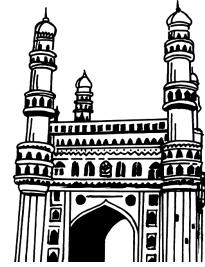


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BUSINESS LAW AND ETHICS

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Ans :

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UNIT I

LAW OF CONTRACTS

Definition of Contract and Agreement – Classification of Contracts, Essential elements of a valid Contract – Offer - Acceptance - Consideration - Capacity to Contract - Free consent, void Contracts– Legality of Object - Performance of Contract – Remedies for breach of Contract - Quasi Contracts.

1.1 LAW OF CONTRACTS

Q1. Explain the meaning of the term Law. State the features of Law.

Ans :

Meaning

The term law refers to rules of conduct enforced by the State to maintain peace and order in the society. Their objective is to provide security and uniformity by regulating human actions. In the absence of law, life and business will become a matter of survival not only of the fittest but also of the most ruthless. Since laws are backed by the authority and the power of the State, they are enforceable against all individuals irrespective of their social status.

Definitions

It will be appropriate here to give definitions of the term law by some eminent scholars:

- i) **According to Salmond**, "Law is the body of principles recognized and applied by the State in administration of justice."
- ii) **According to Austin**, "A law is a rule of conduct imposed and enforced by the sovereign."
- iii) **According to Blackstone**, "Law in its most general and comprehensive sense signifies a rule of action and is applied indiscriminately to all kinds of actions whether animate or inanimate, rational or irrational."

Thus, law may be defined as the system of rights and obligations which the State enforces.

Features

The following are the some of the feature of the Law :

- Law is a body of rules
- External acts of human beings are governed by rules.
- Law presupposes existence of state or sovereign political authority for enforcing rules.
- Law is generally imposed by some authority.
- Law can be enforced in a court of law.

Q2. Define the term mercantile law. State the main sources of Indian mercantile law.

Ans :

The term 'Mercantile Law' or 'Law Merchant' refers to those legal rules which govern and regulate mercantile or business transactions. These rules, regulations, etc. bring a sense of seriousness and definiteness in business dealings. They provide for rules regarding the validity of making contracts and their performance. They deal with various types of contracts such as those relating to partnership, sale of goods, agency, bailment, indemnity and guarantee. Mercantile Law also includes in its fold the laws relating to the joint stock companies, carriage of goods, insurance, insolvency, etc.

Sources

The main sources of Indian Mercantile Law are as follows :

1. English Mercantile Law

Indian Mercantile Law is largely based on English Mercantile Law. As a matter of fact, even after independence, in the absence of provisions regarding any matter of the Indian law, the provisions of the English law are generally accepted in the Indian Courts.

2. Statutes of Indian Legislatures

Most of the Indian laws are in the form of Acts passed by the Legislatures. Both the Central Legislatures (i.e., the Parliament) and the state Legislatures are empowered to enact laws relating to matters which come within their jurisdiction. For example, the Companies Act, 1956 has been enacted by the Parliament while the different State Legislatures have enacted the Sales Tax Acts applicable to their respective States.

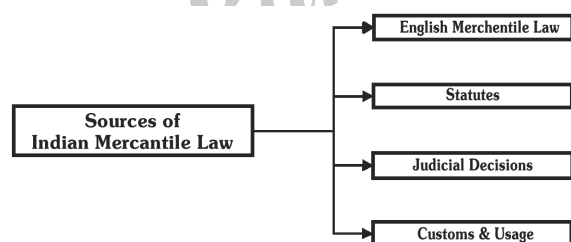
3. Judicial Decisions

Past judicial decisions acquire the force of precedents and are generally followed by law courts in deciding similar cases. In our country, the courts have been divided into three groups:

- (i) The Supreme Court,
- (ii) The High Courts and
- (iii) The Sub-ordinate Courts.

The Supreme Court is the final court of appeal. For the court of same stature, earlier decisions have only a guiding and persuasive value.

However, for a court of a lower stature, the decision given by the court of a higher stature regarding the same subject matter is usually taken as having binding effects.



4. Customs and Usage

Customs and Usage also play a significant role in regulating business transactions. This fact has been accepted by many Indian statutes. For example section 1 of the Indian Contract Act states that 'nothing therein contained shall affect any usage or customs of trade'. Similarly Section 1 of the Negotiable Instruments Act also provides that 'nothing therein contain shall affect any legal usage relating to Instruments in an oriental language.

1.2 DEFINITION OF CONTRACT AND AGREEMENT

Q3. Define contract ? Explain the elements of contract.

(OR)

All contracts are agreements but all agreements are not contracts.

Ans :

(Imp.)

Meaning

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.

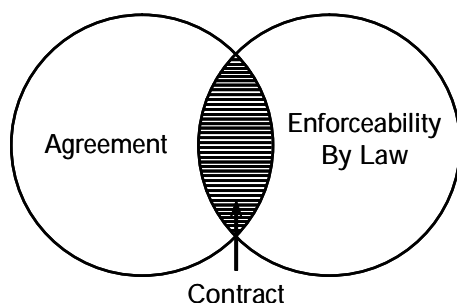
Definitions

- i) 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 enforceable by law. This definition is based on Pollock's definition which is as follows : "Every agreement and promise enforceable at law is a contract."
- ii) **According to 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."
- iii) **According to Salmond**, a contract is "an agreement creating and defining obligations between the parties."

Nature

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 by law

(a) Agreement

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

- (i) A invites his friend B to come and stay with him for a week. B accepts the invitation but when B 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.
- (ii) 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.

1.2.1 Classification of Contracts

Q4. Discuss briefly about classification of contracts.

Ans :

(Imp.)

Meaning

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

On the basis of validity	On the basis of Formation	On the basis of Performance
1. Valid contract	1. Express contract	1. Executed contract
2. Voidable contract	2. Implied contract	2. Executory contract
3. Void contract	3. Quasi contracts	3. Unilateral contract
4. Void agreement		4. Bilateral agreement
5. Unenforceable contract		
4. Illegal agreement		

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 any 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.

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.

Q5. Distinguish between Void Contract and Voidable Contract.

Ans :

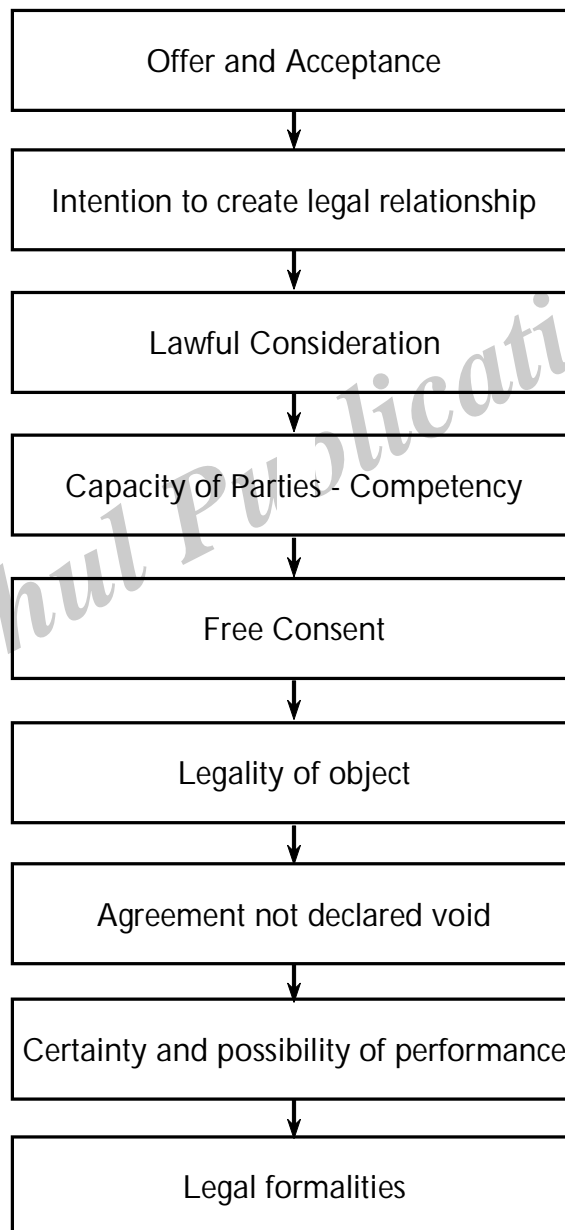
S.No.	Point of difference	Void contract	Voidable contract
1.	Definition	A contract, which ceases to be enforceable by law, becomes void when it ceases to be enforceable.	A voidable contract is an agreement which is enforceable by law at the option of one or more of the parties there to, but not at the 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 repudiable 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

Q6. What are the Differences between contract and agreement*Ans :*

Basis	Contract	Agreement
1. Meaning	"An agreement unenforceable 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) of ICA, 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 of ICA, 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.

1.2.2 Essential elements of a valid Contract**Q7. Explain Essential elements of a valid Contract.****(OR)****What are the essentials elements of a valid contract?***Ans :***(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 :

**Fig.: Essential Elements of a Valid Contract**

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 for 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 benefit 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.

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 complied with in order to make an agreement legally enforceable.

1.3 OFFER

Q8. Define offer? Explain the legal rules relating to a valid offer.

(OR)

Explain the essential elements of a valid offer.

*Ans :***(Imp.)****Meaning**

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 proposee.

Definition

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

- i) A invites B to dinner B accept the invitation. It does not create any legal relations, so there is no agreement.
- ii) 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.

- iii) 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 he did not send, due to which the wife sued the husband. But the court did not hold 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) of ICA, 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.

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.

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 were 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 constitute 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.

1.4 ACCEPTANCE**Q10. 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.

(OR)

Explain the legal rules relating to 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

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. 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.

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

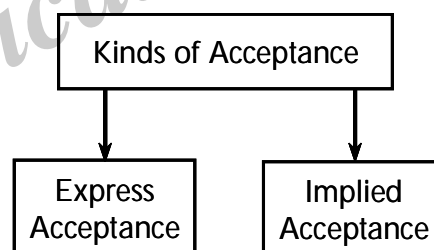
In order to be valid acceptance, it must be given at specified time allowed by offeror. If no time is mentioned, then the acceptance must be given in a reasonable time.

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.

Q11. Explain the various kinds of acceptance.

Ans :



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 and 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.

Q12. 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 offeree.

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.

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.

1.5 CONSIDERATION

Q13. Explain clearly the meaning of consideration.

(OR)

Define the term consideration.

(OR)

What do you understand by the term consideration under the Indian contract act.

Ans :

Meaning

Consideration is an essential element of a valid contract. An agreement without consideration is a bare promise and is htrt binding on the parties.

Consideration, broadly speaking, is the price said by the promisee for the obligation of the promisor. The term is used in the sense of quid pro quo i.e., 'something in return'. According to Sir F. Pollock, it is the 'price for which a promise is bought'.

In an English case: Currie v. Misa the term consideration was defined as 'some right, interest, profit or benefit, accruing to one party or some forbearance, detriment loss or responsibility given or-undertaken by the other'.

Thus, consideration need not be a benefit to the promisor. If the promisee has suffered some loss or detriment, it 'will be taken as a sufficient consideration for the promisor to fulfil his promise.

According to Section 2(d) of the Indian Contract Act 'when at the desire of the promisor, the promisee or any other person has done or abstained from doing or does or abstains from doing or promises to do or to abstain from doing something, such act or abstinence, or promise is called a consideration for the promise.' Consideration, therefore, may be described as something accepted or agreed upon as a return, or equivalent for the promise made. It implies some benefit to the promisor and some injury or inconvenience to the promisee.

Example

- (i) A agrees to sell his car to B for a sum of Rs. 10,000. For A's promise the consideration is a sum of Rs. 10,000 while for B's promise consideration is the car.

Q14. What are the legal rules of consideration?

(OR)

Explain the essential elements of valid consideration.

(OR)

Discuss the the essential elements of a valid consideration.

(OR)

Discuss the legal rules as to valid consideration.

Ans :

(Imp.)

The following legal rules must be satisfied to give rise to lawful consideration.

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 fire 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 Forbearance 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 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 do

A promise to do something which one is already bound to do either in general law or under the existing contract is not good consideration. Similarly a promise to do 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.

Q15. State the exception to the rule "No consideration No contract".

Ans :

Contracts without consideration are void. According to Salmond and Winfield A promise without consideration is a gift; one made for a consideration is a bargain.' However, in the following circumstances a contract without consideration will be perfectly valid :

- 1. Promise made on account of natural love and affection:** No consideration is required when a contract is made (i) on account of natural love and affection between the parties, (ii) standing in a near relation to each other, (iii) is in writing, and (iv) registered under law for the time being in force for the registration of documents [Sec. 21 (1)]. It is to be noted that nearness of relationship does not necessarily impart natural love and affection.

Examples

- (i) A, out of his love and affection, promises to give his wife, B, Rs. 1,000. This promise is put into writing and is registered. It will be a valid contract without consideration.
- (ii) B after referring to persistent quarrels and disagreement between himself and his wife R, promised in writing to pay his wife a sum of money for her maintenance and separate residence. The agreement was also registered. It was held that the promise was not enforceable because it was not entered out of natural love and affection.

- 2. Promise to compensate for voluntary services:** When a contract relates to a promise to compensate wholly or in part a person who had already voluntarily done something for the promisor or something which the promisor could be legally

compelled to do [Sec. 25 (2)]. The act must have been done voluntarily and for the promisor, who must have been in existence at the time when the act was done. The intention of the promisor must have been to compensate the promisee.

Examples

- (i) A finds S's purse and gives it to him. B promises to give A Rs. 100. This will be a valid contract without any formal consideration.
- (ii) A supports B's infant son. B promises to pay A's expenses in so doing. This is a contract.

- 3. Promise to pay a time-barred debt:** When a debtor makes a written promise under his signature or that of his agent to pay a time-barred debt no fresh consideration is required for this fresh promise [Sec. 23(3)]. A mere acknowledgment of a time-barred debt will not be sufficient. There should be a distinct, definite or express promise to pay the debt, which must be a liquidated or an ascertained sum of money.

Example:

A owes B Rs. 1,000 but the debt is barred by The Limitation Act. A signs a written promise to pay B Rs. 500 on account of the debt. This will be a valid contract.

In the case of a time-barred debt, the question of reviving the right does not arise for it was never lost. It had always existed, only the remedy had been destroyed by lapse of time which is being now revived by new promise.

- 4. Contracts of agency:** According to section 185 of the Indian Contract Act consideration is not required to create an agency.
- 5. Completed gifts :** Absence of consideration shall also not affect the validity as between the donor and donee of any gift actually made. Explanation (2) of section 25]. Thus, gifts once made cannot be recovered on the ground of absence of consideration.

1.6 CAPACITY TO CONTRACT

Q16. "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

- 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 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".

Q17. 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 necessities of life to minors can be enforced**

According to the rule of Quasi contracts, if a person supplies necessities 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 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 necessities 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 necessities of life. 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.

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 minor 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 necessities 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.

1.7 FREE CONSENT

Q18. 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

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**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".

Q19. What do you understand by Coercion?

Ans :

Meaning

In simple words, coercion is threat or force used by one party against another for compelling him to enter into an agreement.

Definitions

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 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 contract 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.

Q20. Define Undue Influence. Explain about Effects of Undue Influence on Consent.

Ans :

Meaning

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.

i) Definition

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 the 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.

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 that 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 at least 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 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.

Q21. 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.

Q22. Define Fraud. Explain the Essentials of fraud.

Ans :

Definition

According to Section 17 Fraud means and includes any of the following acts committed by a party to a contract, or by any one with his connivance or by his agent with intent to deceive another party thereto or his agent or to induce him to enter into the contract:

- A suggestion as to a fact of that which is not true by one who does not believe it to be true,
- An active concealment of a fact by one having knowledge or belief of the fact.
- A promise made without any intention of performing it.
- Any other act fitted to deceive.
- Any such act or omission as the law specially declares to be fraudulent.

Elements

The main elements of fraud are :

1. The act must have been committed by a party to the contract or with his connivance or by agent. It should not have been committed by a stranger.

Examples

- (i) The directors of a company issued a prospectus containing some false particulars on the basis of which S applied for allotment of shares in the company. The shares were allotted to S, but subsequently he wanted to avoid the contract on the ground of fraud. It was held that the directors of the company were agents of the company as regards publication of the prospectus, and therefore, S could set aside the contract on the ground of fraud played by the company with him.
 - (ii) A person was induced to buy shares in a company on account of a false statement made by a stranger. It was held that he could not get out of the bargain because false statement was not made by the company or its agent.
2. Acts committed may be of the following nature:
 - (a) **Suggestion of an untrue fact:** If a person knowingly states an untrue fact or fact which he does not believe to be true, it will be taken as a fraud on his part.

Example: A says to B his coat is made of pure wool, though he knows that is untrue. B purchases the coat believing A's statement to be true. It is a fraud by A, and therefore, contract is voidable at A's option.
 3. The act must have been committed with the intention of inducing the deceived party to act upon it: It implies that the assertion should be such that it would necessarily influence and induce the other party to act.

Example: A company's prospectus contained a statement that one Mr. P was a director of the company, A person, O, who never heard of P applied for allotment of shares to him on the basis of company's prospectus. As a matter of fact P was not actually on the Board of Directors of the company. B wanted to set aside the contract on the ground of mis-statement in the prospectus. It was held that B could not do so because the untrue statement was immaterial to him, and it had in no way induced him to purchase shares in the company.

4. **The act must have in fact deceived the other party :** If a person has committed a fraudulent act to deceive the other party, but the other party has not been actually been deceived by his act, it will not be taken as a fraud on his part. It has been observed, "A deceit which does not deceive is no fraud.

