Directors General or such officers or other employees in the office of Director General and the manner of appointment of such Additional, Joint, Deputy or Assistant Directors General or such officers or other employees shall be such as may be prescribed.

Duties

Duties of Commission (Section 18)

This section provides that it shall be the duty of the Commission to eliminate

practices having adverse effect on competition, to promote and sustain competition in markets in India, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets in India. The Commission may for the purpose of discharging its duties or performing its functions under this Act, enter into any memorandum or arrangement, with the prior approval of the Central Government, with any agency of any foreign country.

Q19. Explain the various provisions for competition law.

Ans :

The important provisions relating to competition law are,

1. Prohibition of Anti-Competitive Agreements

Under the Act, the individuals and undertakings are prohibited to enter into any agreement which has negative impact or effect on competition in any department such as supply, distribution, production, storage, acquisition, management of goods or supply of services in the country. The following agreements are prohibited by the Act as these have negative effect on competition,

1. Decisions taken by the organisations and individuals on the following issues,
   (a) Determination of purchase or sale price directly or indirectly
   (b) Controls production, supply, markets, technical development, investment or supply of services
   (c) Through distributing the geographical area the markets are shared, goods are produced, services are provided
   (d) Results in bid or collusive rigging which means already fixing the judgement of something.
2. Tie-in arrangements
3. Exclusive or sole supply an arrangements
4. Refusal to deal
5. Maintenance of resale price.

MRTP Act also consists most of these provisions.

2. Prohibition of Abuse or Misuse of Dominant Position

The abuse or misuse of dominant position by any firm is restricted under Sec. 4(1). Sec 4 states that an abuse of dominant position exists, if an enterprise,

(a) Either directly or indirectly enforce unfair or discriminatory,
   (i) Purchase or sale condition of goods or services, or
   (ii) Purchase or sale price of goods or services, or

(b) Impose restrictions on,
   (i) Production of goods or provision of services or market for that reason or

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(ii) Technical or scientific improvements associated with goods or services towards the discrimination of consumers, or

(c) Dealing in practices which results in the rejection of market access, or

(d) Provide conclusion to contracts that depends on the acceptance by other parties of supplementary obligations which does not have any link with the subject of such contracts, or

(e) Make use of its dominant position in one significant market to enter into other market or protect other related market.

(f) "Dominant position" refers to a position of strength, occupied by an enterprise, in the significant market, whether in India or outside India. The dominant position helps the firm to,

(i) Independently operate the competitive forces existing in the significant market, or

(ii) Influence its competitors or consumers or the related market in their favour.

Sec 4 (2) defined predatory price as " the sale of goods or provision of services at a price which is below the cost, or may be determined by regulations of production of goods or provision of services with a view to reduce competition or eliminate the competitors.

3. Regulation of Combinations

According to Sec 5 combination means, the acquisition of one or more enterprises by one or more persons. It is also referred as merger or amalgamation of enterprises and persons or enterprises if some conditions are satisfied.

I. Acquisition of Control, Voting Rights, Shares or Assets

Any acquisition will be referred as combination if,

(i) The acquirer and the enterprise whose assets are being acquired have,

(a) Either the assets amounting to more than ` 1000 crores or turnover more than ` 3000 crores in India or

(b) In aggregate, the assets of the value of more than 500 million US dollars or turnover more than 1500 million US dollars in India or outside India or

(ii) Any group or an organization relating to the group whose assets which are being acquired jointly have,

(a) The value of assists more than ` 4000 crores or turnover more than ` 12000 crores either in India, or

(b) In aggregate, the assets value of more than 2 billion US dollars or turnover more than 6 billion US dollars, or

II. Acquisition of Control Over Production, Distribution or Trading

Combination also exists when a person acquires control over a firm even though it already has direct or indirect control over another firm which is dealing in production, distribution or trading of identical or substitutable goods or services, if,

(i) Both the enterprises i.e., the acquired and the acquirer jointly have,

(a) The assets valuing more than ` 1000 crores or turnover more than ` 3000 crores either in India, or

(b) In aggregate, the assets of the value of more than 500 million US dollars or turnover more than 1500 million US dollars in India or outside India, or

(ii) The group which has been acquired by the firm jointly have,

(a) The assets valuing more than ` 4000 crores or turnover more than ` 12000 crores either in India or

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(b) In aggregate, the assets valuing more than 2 billion US dollars or turnover more than 6 billion US dollars in India or outside India.

III. Merger or Amalgamation

Any merger or amalgamation will be considered as a combination if,

(i) The firm which is left after merger or the enterprise formed as a result of the amalgamation have,

(a) The assets valuing more than ` 1000 crores or turnover more than ` 3000 crores either in India or

(b) In aggregate, the assets valuing more than 500 million US dollars or turnover more than 1500 million US dollars, or

(ii) Apart or a group enterprise which is left after the merger or the enterprise formed due to amalgamation have,

(a) The assets valuing more than ` 4000 crores or turnover more than ` 12000 crores either in India, or

(b) The assets valuing more than 2 billion US dollars or turnover more than 6 billion US dollars in India or outside India.

Forming a Combination Involves the Following Purposes

(a) Control

It involves the activities which controls the affairs of the management by,

(i) One or more enterprises having control over the other enterprise or group either combinedly or individually.

(ii) One or more groups having control over other group or enterprise either combinedly or individually.

(b) Group

Group includes two or more enterprises which directly or indirectly have the authority to,

(i) Practise or use 26 percent or more of the voting rights in another firm, or

(ii) Recruit more than 50 percent of the members of the board of directors in another firm, or

(iii) Regulate the management affairs of the other firm rise.

(c) The Value of Assets

The value of assets is ascertained by considering the book value of the assets available in audited books of account of the firm in financial year which immediately precedes the financial year in which the merger is proposed. The value of assets involves the brand value, value of goodwill or value of copyright, patent, permitted use, collective mark, registered proprietor, trademark, user, homonymous geographical indication, design or layout-pattem or similar other commercial rights, if any, mentioned in Sec 5(5).

Regulation of Combinations (Sec.6)

According to sec 6(1), a person or enterprise must not enter into a combination which leads to or has a chance of causing a negative impact on competition in the market in India and considered such a combination as void.

Exemption

The person or enterprise who or which is willing to enter in to a combination must provide notice to the competition commission of India, the fee that is fixed by regulations and should disclose the details of the proposed combination, within 7 days of the,

(a) Acceptance of the proposal associated with the merger or amalgamation specified in sec 5(c) by the board of directors of the firms which are related to such merger or amalgamation,

(b) Implementing any agreement or other document for acquisition specified in sec 5(a) or acquiring or control specified in sec 5 [sec.6(2)J

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After receiving the notice, the commission must deal with such notice according to provisions mentioned in sections 29, 30 and 31 [sec 6(3)]. These sections are related with the (i) Procedure for investigation combinations (sec 29), Inquiry into disclosures (sec 30) and orders of the commission on certain combinations (sec 31).

According to sec 6(4), the provisions of sec.6 is not employed to share subscription or financing facility or any acquisition, by a public financial institution, foreign institutional investor, bank or venture capital fund, pursuant to any convenient of a loan agreement or investment agreement.

The public financial institution, foreign institutional investor, bank or venture capital fund must file as per the form specified by regulations with the commission within 7 days along with the details of the acquisition. Sec 6(5) states that the form must contain details relating to control, the situations of exercising such control and the consequences of default occurring due to loan agreement or investment agreement (as the case may be).

5.4 INTELLECTUAL PROPERTY RIGHTS

Q20. What do you understand by Intellectual Property Rights ?

Ans : **(Jan.-18, Imp.)**

The concept of Intellectual Property is define in general is that the important feature of property is that the proprietor or owner may use his property as he wishes and that nobody else can lawfully use his property without his authorization. Of course there are certain recognized limits for the exercise of that right.

The term intellectual property includes, in the broadest sense, all rights resulting from intellectual activity in the industrial, scientifically, literary, or artistic fields. The conventions establishing the WIPO defines 'Intellectual Property' in a broad sense .But the term Intellectual Property is define first time in Paris Convention.

Intellectual Property is derived from the term Industrial Property which includes trademarks, design marks, service marks, commercial names and designations, including indications of source and appellations of origin, and the protection against unfair competition. The main objectives of Paris Convention provides that "the protection of industrial property like patents, utility models, industrial designs, trademarks, service marks and the repression of unfair competition". But in the WIPO defines it broadly and intellectual property' shall include the right relating to:

i) Literary, artistic and scientific works

ii) Performance of performing artists

iii) Inventions in all fields of human endeavour

iv) Scientific discoveries

v) Industrial designs

vi) Trademarks, service marks and etc.

vii) Protection against unfair competition

Intellectual Property

Intellectual property is an intangible creation of the human mind, usually expressed or translated into a tangible form that is assigned certain rights of property. Examples of intellectual property include an author's copyright on a book or article, a distinctive logo design representing a soft drink company and its products, unique design elements of a web site, or a patent on the process to manufacture chewing gum.

Intellectual Property Rights

Intellectual property rights refers to the general term for the assignment of property rights through patents, copyrights and trademarks. These property rights allow the holder to exercise a monopoly on the use of the item for a specified period.

Definition of IPRs

The property that is a result of human creativity such as, literature, songs, new invention, advertising slogans, etc., are known as intellectual property. Basically, property is of three types. They are as follows,

(a) Real Property : It includes land, buildings etc.

(b) Personal Property : It includes jewellery, cars and goods.

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(c) Intellectual Property : It includes literature, songs, etc.

The ownership of intellectual property is very much similar to that of real and personal property.

Q21. Discuss about Need for Intellectual Property Right (IPR).

Ans : **(Nov.-20)**

Need For IPR

Every creation requires time, energy and effort. The time involved varies greatly between projects. It may vary from a few minutes to a few years. In addition, any creative work also requires certain amount of real capital and of course the education or knowledge. All these things add up to a huge investment on the part of any creative professional. Thus, it is necessary to recognize and respect the intellectual creations of a creator. Although many of the legal principles, governing intellectual property rights, have evolved over centuries, it was not until the 19th century that the term intellectual property began to be used. It was in the late 20th century that it became common in the most part of the world.

The World Intellectual Property Organization (WIPO) was established, in 1967, as an agency of the United Nations. Since then the term really began to be used in the United States. There is an extensive international system for defining, protecting, and enforcing intellectual property rights, comprising both multilateral treaty schemes and international organizations such as Trade-Related Aspects of Intellectual Property Rights (TRIPs), World Intellectual Property Organization (WIPO), World Customs Organization (WCO), United Nations Commission on International Trade Law (UNCITRAL), World Trade Organization (WTO) and European Union (EU).

Need for Intellectual Property Rights in India

(a) To provide incentive towards various creative endeavours of the mind by offering protections;

(b) To give such creators official recognition;

(c) To create repositories of vital information;

(d) To facilitate the growth of both domestic industry or culture, and international trade, through the treaties offering multi-lateral protection.

Q22. Explain the different types of Intellectual Property Rights (IPR) ?

Ans : **(Nov.-20)**

Kinds of IPR

The common types of intellectual property rights are: patents, copyright, trademarks, industrial design, trademarks, trade secrets, geographical indicators and layout design for Integrated Circuits.