Examples

- (i) A had a cannon. It had a defect. In order to conceal it, he puts a metal plug on it. He sold it to B, who accepted the cannon without examining it. The cannon burst before it was paid for. B refused to pay on the ground that A was guilty of fraud. It was held that B was bound to pay because he would have bought it even if no deceptive plug was inserted. He was not, therefore, actually deceived by the fraud.
- (ii) A owner of an unsound horse, forged a veterinary surgeon's certificate stating the horse to be sound and pinned it at the stable door. B came to buy the horse. He did not notice the certificate and purchased the horse for a heavy price. Later on B sued for setting aside the contract on the ground of fraud. It was held that contract could not be set aside on the ground of fraud because B had not seen the certificate and, therefore, he was not deceived by A's fraud.

- (iii) Plaintiff must have suffered : 'There is no fraud without damages, and, therefore, to constitute fraud it is necessary that the plaintiff must have suffered some loss of money or money's worth or some other tangible detriment capable of assessment.

Q23. Explain briefly about Misrepresentation.

Ans :

Meaning

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.

Definition

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 contract 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.

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. A wants 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

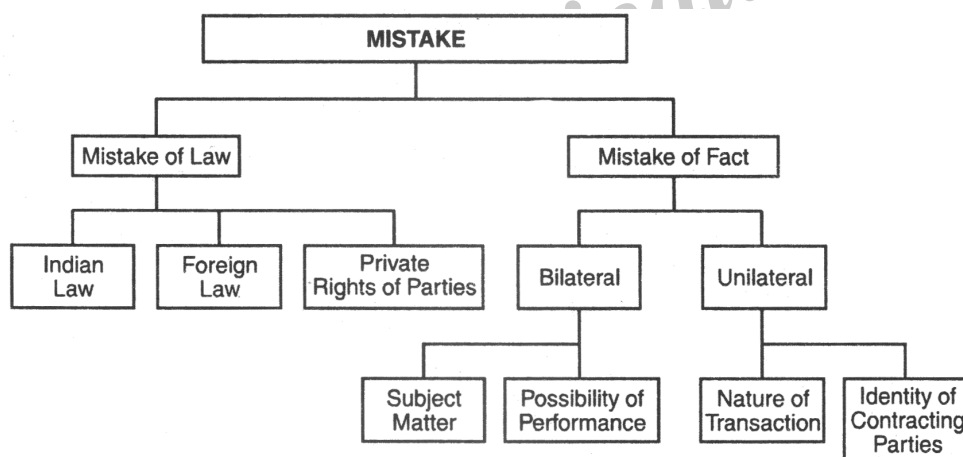
There are very few case examples on misrepresentation because any such case will be filed as a case of fraud but later it is proved as a case of misrepresentation. Therefore no direct cases are found on misrepresentation.

Q24. 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.

Q25. Define mistake. Explain the different types of mistakes.*Ans :*

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.

**Fig. : Types of Mistakes****I) Mistake of Law**

- (a) **Mistake as to Indian Law:** A mistake as to Indian law will not make the contract voidable. This is because person in this country is expected to know the law of this country. Ignorance of law is no excuse (*ignorantia juris nemi nem excusat*).

Examples:

- (i) A and B make a contract on this erroneous belief that a particular debt is barred by the Indian Law of Limitation. The contract cannot be avoided on the ground of mistake because each one of them is expected to know the Law of his own country.
- (ii) A, a widow is entitled to certain occupancy right. A remarries and believing that she has lost her occupancy rights by reasons of her remarriage, agrees to hire the same land at enhanced

rate from B, her zamindar. Both A and B honestly believe that A has lost her occupancy rights. Later, she comes to know that legally her occupancy rights were not withdrawn by her remarriage. She wants to avoid the new agreement. Can she do so?

The widow cannot avoid the new contract. The mistake is as to Indian Law and everybody is expected to know the law of the land. Such a mistake is not a 'mistake' within the meaning of section 20 of the Act. She is, therefore, bound by the new agreement.

However, if a person enters into a contract by making a mistake of law, through the inducement of another, intentional or innocent, the party whose consent is so caused shall have the right to avoid the contract. (b) Mistake as to foreign law ; Mistake as to a foreign law has the same effect as a mistake of fact, and, therefore, the contract can be avoided.

Example

A and B purchase and sell a plot of land of 192 sq. meters in Dublin believing that a house can be constructed over it. Actually it turns out that in Dublin no house can be constructed on a plot of less than 200 sq. metres. The contract can be avoided.

- (c) **Mistake as to private rights of the parties:** Existence of private rights is a matter of fact, though depending on the rules of law. A mistake about such rights is considered as a mistake of fact and the contract can be avoided on the basis.

Example

R after building a house on land purchased from M, discovered that the real owner of the land was X. This fact was also unknown to M. He had sold the land on an honest belief that the land did belong to him. It was held that the contract was void on account of mutual

mistakes as to private rights and R was only entitled to the return of consideration paid by him.

II) Mistake of Fact (Secs. 20 and 22)

- (A) **Bilateral mistake:** According to section 20 'where both the parties to an agreement are under a mistake as to a matter of fact, essential to the agreement, the agreement shall be void.' Thus, a mistake shall be termed as bilateral mistake of fact only when both of the following two conditions are satisfied : 1. It should be committed by both the parties: The mistake should be common to both the parties to the agreement.

Examples

- (i) X having houses, A and B, offers to sell house A, and Y not knowing that X has two houses thinks of house B and agrees to buy it. Here there is no real consent and, therefore, the contract is void on the ground of bilateral mistake of fact.
- (ii) A agrees to buy from B a certain horse. It turns out that the horse was dead at the time of the bargain, though neither party was aware of the fact. The agreement is void.

It should relate to a matter of fact essential to the agreement: The mistake must relate to a matter of fact and not to a matter of law, expectations or opinion etc. An erroneous opinion as to the value of a thing which forms part of the subject-matter of agreement is not to be deemed to be a mistake as to a matter of fact. Such a matter of fact must be essential to the agreement, i.e., affecting substance of the whole consideration.

Example

A and B believing them-selves to be married, made a separation agreement in which A agreed to pay B and 10 a week. It was later discovered that they were not duly married. B claimed the promised payments. The agreement was held to be void as there was mistake of fact on their part which was material to the existence of the agreement.

1.8 VOID CONTRACTS

Q26. Define Void Contracts. Explain the features of Void Contracts.

Ans :

Meaning

The word void means not binding in law. A contract which cannot be forced by both parties is called a void contract. Section 2J defines that if a contract which comes to an end which can be forcible by law becomes void when it cannot be protected by law. It is clear that a void contract is not void from the very beginning. It is valid contract and binding on the parties when it is originally made but after its formation it becomes void due to certain reasons.

Definition

According to sec 2(g) : An agreement which is not enforceable at law is void contract.

Explanation: The word void means not binding in law. A contract which cannot be enforced by either party is void contract.

Features of Void Contract

Following are features of void contract

- i) **Not Enforceable By Law:** A void contract is not enforceable by law.
- ii) **No Legal Rights:** A void contract creates no legal rights.
- iii) **No Obligation on any Party:** It creates no obligation on any party.
- iv) **Nature of Contract:** An agreement which is against the public policy or against any law is void.
- v) **No Compensation:** No compensation can be paid to any party.

Examples of Void Contract

- (i) An agreement In restraint of marriage,
- (ii) An agreement to in restraint in trade.

There are following circumstances under which the contract becomes void:

1. Impossibility of Performance

A contract may become void due to impossibility of performance. A contract may after formation but before performance become void when it becomes impossible to be performed by any party due to any reason. A and B make contract with each other that they will marry but after a certain period of time but A becomes mad.

2. The contract becomes void

A contract becomes void by subsequent illegality. A legal contract may after formation but before performance become illegal and as a result void due to certain reasons. A voidable contract becomes void when the party whose consent is not free rejects the contract. So this is the reason for the void contract.

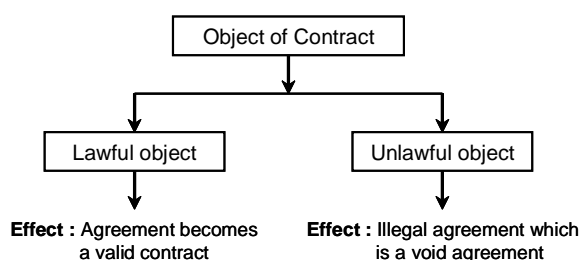
1.9 LEGALITY OF OBJECT

Q27. Under what circumstances is the object or consideration of a contract deemed unlawful? Illustrate with example.

Ans :

(Imp.)

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

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.

Q28. What is unlawful and illegal agreement? Explain the effects of illegal agreement.

Ans :

(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.

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 Condition Dependent is

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 court 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 delicto [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 F uses 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.

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 become 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.

Q29. "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 is 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 and 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.

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.

1.10 PERFORMANCE OF CONTRACT

Q30. What is Performance of a Contracts? Explain the types of Performance of a Contracts.

Ans :

(Imp.)

Meaning

The term 'performance of contract' means fulfillment 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.

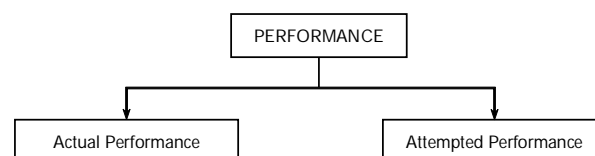
When a contract is duly performed by both the parties, the contract comes to a happy ending and nothing more remains. Performance by all the parties of the respective obligations is the normal and natural mode of discharging or terminating the contract.

Types

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. **Attempted performance:** 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.

Q31. 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.

Q32. 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.
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].

Q33. What do you mean by reciprocal promises?

(OR)

What do you understand by reciprocal promises?

Ans :

Meaning

Promises which form consideration or part of the consideration for each other are called reciprocal promises [Sec. 2(f)]. Such promises are mutual promises, i.e., a promise for a promise. When one party gives a promise in consideration of the other's promise, both the promises are called reciprocal promises.

Kinds of Reciprocal Promises

Lord Mansfield in *Jones v. Barkley* classified reciprocal promises into three categories:

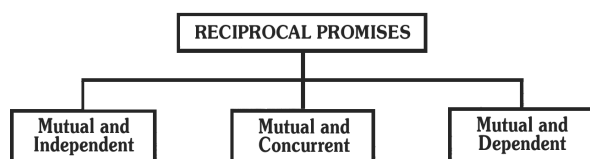


Fig.: Reciprocal Promises

1. **Mutual and independent promises:** In cases where each party has to perform his promise independently without waiting for the performance or willingness to perform of the other party, the promises are mutual and independent. Such promises are rare, and, therefore, have not been provided for in the Act.

Example : On account of an arbitration award B is to pay to D the sum of Rs. 2,000 and to deliver 200 ordinary shares held by him and in default of payment within a fortnight, B is to pay interest from the expiry of the fortnight. Here the obligation of D to deliver shares is quite independent of S's promise to pay.

2. **Mutual and concurrent:** Where the two promises are to be simultaneously performed, promises are mutual and concurrent. This class of cases is covered by section 51 of the Contract Act and section 32 of the Sale of Goods Act.

Example : A agrees to sell certain goods to S. Price is to be paid on delivery. The promises are mutual and concurrent.

3. **Mutual and dependent promises:** Where the performance of promise by one party depends on the prior performance of the promise by the other party, the promises are mutual and dependent. This class of cases is covered by section 54 of the Contract Act.

Example: A agrees to build a house for B. B agrees to supply the necessary material required for the construction of the house. The promises are mutual and dependent.

Q34. State the provisions of the Indian contract act which deal with the order of performance of reciprocal promises.

Ans :

Example

A agrees to supply certain goods to B on 15th of March. B promises to pay the price in advance on 15th February and on default to pay interest @12% p.a. from 15 February till the date of payment. In this case, A's promise to deliver goods

is quite independent of F's promise to pay price on 15 February. In case B does not pay the price, A cannot refuse to deliver the goods on 15th March. His only remedy will be to sue B for price and damages.

2. Mutual and concurrent promises

When a contract consists of reciprocal promises to be simultaneously performed, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise (Sec. 51).

Examples :

- (i) A and B contract that A shall deliver goods to B to be paid for by B on delivery. A need not deliver the goods unless B is ready and willing to pay for the goods on delivery. A need not pay for the goods unless A is ready and willing to deliver them on payment.
- (ii) A and B contract that A shall deliver goods to B at a price to be paid by instalments, the first instalment to be paid on delivery. A need not pay the first instalment unless A is ready and willing to deliver the goods on payment of the first instalment.

3. Mutual and dependent promises

Where a contract consists of mutual and dependent reciprocal promises, the promisor who is required to perform his promise first, fails to perform it, such promisor cannot claim the performance :: the reciprocal promise and must make compensation to the other party to the contract for any loss which such other party may sustain by the non-performance of the contract [Sec. 54].

Examples:

- (i) A hires B's ship to take in and convey from Calcutta to Mauritius, cargo to be provided by A, B receiving a certain retgh.t for its conveyance. A does not provide any cargo for the ship. A cannot claim the performance of B's promise, and must make sensation to B for the loss which B sustains by the non-performance of the contract.

4. General rules for order of performance

Where the order in which reciprocal promises are to be performed is expressly fixed by the contract, they shall be performed in that order; and where the order is not expressly fixed by the contract, they shall be performed in that order which the nature of the transaction requires (Sec. 52).

Examples

- (i) A and B contract that A shall build a house for B at a fixed price. A's promise to build the house must be performed before F's promise to pay for it.

Consequences where a party prevents performance

When a contract contains of reciprocal promises and one party to the contract prevents the other from performing his promise the contract becomes voidable at the option of the party so prevented, and he is entitled to compensation from the other party for any loss which he may sustain in consequence of the non-performance of the contract (Sec. 53).

Example

A and B contract that B shall execute certain work for A for a thousand rupees. B is ready and willing to execute work accordingly, but A prevents him from doing so. The contract is voidable at the option of B, and if he elects to rescind it, he is entitled to recover from A, compensation for any loss which he has incurred by its non-performance.

Reciprocal promises to do things legal, and also other things illegal

Where persons reciprocally promise, firstly to do certain things which are legal, and secondly, under specified circumstances to do certain other things which are illegal, the first set of promises is a contract, but the second is a void agreement (Sec. 57).

Example

A and B agree that A shall sell to B a house for 10,000 rupees, but that if B uses it as a gambling house, he shall pay A 50,000 rupees for it.

The first set of reciprocal promises, namely, to sell the house and pay 10,000 rupees for it is a contract.

The second set is for an unlawful object, that is, B may use the house as a gambling house and therefore, will be a void agreement.

Alternative promises, one branch being illegal

In the case of an alternative promise, one branch of which is legal and the other illegal, the legal branch alone can be enforced (Sec. 58).

Example

A and B agrees that A shall pay 1,000 rupees, for which B shall afterwards deliver to A either rice or smuggled opium. There is a valid contract to deliver rice and void agreement as to the opium.

1.11 REMEDIES FOR BREACH OF CONTRACT

Q35. What do you understand by a Breach of contract ?

Ans :

Meaning

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

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.

Q36. Explain various Remedies for a Breach of a Contract.

(OR)

State the different remedies available to the aggrieved party for a breach of contract.

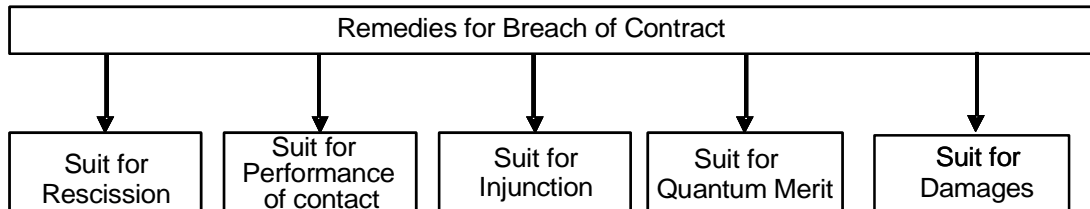
Ans :

(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



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.

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.

1.12 QUASI CONTRACTS

Q37. What are Quasi Contracts? Explain different types of Quasi Contracts.

Ans :

In certain categories of cases, the law imposes obligations of contractual nature on one party and confers rights in favour of the other even though there is no offer, no acceptance, no consensus ad idem and in fact neither agreement nor promise. These contracts are constituted by law, and are, therefore, termed as Quasi-Contracts. They are not contracts in equity because a person cannot be allowed to enrich himself at the expense of another.

The basis for the recognition of quasi-contracts has very nicely been explained by Anson in these words, 'Circumstances must occur under any system of law in which it becomes necessary to hold a person to be accountable to another, without any agreement on the part of the former to be so accountable, on the ground that otherwise he would be retaining money or some other benefit which has come into his hands to which the law regards the other person as better entitled, or on the ground that without such accountability the other would unjustly suffer loss. The law of quasi-contracts exists to provide remedies in circumstances of this kind.

Types

The Indian Contract Act has used the term 'Certain relations resembling to those of contracts' for the term 'quasi-contracts'. These relations are of the following five types :

1. Claim for necessities supplied to a person incapable of contracting or on his account (Sec. 68)

If a person, incapable of entering into a contract, or any one whom he is legally bound to support, is supplied by another person with necessities suited to his condition in life, the person who has supplied such necessities is entitled to be reimbursed from the property of such incapable person.

Examples

- (i) A supplies, B, a lunatic, with necessities suitable to his condition in life. A is entitled to be reimbursed from B's property.

2. Reimbursement of person paying money due by another in payment of which he is interested (Sec. 69)

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

Example

B holds land in Bengal on a lease granted by A, a Zamindar. The revenue payable by A to be the Government being anear, his land is advertised for sale. Under the revenue law, the consequence of such sale will be the annulment of Fs lease. B, prevent the sale and the consequent annulment of his own lease, pays to the Government the sum due fromA. A would be bound :: make good to B the amount so paid.

3. Obligation of Person enjoying Benefit of Non-gratuitous Act-Quantum Meruit (Sec. 70)

Where 51 person lawfully does anything for another person or delivers anything to him, not intending to do so gratuitously and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the things so done or delivered.

4. Responsibilities of a Finder of Goods (Sec. 71)

A person who finds goods belonging to another and takes them into his custody, is subject to the responsibilities of a bailee. He must take reasonable care of the goods found, i.e., as much care as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same description. The finder of the goods must try to find out the real owner of the goods and deliver the goods to him on demand. Finder of the goods may retain the goods as against the real owner until he receives compensation for trouble and expenses voluntarily incurred by him to preserve the goods and find out the owner. He will enjoy particular lien on the things found, until he is compensated for his trouble and expenses. But he will have no right to sue for such compensation. However, he has the right to sue for the reward if any has been offered by the real owner for finding out the goods and retain possession on the goods until he receives that reward. Finder of the goods is also entitled to the possession of the goods as against every-one except the true owner.

5. Liability of person to whom money has been paid or anything delivered by mistake or under coercion (Sec. 72)

A person to whom money has been paid, or anything delivered under a mistake of a fact or under coercion must repay or return it.

Examples: A and B jointly owe Rs. 100 to C. A alone pays the amount to C. B, not knowing this fact later on also pays Rs. 100 to C. C is bound to repay the amount to B.

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Short Question and Answers

1. Mercantile law.

Ans :

The term 'Mercantile Law' or 'Law Merchant' refers to those legal rules which govern and regulate mercantile or business transactions. These rules, regulations, etc. bring a sense of seriousness and definiteness in business dealings. They provide for rules regarding the validity of making contracts and their performance. They deal with various types of contracts such as those relating to partnership, sale of goods, agency, bailment, indemnity and guarantee. Mercantile Law also includes in its fold the laws relating to the joint stock companies, carriage of goods, insurance, insolvency, etc.

2. Define contract

Ans :

Meaning

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

- i) 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 enforceable by law. This definition is based on Pollock's definition which is as follows : "Every agreement and promise enforceable at law is a contract."
- ii) **According to 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."
- iii) **According to Salmond**, a contract is "an agreement creating and defining obligations between the parties."

3. Agreement

Ans :

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

- (i) A invites his friend B to come and stay with him for a week. B accepts the invitation but when it 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.
- (ii) 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.

4. Voidable Contract

Ans :

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.

5. 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 repudiable 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.

6. Define offer

Ans :

Meaning

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 proposee.

Definition

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.

7. 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.

8. What is Free Consent ?

Ans :

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

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.

9. Define Undue Influence.

Ans :

Meaning

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.

Definition

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.

10. Define Fraud.

Ans :

According to Section 17 Fraud means and includes any of the following acts committed by a party to a contract, or by any one with his connivance or by his agent with intent to deceive another party thereto or his agent or to induce him to enter into the contract:

- (a) A suggestion as to a fact of that which is not true by one who does not believe it to be true,
- (b) An active concealment of a fact by one having knowledge or belief 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 as the law specially declares to be fraudulent.

Cases

1. **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".

2. **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.

3. **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.

4. **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.

5. **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.

6. **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.

7. **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 communicating 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.

- 8. 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.

- 9. 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.

- 10. 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.

- 11. 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.

- 12. 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.

13. 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 necessities Bunty's property is liable.

14. 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.

15. 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 offer and acceptance. There is no binding contract for second one because only offer is there.

16. 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 minor is liable for necessary services rendered to him.

17. 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.

18. 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 necessities.

Choose the Correct Answers

1. A contract is made where [c]
 - (a) X agrees with Y to discover a treasure by magic.
 - (b) X bids at a public auction.
 - (c) A takes a sit in a public omni bus.
 - (d) X promises in writing to give Rs. 500 to Y.
2. Right in rem implies [a]
 - (a) A right available against the whole world.
 - (b) A right available against a particular individual.
 - (c) A right available against the Government.
 - (d) None of the above
3. A void contract [b]
 - (a) Is void from the very beginning.
 - (b) Becomes void later on due to certain contingencies.
 - (c) Is enforceable at the option of one of the contracting parties only.
 - (d) None of the above
4. A void agreement is one which is [d]
 - (a) Valid but not enforceable
 - (b) Enforceable at the option of both the parties.
 - (c) Enforceable at the option of one party.
 - (d) Not enforceable in a court of law.
5. In case of void agreements, collateral transactions are [c]
 - (a) Also void
 - (b) Unenforceable
 - (c) Not affected
 - (d) Illegal
6. General offer can be accepted by [c]
 - (a) Any person
 - (b) Specific person
 - (c) Any person having notice of it.
 - (d) None of the above
7. Communication of acceptance is complete against the acceptor when [b]
 - (a) It is put in the course of transmission by him.
 - (b) It comes to the knowledge of the proposer.
 - (c) A reasonable time expires.
 - (d) None of the above

8. Which of the following does not constitute valid acceptance : [c]
(a) It has been communicated
(b) It is absolute and unqualified
(c) It has been presumed from silence of offeree
(d) The offer has been accepted by the proper person
9. A minor [c]
(a) Cannot be an agent (b) Cannot be a principal
(c) Can be a promisee (d) Can ratify a contract on attaining majority.
10. X, a minor misrepresenting that he is a major induces Y to enter into a contract. X is : [b]
(a) Liable on the contract (b) Not liable on the contract
(c) Liable to pay compensation (d) Liable on the contract on attaining majority.
11. A minor can be [a]
(a) An agent (b) A partner in a firm
(c) A member of a company. (d) None of the above
12. In a maintenance agreement : [b]
(a) The promisor gets a share
(b) The promisor does not get share
(c) The third party gets a share; in the property won on account of litigation.
(d) None of the above
13. In case of an alternative promise, one branch which is legal and the other illegal [b]
(a) The whole agreement is void
(b) The legal branch can alone be enforced.
(c) Both legal and illegal branches can be enforced.
(d) None of the above
14. If there are several objects, but a single consideration the agreement is void if: [a]
(a) Any one of the objects is unlawful.
(b) All objects are unlawful.
(c) Majority of the objects are unlawful.
(d) None of the above
15. If there is single object and several considerations, the agreement is void if: [c]
(a) All considerations are unlawful.
(b) Majority of the considerations are unlawful, and
(c) Any one of the considerations is unlawful.
(d) None of the above

16. Cancellation of a contract by the mutual consent of the parties is called [b]
(a) Novation (b) Recession
(c) Satisfaction (d) None of the above
17. A subsequent change in law will make the contract void because of [a]
(a) Supervening impossibility (b) Commercial impossibility
(c) Material alteration. (d) None of the above
18. A breach committed during the performance of the contract is termed as : [a]
(a) Actual breach (b) Anticipatory breach
(c) Waiver. (d) None of the above
19. A contract may be discharged by: [d]
(a) Lapse of time (b) Operation of the law
(c) Mutual agreement (d) All the above

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Fill in the Blanks

1. A contract is an agreement _____.
2. A void agreement is void from the _____.
3. A voidable contract is void at the option of one of the contracting parties but not at the option of the _____.
4. All illegal agreements are _____ but not all void agreements are _____.
5. Collateral agreements are also void in case of _____ agreements.
6. A contract to contract is _____ a contract.
7. General offers means an offer made to the _____.
8. Acceptance can be given only by the person to whom _____ has been made.
9. An offer is different from mere invitation to _____.
10. Mere mental assent is no _____.
11. A proposal may be revoked any time before the communication of its acceptance is complete against the _____.
12. An acceptance may be revoked at a.m. time before the communication of the acceptance is complete against _____.
13. Contracts involving personal skill must be performed by _____.
14. Where two promises are to be simultaneously performed, such promises are termed as _____.
15. Time is taken as of essence generally in _____.
16. The first right of appropriation for a payment is with _____.
17. Tender is an _____.

ANSWERS

1. Enforceable by law
2. Very beginning
3. Other or others
4. Void, illegal
5. Illegal
6. Not
7. World at large
8. The offer
9. An offer
10. Acceptance
11. Proposer
12. Acceptor
13. The promisor himself
14. Mutual and concurrent
15. Mercantile contracts
16. The debtor
17. Attempted performance

UNIT II

Law Relating to Special Contracts :

Salient features of Contract of Agency, Bailment and Pledge, Indemnity and Guarantee. Sale of Goods Act - Distinction between Sale and agreement to sell - Conditions and Warranties.

2.1 SALIENT FEATURES OF CONTRACT OF AGENCY

Q1. Define agent and principal. Explain essential relationships of agent and principal.

Ans : (Imp.)

Agent

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).

Principal

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.

Q2. What are the characteristics of agency?

Ans :

- (a) **Representation:** An agent always represents his/her principal in dealing with third parties. An agent is responsible to the principal of his work. The responsibility of the work is for agents only.
- (b) **Delegation of authority:** In this, the principal delegates his/her authority to the agent to do the things on his/her behalf. In fact, contract of agency starts after principal appoints the agent along with a delegation of authority.

- (c) **Contractual capacity:** Both principal and agent should be competent in the eye of law. They are incomplete when they have unsound mind, minor, or disqualified in the eye of law.
- (d) **Consideration is not compulsory:** In this, the valid consideration is not compulsory. For example, the wife may take the role of his husband without consideration.
- (e) **Purpose:** An agent may be appointed for any purposes the principal likes. For example buying and selling goods, deposit money in the bank, dealing with a customer. However to be valid purpose it should not be against the prevailing law.

Q3. 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:

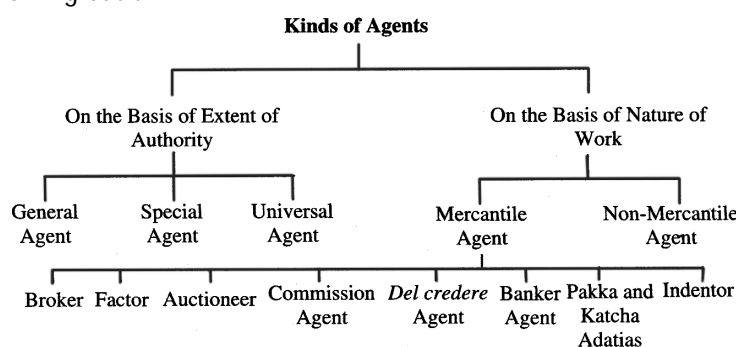


Fig.: Kinds of Agents

- On the Basis of Extent of Authority:** On the basis of extent of authority, agents are of following types:
 - 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.
 - 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.
 - 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.
- On the Basis of Nature of Work:** On the basis of nature of work, agents are of following types:
 - 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 auctioneer is a mercantile agent who is appointed to sell goods on behalf of the principal i.e., seller and for this function, an auctioneer gets 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 sell 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 of the third party.

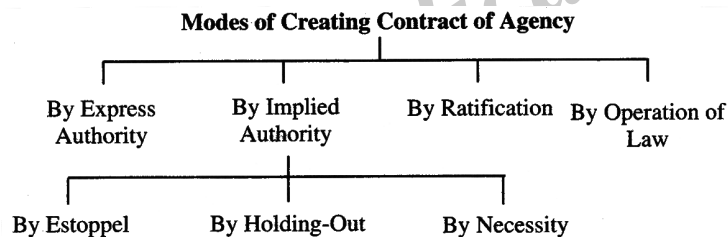
A 'katcha adatia', on the other hand does not guarantee the performance of the contract. However, he guarantees the performance on the part of the principal. Thus, he will be responsible to the other broker or shroff who contracts on behalf of the other party, in case of non-performance by his principal.

- 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.
- ii) **Non-Mercantile Agents:** There would be numerous types of agents performing non-mercantile duties for their principals. These may include:
- Wife,
 - Estate agent,
 - Attorneys,
 - Insurance agents,
 - Legal duties by lawyers,
 - Financial duties by bankers,
 - Technical duties by engineers or architects,
 - Solicitors,
 - Clearing and forwarding agents, etc.

Q4. Explain the various ways creation of agency.

Ans :

An agency can be created by adopting any of the modes are as follows:



- 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.
- 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:

- 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 necessities 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.

Q5. Explain the rights and duties of an agent.

Ans :

(Imp.)

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 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 'T' 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' 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 'T' 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.

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.

Q6. 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

performs the assigned 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 agent to perform an illegal activity and that person performs that activity then in this situation the employer is not liable to 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 commission 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.

Q7. 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 agent's 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.

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 then 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).

2.2 BAILMENT

Q8. Define bailment. State the essentials characteristics of bailment.

Ans :

Definition

According to section 148 of the Indian Contract Act, bailment is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the direction of the person delivering them. The person delivering the goods is called the 'bailor'. The person to whom they are delivered is called:

Examples

- (i) A lends his motor cycle to B for his use.
- (ii) A gives a piece of cloth to a tailor to make it into a coat.
- (iii) A gives his radio set to a mechanic for repairs.

All the above are contracts of bailment.

Essentials characteristics of bailment

The essential characteristics of bailment can be summed up as under :

- (a) Bailment is always based upon a contract. In exceptional cases it may arise without a contract also, i.e., it may be implied by law, e.g., in case of finder of goods.
- (b) There can be a bailment of movable properties only but money is not included in the category of movable goods.
- (c) In bailment the possession of goods must change. Bailment requires temporary delivery of goods. Mere custody of goods without possession will not be sufficient to constitute bailment. A servant or a guest using his master's or host's goods will not be a bailee.
- (d) In bailment, ownership is not transferred. The bailor continues to be the owner of the goods.

- (e) Goods are delivered upon a condition that they are to be returned in specie. On the accomplishment of the purpose of the contract of bailment, the very goods in their original form are to be returned by the bailee or are otherwise to be disposed of according to the directions of the bailor.

Q9. Discuss rights and duties of a bailor and bailee in a contract of bailment.

Ans : (Imp.)

Rights of Bailor

- 1. Right of termination:** Bailor has the right to terminate the bailment and claim damages, if any, if the conditions of bailment are disobeyed by the bailee, e.g., bailee uses the goods bailed in a manner inconsistent with the conditions of bailment (Sec. 153).
Example: A lets B, for hire, a horse for his own riding. B drives the horse in his carriage. A can terminate the contract of bailment.
- 2. Right to demand return of goods any time in case of gratuitous bailment:** In the case of a gratuitous bailment, the bailor can demand back the goods bailed at any time he chooses in spite of the fact that he had lent them for a fixed period or for a specified purpose. But if the bailee had, in this case, acted in such a manner that the return of the goods before the stipulated time would cause loss greater than the benefit which he had derived, the bailor shall be asked to indemnify him for the loss if he compels immediate return of the specified object.
- 3. Enforcement of rights:** The duties of the bailee are the rights of the bailor and he can sue bailee for their enforcement.

Duties of Bailor

- 1. To disclose faults in the goods bailed (Sec. 150):** The bailor is bound to disclose to the bailee faults in the goods bailed, of which the bailor is aware, and which materially interfere with the use of them or expose the bailee to extraordinary risks. In

case the bailee does not make such disclosure, he is responsible for damage arising to the bailee directly from such faults.

If the goods are bailed for hire, the bailor is responsible for such damage, whether he was or was not aware of the existence of such faults in the goods bailed.

Examples :

- A lends a horse to B, which he knows to be vicious. A does not disclose the fact of viciousness of the horse to B. The horse runs away. B is thrown and injured. B can claim damages from A for the injury caused.
 - A hires a carriage from B. The carriage is unsafe, though B is not aware of it and A is injured. B is responsible to A for the injury.
 - R hired a motor launch from D for a holiday on river Thames. The launch caught fire and R could not extinguish the fire as the fire fighting equipment was out of order. R was injured. Held, D was liable to pay him damages.
- 2. Responsibility for title to the goods (Sec. 164) :** The bailor is responsible to the bailee for any loss which the bailee may sustain by reason that the bailor was not entitled to make the bailment or to receive back the goods or to give directions respecting them.
 - 3. To bear necessary expenses of bailment (Sec. 158):** Where by the condition of the bailment the goods are to be kept or to be carried or to have work done upon them by the bailee for the bailor and the bailee is to receive no remuneration (bailment is gratuitous), the bailor shall repay the bailee the necessary expenses incurred by him for the purpose of the bailment.
 - 4. To bear risk for loss etc:** Bailor is to bear the risk of loss, destruction or deterioration of the thing bailed if the bailee has taken as much care as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed.

Rights of Bailee

1. **Right to interplead (Sec. 165):** If a person other than the bailor, claims the goods bailed, bailee may apply to the court to stop the delivery of the goods to the bailor and to decide the title to the goods.
2. **Right against third person:** If a third person wrongfully deprives the bailee of the use or possession of the goods bailed, or causes them any injury, the bailee is entitled to use such remedies as the owner might have used in a like case if no bailment has been made. Bailee can thus bring a suit against a third person for such deprivation or injury (Sec. 180).
3. **Right of particular lien for payment for service (Sec. 170):** Where the bailee has (a) in accordance with the purpose of bailment, (b) rendered any service involving the exercise of labour or skill, (c) in respect of the goods, he shall have, in the absence of a contract to the contrary, right to retain such goods until he receives due remuneration on must have become due. This right of particular lien shall be available only against the property in respect of which skill and labour have been used.

Examples :

- (i) A delivers a rough diamond to B, a jeweller, to be cut and polished, which is accordingly done. B is entitled to retain the stone till he is paid for the services he has rendered.
 - (ii) A gives doth to B, a tailor, to make it into a coat. B promises A to deliver the coat as soon as it is finished and to give three months' credit for the price. B is not entitled to retain the coat until he is paid.
4. **Right of general lien (Sec. 171) :** Bankers, factors, wharfingers, attorneys of a High Court and policy brokers will be entitled to retain, as a security for a general balance of account, any goods bailed to them in the absence of a contract to the contrary. By agreement other types of a bailees may also be given this right of general lien.