1. Patents

A patent is an exclusive right granted for an invention, which is a product or a process that provides a new way of doing something, or offers a new technical solution to a problem. An invention may be defined as the idea of making a new and useful article, method or substance Patent protection means that the invention cannot be commercially made, used, distributed or sold without the patent owner's consent. A patent owner has the right to decide who may or may not use the patented invention for the period in which the invention is protected.

The patent owner may give permission to, or license, other parties to use the invention on mutually agreed terms. He may also sell the right to the invention to someone else, who will then become the new owner of the patent. A Patent is granted for a period of 20 years from the date of filing the application of patent. Once a patent expires, the protection ends, and an invention enters the public domain, that is, the owner no longer holds exclusive rights to the invention.

2. Copyright

Copyright is a legal term describing the rights given to creators for their literary and artistic works. Copyright may apply to a wide range of creative, intellectual, or artistic forms, or works. The works covered by copyright include literary works such as novels, poems, plays, reference works, newspapers and computer programs; databases; films, musical

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compositions, and choreography; artistic works such as paintings, drawings, photographs and sculpture; architecture; and advertisements, maps and technical drawings. The reproduction in various forms such as copying, printing, recording, public performance or adaptation are prohibited under these rights.

Copyright does not cover ideas and information themselves, only the form or manner in which they are expressed (Simon, 2001). This right provides economic right to the creator that is the financial benefit for a period lasting of fifty years after the creator's death.

3. Trademark

A trademark refers to a recognizable sign, design or expression which identifies products or services of a particular source from those of others. It can be patented like invention and industrial designs. The trade mark can be a combination of words, letters, numbers, drawings, images, symbols and even sounds. These are generally registered for seven years but they can be renewed indefinitely by applying again. It provides protection to the owner of the mark by ensuring the exclusive right to use it to identify goods or services or to authorize another to use it, in return for payment. It helps consumers identify and purchase a product or service because of its nature and quality, indicated by its unique trademark.

4. An industrial design

An industrial design consists of the creation of a shape, configuration or composition of pattern or color, or combination of patterns and colors in three dimensional forms, containing aesthetic value. It can be a two or three dimensional pattern, used to produce a product. Even the traditional craft items like hand-woven articles like carpets, cotton bed covers can also be registered for protection as an Industrial design (Kannan, 2010). The design has to be registered against imitation and unauthorized copying. The protection is provided for five years and it can be renewed for fifteen years.

5. Trade secret

A trade secret is a formula, practice, process, design, instrument, pattern or compilation of information which is not generally known or reasonably ascertainable by which a business can obtain an economic advantage over competitors or customers. It may be confidential business information that provides an enterprise a competitive edge. Trade secrets include sales methods, distribution methods, consumer profiles, advertising strategies, lists of suppliers and clients and manufacturing processes. A trade secret can be protected for an unlimited period of time but a substantial element of secrecy must exist, so that, except by the use of improper means, there would be difficulty in acquiring the information.

6. Geographical indicators (GI)

Geographical indicators are the signs used on goods that have a specific geographical origin. A GI indicates that a product comes from a certain place and has special qualities due to that place of origin which could be a village or town, a region or a country. It is an exclusive right given to a particular community and thus the benefits of its registration are shared by the all members of the community. It may be used by all producers or traders whose products originate from that place and which share typical characteristics. Well-known examples of GIs include Bordeaux (wine), Darjeeling (tea), Chanderi (sarees), Kullu shawls and Tuscany (olive oil).

6. Layout Design for Integrated Circuits

Semiconductor Integrated Circuit is a product, having transistors and other circuitry elements, which are inseparably formed on a semiconductor material or an insulating material. The initial term of registration is for 10 years; thereafter it may be renewed from time to time.

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7. Protection of New Plant Variety

New plant varieties can also be protected under IPR. The objective of this act is to recognize the role of farmers as cultivators and conservers and the contribution of traditional, rural and tribal communities to the country's agro biodiversity.

A number of common IPRs are outlines in the table below :

1. Patents	A patent protects an invention. It gives the holder an exclusive right to prevent others from selling, making and using the patented invention for a certain period (typically 20 years from filing date)
2. Copyright	Copyright protects the expression of literary or artistic work. Protection arises automatically giving the holder the exclusive right to control reproduction or adaptation.
3. Trademarks	A trademark is a distinctive sign which is used to distinguish the products or services of one business from others. Trademarks are often closely linked to brands.
4. Design	Protects the form of outward appearance or aesthetic style of an object. Does not protect functionality or unseen (internal) design elements.
5. Database	Database right prevents copying of substantial parts of a database. The protection is not over the form of expression of information but of the information itself, but in many other aspects database right is similar to copyright.
6. Trade secrets	A trade secret is a formula, practice, process, design or compilation of information used by a business to obtain an advantage over competitors. Trade secrets are by definition not disclosed to the world at large.

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5.4.1 Trade Mark

Q23. Define trade mark. Explain the features of trade mark.

Ans :

Introduction

Trade marks are an integral component of modem business. A trade mark is a symbol which indicates the source of particular goods. Producers of the goods devise different trade marks which am distinct from others. The exclusive right to the use of the mark, enables the owners to build goodwill and reputation in the expression of its identify and to prevent others from misleading consumers into wrongly associating products with an enterprise from which they do not originate.

Trade marks legislation grants the producer or a trader an exclusive right in respect of a mark identifying his goods as distinct from other goods.

But trade marks can be misused by unscrupulous businessmen who indulge in duplicating popular brands and cheat the consumers. The Trade and Merchandise Marks Act 1958 was enacted to prevent the misuse of trade marks.

Definition

According to Sec.2(1) (zb) of the Trade marks Act 1999, "Trade mark' means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours and

(i) In relation to a registered trademark or a mark used in relation to goods or services for the purpose of indicting or so as to indicate a connection in the course of trade between the goods or services as the case may be and some person having the eight as proprietor to use the trade mark.

(ii) In relation to other provisions of the Act, a mark used or proposed to be used in relation to goods or services for the purpose of indicating or so as to indicate a connection in the course of trade between the goods or services, as the case may be and some person having the right as proprietor or by way of permitted user to use the mark whether of that person and includes a certification trade mark".

Features of Trade Mark

(a) It must be capable of represented graphically.

(b) It must be capable of distinguishing the goods or services of one person from those of others

(c) It may include shape of goods, packaging of goods or combination of colours.

(d) A registered trade mark should be capable indicating the connection in the course of trade, the right of a proprietor.

(e) A certification trade mark should be capable of indicating the connection in the course of trade the right of a proprietor or a permitted user.

Q24. What are the functions of Trademark ?

Ans :

A trade mark performs the following functions:

1. It identifies the product and its origin. For example the trade mark "Hamam" identifies the soap originating from the company manufacturing the soap and marketing it under that mark.

2. It guarantees its quality. The quality of that the soap sold in the packs marked 'Hamam' Soap would be similar bug different from the soap labelled with mark 'Rexona' or 'Lux'.

3. It advertises the product. The trade mark represents the product. The trade mark 'Sony' is associated with electronic items. The trade mark 'Sony' rings bell of particular quality of particular class of goods. It thus advertises the product while distinguishing it from Sony's competitors.

4. It creates an image of the product in the minds of the public, particularly consumers or the prospective consumers of such goods. For example, the mark 'M' which stands for the food items originating from the American Fast Food Chain Macdonald creates an image and reputation for food items offered by it for sale in the market.

Q25. What are the different kinds of Trade Mark ?

Ans :

Different types of Trade Marks

As can be seen from the definition of the 'mark'[1] and the 'trade mark'[2] a trade mark can be in different forms. It can be

(i) Letter mark: Mark includes a letter mark. The identity created out of letter forms can have its distinctiveness and individuality. The letter forms have been very useful elements for designers to work with and develop and successful mark. Some reputed examples of letter marks as trade marks are IBM, GE, GM, ELBEE and LG etc.

(ii) Symbol Mark: Symbols may take the shape of brands or logos. A logo is a visual depiction of a manufacture or a company and gives an identity to it. In modern times logos are identified by consensus as symbols that belong to a particular company and as representing

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quality and elegance etc. The best example of popular logo as a trade mark are those of Diamler Benz., B.M.W., Tata Nike and Adidas etc.,

(iii) Brand: Brand usually refers to those kind of marks which are branded on goods themselves constituting the trade mark. For example. Ship Brand Safety matches or cycle brand Agarbathis.

(iv) Label and Ticket: Label means a composite mark containing various features including devices, words, usually painted on a paper and attached to the goods themselves. The label may contain, apart from the trade mark, even matter which does not have the trade mark value. A ticket may be said to be a label attached to goods by a string etc., For example the labels attached well-known brands of ready made clothes like Flying-machine Jeans, Van Heusen Shirts and 'Freeman' undergarments. The exact distinction between a label and ticket is not very clear.

(v) Colour combination: A colour combination or scheme can also constitute a mark within the definition of the Act. In Reddaway Co. Ltd's application (31 RPC 147), Particular colour scheme was considered as a mark. A dealer can have a trade mark in combination of colour though not an individual colour.

(vi) Numerals: Combination of Numerals also can be used as a trade mark. For example '555' is a successful brand of cigarettes. In Shaw Wallace & Co. Ltd. vs. Superior Industries Ltd., the Delhi High Court held that a person may have a right of Trade mark in numerals as well - Relying upon the said principle, the court held that '5000' in Haywards 5000 Super Strong Beer' cannot be used in the Trademark of the defendants i.e.; Superior 5000',

(vii) Containers: A container in a three dimensional form may fall within the definition of a mark, as given under Section 2(m) of the Act of 1999. However a two dimensional mark may also form part of a 'trade mark'.

(viii) Shape of goods: Shape of goods can be a trade mark. Therefore the unique shape of a soap, if registered, or of a tooth brush can be trade mark.

(ix) Packaging: A 'packaging' can be a trade mark subject. For example a 'pouch' created for containing a tooth paste or cream, with a distinctive feature may be a trade mark. The expression package has been defined as including any case, box, container, covering, folder, capsule, cap, lid, stopper etc.

(x) Device: A device would refer to such a mark which does not fall under any other category already mentioned.

5.4.2 Patents

Q26. Define patent ? Explain the different types of patents.

Ans :

Definition

According to Sec 2 (1) (m) of the Patent Act 1970, "Patent means a patent granted under this Act" it can be understood as a document issued by the government for the protection of patent conferred upon a person invented in relation to an invention made by him. It prevents others from making, using or selling the invention.

A patent is generally granted in India for a period of 14 years except for food and drugs from the date of grant. During the period the inventor or owner and his heirs or assignees can sell, assign or grant licence to others to exploit it. After expiry of the period it can be used by any body.

As per Sec.2(1) (j) of the Act **'invention'** means any new and useful (a) art, process, method or manner of manufacture (ii) machine, apparatus or other article iii) substance produced by manufacture and includes any new and useful improvement of any of them and an alleged invention" The main object of granting patent is to protect the exclusive rights of the inventor in relation to his invention and to encourage and develop new technology and industry.

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Types of Patent

The patents are classified into three kinds. The invention that falls within any of the following is granted with patent. The following are the three kinds of patents,

1. Utility Patent

The inventions that belong to the categories of machines, processes, compositions, articles of manufacture or new uses of any of these are granted utility patents. Such patents provide protection to inventions that are new and useful for machines, processes, composition, articles or new and useful for their improvements.

The ideas are not patentable but the processes are patentable. A process is the method of taking something through a established set of rules cochrane V. Decner that a process is "an act, or series of acts, performed upon the subject-matter to be transformed and reduced to a different state or thing. If new and useful, it is just as patentable as is a piece of machinery." The process of making synthetic diamonds, chromine plates are a few examples of patented processes.

A machine is a device having parts that perform or assist in performing any type of work. Apart from this any device transmitting or transforming entry may also be called a machine.

An article of manufacture is one of the principal category that may be patented. There is no clear distinction among the article to manufacture a machine. An article of manufacture refers to an individual object that does not comprise of any movable parts. For example a pencil, chair.

A combination of any chemical or other materials is known as the composition of matter. The natural substances are not granted patents but their combinations can be protected.

2. Plant Patents

The plants can also be patented provided they are either discovered or created by an individual. As per the U.S. patent law, the person is regarded as an inventor of the plant if he is the first to appreciate the distinctive qualities of a plant and reproduces it, asexually. The plants that discovered in any wild or uncultivated state are not patented since, their existence is natural on the other hand any plant discovered in a cultivated land and reproduced asexually is entitled to be patented.

The asexual reproduction of plant by using its tissue culture or any other method other than the seeds. The plant should also be distinctive and novel. For example, Henry Davidson of Or India, California patented the smooth angel plant.

If the plants that have existed naturally are reproduced, asexually also, are not regarded as novel and will not be granted a patent. However, the sexually produced plants are protectable under the federal law of 1970. This law was introduced by the department of agriculture and is known as the Plant Variety Protection Act.

The plant should also satisfy the basic four requirements in order to be entitled for patent. They are,

(a) Asexual Reproduction

The discovery of a new and distinctive variety of plant should be reproduced by asexual means. This can usually be done by cutting a part of existing plant and placing it in the soil. Any means used for reproduction of a plant, other than the seed constitutes to asexual reproduction.

(b) Distinctively of the Plant

The plant must be distinctive from existing variety of plants.

(c) Novelty

The plant must be novel. It should be the one that has never existed previously in nature.

(d) Non-obviousness

The section 161 of the patent act does not state directly the requirement of plant being non-obvious but it does state that the act relating to utility patents is applicable equally to plant patents. Therefor it must be non-obvious.

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3. Design Patents

According to 35 U.S.C and sec 171 of the patent act any new, original and ornamental design invented for an article of manufacture is patentable. This provision replaces the requirement of usefulness with momentarily. However, the design, should meet the requirement of being novel and obvious. Since, the useful articles are ornamented by a design patent, for such an article of manufacture, can be obtained. For a design to be predictable under the patent, must fulfill the following requirements.

(a) Article of Manufacture

The design must be ornamented on an article of manufacture. This is the basic requirement. The article of manufacture constitutes of nearly everything made by human.

(b) New

This is another major requirement. The design must be new or novel so as to be granted a patent.

(c) Originality

The design should be an original design similar to non-obviousness requirement of utility patent.

(d) Ornamentality

The design must be ornamental and not functional. The ornamental design is granted a design patent.

The novelty is a requirement of equal importance for design patents. However, there is a similarity between design patents and copyright. Since the work is capable of being registered under both the copyright law as well as the patent law.

5.4.3 Copy Rights

Q27. Explain briefly about copy rights.

Ans :

Definition

According to Section 14, "copyright" means the exclusive right subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely.

(a) In the case of a literary, dramatic or musical work, not being a computer programme.

(i) To reproduce the work in any material form including the storing of it in any medium by electronic means.

(ii) To issue copies of the work to the public not being copies already in circulation.

(iii) To perform the work in public, or communicate it to the public.

(iv) To make any cinematograph film or sound recording in respect of the work.

(v) To make any translation of the work.

(vi) To make any adaptation of the work.

(vii) To do, in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-clauses (i) to (vi).

(b) In the case of a computer programme

(i) To do any of the acts specified in clause (a).

(ii) To sell or give on hire, or offer for sale or hire any copy of the computer programme, regardless of whether such copy has been sold or given on hire on earlier occasions.

(c) In the case of an artistic work

(i) To reproduce the work in any material form including depiction in three dimensions of a two dimensional work or in two dimensions of a three dimensional work.

(ii) To communicate the work to the public.

(iii) To issue copies of the work to the public not being copies already in circulation.

(iv) To include the work in any cinematograph film.

(v) To make any adaptation of the work.

(vi) To do in relation to an adaptation of the work any of the acts specified in relation to the work in sub-clauses (i) to (iv).

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d) In the case of a cinematograph film

i) To make a copy of the film including a photograph of any image forming part thereof.

ii) To sell or give on hire or offer for sale or hire, any copy of the film, regardless of whether such copy has been sold or given on hire on earlier occasions.

iii) To communicate the film to the public.

e) In the case of a sound recording

i) To make any other sound recording embodying it.

ii) To sell or give on hire, or offer for sale or hire, any copy of the sound recording, regardless of whether such copy has been sold or given on hire on earlier occasions.

iii) To communicate the sound recording to the public.

Q28. What are the differences between copyright, patents and trade mark ?

Ans : **(Imp.)**

	Copyright	Patents	Trademark
What's Protected?	Original works of authorship, such as books, articles, songs, photographs, sculptures, choreography, sound recordings, motion pictures, and other works	Inventions, such as processes, machines, manufactures, compositions of matter as well as improvements to these	Any word, phrase, symbol, and/or design that identifies and distinguishes the source of the goods of one party from those of others
Requirements to be Protected	A work must be original, creative and fixed in a tangible medium	An invention must be new, useful and nonobvious	A mark must be distinctive (i.e., that is, it must be capable of identifying the source of a particular good)
Term of Protection	Author's life plus 70 more years.	20 years	For as long as the mark is used in commerce
Rights Granted	Right to control the reproduction, making of derivative works, distribution and public performance and display of the copyrighted works	Right to prevent others from making, selling using or importing the patented invention	Right to use the mark and to prevent others from using similar marks in a way that would cause a likelihood-of-confusion about the origin of the goods or services.

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5.5 ENVIRONMENTAL LAW

Q29. Define Environment.

Ans :

The word 'environment' is derived from the French word *'environner',* which means 'to encircle' or to surround. The most suitable definition of environment is as follows:

It is the sum total of water, air and land and the interrelationships that exist among them with human beings, other living organisms and materials.

The geographical meaning of environment is as follows:

It is a combination of living and non-living things and their mutual interaction with each other which leads to an ecosystem.

The environment encompasses all living and non-living things occurring naturally on earth.

The Honourable Supreme Court has the following definition of 'environment':

"Environment" is a difficult word to define. Its normal meaning relates to the surroundings, but obviously, that is a concept which is relatable to whatever object it is, which is surrounded. Environment is a polycentric and multifaceted problem affecting the human existence.

Today protection of 'environment' is a global issue as it concerns all countries irrespective of their size, stage or development or ideology. Today, the interaction between society and nature is so extensive that the question of environment has assumed large proportions, affecting humanity at large.

Q30. What is environmental pollution?

Ans :

The term 'pollution' refers to unfavourable alteration to our surroundings, wholly or largely as a by-product of human's action through direct and indirect effects of changes in energy pattern, chemical and physical construction and abundance of organisms. Thus, it is the addition of any foreign material to water, air or soil, which may change immediately or after some time, the natural properties of these basic constituents further causing some unfavourable change by making them unfit and injurious. Industrialization, poverty, populationexplosion, urbanization, over-exploitation of resources, etc. are some of the factors which have contributed to environmental deterioration.

5.5.1 Water Pollution Control

Q31. What is Water Pollution? What are the causes of Water Pollution?

Ans : **(Imp.)**

Water pollution is the contamination of water bodies (e.g. lakes, rivers, oceans, aquifers and groundwater). Water pollution occurs when pollutants are discharged directly or indirectly into water bodies without adequate treatment to remove harmful compounds.

About three-fourths of the earth's surface is covered by water. The oceans and the seas contain about 97% of the total water available on earth and the remaining 3% is fresh water.

Water is used by man for recreation and aesthetics, aquatic life, public water supply, agriculture and industry.

The causes of water pollution

1. Dumping of industrial effluents into water bodies.
2. Fertilizers and pesticides when applied on crops runoff into rivers and streams, thereby causing water pollution.
3. Nitrogenous fertilizers when accumulates in water bodies, then it makes the water unfit to drink. Thus, contaminates potable water.
4. Nitrogenous fertilizers when runoff into ponds, lakes and stream, leads to eutrophication. In eutrophication, excess growth of algae occurs which depletes the total oxygen of the aquatic life, r hence death of the aquatic organisms occurs.
5. Release of municipal wastes into water bodies causes water pollution.
6. The effluents released from chlorine plants into water bodies, leads to toxicity of the aquatic vegetation.
7. Domestic sewage is drained into the water bodies, thus causing water pollution.
8. The warm water is released from the power plants into the water bodies. This leads to thermal pollution of water.
9. Spillage of oil rigs, pipelines from oil offshore exploration and tankers pollute the sea water.
10. Testing of nuclear weapons and during nuclear accidents, the radioactive wastes are formed which are dumped into oceans. These wastes gets absorbed by the plankton and do not metabolize, hence gets accumulated in the food chain.
11. The process of making coirs from decaying husks of coconut is known as retting. This process releases hydrogen sulphide which pollutes the water bodies.

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Q32. Explain Prevention and Control of Water Pollution.

Ans :

The Water (Prevention and Control of Pollution) Act, 1974

According to this Act, water pollution refers to alteration of physical, chemical and biological properties of water by discharge of effluents of any form, that might be potentially injurious to aquatic, domestic, agricultural life. It is also applicable to all establishments discharging effluents in water or on land. It is the main law that ensures the quality of drinking water in India.

The law was enacted by the Parliament in the 25th year of the Republic of India.

Objectives of Water Pollution Control Act

The main objectives of water prevention and control Act are as follows,

1. Prevention of water pollution
2. Control over water pollution
3. Maintenance of quality of water
4. Setting up pollution control boards at different levels
5. Directing the pollution control boards to inspect and monitor the water quality.

The role and power of the Central and State Boards for Prevention and Control of water pollution may be summarized as follows,

A) Central Pollution Control Board

The water (prevention and control of pollution) Act empowers the central government to constitute a central pollution control board to exercise such powers and functions as may be conferred on it.

Central Board shall consist of the following members,

(a) A full time chairman, who is a person having special knowledge or practical experience in respect of matters relating to environmental protection.

(b) Such number of officials not exceeding 5 to be nominated by the central government to represent that government.

(c) Such number of persons not exceeding five to be nominated by the central government from amongst the members of the state board of whom not exceeding 2 shall be from local authorities.

(d) Such number of non-officials not exceeding 3 to be nominated by the central government to represent the interests of agriculture, fishery or industry.

(e) Two persons to represent the companies or corporations owned, controlled or managed by the central government, to be nominated by that government.

(f) A full time member secretary possessing qualification, knowledge and experience of scientific, engineering or management aspects of pollution control to be appointed by the central government.

The Central Board shall be a body corporate having perpetual succession and a common seal. It shall have power, subject to the provisions of the Act, to acquire, hold and dispose of property and to contract, and may sue or be sued.

The Board shall meet at least once in every 3 months and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be prescribed. However in the case of urgency, the chairman may convene a meeting of the Board at such time.