5. **Right to indemnity (Sec. 166) :** Bailee is entitled to be indemnified by the bailor for any loss arising to him by reason that the bailor was not entitled to make the bailment or to receive back the goods or to give directions respecting them. If the bailor has no title to the goods, and the bailee in good faith, delivers them back to, or according to the directions of the bailor, the bailee shall not be responsible to the owner in respect of such delivery. Bailee can also claim all the necessary expenses incurred by him for the purpose of gratuitous bailment.
6. **Right to claim compensations in case of faulty goods (Sec. 150):** A bailee is entitled to receive compensation from the bailor for any loss caused to him due to the failure of the bailor to disclose any faults in the goods known to him. If the bailment is for hire, the bailor will be liable to compensate even though he was not aware of the existence of such faults.
7. **Right to claim necessary expenses (Sec. 158):** Where the bailee is not to receive any remuneration for the work to be done by him as per terms of the bailment, he is entitled to recover from the bailor all necessary expenses incurred by him for the purposes of bailment.
8. **Right of delivery of goods to any one of the several joint bailors of goods (Sec. 165):** Delivery of goods to any one of the several joint bailors of goods will amount to delivery of goods to all of them in the absence of any contract to the contrary.

Duties of Bailee

1. **To take reasonable care (Secs. 151 and 152) :** Bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed. It will not make any difference whether the bailment is gratuitous or for reward. If any loss is caused to the goods, in spite of such reasonable care by the bailee, he shall not be liable for the loss. Bailee shall be held liable

for all losses arising due to his negligence. Bailee shall be held liable for having not taken reasonable care of the goods bailed as a prudent man would have taken in all those cases where goods bailed are used for any other purpose which is inconsistent with the terms of the agreement. However, a bailee will not be liable for any loss resulting from action of the third parties over which the bailee has no control or for destruction or deterioration of the things bailed if he has taken the amount of care required of him.

2. **To use goods according to the conditions of bailment (Sec 154):** Bailee must use the goods according to the conditions of the contract of bailment or the directions of the bailor. He shall be held liable for compensation to the bailor if any damage is caused to the goods because of his unauthorised use. Liability on this account will arise even if the bailee is not found to be guilty of any negligence and the damages may result from an accident. Bailee must not do any act with regard to the goods bailed which is inconsistent with the terms of the bailment, otherwise the contract shall become voidable at the option of the bailor and bailee shall be held liable to compensate for any damages caused to the goods.

3. **Must not mix up the goods with his own goods :** Bailee is not entitled to mix up the goods bailed with his own goods except with the consent of the bailor. If he, with the consent of the bailor, mixes the goods bailed with his own goods, both the parties shall have an interest in proportion to their respective shares in the mixture thus produced (Sec. 155).

If the bailee, without the consent of the bailor, mixes the goods bailed with his own goods and the goods can be separated or divided, the property in the goods remains in the parties respectively. Bailee is bound to bear the expenses of separation and division and any damage arising from the mixture (Sec. 156).

If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods in such a manner that it is impossible

to separate the goods, bailed from the other goods and deliver them back, the bailor is entitled to compensation from the bailee for the loss of the goods (Sec. 157).

4. **To return the goods :** Bailee must return or deliver the goods bailed according to the directions of the bailor, on the expiry of the time of bailment or on the accomplishment of the purpose of bailment (Sec. 160). Bailee shall be responsible to the bailor for any loss, destruction or deterioration of the goods from the date of the expiry of the contract of bailment, if he fails to return, deliver, or tender the goods at the proper time (Sec. 161). As a Railway Contracts the liability is governed by the Railways Act, 1989.)

Example : S delivered certain books to C, a binder, who promised to bind and return them to S within a reasonable time. The binder could not complete his job within a reasonable time. The books were subsequently burnt by an accidental fire in Cs premises. Held, C was liable for the loss and the plea that the fire was accidental or 'an act of God' was of no avail.

5. **To return any increase or profit from the goods (Sec. 163):** Bailee is bound to deliver to the bailor any increase or profit which might have accrued from the goods bailed provided the contract does not provide otherwise.

Example: A leaves a cow in the custody of B. The cow gives birth to a calf. B is bound to deliver the calf as well as the cow to A.

6. **Must not set up an adverse title:** Bailee must not set up a title adverse to that of the bailor. He must hold the goods on behalf of and for the bailor. He cannot deny the title of the bailor.

Q10. Define Lien. Explain the classifications of lien.

(OR)

What do you mean by general lien?

(OR)

Explain the meaning of particular lien.*Ans :***Meaning**

Lien is a right of a person to retain that which is in his possession and which belongs to another, until the demands of The person in possession are satisfied. Lien may arise by statutes, contract or by general course of dealing in a particular trade where it is claimed. Lien gives to a person only a right to retain the possession of the goods and not the power to sell unless such a right is expressly conferred by statute (e.g., unpaid seller or Pawnee) or by custom or usage.

Kinds of Lien

There are two kinds of lien :

- (a) Particular Lien
- (b) General Lien.

(a) Particular lien

It is attached to some specific goods. It is a right to retain possession over those particular goods in connection with which the debt arose. It is restricted to those goods which are the subject matter of the contract and are liable for certain demands of the person in possession of those goods.

Section 170 lays down that where the bailee has, in accordance with the purpose of the contract of bailment, rendered any service involving the exercise of labour or skill in respect of the goods bailed, he has, in the absence of a contract to the contrary, a right to retain such goods in his possession until he receives due remuneration for the services, he has rendered in respect of them. A bailee, therefore, has a particular lien which he can exercise on the goods bailed till he is paid for his services, provided;

- (a) There is no contract to the contrary,
- (b) Bailee has rendered some service involving labour or skill, to the goods bailed, and
- (c) The service is not contrary to the purpose of bailment.

Particular lien can be exercised when the services when the services have been performed entirely and the remuneration has become due. Bailee's particular lien in contracts of service may be lost if he does not complete the work within the agreed time or reasonable time.

Example

S delivered to J an organ to repair. J promised to repair it for Rs. 100. Subsequently J refused to repair it for Rs. 100, and claimed to be entitled to retain the organ until he received certain remuneration for the work done. It was held that as there was an express contract, it must be done in its entirety or nothing could be claimed under it and that was not entitled to retain the organ.

Besides the bailee, other persons who are entitled to exercise particular lien are - unpaid seller of goods, finder of goods, Pawnee, agents etc.

(b) General lien

A general lien entitles a person to retain possession of goods belonging to another for a general balance of account. It will entitle a person in possession of the goods to retain them until all claims or accounts of the person in possession against the owner of the goods are satisfied. It is not necessary that the demands should arise only out of the articles detained under possession. General lien is a kind of a special privilege which the law has granted only to a few persons: (i) bankers, (ii) factors (agents entrusted with possession of goods for the purpose of sale), and (iii) wharfingers (persons who own a wharf, i.e., landing site along the shore), (iv) attorneys of the High Courts, (v) policy brokers, (insurance agents employed to effect a marine insurance policy), and (vi) others by express agreements (Sec. 171). The general balance of account must include only lawful claims, which must have arisen to them while acting in any of the above-mentioned capacities. These parties therefore, can exercise general lien against any goods under their possession and for any sum legally due on a general balance of account. But, where goods are deposited for a some special purpose, e.g., safe custody, they will not come under the spell of general lien. This is because acceptance of goods for special purpose impliedly excludes general line. As to lien of Railway Administration, the provisions of the Railway Act 1989 will be applicable.

Example

K deposited certain jewels with the Madras Bank to secure certain debt. After payment of this debt he demanded the return of these jewels from the bank. He was still indebted to the bank for certain debts. On bank's refusal to return, it was held that he was not entitled to recovery unless he proved that the bank has agreed to give up its general lien.

2.3 PLEDGE

Q11. Explain briefly about Pledge.

Ans :

Meaning

Pledge is the bailment of goods as security for the payment of a debt or performance of a promise. Bailor, in this case, is called the 'pawner' and the bailee is called the 'Pawnee' (Sec. 172). In a contract of pledge, pawner must deliver the goods pledged to the Pawnee either actually or constructively. Transfer of possession, in the judicial sense, is essential in a valid pledge. Mere contract to give possession cannot constitute a pledge but it has been held that delivery of documents of title which would enable the pledgee to obtain possession, is equally effective to create a pledge.

Pledge is not necessarily terminated by return of goods to the owner. The goods pledged may be redelivered to the pawner for a limited purpose. But in case the pawner fraudulently sells away the goods pledged to a bona fide purchaser for value, he will get a good title to the goods.

Pledge can be made only of movable properties. Properties which can not be the subject-matter of sale, e.g., sky, rivers etc., cannot be pledged.

It is not necessary that delivery of the goods and making of the advance should be simultaneous, to create a valid pledge. Delivery of the goods may be made before or in contemplation of an advance. The transaction will ripen into a pledge as soon as the advance is made. Similarly, delivery of goods may be made after getting the advance. In such a case, the pledge will be effective as soon as the delivery is given.

Q12. In what way does pledge differ from bailment.

Ans :

Pledge is a kind of bailment made for a specific purpose, i.e., as a security for payment of a debt or performance of a promise. Both the contracts are created by agreement between the parties and both necessitate transfer of possession of movable goods from one person to another. In both the cases the

same goods are to be returned on the accomplishment of the purpose of the contract. In spite of these similarities, the difference between bailment and pledge can be put as follows :

1. The objectives of the two are different. A pledge is made for a specific purpose, i.e., as security for payment of a debt or performance of a promise, while a bailment may be made for any purpose.
2. A Pawnee does not have a right to use the goods. But a bailment may be made entitling the bailee to use the goods.

Q13. State the rights and duties of pawner and Pawnee.

Ans :

Rights and Duties of the Pawner

1. **Duty of repay loan:** The pawner should repay the loan and take back the delivery of his property from the Pawnee within the stipulated time.
2. **Right to receive goods till sold (Sec. 177):** If a time is stipulated for the payment of the debt or performance of the promise for which the pledge is made, and the pawner makes default in the payment of the debt or the performance of the promise at the stipulated time, he may still redeem the goods pledged at any subsequent time before the actual sale of them, but he must in that case pay, in addition, any expenses which might have arisen from his default.

In case there is any increase in the goods, the pawner is entitled to such increase. For example, in case bonus shares are issued against the shares pledged, the pledger will be entitled to these shares after he has paid off the amount due.

Rights and Duties of the Pawnee

1. **Right to receive payment from the debtor or obtain the performance of promise with interest and expenses**

(Sec. 173): Pawnee has a right to retain possession on the goods pledged till he obtains payment of his debt, interest on that debt and all other necessary expenses which

he might have incurred for the preservation of the goods pledged or in respect of his possession.

2. **Right of particular lien (Sec. 174):** Pawnee has no right to retain his possession over the goods pledged for any debt or promise other than the debt or promise for which they were pledged, unless otherwise provided for, by the contract. Law will presume such a contract with regard to the subsequent advances made by the Pawnee, in the absence of anything to the contrary.

3. **Right to receive extraordinary expenses (Sec. 175) :** Pawnee is also entitled to receive from the pawner any extraordinary expenses which he might have incurred for the preservation of the goods pledged. But he has no right of lien for such expenses.

4. **Pawnee's right in case of default of the pawner (Sec. 176):** In the case of default by the pawner in the payment of debt or the performance of promise at the stipulated time, the Pawnee can exercise the following two rights :

- (a) He has a right to bring a suit on the debt or promise and can retain the goods pledged as a collateral security.
- (b) He has also a right to sell the goods pledged after giving reasonable notice of sale to the pawner. The requirement of 'reasonable notice' is a statutory requirement and, therefore, cannot be excluded by a contract to the contrary. The pledgee may sell the goods to himself but in case he has given a value less than the market price of the goods, the pledger may make him liable for the balance.

The pledgee has a right to claim any deficit arising from the sale of the goods pledged from the pawner. He will have to return to the pawner any excess obtained by the sale of goods pledged beyond the amount necessary to pay the debt and other expenses due.

5. **Pawnee must not use the goods pledged:** He must not use the goods pledged unless they are such as will not deteriorate by wear.

Besides the above rights and duties, all other rights and duties of the bailer and bailee apply to the pawner and the Pawnee.

Q14. When will a pledge made by a non-owner of the goods be valid?

(OR)

"Goods can be pledged by the owner only". Discuss. State the circumstances in which the goods can be pledged by non-owner.

Ans :

(Imp.)

1. **Pledge by a mercantile agent (Sec. 178):** Where a mercantile agent is, with the consent of the owner, in possession of goods or the documents of title to goods, makes a pledge acting in the ordinary course of his business, the pledge shall be as valid as if he were expressly authorised by the owner of the goods to make the same, provided the Pawnee acts in good faith and has not at the time of the pledge notice that the pawner has no authority to pledge. The term 'mercantile agent' is defined in Sec. 2(9) of the Sale of Goods Act, thus :

'Mercantile agent means a mercantile agent having in the customary course of business as such agent, authority to sell goods or to consign goods for the purposes of sale or to buy goods or to raise money on the security of good

Example: A, a mercantile agent was entrusted with certain diamonds for sale. He pledged them through a friend with B. He the pledge was not valid since it was not in the ordinary course of business of a mercantile agent to ask a friend to pledge go entrusted to him. He should have pledged the goods himself.

2. **Pledge by person in possession under voidable contract (Sec. 178A):** When the pawner has obtained possess of the goods pledged by him under a contract voidable under Section 19 or Section 19A, but the

contract has not be rescinded at the time of the pledge, the Pawnee acquires a good title to the goods, provided he acts in good faith without notice of the pawner's defect of title.

Example: A purchases a car worth Rs. 10,000 from his student B for Rs. 5,000 by exercising undue influence over him. But B takes any action for rescinding the contract, A pledges the car with C for a sum of Rs. 5,000 who accepts this in good faith. The pledge made by A is valid.

3. Pledge where pawner has only a limited interest (Sec. 179): Where a person pledges goods in which he has only a limited interest, the pledge is valid to the extent of that interest.

Example : A finds a watch on the road and spends Rs. 25 on its repair. He pledges it with B for Rs. 50. The real owner can retrieve the watch by paying Rs. 25 to the Pawnee.

2.4 INDEMNITY AND GUARANTEE

Q15. What is a contract of Indemnity?

Ans :

A contract by which one party promises to save the other from loss 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 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 is a contract of indemnity.
- 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

out to be the true owner. There is a contract of indemnity between A and the railway company.

- 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.

Definitions

The definition of contract of indemnity as given in the Indian Contract Act is not exhaustive. It includes:

- Express promises to indemnify, and
- Cases where the loss is caused by the conduct of the promisor himself or by the conduct of any other person.

It does not include:

- Implied promises to indemnify, and
- 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 its scope. 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.

Q16. What are the rights of Indemnity?*Ans :*

Sec. 125 deals with rights of indemnity-holder (i.e., indemnified) when sued.

According to it, an Indemnity-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.

Q17. What is contract of Guarantee? Explain the essential features of a contract of Guarantee.*Ans :***Meaning**

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 'B' 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.

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 'S'. 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 'S' 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.
- (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.

Q18. 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.

2. 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.

Q19. What are the differences between contract of Indemnity and contract of Guarantee?

Ans :

(Imp.)

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.

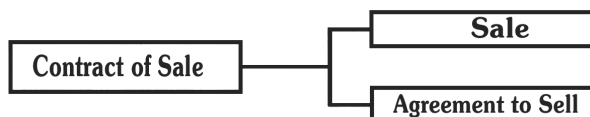
2.5 SALE OF GOODS ACT

Q20. Define the term sale and agreement to sell.

Ans :

Meaning

According to Section 4 of the Act, a contract of sale means "a contract where the seller transfers or agrees to transfer the property in goods to the buyer for price." Thus, a contract of sale may be of two types :



i) Sale

Where under a contract of state the property in the goods is immediately transferred from the seller to the buyer, the contract is called a 'sale'.

Example

On 15th March, A sells 10 bags of rice to B for a sum of Rs. 100. It is a sale since the ownership of 10 bags of rice has been transferred from A to B.

ii) Agreement to Sell

Where under a contract of sale, the transfer of property in goods is to take place at a future time or subject to the fulfillment of certain conditions, the contract is called an agreement to sell.

Example

On 15th March, A agrees with B that he will sell to B, his horse on 21st of March for a sum of Rs. 1,000. It is an agreement to sell, since A agrees to transfer the ownership of the horse to B in future. An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods will be transferred.

Q21. Briefly discuss the essential characteristics of a contract of sale of goods.**(OR)**

Explain the characteristics of contract of sale.

Ans :

The essential characteristics of a contract of sale can be summarised as follows :

1. Two Parties

There must be two parties - a buyer and a seller - to constitute a contract of sale. The same person cannot be both a purchaser and a seller.

Example

A is the owner of certain goods but he does not know. B pretends to be the owner of those goods and sells them to A. There is no sale since there is nothing for A to buy.

However, the same person may work in both capacities i.e., buyer as well as the seller. For example in case of pledge, a Pawnee may sell the goods pledged with him on non-payment of his money. In such a case the pawner himself may buy such goods. Actually speaking, here are also two different persons, the Pawnee and the buyer. On the same basis, a partner can also buy the goods belonging to his principal. A part-owner can also sell his share to the other part-owner.

2. Goods

Contract of sale relates to goods i.e., movable property. Transactions involving purchase and sale of immovable property are out of the purview of the Sale of Goods Act. They are regulated by the Transfer of Property Act. Similarly, contracts for providing a certain service cannot be taken as a contract for the sale of goods.