Functions of the Central Board

The main function of the Central Board is to promote cleanliness of streams and wells in different areas of the states. Some of the other functions are as follows,

(a) Advise the central government on any matter concerning the prevention and control of water pollution.

(b) Co-ordinate the activities of the State Board and resolve disputes among them.

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(c) Provide technical assistance and guidance to the State Board, carry out and sponsor investigation and research relating to problem of water pollution and prevention control or abatement of water pollution.

(d) Plan and organize the training of persons engaged or to be engaged in programmes for the prevention, control or abatement of water pollution on such terms and conditions as the Central Board may specify.

(e) Organize through mass media a comprehensive program regarding the prevention and control of water pollution.

(f) Collect, compile and publish technical and statistical data relating to water pollution and the measures devised for its effective prevention and control and prepare manuals, codes or guides relating to treatment and disposal of sewage and trade effluents and disseminate information connected therewith.

(g) Lay down, modify or annul in consultation with the state government concerned, the standards for a stream or well.

(h) Plan and try to execute a nationwide programme for the prevention, control and abatement of water pollution.

(i) Perform such other functions as may be prescribed.

The board may establish or recognize a laboratory or laboratories to enable the board to perform its functions efficiently including the analysis of samples of water from any stream or well or of samples of any sewage or trade effluents.

B) State Pollution Control Board

The state governments can, by notification in the official gazette, constitute a state pollution control board. The state board shall consist of the following members,

(a) A chairman being a person having special knowledge or practical experience in respect of matters relating to environmental protection or a person having knowledge and experience in administering institutions dealing with the above matters, to be nominated by the state government.

(b) Such number of officials not exceeding 5 to be nominated by the state government to represent such a government.

(c) Such number of persons not exceeding 5 to be nominated by the state government from among the members of local authority.

(d) Such number of nonofficials not exceeding three to be nominated by the state government to represent the interest of Agriculture, Fishery or Industry.

(e) Two persons to represent the companies or the corporation owned, controlled and managed by the state government to be nominated by such government.

(f) A full time member secretary possessing qualifications, knowledge and experience of Scientific, Engineering, or Management aspects of pollution control to be appointed by the state government.

Every state board shall be a body corporate having perpetual succession and a common seal. It shall have the power to acquire, hold and dispose of property and enter into contract. It can sue or be used in its own name.

No state board shall be constituted for a union territory. In relation to an union territory the central board shall exercise the powers and perform the functions of state board for that union territory. The Central Board may delegate all or any of its powers and functions to such persons as it may specify.

Functions of State Board

Section 17 of the act enumerates the following functions of state board,

(a) To plan a comprehensive programme for the prevention, control or abatement of pollution of stream and wells in the state and to secure the execution thereof.

(b) To advice the state government on any matter concerning the prevention, control or abatement of water pollution.

(c) To collect and disseminate information relating to water pollution and the prevention, control or abatement thereof.

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(d) To encourage, conduct and participate in investigations and research relating to problems of water pollution and prevention, control or abatement of water pollution.

(e) To collaborate with the Central Board in organizing the training of persons engaged or to be engaged in programmes relating to prevention, control or abatement of water pollution and to organize mass education programmes relating thereto.

(f) To inspect sewage or trade effluents works and plants for the treatments of sewage and trade effluents and to review plans, specifications or other data relating to plant set-up for the treatment of water, works for the purification thereof and the system for the disposal of sewage or trade effluent.

(g) To lay down, modify or annual effluent standards for the sewage and trade effluents and for the quality of receiving waters, resulting from the discharge of effluent and to classify waters of the state.

(h) To evolve economical and reliable methods of treatment of sewage and trade effluents, having regard to the peculiar conditions of soils, climate and water resources of different regions and more specially the prevailing flow characteristics of water in streams and wells which render it impossible to attain even the minimum degree of dilution.

(i) To evolve methods of utilization of sewage and suitable trade effluents in agriculture.

(j) To evolve efficient methods of disposal of sewage and trade effluents on land, as are necessary on account of the predominant conditions of scant stream flows that do not provide for major part of the year, the minimum degree of dilution.

(k) To lay down standards of treatment of sewage and trade effluents to be discharged into any particular stream taking into account the minimum fair whether dilution available in that stream and the tolerance limits of pollution permissible in the water of the stream after the discharge of such effluents.

(l) To make, vary or revoke any order for the prevention, control or abatement of discharge of waste into streams of wells.

(m) To lay down effluent standards to be complied with by persons while causing discharge of sewage or sullage or both to lay down, modify or annul effluent standards for the sewage and trade effluent.

(n) To advice the state government with respect to the location of any industry, the carrying on of which is likely to pollute a stream or well.

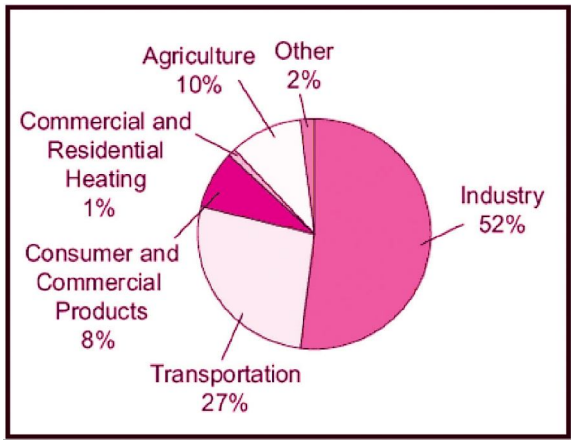
(o) To perform such other functions as may be prescribed as may from time to time, be entrusted to it by the central board or the state government.

5.5.2 Air Pollution

Q33. What is Air Pollution? What are the causes of Air Pollution?

Ans : **(Imp.)**

Air contains a mixture of various gases like oxygen, nitrogen, carbon dioxide, argon etc. Air pollution is the introduction into the atmosphere of chemicals, particles, or biological materials that cause discomfort, disease, or death to humans, damage to other living organisms such as food crops, natural environment or built environment.



The major sources of air pollution are:

1. Industrial emissions
2. Vehicular emissions
3. Domestic emissions

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The most common air pollutants in urban areas include Sulphur dioxide (SO_2), Nitrogen oxides (NO & NO_2), Carbon monoxide (CO), etc. Apart from this, the gases discharged from refrigerators, air conditioners etc. are responsible for depletion of the Ozone layer.

Causes of Air Pollution

The various causes of atmospheric pollution may be attributed to the following,

1. Increase in the level of atmospheric carbon dioxide. The different gases in the atmosphere are nitrogen (78%), oxygen (21%), argon (0.9%), carbondioxide (0.03%) and traces of helium, neon, krypton, xenon, hydrogen and ozone.
2. Use of harmful chemicals like pesticides, insecticides, herbicides etc., in agriculture.
3. The domestic sewage is discharged into water bodies like rivers and oceans.
4. The industrial effluents are discharged into the environment.
5. The exhaust gases emanating from the automobiles and factories pollute the air, thus causing serious health problems to humans. Vehicles which run on the internal combustion engines and factories release large amounts of sulphurous compounds into the *atmosphere*.

Q34. Explain briefly about Prevention and Control of Pollution

Ans :

According to the Air (Prevention and Control of Pollution) Act. 1981 'Air Pollution' refers to any solid, liquid or gaseous substance present in the atmosphere in a concentration that might pose a threat to humans, plants or other organisms.

The Act was enacted by the Parliament in the 32nd year of the Republic of India with the aim to prevent, control and mitigate air pollution.

The main objective of this Act is to establish Central and State Boards and empower them to monitor air quality and control pollution.

A) Functions of Central Board

The Central Pollution Control Board was established and constituted in 1981 by the Government of India. It has an important role in abatement and control of pollution in the country.

Some of the functions of the central pollution control board include the following,

(i) To encourage cleanliness of waterbodies like streams and wells in different regions of the states through reduction, control and prevention of pollution.

(ii) To improve the air quality of the surrounding environment and prevent control or lessen the air pollution in the country.

(iii) Advise the Central Government regarding pollution prevention and control and in the improvement of air quality.

(iv) Raising awareness nation wide for prevention, control or abatement of environmental pollution.

(v) To coordinate the activities of various State Boards and settle their disputes, if any

(vi) Provide technical support and advise the state Pollution Control Boards, conduct and sponsor research programmes relating to pollution problems, their prevention and control.

(vii) Provide training to personnel involved in pollution prevention, control and abatement programmes.

(viii) Organize mass awareness programmes through mass media to disseminate and educate the public regarding pollution prevention, control and abatement.

(ix) Collect, compile and publish technical and statistical data regarding environmental pollutants and workout various activities for prevention, control and abatement of pollutants.

(x) Prepare manuals, codes and guidelines regarding treatment and disposal of sewage.

(xi) Lay down standards for quality of air or water in consultation with the respective State Government.

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(xii) Set up research laboratories.

(xiii) The CPCB is empowered to issue consent to industry, local bodies and other authority for violation of rules regarding general emission, effluent standards, hazardous chemicals and waste, bio-medical waste, industrial solid waste, municipal solid waste under the Environment Protection Act, 1986.

B) Functions of State Board

The state pollution board was formed under section 4 of Act 6 of 1974 as state boards under this Act. Any of the state in which the water prevention and control of pollution Act, 1974 is applicable and where the state government has been constituted for that state a state pollution control board under section 4 of that Act, then such a state board must be deemed to be the state board for the prevention and control of air pollution formed under section 5 of this Act and the state pollution control board would be exercising the powers and functions of that state board for the prevention and control of air pollution under this Act.

Functions of State Boards

1. State boards main function is to formulate a detailed programme for preventing and controlling the air pollution and also enabling its safe implementation.
2. To give suggestions to the state government on the matters relating to the prevention, control or abatement of air pollution.
3. To gather and distribute the information about air pollution.
4. To build collaborations with the central board for arranging and carrying out the training programmes for prevention, control or abatement of air pollution.
5. To conduct mass-education programme for preventing, controlling and abating the air pollution.
6. To check at regular intervals all the controlling machineries, industrial plant or manufacturing process.
7. To check the air pollution control areas and to evaluate their quality and take essential steps for prevention, control or abatement of air pollution in such areas.
8. To laid down the quality standards of air given by central board, standards for air pollution emission in the atmosphere out of the industrial units, automobiles or any discharge of air pollutant in the atmosphere from any other source.
9. To give suggestions to the state government with regards to the selection of the location for establishing an industry.
10. To carry out all the other functions which may be ordered by the central board and to carry out any of the suitable and appropriate act essential for the discharge of its functions.

5.5.3 Green Tribunal in protecting Environment

Q35. Explain briefly about national green tribunal protecting the environment.

Ans : **(Imp.)**

A Tribunal has trappings of a Court. Every Court is Tribunal but Tribunals are not Courts. A Tribunal is established for the adjudication of disputes related to some specific areas, whereas courts exist for the adjudication of all kinds of disputes regardless of any specific area. Rules of natural justice ensure fairness in any adjudicatory process. Final judgement of Tribunal is generally called 'award'.

The National Green Tribunal was established on 18th October, 2010 under the National Green Tribunal Act, 2010 for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto. It is a specialized body equipped with the necessary expertise to handle environmental disputes involving multi-disciplinary issues.

The Tribunal is to make efforts for disposal of applications or appeals finally within six months of filing of the same. Initially, the NGT was proposed to be set up at five places of sittings and follow circuit procedure for making itself more accessible. New Delhi is the principal place of sitting of the Tribunal and Bhopal, Pune, Kolkata and Chennai are the other four place of sitting of the Tribunal.