Example

According to a contract between the hotelier and resident customers, the hotelier made a consolidated charge for residence, services and supply of food. No rebate was allowed if food was not taken. On a question being raised whether supply of food amounted to "sale", it was held that the supply of food could not be taken as sale of goods but simply service as the transaction was an indivisible contract of multiple services and did not involve any sale of food.

3. Transfer of general property

The object of the contract must be the transfer of general property as distinguished from special property in the goods by one person to another. The term 'general property' refers to ownership in goods.

4. Price

Transfer of property must take place for some money consideration called 'price'. Where goods are exchanged for goods, it is not a contract of sale but simply a barter transaction. But in case the consideration consists partly of goods and partly of money, it will be taken as a contract of sale).

2.5.1 Distinction between Sale and Agreement to sell**Q22. Distinguish between a contract of Sale and an Agreement to sell.****(OR)**

Compare and contrast a contract of Sale and an Agreement to sell.

(OR)

What are the Differences between sale and agreement to sell.

Ans :

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 even though 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 rateable dividends.

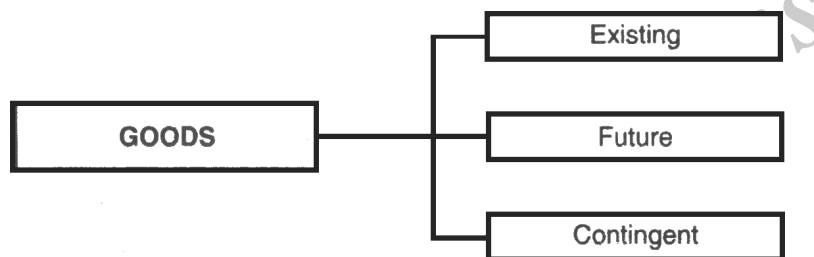
Q23. Define the term goods as defined in the sale of goods act 1930. State the classification of goods.

Ans :

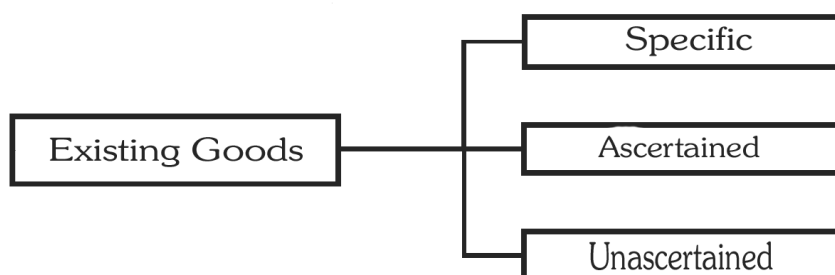
The subject matter of a contract of sale must be goods. According to Section 2(7) the term 'goods' means "every kind of movable property other than actionable claims and money and includes stock and shares, growing crops, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale."

Thus, every type of movable property comes within the definition of the term 'goods'. Goodwill, patents, trade marks, water, gas, electricity etc. Are also considered movable properties and are, therefore, treated as goods. Actionable claims and money have been excluded from the definition of the term goods. The actionable claim means a claim which can be recovered only by means of a suit or an action in the court of law, e.g., debt. A debt is not goods. It cannot be sold though it can be assigned. Money currently in circulation is not included in the definition of goods but old and rare coins easily be treated as goods and can be the subject matter of a contract of sale.

Types of goods : Goods may be of the following types :



- Existing goods :** Goods owned or possessed by the seller at the time of making of the contract of sale are called existing goods. In case of sale by an agent or Pawnee, the goods are possessed but not owned by the seller (agent or Pawnee). Existing goods may be classified as follows :



- Specific goods:** Goods identified and agreed upon at the time of making of the contract of sale of goods.
- Ascertained goods:** Goods identified subsequent to the formation of the contract of sale. The terms, ascertained and specific, are commonly used for the same kind of goods.
- Unascertained or Generic goods:** Goods not identified or agreed upon at the time of making of the contract of sale. They are goods defined by description only.

Example: X has ten cows. He promises to sell one of them to Y, pointing it out to Y at the time of sale. Goods have been identified at the time of sale and, therefore, it is a contract of sale of 'specific goods'.

If in the above example, X only agrees to sell one of the cows, but does not specify which cow he will sell, it is a contract of sale of unascertained goods. The cow will become 'ascertained' when X makes up his mind as to which cow he will sell and Y gives his assent thereto.

2. **Future goods:** Goods to be manufactured, produced or acquired after the making of the contract are called future goods.

Example: A contract, on 1st January, to sell B 50 shares in Reliance Ltd., to be delivered and paid for on the 1st March of the same year. At the time of making of the contract, A is not in possession of any shares. The contract is a contract for the sale of future goods.

3. **Contingent goods:** Goods, the acquisition of which by the seller, depends upon an uncertain contingency are called 'contingent goods'. They are also a type of future goods.

Example: A agrees to sell 100 units of an article provided the ship which is bringing them, reaches the port safely. This is an agreement for the sale of contingent goods.

2.6 CONDITIONS AND WARRANTIES

Q24. Define the term

- (a) Conditions
- (b) Warranties

Ans.:

- (a) **Conditions**

Meaning

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

'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

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.

Q25. Explain briefly about various implied conditions in contract 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.

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.

Q26. 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 goods 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.

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 warn the buyer. Otherwise he is liable to pay damages.

Q27. Compare and contrast between conditions and warranties.*Ans :***(Imp.)**

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. Interchangeability	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. Compulsory Interchangeability	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.
6. 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.

Q28. 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.

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.

Q29. Discuss the rule of caveat emptor and state its exceptions.

Ans :

(Imp.)

Caveat Emptor means that the buyer must take care of his own interest while purchasing the goods. Buyer in a contract of sale of specific goods will purchase them at his own risk as regards the quality or fitness of the goods except in case of fraud or where a condition to that effect is laid down in the contract itself. Buyer cannot hold the seller liable if the goods turn out to be defective or do not suit his purpose or if the buyer makes a mistake in assessing the quality of the goods. It is for the buyer to ensure at the time of purchase that the goods conform to his requirements.

Section 16 of the Indian Sale of Goods Act has enunciated this principle in the following words : "Subject to the provisions of this Act and of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under contract of sale " When a person sells goods, he only warrants that they shall be fit for some purpose but he does not warrant that they will be fit for any particular purpose. The buyer, unless otherwise agreed upon, cannot reject the goods on the basis of latent defect unless they render the goods unmerchantable or the seller had, deliberately concealed such defects.

Following are important exceptions to this general rule :

- 1. Implied condition as to quality or fitness :** Where the buyer has made known to the seller the purpose for which he requires the goods and depends on the skill and judgment of the seller, there is an implied condition that the goods will be fit for the purpose for which the buyer requires them. This condition is not applicable in those cases where the goods have been sold under a patent mark or trade name.
- 2. Sale of goods by description:** Where the goods are purchased by description from a seller, who deals in such class of goods, there will be an implied condition that the goods shall be of a merchantable quality.
- 3. Usage of trade:** Proof of reasonable usage or custom of trade may also establish an implied condition as to quality or fitness of goods for a particular purpose.
- 4. Consent by fraud:** The doctrine of Caveat Emptor shall not apply to all those purchases which have been made by a buyer under a contract where his consent was obtained by the seller by fraud i.e., where the buyer relies on false representation of the seller and suffers damage. A seller, who is guilty of fraud, shall have no protection of the doctrine of caveat emptor.

Short Question and Answers

1. Define agent and principal.

Ans :

Agent

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).

Principal

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.

2. Rights of an Agent

Ans :

- i) **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.
- ii) **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.
- iii) **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 special contract, an agent can have a general lien which extends to all the claims emerging out of the agency business.

- iv) **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.

- v) **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 'T' gets injured in the process of construction. In such case 'AT must compensate 'P.

3. Define bailment.

Ans :

Definition

According to section 148 of the Indian Contract Act, bailment is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the direction of the person delivering them. The person delivering the goods is called the 'bailor'. The person to whom they are delivered is called:

Examples

- (i) A lends his motor cycle to B for his use.
 - (ii) A gives a piece of cloth to a tailor to make it into a coat.
 - (iii) A gives his radio set to a mechanic for repairs.
- All the above are contracts of bailment.

4. Particular lien*Ans :*

It is attached to some specific goods. It is a right to retain possession over those particular goods in connection with which the debt arose. It is restricted to those goods which are the subject matter of the contract and are liable for certain demands of the person in possession of those goods.

Section 170 lays down that where the bailee has, in accordance with the purpose of the contract of bailment, rendered any service involving the exercise of labour or skill in respect of the goods bailed, he has, in the absence of a contract to the contrary, a right to retain such goods in his possession until he receives due remuneration for the services, he has rendered in respect of them. A bailee, therefore, has a particular lien which he can exercise on the goods bailed till he is paid for his services, provided;

- (a) There is no contract to the contrary,
- (b) Bailee has rendered some service involving labour or skill, to the goods bailed, and
- (c) The service is not contrary to the purpose of bailment.

Particular lien can be exercised when the services when the services have been performed entirely and the remuneration has become due. Bailee's particular lien in contracts of service may be lost if he does not complete the work within the agreed time or reasonable time.

Example

S delivered to J an organ to repair. J promised to repair it for Rs. 100. Subsequently J refused to repair it for Rs. 100, and claimed to be entitled to retain the organ until he received certain remuneration for the work done. It was held that as there was an express contract, it must be done in its entirety or nothing could be claimed under it and that S was not entitled to retain the organ.

5. General lien*Ans :*

A general lien entitles a person to retain possession of goods belonging to another for a general balance of account. It will entitle a person in possession of the goods to retain them until all claims or accounts of the person in possession against the owner of the goods are satisfied. It is not

necessary that the demands should arise only out of the articles detained under possession. General lien is a kind of a special privilege which the law has granted only to a few persons: (i) bankers, (ii) factors (agents entrusted with possession of goods for the purpose of sale), and (iii) wharfingers (persons who own a wharf, i.e., landing site along the shore), (iv) attorneys of the High Courts, (v) policy brokers, (insurance agents employed to effect a marine insurance policy), and (vi) others by express agreements (Sec. 171). The general balance of account must include only lawful claims, which must have arisen to them while acting in any of the above-mentioned capacities. These parties therefore, can exercise general lien against any goods under their possession and for any sum legally due on a general balance of account. But, where goods are deposited for a some special purpose, e.g., safe custody, they will not come under the spell of general lien. This is because acceptance of goods for special purpose impliedly excludes general lien. As to lien of Railway Administration, the provisions of the Railway Act 1989 will be applicable.

Examples

K deposited certain jewels with the Madras Bank to secure certain debt. After payment of this debt he demanded the return of these jewels from the bank. He was still indebted to the bank for certain debts. On bank's refusal to return, it was held that he was not entitled to recovery unless he proved that the bank has agreed to give up its general lien.

6. What are the rights of Indemnity?*Ans :*

- (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.

7. Define the term sale and agreement to sell.

Ans :

Meaning

According to Section 4 of the Act, a contract of sale means "a contract where the seller transfers or agrees to transfer the property in goods to the buyer for price." Thus, a contract of sale may be of two types :

i) Sale

Where under a contract of state the property in the goods is immediately transferred from the seller to the buyer, the contract is called a 'sale'.

Example

On 15th March, A sells 10 bags of rice to B for a sum of Rs. 100. It is a sale since the ownership of 10 bags of rice has been transferred from A to B.

ii) Agreement to Sell

Where under a contract of sale, the transfer of property in goods is to take place at a future time or subject to the fulfillment of certain conditions, the contract is called an agreement to sell.

Example

On 15th March, A agrees with B that he will sell to B, h's horse on 21st of March for a sum of Rs. 1,000. It is an agreement to sell, since A agrees to transfer the ownership of the horse to B in future. An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods will be transferred.

8. Define the term goods as defined in the sale of goods act 1930.

Ans :

The subject matter of a contract of sale must be goods. According to Section 2(7) the term 'goods' means "every kind of movable property other than actionable claims and money and includes stock and shares, growing crops, and things

attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale."

Thus, every type of movable property comes within the definition of the term 'goods'. Goodwill, patents, trade marks, water, gas, electricity etc. are also considered movable properties and are, therefore, treated as goods. Actionable claims and money have been excluded from the definition of the term goods. The actionable claim means a claim which can be recovered only by means of a suit or an action in the court of law, e.g., debt. A debt is not goods. It cannot be sold though it can be assigned. Money currently in circulation is not included in the definition of goods but old and rare coins easily be treated as goods and can be the subject matter of a contract of sale.

9. Types of goods

Ans :

Goods may be of the following types :

1. **Existing goods:** Goods owned or possessed by the seller at the time of making of the contract of sale are called existing goods. In case of sale by an agent or pawnee, the goods are possessed but not owned by the seller (agent or pawnee). Existing goods may be classified as follows :

(a) **Specific goods:** Goods identified and agreed upon at the time of making of the contract of sale of goods.

(b) **Ascertained goods:** Goods identified subsequent to the formation of the contract of sale. The terms, ascertained and specific, are commonly used for the same kind of goods.

(c) **Unascertained or Generic goods:** Goods not identified or agreed upon at the time of making of the contract of sale. They are goods defined by description only.

Example: X has ten cows. He promises to sell one of them to Y, pointing it out to Y at the time of sale. Goods have been identified at the time of sale and, therefore, it is a contract of sale of 'specific goods'.

If in the above example, X only agrees to sell one of the cows, but does not specify which cow he will sell, it is a contract of sale of unascertained goods. The cow will become 'ascertained' when X makes up his mind as to which cow he will sell and Y gives his assent thereto.

2. **Future goods:** Goods to be manufactured, produced or acquired after the making of the contract are called future goods.

Example: A contract, on 1st January, to sell B 50 shares in Reliance Ltd., to be delivered and paid for on the 1st March of the same year. At the time of making of the contract, A is not in possession of any shares. The contract is a contract for the sale of future goods.

3. **Contingent goods:** Goods, the acquisition of which by the seller, depends upon an uncertain contingency are called 'contingent goods'. They are also a type of future goods.

Example: A agrees to sell 100 units of an article provided the ship which is bringing them, reaches the port safely. This is an agreement for the sale of contingent goods.

10. 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 in its scope
4. Interchangeability	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. Compulsory Interchangeability	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.
6. 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.

Choose the Correct Answers

1. A transaction involving exchange of goods for goods for goods is termed as : [c]
(a) Bailment (b) Exchange
(c) Barter (d) All of the above
2. Goods identified and agreed upon at the time of the making of the sale are termed as : [a]
(a) Specific goods (b) Ascertained goods
(c) Generic goods (d) None of the above
3. A contract of sale includes : [c]
(a) Sale only (b) An agreement to sell only
(c) both sale and agreement to sell. (d) None of the above
4. There is a contract for sale of goods when : [b]
(a) A agrees to give his horse to B on his giving a cow to A.
(b) A supplies artificial teeth to fit into the mouth of B for Rs. 500.
(c) A agrees to paint a picture on a canvas with the materials supplied by B.
(d) A agrees to construct a building with the materials to be supplied by B.
5. The term 'goods' under the Sale of Goods Act, 1930 does not include : [b]
(a) Harvested crops (b) Actionable claims
(c) Grass (d) Stocks and shares
6. Which of the following is not a contract of sale under the Sale of Goods Act, 1930. [b]
(a) A partner agreed to buy goods from the firm
(b) X agreed to sell his building for Rs. 10 lakh to Y
(c) M agreed to sell 20 kgs rice worth Rs. 1,000 on a future date
(d) P agreed to sell 100 shares for Rs. 20,000 to R.
7. A buyer acquires a better title than the seller when : [c]
(a) The seller obtained the possession of goods under a voidable contract which has been rescinded and buyer buys goods in good faith.
(b) One of several joint owners has obtained possession of goods by murdering other co-owners and the buyer buys the goods from such co-owners in good faith.
(c) A seller who has already sold the goods continues to be in their possession and sells them again to a buyer who receives them in good faith and without notice of the previous sale.
(d) None of above

8. In case of 'sale or return' the buyer is deemed to have accepted the goods when : [b]
- (a) He does not intimate to the seller that he has accepted them
 - (b) He pledges the goods
 - (c) He retains without intimating the seller that he has rejected them
 - (d) He rejects the goods but does not intimate the seller.
9. In case of an agreement to sell action against a third party for damaging the goods can be taken by: [a]
- (a) The seller
 - (b) Buyer
 - (c) Both
 - (d) None of above
10. When a person deposits with another, goods by way of security for the payment of a loan, it is a contract of: [b]
- (a) Bailment
 - (b) Pledge
 - (c) Hypothecation
 - (d) None of above
11. The bailor is responsible for loss caused to the bailee on account of defects in goods bailed but unknown to him in case of: [b]
- (a) Gratuitous bailment
 - (b) Non-gratuitous bailment
 - (c) Bailment for mutual benefit
 - (d) None of above
12. Any increase of profit from the goods bailed belongs to : [a]
- (a) The bailor
 - (b) The bailee
 - (c) Both
 - (d) None of above
13. The delivery of goods by one person to another as security for payment of a debt is called [b]
- (a) Bailment
 - (b) Pledge
 - (c) Mortgage
 - (d) Hypothecation

Fill in the Blanks

1. _____ depends on agreement but not necessarily on contract.
2. _____ agent is practically a general agent with very extensive rights.
3. A _____ is a mercantile agent who is employed to make contracts for the purchase and sale of goods.
4. An _____ is a mercantile agent who is appointed to sell goods on behalf of the principal.
5. A _____ 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.
6. _____ is always based upon a contract.
7. _____ is not necessarily terminated by return of goods to the owner.
8. The contract of sale is _____ in nature.
9. Agreeemnt to sale is an _____ contract in nature.
10. Goods to be manufactured, produced or acquired after the making of the contract are called _____.

ANSWERS

1. Agency
2. Universal
3. Broker
4. Auctioneers
5. Del Credere
6. Bailment
7. Pledge
8. Executed
9. Executory
10. Future goods

UNIT III

Companies Act

Definition of company - Characteristics - Classification of Companies - Formation of Company - Memorandum and Articles of Association - Prospectus - Share holders meetings - Board meetings - Law relating to meetings and proceedings - Company - Management - Qualifications, Appointment, Powers, and legal position of Directors - Board - M.D and Chairman - Their powers.

3.1 DEFINITION OF COMPANY

Q1. Define the term Company.

(OR)

Define a company under companies act 2013.

Ans :

Meaning

The word company is derived from a Latin word 'companies' it means a group of persons who took their need together.

A person desirous of running a large business house needs huge amount of money and resources. Generally, a single person is incapable of gathering it all alone, and even if he is capable of doing so, still he prefers others to join him because of the magnitude of risk involved in it. As such he enters into partnership or forms a company. While partnership is suitable for small to mid-size business, for a large size business, company is preferred.

Companies Act 2013 passed by the Parliament in August 2013 consolidates and amends the law related to corporate affairs or simply companies. A Pvt Ltd company which can have a minimum of two members and can go as far as to two hundred members have limited liability of its members but has many similar characteristics as of a Partnership firm. A Pvt Ltd Company must have a minimum of two directors and a maximum of fifteen directors. A minimum of two shareholders is required for legal registration of a Pvt Ltd company. A total of two hundred shareholders are acceptable in any Private Limited Company but not more than that. The company lies somewhere between a partnership firm and a widely owned Public company. Private Limited Company provides certain benefits including stability however it has its

own disadvantages too like selling of shares which must first be offered to the members of the company itself.

Moving from the Companies Act 1956 to the Companies Act 2013 therefore all the provisions become changed with new Act, 2013. Due to new act many amendments were introduced by Central Government from time to time by Notification, Amendments etc. There were so many amendments have been made in last approximately 4 years in relation to Incorporation of New Company. Let's look at the Journey of Major Amendments in relation to Incorporation of Company since 1st April, 2014 to till date i.e. 01st March, 2018.

Definitions

A company is a voluntary association of persons formed for some common purpose with capital divisible into parts known as shares.

Justice Lindlay defines company "as an association of many persons who contribute money or money's worth to a common stock and employ it in some trade or business and who share the profits arising there from"

According to the Companies Act, 1956, "A company is a person, artificial, invisible, intangible, and existing only in the contemplation of the law. Being a mere creature of the law, it possesses only those properties which the character of its creation confers upon it either expressly or as incidental to its very existence."

It can clearly be defined that

- A company is defined as a group of people that contributes money or the worth of money to a common stock to employ it in some trade or business. The people in this group share the profit or loss (as the case may be) arising as a result.

- The common stock is usually denoted in terms of money and is the capital of the company.
- The persons who contribute to the common stock are the members.
- The proportion of the capital entitled to each member is called the member's share.
- Shares are always transferrable subject to the restrictions and liabilities offered by the rights to transfer shares.

3.1.1 Characteristics

Q2. Explain the Characteristics of a company.

(OR)

State the characteristics of a company.

(OR)

What are the characteristics features of a company.

Ans :

(Imp.)

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 the entity of new members. The company remains the same entity in spite of the total change in membership.
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 a separate property:** The 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.
5. **It has capacity to sue and being used:** The 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.
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 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. **Style has it 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 permanences of capital collected and stability to the company and protection to some extent to the creditors of the company.

3.1.2 Classification of Companies

Q3. Explain different types of companies.

(OR)

Classify the different types of companies.

Ans :

(Imp.)

1. Chartered company

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.

2. 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 is 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:

- A change in the structure of a statutory company is possible only by amending the Special Act under which it is created.
- The audit of a statutory company is conducted under the control and supervision of Auditor General of India.
- 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.

3. Registered Company

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:

- i) Limited companies
- iii) Unlimited companies

- i) **Limited companies:** A limited company is one in which the liability of the members is limited i.e., the members are liable upto a limited amount, and beyond that limit they cannot be asked to contribute anything towards the payment of company's liabilities.
- ii) **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 utilized for the payment of company's liabilities.

4. 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:

- Restricts the right to transfer its shares, if any.
- Limits the maximum number of its members to 200 (excluding the present or past employees of the company).
- 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.

5. Public Company

As per sec 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.

6. 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:

- Only a natural person can be a member of a one person company.
- One person company can *only* be formed as a private limited company [Section 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)].
- 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.

7. Holding and Subsidiary Companies

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

8. Government Companies

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.

9. Foreign Company

In simple words, a foreign company is one which is incorporated (i.e., formed) outside India. 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 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.

Q4. What are the differences between private company and public company.

Ans :

No.	Private Company	Public Company
1.	Minimum number of members is 2	Minimum number of members is 7
2.	Maximum number of members is 50	No maximum limit.
3.	Minimum paid up capital is Rs. 1 lakh	Minimum paid up capital is 5 lakh
4.	Name must end with the word 'Pvt. Ltd.'	Name must end with the word 'Ltd.'
5.	Can commence business immediately after incorporation	It shall have to wait until it receives the certificate for commencement of business.
6.	It cannot invite public to subscribe its shares and debentures	It can invite public to subscribe its shares and debentures.
7.	Minimum subscription is not required for allotment of shares. 9	Minimum subscription is required for allotment of shares.
8.	Need not hold statutory meeting of the members.	It has to hold a statutory meeting and file a stat. report.
9.	Quorum required for a meeting is 2.	Quorum required for a meeting is 5.
10.	There is restriction of transfer of shares	Shares can be freely transferred.
11.	Not required to issue prospectus.	Must issue prospectus.
13.	Two directors	Three directors.

3.2 FORMATION OF A COMPANY

Q5. Explain various steps involved in the formation of a company under the companies Act-2013.

(OR)

Explain the formation procedure of a company - under the Indian companies Act-2013.

(OR)

How is a company formed under the companies Act, 2013? Enumerate the various documents to be filed with the registrar of companies. "A certificate of incorporation of conclusive evidence that all the requirements of the companies Act have been complied with". Explain.

Ans :

(Imp.)

Following are the three stages in the formation of a company

1. Promotion of a company.
2. Registration and incorporation of a company.
3. Commencement of business.

1. Promotion of a company

It is the first stage in the formation of a company. Before a company is actually formed, certain persons plan about the starting of some business, and after arriving at the decision about the formation of a company, they take necessary steps in this regard. The promotion of a company refers to all those steps which are taken from the time of having an idea of starting a company to the time of the actual starting of the company business. Thus, 'formation of a company' means originating the idea of forming a company, and taking necessary steps in this regard. The persons who think of forming a company and take necessary steps in its formation are known as 'promoters' or 'company promoters'.

2. Registration and incorporation of a company

i) Formation of the Company: It is the second stage in the formation of a company, and the company comes into existence when it is registered under the Companies Act, 2013. The persons associated for any *lawful* purpose may form the same by getting it registered with the Registrar of Companies. These persons may decide to form any of the following type of company [Section 3(1)]:

- (a) Public company:** 7 or more persons may form the company by getting it registered with the Registrar;
- (b) Private company:** 2 or more persons (not exceeding 200) may form the company by getting it registered with the Registrar.
- (c) One person company:** One person may also form a company by getting it registered with the Registrar. It would always be a private company only.

The company so formed, whether public or private, may be of the following two types, namely [Section 3(2)]:

- (a)** Limited company (limited by shares or limited by guarantee).
- (b)** Unlimited company.

Procedure for registration and incorporation

The procedure for registration and incorporation of the company involves the following steps:

ii) Application to the Registrar for availability of name: An application for availability of proposed name should be made to the Registrar in the prescribed form. The Registrar shall then inform about the availability of proposed name. Thereafter, the company is got registered by filing an application with the Registrar of Companies of the area in which registered office of the company is to be situated. Such an application is filed by the promoters, and must be accompanied by requisite fees and documents.

iii) Filing of documents and information with Registrar [Section 7]: After getting the approval of name, the application for registration of the company should be filed with the Registrar alongwith the following documents and particulars:

- (a) The 'memorandum of association':** It is the document which describes the scope of company activities. It must be signed by the required number of persons which are necessary for the formation of company, and who come forward to form it (*i.e.*, seven in case of public, and two in case of private company) [Section 7(l)(a)].
- (b) The articles of association:** It is the document which contains the rules and regulations of the company. It must also be signed by all the persons who sign the memorandum of association.
- (c) Prescribed declaration:** A declaration in the prescribed form stating that *all* the requirements of the Companies Act, 2013 and rules made thereunder in respect of registration have been complied with. Such a declaration should be given.
 - (i)** An advocate, a chartered accountant, cost accountant or a company secretary in practice who is engaged in the formation of the company; and

- (ii) A person named in the articles as a director, manager or secretary of the company.
- (d) **Affidavit of subscribers and first directors:** An affidavit from each of subscribers to memorandum, and from first directors named in 'articles' to the effect that they are not convicted and have not been found guilty of any fraud, misfeasance or breach of duty under this Act or under any previous company law during the last 5 years and all the documents filed with the Registrar are correct and complete [Section 7 (l)(c)]:
- (e) **Correspondence address:** The address for correspondence till the registered office of the company is established [Section 7(1)(d)].
- (f) **Particulars of subscribers:** The complete particulars of name including surname or family name, residential address, nationality and prescribed particulars of every subscriber to the memorandum including their proof of identity [Section 7(l)(e)].
- (g) **Particulars of first directors:** The complete particulars of name, as stated above, including proof of identity of persons named in Articles as first directors. The particulars of Director Identification Number (DIN) should also be given [Section 7(l)(f)].
- (h) **Consent to act as directors and particulars of interest:** The consent to act as directors, and particulars of interest of first directors mentioned in company's articles of association [Section 7(1)(g)].
- iv) **Registration by the Registrar:** When the application for registration of the company alongwith the requisite fee and above documents is presented to the Registrar for registration, the Registrar shall satisfy himself regarding compliance of legal formalities, such as:
- (a) The company is proposed to be formed for lawful object.
- (b) The 'memorandum of association' has been signed by the requisite number of persons (i.e., seven in case of public, and two in case of private company).
- (c) The 'memorandum of association' and the 'articles of association' are prepared according to the provisions of the Companies Act i.e., they do not go against the Companies Act.
- (d) The prescribed declaration, affidavits and particulars have been duly signed and filed.
- (e) The name of the company is acceptable i.e., the name is neither prohibited nor is similar to the name of any existing company.
- v) **Issue of certificate of incorporation**
- After the registration, the Registrar issues a 'certificate of incorporation' (i.e., a certificate of the formation of company) in the prescribed form to the effect that the proposed company is incorporated. In this way, the company is formed and comes into existence [Section 7(2)].
- Following points are important to note in this regard:
- (a) **Corporate Identity Number (CIN):** On and from the date mentioned in the certificate of incorporation, the Registrar shall allot CIN to the company. The CIN shall be a distinct entity for the company. It shall also be included in the certificate of incorporation [Section 7(3)].
- (b) **Maintenance and preservation of documents:** The company shall maintain and preserve, at its registered office, the copies of all documents and information as originally filed with the Registrar for registration, till its dissolution [Section 7(4)].
- vi) **Certificate of Incorporation**
- A certificate of incorporation is one which certifies that the company is incorporated (i.e., formed). It is issued by the Registrar of Companies. It contains the name of the company, Corporate Identity Number (CIN), the date of its issue, and the signature of the Registrar with his seal. This certificate brings the company into existence. The legal effects of the certificate of incorporation may be stated as under [Section 9]:

- The company comes into existence and it becomes a legal entity independent from its members.
- The subscribers to the memorandum become members of the company.
- The company's life starts from the date of the certificate of incorporation.
- The company acquires a perpetual succession *i.e.*, it remains in existence for ever unless wound up according to the provisions of the Companies Act. In other words, the death, retirement, admission etc., of the members of the company does not affect its existence.
- The 'memorandum' and 'articles of association' become binding upon the company and all its members.
- The liability of the members of the limited company becomes limited.

3. Commencement of Business

It is important to note that the provisions relating to the commencement of business by the companies were contained in section 11 of the companies Act, 2013 which imposed certain restrictions on companies (public and private) to commence business.

Thus, now a company (public or private) commence its business on obtaining 'certificate of incorporation' from the Registrar of companies.

(I) Legal requirements to commence business [Section 11(1)]: A company having share capital, define a private company, can commence business or exercise borrowing powers *only* on the filing of the following declaration and verification with the Registrar:

(a) Filing of prescribed declaration: A declaration, in Such form and verified in such manner as may be prescribed, is to be filed with the Registrar by the director stating:

- (i) That every subscriber to the memorandum has paid the value of shares agreed to be taken by him, and
- (ii) That on the date of making the declaration, the paid-up share capital of the company is not less than ` 5 lakhs in case of a public company, and not less than ` one lakh in case of a private company [Section 11(1)(a)].

(b) Filing of verification of registered office: The company has filed with the Registrar a verification of its registered office in such manner as may be prescribed [Section 11(1)(b)].

(II) Penalty for non-compliance [Section 11(2)]: In case of default of non-compliance of above provisions, the penalty is as under:

(a) The company shall be liable to penalty which may extend to ` 5,000; and

(b) Every officer in default shall be punishable with fine upto ` 1,000 for each day during which the default continues.

Thus, if the company commences its business or exercises borrowing powers without filing the above declaration and verification, then the company and its officers in default are liable as stated above.

3.3 MEMORANDUM OF ASSOCIATION

Q6. What is Memorandum of Association? Describe the clauses of Memorandum of Association.

Ans.:

(Imp.)

Meaning

The 'memorandum of association' briefly called the memorandum is the first important document to be filed with the Registrar at the time of formation of the company.

Definition

The 'memorandum' is legally defined in Section 2(56) of the Companies Act, 2013, as under:

'Memorandum' means memorandum of association of a company as originally formed or as altered from time to time in pursuance of any previous company laws or of this Act.

Thus, legally a memorandum means:-

- (a) A memorandum as originally formed by the company, or
- (b) A memorandum as altered by the company from time to time.

The memorandum of association of every company must have the following clauses:

1. Name Clause
2. Registered Office Clause
3. Objects Clause
4. Liability Clause
5. Capital Clause

1. Name Clause

This clause of 'memorandum of association' contains the name of the proposed company. The company being a legal person, must have a name to establish its identity. As a matter of fact, the name is the symbol of personal existence of the company.

2. Registered office clause

This clause of 'memorandum of association' contains the name of the State in which the Registered Office of the company is to be situated [Section 4(l)(b)]. Following provisions are to be noted relating to the registered office of the company:

(i) **Establishment of registered office:** The registered office of the company must be in existence (i.e., established) on and from the 15th day of incorporation of the company, and at all times thereafter [Section 12(1)].

(ii) **Verification to be filed with the Registrar:** The verification of the situation of the registered office must be given to the Registrar of Companies within 30 days of the incorporation of the company [Section 12(2)].

(iii) **Importance of registered office:** Its importance becomes clear from the following points:

(a) The situation of company's registered office determines the domicile of the company. The domicile is important to determine the jurisdiction of the courts in which the legal actions are to be brought by or against the company.

(b) All the important documents and books of the company such as Annual Returns, Minutes Books, Register of Members, etc., are kept in the registered office. Moreover, all important communications, notices, circulars, process of court and other correspondence relating to the company are also addressed to its registered office.

3. Objects Clause

This clause of 'memorandum of association' contains the objects for which the proposed company is to be formed [Section 4(l)(c)]. It is the most important clause of the memorandum, and should be drafted very carefully. The objects of the company must state in clear and definite terms:

- (i) The objects for which the company is proposed to be incorporated; and
- (ii) Any matter considered necessary in furtherance of the stated objects.

The choice of objects rests with the subscribers to the memorandum. They are free to choose any lawful objects for their company. This is, however, subject to the following restrictions:

- (a) The objects should not be illegal or against the public policy, e.g., formation of a company for conducting lotteries, trading with enemy, etc.
- (b) The objects should not be against the provisions of the Companies Act.
- (c) The objects should not be against the general law of the land, e.g., the law prohibits gambling. No company can be formed for that purpose.

4. Liability Clause

This clause of 'memorandum of association' contains the nature of liability of the members of the company. This clause is necessary for those companies in which the liability of the members is limited. The memorandum of such companies must state that the liability of the members is limited. The proposed company may be limited by shares, or by guarantee. In these cases, the liability clause should state as under:

- (i) **In case of companies limited by shares:** The liability clause must state that the liability of the members shall be limited to the amount unpaid, if any, on shares held by him [Section 4(l)(d)(i)]. If the shares are fully paid (i.e., all the amount has been paid), then the liability of the members is nil.
- (ii) **In case of companies limited by guarantee:** The liability clause must state that the liability of the members shall be limited by guarantee. In such cases, the liability clause will also state the amount which every member undertakes to contribute to the assets of the company in the event of its winding up [Sections 4(l)(d)(ii)]. This means that if at the time of winding up of the company, the assets of the company fall short to pay its debts and liabilities, then members shall contribute to the assets of the company, the amount which they have undertaken to pay. It may be noted that a member cannot be asked to pay anything before the company goes into liquidation.

5. Capital Clause

This clause of 'memorandum of association' contains the amount of share capital with which the

company is to be registered. This clause should also state the number and value of shares into which the capital of the company is divided. [Section 4(1)(e)]. The capital with which the company is registered is called the 'registered', 'nominal' or 'authorised' capital. The effect of this clause is that the company cannot issue more shares than are authorised by its memorandum of association, except by altering the memorandum as provided by Section 94.