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Q36. Explain the composition of national green tribunal.

Ans :

NGT comprises of both judicial and expert members as adjudicators. The Chairman of NGT is a judicial member and must be or has been a judge of the Supreme Court of India or Chief Justice of a High Court. The Chairman is appointed by the Central Government in consultation with the Chief Justice of India. Other judicial members of the NGT must be or has been a judge of the High Court. For an expert member a person must have a doctorate degree in life sciences or physical sciences with fifteen years experience in the relevant field including five years practical experience in the field of environment and forest in a reputed national level institution or an administrative experience of fifteen years including experience of five years in dealing with environmental matters in the Central or State Governments or in a reputed National or State level institution. The Judicial and expert members are appointed by the Central Government on the recommendation of a Selection Committee.

Q37. Explain the Jurisdiction and Powers of NGT.

Ans :

Jurisdiction means authority of any Court or Tribunal to accept a matter for hearing and decision. NGT has the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I of the National Green Tribunal Act, 2010. Schedule I of the Act lists following legislations:

(i) The Water (Prevention and Control of Pollution) Act, 1974;

(ii) The Water (Prevention and Control of Pollution) Cess Act, 1977;

(iii) The Forest (Conservation) Act, 1980;

(iv) The Air (Prevention and Control of Pollution) Act, 1981;

(v) The Environment (Protection) Act, 1986;

(vi) The Public Liability Insurance Act, 1981;

(vii) The Biological Diversity Act, 2002.

This explains the importance of NGT, as the above mentioned legislations together stands for what we know as the 'Environmental Law'. So now on for the enforcement of Environmental Law, be it matters related to Water Pollution, Air Pollution, Forest Conservation, Environment Protection or Biological Diversity, we have NGT.

NGT is empowered to provide by an order:

(i) Relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in Schedule I (including accident occurring while handling any hazardous substance) of the Act.

(ii) For restitution of property damaged

(iii) For restitution of the environment for such area or areas

The above mentioned remedies must be claimed by the persons aggrieved within 5 years from the date when the cause of action arose. Cause of action means the happening of the very reason which enables the person to approach NGT. Though, in exceptional cases the Tribunal may give sixty more days for filing of the application before it, if the Tribunal is satisfied that the applicant was prevented by a sufficient cause to file the application within 5 years.

The Act mandates that in case of accident, the Tribunal shall, apply the principle of 'no fault'. 'No fault principle' stipulates that in case of accident the owner or the employer cannot take the defence of him/her having committed no fault. If accident occurs and as a consequence of it damage is caused to any person or environment, the owner or the employer is liable, only because of the fact that accident occurred in his/her enterprise. Apart from this principle, NGT has to also apply the principles of 'Sustainable Development', 'precautionary principle' and 'polluter pays principle', while giving an order or decision or award.

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Short Question & Answers

1. Rights of Consumer.

Ans :

(i) Right to Safety

The right to be protected against goods which are hazardous to life and property.

(ii) Right to Information

The right to be informed about the quality, quantity, purity, price and standards of goods.

(iii) Right to Choose

The right to be assured access to a variety of products at competitive prices, without any pressure to impose a sale, i.e., freedom of choice.

(iv) Right to be Heard

The right to be heard and assured that consumer interests will receive due consideration at appropriate forums.

(v) Right to Seek Redressal

The right to get relief against unfair trade practice or exploitation.

(vi) Right to Education

The right to be educated about rights of a consumer.

2. Powers of the District Forum

Ans :

The District Forum shall have the same powers as are vested in District Court under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely.

(i) The summoning and enforcing attendance of any defendant or witness and examining the witness on oath ;

(ii) The discovery and production of any document or other material object producible as evidence ;

(iii) The reception of evidence on affidavits ;

(iv) The requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source ;

(v) Issuing of any commission for the examination of any witness ; and

(vi) Any other matter which may be prescribed.

3. Define Digital Signature.

Ans :

Definition

A digital signature is basically a way to ensure that an electronic record or document (e-mail, spreadsheet, text file, etc.) is authentic. The Act contains the following provisions in relation to digital signature:

(i) Any subscriber may authenticate an electronic record by affixing his digital signature.

(ii) The authentication of the electronic record shall be effected by the use of the asymmetric crypto system and hash function which envelop and transform the initial electronic record into another electronic record.

(iii) Any person by the use of a public key of the subscriber can verify the electronic record.

(iv) The private key and the public key are unique to the subscriber and constitute a functioning key pair.

4. Objective of the Competition Act, 2002

Ans :

An Act, keeping in view of the economic development of the country, was laid down to provide for an establishment of a commission with the following object:

- to prevent practices having adverse effect on competition,

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- to promote and sustain competition in markets,
- to protect the interests of consumers,
- to ensure freedom of trade carried on by other participants in markets in India and - for matters connected therewith or incidental thereto.

5. Explain the Features of Competition Act, 2002.

Ans :

The focus of the new law is towards the following areas affecting competition namely:

(i) Prohibition of certain agreements, which are considered to be anti-competitive in nature

Such agreements [namely tie in arrangements, exclusive dealings (supply and distribution), refusal to deal and resale price maintenance] shall be presumed as anti-competitive if they cause or are likely to cause an appreciable adverse effect on competition within India.

(ii) Prohibition of Abuse of dominant position

If an enterprise by imposing unfair or discriminatory conditions or limiting and restricting production of goods or services or indulging in practices resulting in denial of market access or through in any other mode are prohibited.

(iii) Regulation of combinations

Regulation of combinations which cause or are likely to cause an appreciable adverse affect on competition within the relevant market in India is also considered to be void.

(iv) Entrust

Competition Commission of India the responsibility of undertaking competition advocacy, awareness and training about competition issues.

6. Intellectual Property Rights

Ans :

The concept of Intellectual Property is define in general is that the important feature of property is that the proprietor or owner may use his property as he wishes and that nobody else can lawfully use his property without his authorization. Of course there are certain recognized limits for the exercise of that right.

The term intellectual property includes, in the broadest sense, all rights resulting from intellectual activity in the industrial, scientifically, literary, or artistic fields. The conventions establishing the WIPO defines 'Intellectual Property' in a broad sense .But the term Intellectual Property is define first time in Paris Convention.

Intellectual Property is derived from the term Industrial Property which includes trademarks, design marks, service marks, commercial names and designations, including indications of source and appellations of origin, and the protection against unfair competition. The main objectives of Paris Convention provides that "the protection of industrial property like patents, utility models, industrial designs, trademarks, service marks and the repression of unfair competition". But in the WIPO defines it broadly and intellectual property' shall include the right relating to:

i) Literary, artistic and scientific works
ii) Performance of performing artists
iii) Inventions in all fields of human endeavour
iv) Scientific discoveries
v) Industrial designs
vi) Trademarks, service marks and etc.
vii) Protection against unfair competition

7. Define trade mark.

Ans :

Introduction

Trade marks are an integral component of modem business. A trade mark is a symbol which

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indicates the source of particular goods. Producers of the goods devise different trade marks which am distinct from others. The exclusive right to the use of the mark, enables the owners to build goodwill and reputation in the expression of its identify and to prevent others from misleading consumers into wrongly associating products with an enterprise from which they do not originate.

Trade marks legislation grants the producer or a trader an exclusive right in respect of a mark identifying his goods as distinct from other goods.

But trade marks can be misused by unscrupulous businessmen who indulge in duplicating popular brands and cheat the consumers. The Trade and Merchandise Marks Act 1958 was enacted to prevent the misuse of trade marks.

Definition

According to Sec.2(1) (zb) of the Trade marks Act 1999, "Trade mark' means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours and

(i) In relation to a registered trademark or a mark used in relation to goods or services for the purpose of indicting or so as to indicate a connection in the course of trade between the goods or services as the case may be and some person having the eight as proprietor to use the trade mark.

(ii) In relation to other provisions of the Act, a mark used or proposed to be used in relation to goods or services for the purpose of indicating or so as to indicate a connection in the course of trade between the goods or services, as the case may be and some person having the right as proprietor or by way of permitted user to use the mark whether of that person and includes a certification trade mark".

8. Explain briefly about copy rights.

Ans :

Definition

According to Section 14, "copyright" means the exclusive right subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely.

(a) In the case of a literary, dramatic or musical work, not being a computer programme.

(i) To reproduce the work in any material form including the storing of it in any medium by electronic means.

(ii) To issue copies of the work to the public not being copies already in circulation.

(iii) To perform the work in public, or communicate it to the public.

(iv) To make any cinematograph film or sound recording in respect of the work.

(v) To make any translation of the work.

(vi) To make any adaptation of the work.

(vii) To do, in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-clauses (i) to (vi).

(b) In the case of a computer programme

(i) To do any of the acts specified in clause (a).

(ii) To sell or give on hire, or offer for sale or hire any copy of the computer programme, regardless of whether such copy has been sold or given on hire on earlier occasions.

(c) In the case of an artistic work

(i) To reproduce the work in any material form including depiction in three dimensions of a two dimensional work or in two dimensions of a three dimensional work.

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(ii) To communicate the work to the public.

(iii) To issue copies of the work to the public not being copies already in circulation.

(iv) To include the work in any cinematograph film.

(v) To make any adaptation of the work.

(vi) To do in relation to an adaptation of the work any of the acts specified in relation to the work in sub-clauses (i) to (iv).

9. Define Environment.

Ans :

The word 'environment' is derived from the French word *'environner',* which means 'to encircle' or to surround. The most suitable definition of environment is as follows:

It is the sum total of water, air and land and the interrelationships that exist among them with human beings, other living organisms and materials.

The geographical meaning of environment is as follows:

It is a combination of living and non-living things and their mutual interaction with each other which leads to an ecosystem.

The environment encompasses all living and non-living things occurring naturally on earth.

The Honourable Supreme Court has the following definition of 'environment':

"Environment" is a difficult word to define. Its normal meaning relates to the surroundings, but obviously, that is a concept which is relatable to whatever object it is, which is surrounded. Environment is a polycentric and multifaceted problem affecting the human existence.

Today protection of 'environment' is a global issue as it concerns all countries irrespective of their size, stage or development or ideology. Today, the interaction between society and nature is so extensive that the question of environment has assumed large proportions, affecting humanity at large.

10. Causes of Air Pollution

Ans :

The various causes of atmospheric pollution may be attributed to the following,

1. Increase in the level of atmospheric carbon dioxide. The different gases in the atmosphere are nitrogen (78%), oxygen (21%), argon (0.9%), carbondioxide (0.03%) and traces of helium, neon, krypton, xenon, hydrogen and ozone.
2. Use of harmful chemicals like pesticides, insecticides, herbicides etc., in agriculture.
3. The domestic sewage is discharged into water bodies like rivers and oceans.
4. The industrial effluents are discharged into the environment.
5. The exhaust gases emanating from the automobiles and factories pollute the air, thus causing serious health problems to humans. Vehicles which run on the internal combustion engines and factories release large amounts of sulphurous compounds into the atmosphere.