The usual way to state the capital in the memorandum of association is as under:

"The capital of the company is ` 50,00,000 divided into 5,00,000 equity shares of ` 10 each".

3.4 ARTICLES OF ASSOCIATION

Q7. What is Articles of Association? Explain the contents of Articles of Association.

Ans :

Meaning

The 'articles of association', briefly called 'articles', is the second important document which has to be filed with the Registrar at the time of registration of the company.

Definitions

- The 'articles of association' is legally defined in Section 2 (5) of the Companies Act, 2013 as under:

"Articles' means articles of association of a company as originally framed or as altered from time to time or applied in pursuance of any previous company law or of this Act.

Thus, legally the articles means-

- (a) The articles as originally framed; or
- (b) The articles altered or applied by the company from time to time.

Contents

- Regulations for management of company [Section 5 (1)]:** The 'articles of association' of a company contains the rules and regulations which are framed for the internal management of the company. Thus, such rules and regulations are contained in it which are necessary to carry out the objects of the company.

2. **Matters as may be prescribed by rules [Section 5 (2)]:** The articles of company shall also contain such matters as may be prescribed by rules made by Central Government.
3. **Additional matters [Section 5 (2), proviso]:** The articles of a company may also contain such additional matters as may be considered necessary for management of the company.'
4. **Provisions for entrenchment [Section 5 (3), (4), (5)]:** The articles may contain provisions for entrenchment {i.e., additional safeguards for alternation) stating that certain specified provision of articles may be altered only if more restrictive conditions or procedure is complied with. In simple words, the articles may now contain such provisions which provide very difficult procedure (than special resolution) for. alteration of certain specified provisions of articles.

It is a new provision in the Companies Act, 2013 and it would provide additional layer of protection to the investors. Other important provision in this regard are:

- (i) These provisions shall only be made either, (a) on formation of the company, or (b) by an amendment in articles agreed to by all the members of the company in case of a private company and by special resolution in the case of a public company [Section 5 (4)].
- (ii) Where the articles contain such provisions for entrenchment, whether on formation or by amendment, the company shall give notice of such provision to the Registrar in such form and manner as may be prescribed [Section 5 (5)].

Q8. Compare and contrast Memorandum of association and Articles of association.

Ans :

(Imp.)

S.No.	Memorandum of Association	Articles of Association
1.	It defines the objects and powers of the company.	It contains the rules and regulations of the company which are formed for the purpose of carrying out the objects as laid down in the memorandum of association.
2.	It is the supreme document as it defines constitution of the company. As a matter of fact, it is the charter of the company.	It is subordinate to the memorandum of association. In case of any conflict between the two, the memorandum shall prevail.
3.	It regulates the relationship of the company with the outsiders, as the objects and powers of the company are made known to the outsiders through this document.	It regulates the internal management of the company, as the rules and regulations contained in it describe the internal procedure to be followed by the company.
4.	It cannot be easily altered. The company has to follow strict procedure for the alteration of its registered office clause for shifting the registered office from one state to another.	It can be easily altered as compared to memorandum of association.
5.	Any act which is ultra vires (i.e., beyond powers) the memorandum, is wholly void and cannot be ratified even by the whole body of shareholders. As a matter of fact, the company cannot go beyond the scope of its memorandum of association.	Any act which is ultra vires the articles of association may be ratified by the share holders. Acts ultra vires the articles of association are merely irregular and not void. However, such act can be ratified only if it is within the scope of memorandum of association.

3.5 PROSPECTUS

Q9. What is a Prospectus? State the various contents of a prospectus.

Ans :

The term prospectus is defined in Section 2 (70) of the Companies Act, 2013, which reads as under:

"A prospectus means any document described or issued as prospectus and includes:

- (a) A shelf prospectus referred in Section 31; or
- (b) A red-herring prospectus referred in Section 32; or
- (c) Any notice or circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a body corporate

In other words, a prospectus means any invitation issued to the public inviting it to take shares or debentures of the company. Such invitation may be in the form of (a) a shelf prospectus; or (b) red-herring prospectus; or (c) a document or a notice, circular, advertisement, etc. The only requirement is that the invitation must be made (or issued) to the public.

Contents of Prospects

The provisions relating to the contents of prospectus are provided in Section 26 of the Companies Act, 2013, which were earlier contained in Section 56 and Schedule - II of the Companies Act, 1956.

Now, the contents of prospectus are listed out in Section 26 itself as against in the Schedule under the earlier Companies Act, 1956.

The contents of prospectus, as listed in Section 26, may be stated as under:

1. General Information [Section 26(I)(a): Every prospectus issued by the company shall state the following information, namely:

- (i) Names and addresses of the registered office of the company, company secretary, Chief financial officer, auditors, legal advisers, bankers, trustees, if any, underwriters and such other persons as may be prescribed.

- (ii) Dates of the opening and closing of the issue, and declaration about the issue of allotment letters and refunds within the prescribed time;
- (iii) A statement by the Board of Directors about the separate bank account where all monies received out of the issue are to be transferred and disclosure of details of all monies including utilised monies out of the previous issue in the prescribed manner;
- (iv) Details about underwriting of the issue;
- (v) Consent of the directors, auditors, bankers to the issue, expert's opinion, if any, and of such other persons, as may be prescribed;
- (vi) The authority for the issue and the details of the resolution passed therefor;
- (vii) Procedure and time schedule for allotment and issue of securities;
- (viii) Capital structure of the company in the prescribed manner;
- (ix) Main objects of public offer, terms of the present issue and such other particulars as may be prescribed;
- (x) Main objects and present business of the company and its location, schedule of implementation of the project;
- (xi) Particulars relating to -
 - (a) Management perception of risk factors specific to the project;
 - (b) gestation period of the project;
 - (c) extent of progress in the project;
 - (d) Deadlines for completion of the project; and
 - (e) Any litigation or legal action pending or taken by a Government Department or a statutory body during the last five years immediately preceding the year of the issue of prospectus against the promotor of the company;

- (xii) Minimum subscription, amount payable by way of premium, issue of shares otherwise than on cash;
- (xiii) Details of directors including their appointments and remuneration, and such particulars of the nature and extent of their interests in the company as may be prescribed.

2. Reports of Financial Information

[Section 26(1)(b)]: Every prospectus issued by the company shall set out the following reports for the purposes of the financial information, namely :

- (i) Reports by the auditors of the company with respect to its profits and losses and assets and liabilities and such other matters as may be prescribed.
- (ii) Reports relating to profits and losses for each of the five financial years immediately preceding the financial year of the issue of prospectus including such reports of its subsidiaries and in such manner as may be prescribed:

Provided that in case of a company with respect to which a period of five years has not elapsed from the date of incorporation, the prospectus shall set out in such manner as may be prescribed, the reports relating to profits and losses for each of the financial years immediately preceding the financial year of the issue of prospectus including such reports of its subsidiaries;
- (iii) Reports made in the prescribed manner by the auditors upon the profits and losses of the business of the company for each of the five financial years immediately preceding issue and assets and liabilities of its business on the last date to which the accounts of the business were made up, being a date not more than one hundred and eighty days before the issue of the prospectus.

3. Declaration of Compliance [Section 26(1)(c)]:

The prospectus issued by the company shall make a declaration about the compliance of the provisions of this Act and

a statement to the effect that nothing in the prospectus is contrary to the provisions of this Act, the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 and the rules and regulations made thereunder;

4. Matters and Reports as Prescribed [Section 26(1)(d)]:

The prospectus issued by the company shall also state such other matters and set out such other reports as may be prescribed by rules made by the Central Government's.

Q10. Write a note on Redherring prospectus.

(OR)

Define the term Redherring prospectus.

Ans :

(Imp.)

A public company is required to issue a prospectus to the public when it wants to raise money by issue (i.e., allotment) of shares or debentures.

A company may also make an offer of securities (i.e., shares, etc.) by issuing a red herring prospectus prior to the issue of prospects.

The legal provisions relating to red herring prospectus are contained in Section 32 of the Companies Act, 2013.

- i) **Meaning:** A 'red herring prospectus' means a prospectus which does not include complete particulars of the (a) quantum of securities, or (b) price of securities included therein.
- ii) **Time of issuing red herring prospectus:** A company proposing to make an offer of securities may issue a red herring prospectus prior to the issue of prospectus [Section 32(1)].
- iii) **Filing of red herring prospectus:** A company which proposes to offer securities by issuing a red herring prospectus is bound to file the same with the Registrar at least 3 days prior to the opening of the subscription list and the offer [Section 32(2)].
- iv) **Obligations and variations in red herring prospectus:** In this regard, the legal provisions are as under:

- (a) The information memorandum and red-herring prospectus carry the same obligations as are applicable in case of a conventional prospectus [Section 32(3)].
- (b) The issuing company has to highlight any variation between the red herring prospectus and a prospectus [Section 32(3)].
- v) **Filing of final prospectus:** On completion of allotment and closing of the offer of securities, a final prospectus shall be prepared completing the information which was missing in the red-herring prospectus, namely, (a) the amount of capital raised whether by way of debt or share capital, (b) the closing price of securities, and (c) any other details which was not complete in the red-herring prospectus [Section 3].

3.6 SHARE HOLDERS MEETINGS

Q11. Define the term meeting. State the different kinds of meetings of a company.

Ans :

(Imp.)

The business of the company is carried on by the selected representatives of the members, called the directors. The directors take decisions by calling their meetings. There are also certain matters which are to be decided by the whole body of shareholders of the company. The shareholders also decide the matters by calling their meetings from time to time. A meeting may be defined as a gathering or assembly of a number of persons for transacting any lawful business. It may be noted that every gathering of persons does not constitute a meeting. A meeting would be valid if it is held by following the prescribed rules and regulations. A company meeting to be valid, must be convened and held as per the provisions of the Companies Act, 1956 and the rules framed thereunder. The matters are decided by passing resolutions at the meetings.

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

1. Meeting of members (shareholders) and
2. Other meetings

1. Meeting of Members (Shareholders)

The meetings of the shareholders can be of following kinds, namely:

- (i) Annual general meeting
- (ii) Extraordinary general meeting
- (iii) Class meeting

(i) Annual General meeting

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.

(ii) Extraordinary General Meeting

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).

(iii) Class meeting

It is the meeting of a particular class of shareholders. Generally, the companies have two classes of shareholders, namely (a) equity shareholders and (b) preference shareholders. In order to discuss the matters affecting one class, only a meeting of the particular class of shareholders is held. It may be noted that at a class meeting, only the shareholders of the particular class have the right to be present e.g., 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 entitled 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 approved at the meeting by a special resolution [Section 48].

2. Other Meetings

- (i) **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]
- (ii) **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 [Section 230].
- (iii) **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).

Q12. Explain the provisions relating to Annual General Meeting.

Ans :

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.

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 Provison], 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)].

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 proviso]

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)]

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)].

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].
- (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].

Q13. Explain the legal provisions relating to Extraordinary general meeting.

Ans :

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:

1. 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.

2. 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:

(i) 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)].

(ii) 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)].

(iii) 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 100(4)].

3. 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:

(i) Claim of expenses

The requisitionists may claim 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)].

(ii) 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.

(iii) 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.

4. 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:

- (i) The Tribunal can order a meeting to be called, held or conducted in accordance with its directions.
- (ii) 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.

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

- 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.
- 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.
- 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.

3.6.1 Law Relating to Meetings and Proceedings

Q14. What are the essentials and legal rules for a valid meeting.

Ans :

The company meetings are called to take decisions on the matters discussed in the meeting. And such decisions are binding on the persons in respect of whom the matters are decided. However, the decisions will have binding effects only if the meeting is valid and is conducted in accordance with the procedure. The following are the essentials and legal rules (or procedure) for a valid meeting.

1. **Proper authority:** It is an important requirement of a valid meeting that it should be called by a proper authority. The proper authority to call a general meeting of the members is the Board of Directors. The Board of Directors should pass a resolution at Board meeting to call the general meeting. If meeting of Board of Directors is itself unlawful (e.g., some lawfully constituted directors are prevented from attending the Board meeting), then the decision taken at such meeting to call the general meeting of the shareholders shall also be invalid).
2. **Proper notice:** It is another important requirement of a valid meeting that a proper notice to call every meeting should be given to the following persons [Section 101(3)]:
 - (a) To every member of the company;
 - (b) To legal representative of a deceased member or the assignee of an insolvent;
 - (c) To the auditor(s) of the company;
 - (d) To every director of the company;
3. **Contents of notice:** The notice of meeting must specify the following particulars:
 - (a) The place, day and hour of the meeting.
 - (b) The statement of the nature of the business to be transacted at the meeting [Section 101(2)].The business to be transacted at the meeting may be of the following two kinds [Section 102]:
 - (i) Special business, and
 - (ii) General business.

In the case of transacting special business, a statement containing the following particulars must be attached to the notice of calling meeting:

- The nature of concern or interest of every director, key managerial personnel and their relatives.
- Any other information and facts that may enable members to understand the meaning, scope and implication of the items of business and to take decision thereon.

4. **Quorum for meeting:** The term 'quorum' may be defined as the minimum number of members that must be present at the valid meeting so that the business can be validly transacted at the meeting. If the quorum is not present, the meeting shall not be valid and the proceedings of such meeting shall be invalid. Generally, the quorum is fixed by the articles of association of the company. The provisions relating to quorum have been amended by the Companies Act, 2013 and are incorporated in Section 103 of the new Act. This section has been made effective w.e.f. 12.9.2013.

The minimum number of members that constitute quorum, in view of new Section 103, is as under:

- (i) In case of a public company: In this case, the quorum will depend upon the number of members of the company as on the date of meeting, and is as under:

Number of Members as on the date of meeting	Quorum
Upto 1000 members	5 members
Between 1000 to 5000 members	15 members
More than 5000 members	30 members

- (ii) In case of a private company: In this case, the quorum will be 2 members personally present at the meeting.

It is important to note here that the articles of association *cannot* provide for a smaller quorum than the above though it may provide for a larger quorum. It may be noticed that for the purpose of quorum, only the members present personally are counted, and no 'proxy' shall be counted. Even the company cannot, by its articles of association, provide for the 'proxy' being counted for the purpose of quorum.)

The following points are important in connection with the quorum of a meeting:

- (a) **Members personally present:** For the purpose of quorum, only the members personally present are counted, and no 'proxy' shall be counted. Even the company, by its articles, cannot provides for proxy being counted for the purposes of quorum [Section 103(1)].
- (b) **Quorum to be present at the beginning:** The quorum required is the quorum to be present at the time of beginning to consider the business, and it need not be present throughout or at the time of taking vote on any resolution. [Re *Hartley Baird Ltd.*, (1955) 1 Ch. 143; (1954) All England Reporter 695]¹⁰
- (c) **Resolution without quorum invalid:** Any resolution passed without a quorum is invalid
- (d) **Quorum where number of members are reduced:** In case, the total number of members of a company becomes reduced below the quorum fixed for a meeting, then the rules as to quorum will be satisfied if all the members of the company are present e.g., where the number of members of a company is 400 and the quorum fixed by the articles is 75 members. Subsequently 350 members have sold their shares to the remaining 50 members. In this case, all the 50 members present personally will constitute a valid quorum even if the quorum fixed by the articles is 75 members.
- (e) **Position when quorum not present within half an hour:** In this regard, legal position is as under:
- (i) **Meeting called on requisition:** In case, the meeting is called on the requisition of members, it shall stand cancelled if the quorum is not present within half an hour from the time for holding the meeting of the company [Section 103(2)].

- (ii) **Meeting other than on requisition:** In other cases (i.e., where it is not called the requisition of members), the meeting shall stand adjourned to re-assemble in the next week on the same day at the same time and place, or to such other day time and place as the Board of Directors may determine. However, in this case, the company shall give not less than 3 days notice to the members either individually or by publishing an advertisement in the newspaper (one in English and one in vernacular language) which is in circulation at the place of registered office of the company [Section 103(2)].
- (iii) **Quorum not present at adjourned meeting:** If at the adjourned meeting also the quorum is not present within half an hour from the time of holding the meeting, as many members as are actually present shall constitute quorum [Section 103(3)]. It is important to note here that if only one member is present at the adjourned meeting, he alone will not constitute the quorum as Section 103(3) reads that members present shall be the quorum. The point of 'one-member meeting' will be discussed in detail in the next article.
5. **Chairman of the meeting [Section 104]:** A chairman is necessary for conducting a meeting properly. He presides over the meeting, and his main function is to keep order and see that the business is properly conducted. Legally speaking, the chairman is the proper person to put resolution to the meeting, count the votes, declare the result and authenticate the minutes by signature.

The appointment of the chairman is usually regulated by the articles of association of the company. But if there is nothing in the articles, the members personally present at the meeting shall elect one of themselves to be the chairman of the meeting [Section 104, the Companies Act, 2013]. Sometimes, there are difference among the members, and a peaceful meeting is impossible under the chairmanship of a person appointed by one group. In such cases, the chairman may be appointed by the court. It may, however, be noted that apart from such extraordinary circumstances, the courts do not interfere in the conduct of meetings by appointing a chairman.

Q15. What are the Requisites of a Valid Meeting.