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Internal Assessment (Mid Examinations)

The pattern of Mid Exams or Continuous Internal Evaluation (CIE) prescribed by the JNTU-H as per the Regulations 2019 (R19) for all the semesters is as follows,

- There would be two Mid Exams or Continuous Internal Evaluation (CIE) for each semester,
  - The **Ist Mid Term Examinations** would be conducted during the Middle of the Semester.
  - The **IInd Mid Term Examinations** during the last week of instructions.
- The Mid Exam I and II would have the same pattern of question paper which would carry **25 Marks** each and the time duration for conducting each Mid exam would be 120 min.
- The pattern of Mid Exam Question Paper would consist of two parts i.e., **Part-A** and **Part-B.**
  - **Part-A** consist of 5 compulsory questions each carries 2 marks (i.e 5 × 2 = 10 marks).
  - **Part-B** consist of 5 questions out of which 3 questions should be answered, each question carries 5 marks (i.e 5 × 3 = 15 marks).
- The average of the two Mid exams will be added with the 75 marks of External end examination which equals to 100 marks (i.e 25 + 75 = 100).

UNIT - I

Part - A

1.	Objectives of companies Act 2013.	(Refer Unit-I, SQA-2)
2.	Qualifications of a Director.	(Refer Unit-I, SQA-4)
3.	Appointment of First Directors.	(Refer Unit-I, SQA-5)
4.	Define Auditing.	(Refer Unit-I, SQA-7)
5.	What is Class Meeting.	(Refer Unit-I, SQA-9)

Part - B

1.	Define the term company. Explain the characteristics of a company.	(Refer Unit-I, Q.No. 1)
2.	Discuss the procedure involved in registration and incorporation of a company.	(Refer Unit-I, Q.No. 4)
3.	Explain the powers of directors under companies act 2013.	(Refer Unit-I, Q.No. 8)
4.	What is Annual General Meeting. Explain the legal provisions relating to the annual general meeting.	(Refer Unit-I, Q.No. 20)
5.	What is extra Ordinary General Meeting. Explain the legal provisions relating to the extra ordinary general meeting.	(Refer Unit-I, Q.No. 21)

6. What is meant by Compulsory Winding-up? Who can order such winding-up and in what circumstances? What is the nature and extent of contributory's Liability. (Refer Unit-I, Q.No. 29)
7. What do you mean by Voluntary Winding-up? Explain the conditions to be followed in Voluntary Winding-up. (Refer Unit-I, Q.No. 32)

UNIT - II

Part - A

1. Explain the classification of offer. (Refer Unit-II, SQA-5)
2. Define acceptance. (Refer Unit-II, SQA-6)
3. What are the Differences between Fraud and Mis-representation? (Refer Unit-II, SQA-13)
4. Types of Performance of a Contract. (Refer Unit-II, SQA-14)
5. Auction Sale. (Refer Unit-II, SQA-19)
6. Define E-auction. (Refer Unit-II, SQA-20)

Part - B

1. Define contract ? Explain the elements of contract. (Refer Unit-II, Q.No. 1)
2. Explain the Essential Elements of Valid Contract. (Refer Unit-II, Q.No. 7)
3. Define acceptance ? Explain the essential elements of a valid acceptance. (Refer Unit-II, Q.No. 11)
4. Discuss the validity of contracts by minor. (Refer Unit-II, Q.No. 19)
5. Explain agreements opposed to public policy. (Refer Unit-II, Q.No. 30)
6. Explain the various modes of discharges of contract. (Refer Unit-II, Q.No. 37)
7. Explain various Remedies for a Breach of a Contract. (Refer Unit-II, Q.No. 39)
8. What are the differences between contract of Indemnity and contract of Guarantee? (Refer Unit-II, Q.No. 43)
9. Explain the characteristics of contract of sale. (Refer Unit-II, Q.No. 53)

UNIT - III

Part - A

1. What is Negotiable Instruments ? (Refer Unit-III, SQA-1)
2. Distinguish between Bills of exchange and promissory note. (Refer Unit-III, SQA-5)
3. What is Endorsements. (Refer Unit-III, SQA-7)
4. Holder in Due course. (Refer Unit-III, SQA-9)
5. Distinguish between holder and holder in due course. (Refer Unit-III, SQA-10)

Part - B

1. What is Negotiable Instruments ? Explain the features of Negotiable Instruments. (Refer Unit-III, Q.No. 1)
2. Define Promissory Note. Explain the characteristics of Promissory Note. (Refer Unit-III, Q.No. 3)
3. Define Bills of Exchange. Explain the parties involved in Bills of Exchange. (Refer Unit-III, Q.No. 5)
4. Define Cheque. Explain the characteristics of Cheque. (Refer Unit-III, Q.No. 10)
5. Distinguish between cheque and bills of exchange. (Refer Unit-III, Q.No. 15)
6. Explain the different types of Endorsement. (Refer Unit-III, Q.No. 19)
7. Explain the Dishonour of Negotiable Instruments. (Refer Unit-III, Q.No. 23)
8. What do you understand by Offences by Companies? (Refer Unit-III, Q.No. 26)

UNIT - IV

Part - A

1. Define Business Environment. (Refer Unit-IV, SQA-1)
2. Industrial Licensing. (Refer Unit-IV, SQA-3)
3. What is Five Year Planning (Refer Unit-IV, SQA-5)
4. Foreign Direct Investment. (Refer Unit-IV, SQA-6)
5. Define Fiscal Policy. (Refer Unit-IV, SQA-7)
6. Define Monetary Policy. (Refer Unit-IV, SQA-9)

Part - B

1. Define Industrial Policy. Explain the objectives of Industrial Policy. (Refer Unit-IV, Q.No. 9)
2. Explain the main features of 1948 industrial policy. Discuss the objectives of industrial policy resolution 1956. (Refer Unit-IV, Q.No. 11)
3. Explain the New Industrial Policy of 1991. (Refer Unit-IV, Q.No. 12)
4. What is Foreign Direct Investment (FDI). Explain the importance of FDI. (Refer Unit-IV, Q.No. 18)
5. Explain the advantages and dis-advantages of FDI. (Refer Unit-IV, Q.No. 19)
6. Define Monetary Policy. What are the objectives of Monetary Policy? (Refer Unit-IV, Q.No. 31)
7. Explain different types of Monetary Policy? (Refer Unit-IV, Q.No. 32)
8. What are the various Banking Sector Reforms in India? (Refer Unit-IV, Q.No. 36)

UNIT - V

Part - A

1.	Rights of Consumer.	(Refer Unit-V, SQA-1)
2.	Define Digital Signature.	(Refer Unit-V, SQA-3)
3.	Intellectual Property Rights	(Refer Unit-V, SQA-6)
4.	Define trade mark.	(Refer Unit-V, SQA-7)
5.	Define Environment.	(Refer Unit-V, SQA-9)
6.	Causes of Air Pollution	(Refer Unit-V, SQA-10)

Part - B

1.	Explain the working and composition of District Forum.	(Refer Unit-V, Q.No. 6)
2.	Explain the composition and working of state commission as a redressal agency under the consumer protection act 1986.	(Refer Unit-V, Q.No. 7)
3.	What are the objectives and scope of the Information Technology Act 2000 ?	(Refer Unit-V, Q.No. 9)
4.	Explain in detail the penalties imposed u/s 43 of the IT act 2000.	(Refer Unit-V, Q.No. 14)
5.	What do you understand by Intellectual Property Rights ?	(Refer Unit-V, Q.No. 20)
6.	What is Water Pollution? What are the causes of Water Pollution?	(Refer Unit-V, Q.No. 31)
7.	What is Air Pollution? What are the causes of Air Pollution?	(Refer Unit-V, Q.No. 33)
8.	Explain briefly about national green tribunal protecting the environment.	(Refer Unit-V, Q.No. 35)

JAWAHARLAL NEHRU TECHNOLOGICAL UNIVERSITY HYDERABAD

M.B.A I Year I Semester Examination **R19**

MODEL PAPER - I

LEGAL AND BUSINESS ENVIRONMENT

Time : 3 Hours] [Max. Marks : 75

PART - A (5 × 5 = 25 Marks)

(Short Answer Questions)

ANSWERS

1. (a) Objectives of companies Act 2013 **(Unit-I, SQA - 2)**
   (b) Differences between sale and agreement to sell. **(Unit-II, SQA - 17)**
   (c) Characteristics of Cheque. **(Unit-III, SQA - 6)**
   (d) What is Five Year Planning? **(Unit-IV, SQA - 5)**
   (e) Rights of Consumer. **(Unit-V, SQA - 1)**

PART - B (5 × 10 = 50 Marks)

(Essay Type Questions)

2. Define the term company. Explain the characteristics of a company. **(Unit-I, Q.No. 1)**

OR

3. What is Annual General Meeting. Explain the legal provisions relating to the annual general meeting. **(Unit-I,Q.No. 20)**

4. (a) Explain the Essential Elements of Valid Contract. **(Unit-II, Q.No. 7)**
   (b) Ajay agrees to sell Vijay "my white horse for rupees five hundred or rupees one thousand". Is the agreement valid ? **(Unit-II, Case-5)**

OR

5. Define contingent contract? Explain the rules relating to enforceability of contingent contract. **(Unit-II, Q.No. 31,32)**

6. What is Negotiable Instruments ? Explain the features of Negotiable Instruments. **(Unit-III, Q.No. 1)**

OR

7. (a) Differences between general crossing and special crossing. **(Unit-III, Q.No. 13)**
   (b) Define Promissory Note. Explain the characteristics of Promissory Note. **(Unit-III, Q.No. 3)**

8. Define business environment. Explain the nature of business environment. **(Unit-IV, Q.No. 1, 5)**

OR

9. Explain the advantages and disadvantages of FDI. **(Unit-IV, Q.No. 19)**

10. (a) What are the objectives of Consumer Protection Act, 1986 ? **(Unit-V, Q.No. 2)**
    (b) Define trade mark. Explain the features of trade mark. **(Unit-V, Q.No. 23)**

OR

11. Explain the various provisions for competition law. **(Unit-V, Q.No. 19)**

JAWAHARLAL NEHRU TECHNOLOGICAL UNIVERSITY HYDERABAD

M.B.A I Year I Semester Examination **R19**

MODEL PAPER - II

LEGAL AND BUSINESS ENVIRONMENT

Time : 3 Hours] [Max. Marks : 75

PART - A (5 × 5 = 25 Marks)

(Short Answer Questions)

ANSWERS

1. (a) Qualifications of a Director **(Unit-I, SQA - 4)**
   (b) Types of Performance of a Contract **(Unit-II, SQA - 14)**
   (c) Define Bills of Exchange. **(Unit-III, SQA - 4)**
   (d) Foreign direct investment. **(Unit-IV, SQA - 6)**
   (e) Define Digital Signature. **(Unit-V, SQA - 3)**

PART - B (5 × 10 = 50 Marks)

(Essay Type Questions)

2. Explain the methods of Appointment of Directors of a company. **(Unit-I, Q.No. 7)**

OR

3. What is meant by Compulsory Winding-up? Who can order such winding-up and in what circumstances? What is the nature and extent of contributory's Liability. **(Unit-I,Q.No. 29)**
4. Explain the various modes of discharges of contract. **(Unit-II, Q.No. 37)**

OR

5. (a) Define offer? Explain the legal rules relating to a valid offer. **(Unit-II, Q.No. 8)**
   (b) Khurram offers to sell his bike to Naveed for Rs.20,000. Naveed offers to buy it for Rs. 18,000. Khurram refuses to sell. Naveed then says to Khurram; "I accept your offer and shall purchase the bike for Rs. 20,000". Is Khurram bound to sell the cycle to Naveed for Rs. 20,000 ? **(Unit-II, Case-10)**
6. What do you understand by a acceptance of a bill under the negotiable instrument Act 1881 and what are the modes of acceptance ? **(Unit-III, Q.No. 8)**

OR

7. (a) Distinguish between cheque and promissory note. **(Unit-III, Q.No. 16)**
   (b) Explain the different types of Endorsement. **(Unit-III, Q.No. 19)**

8. Define monetary policy? Explain the objects of monetary policy. **(Unit-IV, Q.No. 31)**

OR

9. Discuss the new industrial policy of 1991. **(Unit-IV, Q.No. 12)**

10. (a) Discuss briefly about District Forum. **(Unit-V, Q.No. 6)**

(b) What do you understand by Intellectual Property Rights ? **(Unit-V, Q.No. 20)**

OR

11. Discuss briefly about E-governance. **(Unit-V, Q.No. 13)**

JAWAHARLAL NEHRU TECHNOLOGICAL UNIVERSITY HYDERABAD

M.B.A I Year I Semester Examination **R19**

MODEL PAPER - III

LEGAL AND BUSINESS ENVIRONMENT

Time : 3 Hours] [Max. Marks : 75

PART - A (5 × 5 = 25 Marks)

(Short Answer Questions)

ANSWERS

1. (a) What is Class Meeting. **(Unit-I, SQA - 9)**
   (b) What are the Differences between Void Agreement of Void Contract? **(Unit-II, SQA - 2)**
   (c) What do you understand by Holder, Holder in due course? **(Unit-III, SQA - 8, 9)**
   (d) Features of New Industrial Policy 1991. **(Unit-IV, SQA - 4)**
   (e) Explain briefly about copy rights. **(Unit-V, SQA - 8)**

PART - B (5 × 10 = 50 Marks)

(Essay Type Questions)

2. What do you mean by Voluntary Winding-up? Explain the conditions to be followed in Voluntary Winding-up. **(Unit-I, Q.No. 32)**

OR

3. Explain the powers, duties and liabilities of director under the companies act 2013. **(Unit-I, Q.No. 8, 9, 10)**

4. (a) Compare and contrast between conditions and warranties. **(Unit-II, Q.No. 58)**
   (b) What is unlawful and illegal agreement? **(Unit-II, Q.No. 29)**

OR

5. (a) Discuss the validity of contracts by minor. **(Unit-II, Q.No. 19)**
   (b) A grocer supplies monthly rations for six months to Bunty who is aged 17 years. On Bunty's failure to pay, he sues him for realisation of his due. Will he succeed ? **(Unit-II, Case-17)**

6. (a) Define Bills of Exchange. Explain the parties involved in Bills of Exchange. **(Unit-III, Q.No. 5)**
   (b) Explain the characteristics of Cheque. **(Unit-III, Q.No. 10)**

OR

7. Discuss under what conditions a cheque is dishonoured. **(Unit-III, Q.No. 17)**

8. Explain the various Five Year Plans in India. **(Unit-IV, Q.No. 16)**

OR

9. What are the various banking sectors reforms in India. **(Unit-IV, Q.No. 36)**

10. (a) Explain the composition and working of state commission as a redressal agency under the consumer protection act 1986. **(Unit-V, Q.No. 7)**

(b) What are the differences between copyright, patents and trade mark ? **(Unit-V, Q.No. 28)**

OR

11. Explain Prevention and Control of Water Pollution. **(Unit-V, Q.No. 32)**

JAWAHARLAL NEHRU TECHNOLOGICAL UNIVERSITY HYDERABAD

M.B.A I Year I Semester Examination **R19**

October / November - 2021

LEGAL AND BUSINESS ENVIRONMENT

Time : 3 Hours] [Max. Marks : 75

Note: Answer any five questions.

All questions carry equal marks.

ANSWERS

1. Explain the procedure involved in for nation of a company. **(Unit-I, Q.No.4)**
2. Explain about :
   (a) Powers and duties of directors **(Unit-I, Q.No.8)**
   (b) Role of Auditors **(Unit-I, Q.No.12)**
3. What is a 'Contract'? List out and explain essential elements of a contract. **(Unit-II, Q.No.1,7)**
4. (a) Distinguish between Sale and Agreement to sell under the sale of goods Act.1930 **(Unit-II, Q.No.54)**
   (b) Discuss the essential characteristics of a contract of sale of goods. **(Unit-II, Q.No.53)**
5. What is negotiable instrument? Discuss about discharge of negotiable instruments. **(Unit-III, Q.No.1, 23)**
6. Explain about:
   (a) Types of endorsements **(Unit-III, Q.No.19)**
   (b) Holder and Holder in due course **(Unit-III, Q.No.20)**
7. What is Monetary Policy? Discuss its importance for a countries economy. **(Unit-IV, Q.No.31)**
8. Write a note on consumer? Protection Act.1986. **(Unit-V, Q.No.2)**

JAWAHARLAL NEHRU TECHNOLOGICAL UNIVERSITY HYDERABAD

M.B.A I Year I Semester Examination **R19**

July / August - 2021

LEGAL AND BUSINESS ENVIRONMENT

Time : 3 Hours] [Max. Marks : 75

Note: Answer any five questions.

All questions carry equal marks.

ANSWERS

1. What is Company? Explain steps and procedure for in corporation of the company. **(Unit-I, Q.No.1,4)**

2. Write about:

   (a) Different Company Meetings **(Unit-I, Q.No.20,21,23,24)**

   (b) Winding-up of a company and modes of winding up. **(Unit-II, Q.No.27,29,32)**

3. Define the term 'Contract" and explain the nature and elements of contract. **(Unit-II, Q.No.1,7)**

4. (a) Distinguish between a 'Condition' and 'Warranty'. **(Unit-II, Q.No.58)**

   (b) Explain the doctrine of 'Caveat Emptor' with its exceptions.

Ans :

In general terms, the amount of available information among a buyer and seller of any item or property has always leaned more to the seller's side. After all, they know much more about the item's history, condition, and suitable purposes than the buyer.

The doctrine of caveat emptor was created to resolve issues between sellers and buyers in instances where a buyer was not happy with the item's condition after purchasing it. Thus, under caveat emptor, the buyer in an agreement for the sale of a particular item agrees to buy it at their own risk regarding the condition or quality of the item. This excludes instances of fraud, or when a relative condition is determined in the contract itself.

In other words, the buyer cannot make a claim against the seller if the item is revealed to be defective or unsuitable for the intended purposes, or if the buyer mistakenly evaluates the condition of the item.

Exceptions to the Doctrine of Caveat Emptor

There are a number of exceptions to the doctrine of caveat emptor, including:

- **Implied Condition:** If the seller knows about the purpose for which the purchaser intends to use the item, and the purchaser is relying on the judgment of the seller, there exists an implied condition that the item will serve the requirement for which it is purchased. However, this term does not apply if the items are sold under a patent mark or trade name.
- **Sale of Goods by Description:** If the purchaser buys items from a seller who offers a particular class of items, there exists an implied condition that the items are of relative quality.

- **Condition as to Description:** If the purchaser buys an item by description, and the item does not match the description, caveat emptor is not applicable.
- **Condition as to Wholesomeness:** In instances of foods and other products intended for consumption, there exists an implied condition that such products are indeed fit for consumption.
- **Usage of Trade:** Evidence of reasonable custom of trade can support an implied condition as to the condition or quality of items for a specific purpose.
- **Consent by Fraud:** In cases where a seller obtained their consent to a contract under fraud, the seller has no protection under the rule of caveat emptor.
- **Misrepresentation:** If the seller makes a false representation pertaining to the items offered, and the purchaser has relied upon it, caveat emptor is not applicable.
- **Sale by Sample:** If a purchaser receives a satisfactory sample and then buys the item in bulk, caveat emptor will not be applicable if the purchaser then finds the bulk purchase to be defective or incongruent with the received sample. In addition, any hidden damaged product will void the doctrine of caveat emptor.

5. Define the term 'Negotiable Instruments'. Discuss about parties to negotiable instruments and their role. **(Unit-III, Q.No.1,2)**

6. Explain about:

   (a) Bills of Exchange **(Unit-III, Q.No.5)**

   (b) Promissory note **(Unit-III, Q.No.3)**

7. Write a note on new industrial policy of India-1991 and what are the latest developments. **(Unit-IV, Q.No.12)**

8. Write a note on IT Act. 2000. **(Unit-V, Q.No.9)**

JAWAHARLAL NEHRU TECHNOLOGICAL UNIVERSITY HYDERABAD

M.B.A I Year I Semester Examination

R19

October/November - 2020

LEGAL AND BUSINESS ENVIRONMENT

Time : 2 Hours] [Max. Marks : 75

Answer any five questions

All questions carry equal maks

ANSWERS

1. Can a company ratify the contracts of promoters who acted on behalf of the company before its incorporation? What is the remedy available to the third party in case of such contracts?

Ans :

- The prime characteristic of the company structure is separate legal identity, which allows it to enter into contract with parties and own assets in its own name. A company obtains the legal identity after its incorporation and registration in India.
- However, more often, it is observed that the promoters enter into contract with third parties even before pvt ltd company registration in India, whether for the registration purpose itself or otherwise. Here, we are discussing whether these contracts made in name of promoters are valid or not. These contracts are known as promoter's contract or pre-incorporation contract in legal terms.
- Promoters are the person obliged to promote a company to operational level ensuring it running successfully. Therefore, the promoters enter into various contracts necessary to promote company.
- These contracts also include those executed with the professionals for company registration or those imperative to float company.
- As a company is artificial person that is unborn unless the registration process is completed, it cannot enter execute any agreement before incorporation. Therefore, these contracts entered by the promoters are made in their own name.
- Hence, these contracts are known as pre-incorporation contract or promoter's contract. Such contracts are inevitable for company registration and therefore are also recognised by Companies Act and also by Specific Relief Act.
- Section 15(h) provides that the company may ask for specific performance from the third party if the pre-incorporation contracts are entered by promoters for the purpose of the company and subject to terms of incorporation of company.
- This condition can only be applied if the company has expressly shown the acceptance of such contracts after its incorporation and communicated the same to concerned third party (i.e. the other party).
- Under similar circumstances, specific performance may be enforced against the company by the other party to the contract u/s 19(e) of Specific Relief Act.
- Hence, for enforcement of the contract by the company against the other party to contract, the members must ratify the contract followed by communication of acceptance to other party.
- Unless the contract is accepted by the company, the company may not receive any benefit from such contract and the promoters would be personally liable for the contracts.

- In case, the said contract is not accepted by the company in its meeting, such contract is binding to the promoters and the both, promoters and other party may demand specific performance against each other.

Remedies to the third party

- Such actions of acceptance are essential after registration of private company as it owns a separate legal identity to operate in its own name. Also, such action would be favourable to promoters that they are not personally liable for such contract entered for and on behalf of the company.
- While executing contract on behalf of company, some also mistake to contract in name of company even before it is incorporated.
- Company is artificial person which comes into existence after completion of incorporation process. Unless a company is born, it cannot execute any agreement or be a party of contract. Therefore, such contracts entered in name of company are not valid due to its non-existence.
- Enforceability of such contracts would be questionable and may also be denied.
- Hence, it is preferable to enter into contract as promoter of the company with condition as to incorporation of company. Such contracts can be enforced by the company if it is accepted as discussed above.
- Promoter's contracts or pre-incorporation contracts are inevitable in most cases. Process like private limited company registration in india would always be allied with such contracts whether in form of contract with professional or property owners or otherwise that would affect the company operations in one or the other way.
- Hence, while such execution these prospects must be known by the promoters. Also, it would be advisable to ask the professionals while executing such contract that which aspects must be kept in mind.

2. "It is in general just and equitable that a company should be wound tip when its substratum is shown to have gone." Discuss the tests to be applied in this regard before a winding up order is passed under the 'just and equifable' clause.

Ans :

- The just and equitable clause confers very wide discretionary powers on the court. In ordering a company to be wound up under this clause, the courts have to take into consideration the interest of the company, its employees, creditors, shareholders and the general public.
- For a long period of time the term 'just and equitable' were read ejusdem generis. In Cowasjee v. Nath Singh Oil Co., the court held that "though the court is not bound to construe this clause ejusdem generis, as only covering grounds of a like nature with those specified in Clauses 1 to 5, yet it will require grounds of a like magnitude before acting under the clause."
- In Kilpest (P) Ltd. v. Shekhar Mehra, the court observed that the term 'just and equitable' has undergone a radical change in the social and economic conditions in our country. The term 'just and equitable' has lost its technical meaning and has acquired a more meaningful and pragmatic one.
- The courts have thus held the words 'just and equitable' to be words of the widest significance and as not limiting the jurisdiction of the court to any case. It is a question of fact and each case must depend on its own circumstances. No general classification can be made to show under what circumstances the court can invoke the 'just and equitable clause'.
- However, the courts have taken the assistance of this clause wherever it was of the opinion that the running of the company was not viable or beneficial to the shareholders.

- The court does not get jurisdiction only because of the provisions of law mentioned by the applicant. At the foundation of applications for winding up, on the just and equitable rule, there must lie a justifiable lack of confidence in the conduct and management of the company's affairs. This lack of confidence must be based on the conduct of the directors, not in regard to the private life or affairs, but with regard to the company's business.
- Furthermore, the lack of confidence must spring, not from dissatisfaction at being outvoted on the business affairs or on what is called the domestic policy of the company. On the other hand, wherever the lack of confidence is rested on the lack of probity in the conduct of the company's affairs, the former is justified by the latter, and 'just and equitable' that the company be wound up.
- The relief under the 'just and equitable' clause is discretionary and the court may refuse to make an order of winding up if it is of the opinion that some other remedy is available to the petitioner and that the petitioner is acting unreasonably in seeking to have the company wound up instead of pursing the other remedies.
- It is therefore necessary for a contributory seeking the discretionary powers of the court under Section 433(f) not only to establish that the circumstances prevailing in the company are such that a winding up of the company is the only alternative but also to show that there are no other remedies available. Where an alternative remedy is available, section 433(f) cannot be invoked and also the principle of dominuslitus cannot be applied.

3. Mr. Samsukh offered a reward to anyone who returned his lost dog. Mr. Funtoos brought the dog to Mr. Samsukh without having heard the offer. In this case is Mr. Funtoos entitled to get the reward? Discuss with the decided bases and relevant provisions of the Indian Contract Act, l872.

Ans :

- A sum of money or other compensation offered to the public in general, or to a class of persons, for the performance of a special service.
- It is commonplace for the police to offer a reward for information leading to the arrest and conviction of an offender or for a pet owner to post notices in a neighborhood offering a reward for the return of a lost dog or cat. In legal terms, the person promising a reward is offering to enter into a contract with the person who performs the requested action, that is, turning in a criminal or returning a lost pet.
- Performance will be rewarded with money or some other compensation. Therefore, the legal concepts involving rewards are derived from the law of contracts.
- An actual, valid offer must be made to create a contract of reward. The offer is merely a proposal or a conditional promise by the person offering the reward, known legally as the offerer. It is not a consummated contract until the requested action is performed.
- The person offering the reward can do so on any terms she wishes, and the terms must be met before the reward can be recovered.
- The subject matter of the offer can entail the discovery of information leading to the arrest and conviction of a person, the discovery of stolen property and the apprehension of the thief, the return of lost property, or the recovery or rescue of a person.
- A prize or premium can be a valid offer of a reward for exhibits, architectural plans, paintings, the best performance in a tournament, the suggestion of a name, or the achievement of the best time in a race.
- Any persons, including corporations, legally capable of making a contract can bind themselves by an offer of reward.

- Legislatures have the power to offer rewards for acts that will be of public benefit. Legislatures, however, typically empower officers, such as the governor, the U.S. attorney general, or a federal marshal, to offer rewards for certain purposes, such as the apprehension of criminals.
- Unless a statute requires the offer to be in writing, the offer of reward can be made orally.
- An offer can be made by a private contract with a particular person or by an advertisement or public statement on television or radio, or in a newspaper, handbill, or circular.
- A contract of reward, like any contract, must be supported by consideration, something of value. The consideration that supports the promise of reward is the trouble or inconvenience resulting to the person who has acted on the faith of the promise.
- A reward can be claimed only by a person who has complied with the conditions of the offer before it expires or is revoked.
- Performance can be completed by a third person, such as an agent or servant, who is acting on behalf of the claimant's interest.
- When the reward is offered for information leading to an arrest and conviction, the return of property, the location of a missing person, or for other purposes, the person who furnishes the information is entitled to the reward.
- This rule applies even if, in the case of arrest, the person does nothing more than disclose the information and others make the physical capture. The informant need not become involved in the prosecution or appear as a witness at the offender's trial to collect the reward.
- The information must be adequate and timely for a person to collect a reward. If a criminal has surrendered or the information was already known when the informant provided it, no reward will be given.
- Likewise, if the information does not lead to the desired end included in the initial offer, such as an arrest and conviction, or the recovery of property, the reward will be denied. However, when the reward is for the detection or discovery of an offender, a conviction is not necessary as long as the discovery or arrest occurs.

4. What are the grounds for dishonor of a cheque? Explain the provisions of Section 138 of the Negotiable Instruments Act, 1881 with respect to dishonor of cheque along with the ingredients of offence. What is the latest proposal of Finance ministry on Section 138 of the Negotiable Instruments Act, 1881 post breakout of COVID 19? **(Unit-III, Q.No. 17)**

5. Discuss the major Banking sector reforms in the history of Indian economy that shaped Indian banking system. **(Unit-IV, Q.No. 36)**

6. Write a brief review of Industrial policies in India since Independence. **(Unit-IV, Q.No. 9, 11, 12)**

7. Intellectual property (IP) rights exist to protect the works of creators and innovators from misappropriation or copying by unauthorized parties. Such protection is in the interests not only of the individual creators, but of wider economic development and consumer interests. How is this position covered by Indian IP laws? **(Unit-V, Q.No. 22, 21)**

8. "Information Technology Act, 2000 and Intellectual Property Rights (IPRs) are intertwined to create maximum business value to the organization". Justify this observation, giving examples, and how cyber laws protect and manage Intellectual Property Rights. Discuss. **(Unit-V, Q.No.9,10,14)**

JAWAHARLAL NEHRU TECHNOLOGICAL UNIVERSITY HYDERABAD

M.B.A I Year I Semester Examination **R19**

January - 2020

LEGAL AND BUSINESS ENVIRONMENT

Time : 3 Hours] [Max. Marks : 75

Note: This question paper contains two parts A and B.

Part A is compulsory which carries 25 marks. Answer all questions in Part-A. Part-B consists of 5 Units. Answer any one full question from each unit. Each question carries 10 marks and may have a, b, c as sub questions.

PART - A (5 × 5 = 25 Marks)

ANSWERS

1. (a) Explain the powers of Director. **(Unit-I, Q.No. 8)**

   (b) What are essential elements of contract. **(Unit-II, Q.No. 7)**

   (c) Discuss different types of endorsements. **(Unit-III, Q.No. 19)**

   (d) Give the highlights of 7th five-year plan.

Ans :

- The Plan aimed at accelerating food grain production, increasing employment opportunities & raising productivity with focus on 'food, work & productivity'.
- The plan was very successful as the economy recorded 6% growth rate against the targeted 5% with the decade of 80's struggling out of the' Hindu Rate of Growth'.

(e) Expalin the salient features of Consumer Protection Act 1986.

Ans :

- This Act is an umbrella of legislation covering goods and services but excluding all the transactions undertaken by the person not coming under the ambit of section 2(1)(d).
- The legislative intention of consumer protection Act, 1986 was to provide inexpensive, simple and timely redressal of all consumer complaints.
- This Act is an umbrella of legislation covering goods and services but excluding all the transactions undertaken by the person not coming under the ambit of section 2(1)(d).
- The legislative intention of consumer protection Act, 1986 was to provide inexpensive, simple and timely redressal of all consumer complaint.

PART - B (5 × 10 = 50 Marks)

2. Explain the salient features of Companies Act 2013. **(Unit-I, Q.No. 1)**

OR

3. a) What atre the duties and responsibilities of Auditors? **(Unit-I, Q.No. 16, 17)**

   b) Discuss the procedure for appointing a Director. **(Unit-I, Q.No. 7)**

4. a) Define contract and explain different type sof contracts. **(Unit-II, Q.No. 1, 2)**

   b) Explain about the conditions and warranties. **(Unit-II, Q.No. 55)**

OR

5. Explain the general principles of Sale of Goods Act 1930. **(Unit-II, Q.No. 53)**

6. What are different types of negotiable instruments? **(Unit-III, Q.No. 3, 5, 10)**

OR

7. Discuss about the Negotiable Instruments Act 1881. **(Unit-III, Q.No. 1)**

8. a) Explain about the foreign direct investments. **(Unit-IV, Q.No. 18)**

   b) Discuss about monetary policy. **(Unit-IV, Q.No. 31)**

OR

9. Explain the recent banking sector reforms in India. **(Unit-IV, Q.No. 36)**

10. a) Discuss about IT Act 2000. **(Unit-V, Q.No. 9)**

    b) Write about intellectural property rights. **(Unit-V, Q.No. 20)**

OR

11. Examine the features and components of Environmental Law. **(Unit-V, Q.No. 31, 33)**

Ans :

Components of Environmental Law

1. **Waste Management:** One of the major areas addressed by environmental law initiatives is waste management. This can take the form of helping to build or upgrade waste management systems to make sure that waste is not polluting groundwater or causing the spread of disease. It can also take the form of managing radioactive waste materials. In areas of the world where industrialization is changing traditional community living, there may also have to be education programs done that demonstrate public health hygiene.

2. **Food Production:** Food production is another area covered by environmental law. Regulations will concern everything from how seed is harvested and prepared to what types of fertilizer and pesticides are used to nurture the crops to maturity. They will also examine processing, packaging and storage facilities for food products to ensure that all ingredients are safe for human consumption, and there is less risk for contamination or spoiled food.

3. **Water Reserves:** Making sure that adequate drinking water, or potable water, is available to a community is another key issue with environmental law. Environmental law advocates will also look towards creating reserves of water that can be adequately protected from contamination. They don't just look towards drinking and cooking water but making sure there is adequate irrigation for crops as well.

4. **Pollution Control and Remediation:** Environmental law is concerned with the control of pollution on the one hand and the conservation of natural resources on the other hand. It also has relevance to product design in the form of environmentally friendly materials, emission controls and energy-efficient devices.