Ans :

A meeting should be conducted by following the procedure provided in the articles and the Act. It must satisfy the following conditions to validly transact a business,

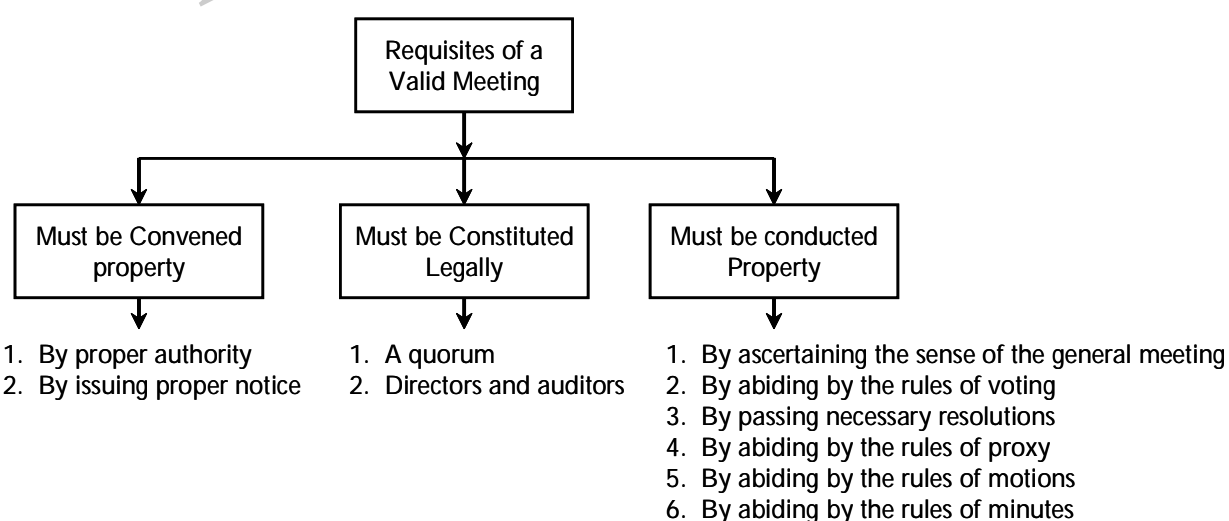


Fig. : Requisites of a Valid Meeting

I) Convened Properly

A meeting which is properly convened by the proper authority and conducted after giving a proper notice to all the individuals who are supposed to attend the meeting is a valid meeting.

1. By Proper Authority

Meeting is stated valid, if it is called by a proper authority. Following are the proper authorities to call the meetings,

- (a) Board of Directors:** Board of directors of a company is empowered by the articles of association of a company and common law to convene a meeting. An individual director cannot call a general meeting. Aboard meeting is stated unlawful and the notice for the general meeting becomes invalid, if few directors conduct a board meeting without allowing other directors who were freely available at the office to the meeting. A secretary cannot convene a general meeting without proper authority. But the notice can be ratified before meeting by the board.
- (b) Members:** Members or requisitionists U/S 100 are eligible to call a EFM, if the directors don't call a meeting.
- (c) The Tribunal:** The Tribunal U/S 97 is also eligible to call an EGM on a petition of any member. It has been conferred with the same powers to call an EGM but on a petition of any director, Suo Motu and any member. This power can only be exercised when it is impracticable to hold, call or conduct a meeting (Section 98). A meeting conducted in such a way is deemed to be a meeting which is duly called and conducted.

2. By Issuing proper notice

Notice is a document containing various details regarding meeting, such as time, date, day and venue where business to be transacted at the meeting. It is sent to the persons who are entitled to receive a notice to the meeting to the addresses provided by them.

A valid notice is a notice which complies with the rules laid down in the articles and companies Act and also complies with the general rules.

II) Must be Constituted Legally

To be constituted legally, a meeting must consist a quorum, a chairman, directors and auditors and must be according to the provisions of the articles of association of the Act.

1. A quorum (Section 103)

Quorum implies to the minimum number of members required to conduct and validate a meeting. Presence of Quorum is necessary to validly transact business at a meeting. If it is not present, then proceedings of the meeting will be invalid.

According to section 103 of companies Act, 2013 Quorum required for any other company is minimum of two members. Whereas under Articles it is prescribed that quorum shall be more than one.

Following is the Quorum prescribed in section 103 of the companies Act, 2013 for public companies,

- (i) If number of members present on the date of meeting is less than 1,000 then the Quorum required is 5
- (ii) If number of members present is more than 1,000 but lesser than 5,000, then the quorum required is 15.
- (iii) If number of members present is more than 5,000, then the quorum required is 30.

2. Directors and Auditors

SS-2 provides the following regarding the Presence of directors and auditors in the meeting.

- (a) Directors:** If a directors fails to attend the meeting, his absence is explained by the chairman. On his behalf, the chairman of the audit committee, stakeholders, relationship committee, nomination and remuneration committee and any other member of such committee who is authorized by the chairman can attend the general meeting.
- (b) Auditors:** Auditors or their authorized representatives can attend the general meeting. They have the right to be heard at the meeting on the part of the business concerning them. An authorized representative is qualified to be an auditor if he attends the general meeting.

- (c) **Secretarial Auditor:** A secretarial auditor or his authorized representative can attend the annual general meeting unless exempted by the company. The chairman can invite the secretarial auditor or his authorized representative to the general meeting if need be. He has the right to be heard on the part of business concerning him as a secretarial auditor. An authorized representative is qualified to be a secretarial auditor if the attends the general meeting.

III) Must be Conducted Properly

A properly conducted meeting is one which follows proper rules to estimate the sense of meeting and rules for discussion, maintains proper order in debate and has properly recorded proceedings.

1. By Ascertaining the Sense of the General Meeting

Harmony before a meeting is not obtained on all matters. The chairman would like to acknowledge the opinions of the people in the meeting. This process is called as ascertaining the sense of the house. For this the chairman puts forth the matter to vote and the members convey their approval or disapproval. The following methods are used for ascertaining the sense of the general meeting,

- (a) **By Voice Vote:** The members who are in favour of the proposition say 'yes' and those who are against it say 'no'. The decision is made after calculating their numbers.
- (b) **By Acclamation:** Voting by acclamation is a method in which people show their approval or disapproval by cheering, clapping of hands or applause.
- (c) **By Division:** In this method, the members are requested to group themselves into two blocks based on their opinion to approve or disapprove. The director then gives the verdict after counting them.
- (d) **By Ballot:** Each person records his/her vote on a ballot paper and casts it into a ballot box. This method is adapted to maintain secrecy. The results are revealed after counting the ballots casted for and against the motion.

- (e) **By Show of Hands:** The chairman requests the members in favour to raise their right hand and they are counted and noted down. The members who are against the resolution are asked to do likewise and their number is noted. Verdict is given based on the majority of counts.

- (f) **By Poll:** Voting by poll is done according to the number of shares which a member possesses. In some cases few of members do not take part in the voting. These members are not counted on either side.

2. By abiding by the Rules of Voting

Following are the rules as to voting,

- (a) **For Equity Shareholders:** In a company limited by shares, every equity shareholder has the right to vote in proportion to their paid up equity capital U/S 47(1) (a) and 47(1) (b).
- (b) **For Preference Shareholders:** The preference shareholders are empowered with voting rights only on the resolutions which affect them U/S 47(2).
- (c) **Bearer of Share Warrants:** The holders of share warrants enjoy with right to vote if the articles of association of the company allows it.
- (d) **Insolvent:** An insolvent shareholder can vote only if his/her name appears in the register of names.
- (e) **Joint Holders:** The senior among the joint holder is entitled the right to vote.
- (f) **Representation of corporations in Meetings:** Representative of a company or his proxy can exercise the right to vote in a meeting U/S 113.
 - (i) **Proxy:** A proxy can vote on a poll and is not allowed to vote by the show of hands.
 - (ii) **Representation of the President and Governor:** If the president or governor of India is a member of a company, then

their selected representative action a member of the company and its entitled to various rights and powers along with voting right.

(g) **Voting by Show of Hands in the First Instance (Sec 107):** Firstly, the voting must be done by the show of hands and each member has one vote U/S 107.

(h) **Voting by Poll and Time for its Demand:** A poll is demanded when voting by show of hands doesn't provide accurate results because a proxy cannot vote by show of hands U/S 109. It can be demanded on or before result declaration.

3. Resolutions

The term resolution can be defined as any decision taken by the directors or other members of the company at the time of Annual General Meeting which is passed at the board meeting or AGMs. Every company is considered as a artificial person any decision by the company would always be in the form of resolution. The companies Act, 2013 not provided any clear definition of the term resolution, but it stated various matters and types of resolutions can be taken by a company which are required to be passed in the general meeting of company by its members. Thus in a simple way it can be defined as the formal decision of a meeting on any motion before it. Resolution came into existence when any proposal is passed and accepted by the members of company.

4. Proxy

According to the Section 105 of companies Act, 2013. Proxy means a person appointed to represent another person and can vote at the time of meeting on behalf of that person. Basically, the proxy is an instrument through which a person is appointed.

5. Motions

The term 'motion' refers to a proposal which is made by any member at a meeting and passed without making any changes or modifications. The individual who prosper a motion is called the mover and the motion must be signed by him. If the other member think that the motion needs few modifications or changes then an amendment is

moved. An amendment is a proposed modification in the wording of the motion. If a motion is passed without amendment, it is called a resolution. The motion must be brought to the meeting in written form and a necessary notice must be given if needed

6. Minutes

The concept of 'Minutes of Meetings' is discussed Under Section 118 of companies Act, 2013. Minutes refers to the official record of the company meetings, all board meetings and AGMs. The concept of 'Minutes of Meetings' is discussed Under Section 118 of companies Act, 2013. Minutes refers to the official record of the company meetings. the minutes of meeting are the summary of complete meeting conducted with shareholders and directors in which discussions are made, decision are taken and resolution arrived. Thus, minutes of meeting considered as the complete summary report of the conducted company meetings.

3.7 BOARD MEETINGS

Q16. Discuss briefly about Board Meetings.

Ans :

The Board of Directors of a Company should hold Board Meetings as frequently as necessary. They should hold atleast one meeting in three months or four such meetings in a calendar year. The decisions taken by the directors at various Board Meetings should be recorded in the form of resolutions in a separate register known as " Minutes Book".

The Board Meetings should be, generally, held at the Registered Office of the Company. However, they may decide to hold the meetings at any other place of their convenience such as factory | of the company, showroom of the company, any hotel, or residence of any director etc. It can also be held in a running car or a bus or an aeroplane.

The date of next Board Meeting is decided at the end of every Board meeting. Therefore, the directors of the company will be aware of the date. But written notices, be given to the directors before reasonable time to their residential address in India otherwise a penalty of Rs. 1000 may be imposed on the officer responsible for such failure. The

quorum (minimum number of directors to be present to hold the meeting validity) to be present to hold a Board Meeting is one-third of the total number of directors or two directors whichever is more. The meeting should not be held without the presence of quorum.

The Companies Act 2013 has added the following new rules regarding holding of Board meetings.

- (a) First Board meeting of a company should be held within 30 days of its incorporation.
- (b) A director can participate in board meeting through video conference or such other audio - visual means as may be prescribed.
- (c) At least 7 days advance notice should be given for Board meeting.
- (d) The notice can be given by any electronic means.
- (e) At least one board meeting should be conducted in each half of a calendar year.
- (f) The time gap between two Board Meetings should not be more than 90 days.
- (g) The penalty for failure to give notice is enhanced from Rs. 1000 to Rs. 25000.
- (h) Participation of director by video conference or audio visual means be counted for quorum for board meeting.

3.8 COMPANY MANAGEMENT

Q17. Who is a manager of a company? Discuss the provisions of the companies act relating to the disqualification of a manager.

Ans :

A 'manager' is an individual person who has the management of the whole or substantially waste of the affairs of the company [Section 2 (53)]. He is, therefore, an important managerial personnel of the company who is entrusted with the management of all the affairs of the company.

Following points are important to note in respect of manager of a company:

- i) Only an individual can be appointed as a manager [Section 2(53)].
- ii) A company cannot appoint or employ at the same time a manager and a managing director [Section 196(1)]. However, a company can simultaneously employ a manager and whole-time director(s).
- iii) A manager may or may not be the director of a company. When a director actually manages the whole of the affairs of the company, he is the manager of the company.
- iv) The manager of a company shall exercise his powers subject to the superintendence, control and directions of the Board of Directors [Section 2(53)].

Disqualifications of a Manager

These are the same as in case of a managing director as provided in Section 196(3). As per this section, the persons suffering from the following disqualifications cannot be appointed as a manager of the company:

- i) A person who is below the age of 21 years or has attained the age of 70 years.
- ii) A person who is an undischarged insolvent, or who has at any time been declared an insolvent by the court.
- iii) A person who has at any time suspended the payment to his creditors.
- iv) A person who makes a composition with his creditors, or who has made composition with his creditors.
- v) A person who has at any time, been convicted by a court of an offence and sentenced for a period of more than 6 months.

Q18. Who is a director of a company?

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 supervises the overall management of company's affair.

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)].

The corresponding provisions to 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(1)(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.
2. **Maximum number of directors [Section 149(1)(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(1)(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 1/3rd 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)].
- (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.

3.8.1 Qualifications

Q19. Explain the Qualification - Disqualification of a director.

Ans :

(Imp.)

Qualifications of a Directors

Section 270 of the act specifies the following provisions which needs to be incorporated into the company's Articles of association.

1. Minimum share qualification must be disclosed in the prospectus.
2. Each director is entitled to attain his allotted shares within a period of two months after his appointment.
3. Directors must hold only those, shares whose notional value should not exceed ₹ 5000.
4. Share qualification must not be associated with share warrants.

Disqualifications of a directors

The disqualifications of directors are specified in Section 164 of the Companies Act, 2013 which were earlier provided in Section 274 of the Companies Act, 1956.

As per new Section 164, the following persons are disqualified for appointment as directors of a company:

1. A person who is of unsound mind and stands declared so by a competent court [Section 164(l)(a)].
2. A person who is an undischarged insolvent [Section 164(l)(b)]. But where the insolvent proceedings are discharged by the court, the direction would be qualified for appointment.
3. A person who has applied to the court to be declared as an insolvent and his application is pending [Section 164(l)(c)].
4. A person who has been sentenced to at least six months imprisonment for an offence whether involving moral turpitude or otherwise, and five years have not elapsed from the date of the expiry of the sentence [Section 164(1)(d)].

The expression 'moral turpitude' though vague but generally, it means a conduct contrary to justice, honesty, modesty or good morals. It implies depravity and wickedness of character.

5. A person has not paid for six months any calls on his shares [Section 164(l)(f)].
6. A person who has been disqualified for appointment as director by an order of the court or Tribunal and the order is in force [Section 164(l)(e)].
7. A person who has not been allotted a Director Identification Number [Section 164(1)].
8. A person who is already a directors of a company which
 - (a) Has not filed financial statements or annual returns for any continuous period of three financial years (or)
 - (b) Has failed to repay its deposits or interest or redeem its debentures on due date

or pay dividend and such failure continues for one year or more. Such a person shall not be eligible to be appointed as a director of any other company for a period of 5 years from the date of default by such a company [Section 164(2)].

- It is important to note that a private company which is not a subsidiary of a public company may, by its articles of association, provide for additional disqualifications of directors [Section 164(3)].
- However, in case of a public company, the disqualifications of directors are specified as enumerated above. It cannot provide for any additional disqualification.
- If it does so, the action of the company is not valid, and the director cannot be asked to quit because of the additional disqualification.

3.8.2 Appointment

Q20. Discuss briefly the provisions of Companies Act with regard to the modes of appointment of directors of a company?

Ans :

(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 Central Tribunal.

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 director.

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).

2. Appointment of directors by shareholders at general meeting.

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,

- (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)].

(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 $\frac{1}{3}$ 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 $\frac{2}{3}$ of appointment of remaining $\frac{2}{3}$

rd directors e.g., the articles may empower the Board of directors to appoint 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)].

As stated in last point, not less than $\frac{2}{3}$ rd 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 small shareholders' director

A 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 Rules, 2001 have also been made for the appointment of such director. These are discussed in the following pages :

- i) **Meaning:** 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 [Section 151(1), Explanation]. 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, 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.

- ii) **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].

- iii) **Appointment of small of small shareholders director - optional or obligatory:**

A small shareholders' director may be appointed by the company suo moto 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].

- iv) **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:

- The notice must be given in writing.
- The notice shall be given at least 14 days before the meeting.

- The notice shall be given by at least 1/10th in number of small shareholders.

- He notice shall be signed by at least 100 small shareholders.

- 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-

- Shareholders proposing the resolution; and
- The person whose name is proposed as a 'Small Share holders' Director'.

- v) **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].

- vi) **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.

- vii) **Disqualifications and vacation of office:** In this regard, the provisions are as under:

- Disqualifications of a 'Small Shareholders' Director' are same as that of any other director, as specified under Section 164.
- 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
 - The shall vacate his office if he ceases to be a small shareholder;

- viii) **Tenure of a small shareholders' director:** In this regard, the provisions are as under:

- A 'Small Shareholders' Director' shall be appointed for a maximum period of three years.
- He shall not retire by rotation.
- He may be re-elected for another period of three years.

- ix) **Number of small shareholders' director-ships:** A person can be appointed as a Small Shareholder's Director in not more than 2 companies.

4. Appointment of directors by the Board of Directors.

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:

- i) **Authorization 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)].
- ii) **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)].
- iii) **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.

b) Filling of Causal Vacancies

A casual vacancy occurs when the office of a director is vacated before the expiry 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.

6. Appointment of Directors by Central 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)].

3.8.3 Powers

Q21. Discuss in brief the various powers of directors.

Ans :

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

1. General Powers of Directors

This point may be discussed under two sub-heads namely (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 directors.

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 proviso],
- (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 proviso].

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.

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

and 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 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.

2. 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.

3.8.4 Legal Position of Directors

Q22. Explain the legal position of director of a company.

Ans :

1. Directors as agents

We know that a company being an artificial legal person cannot act in itself. It acts through some persons, called the directors. In the eyes of law, the directors are the agents of the company for which they act.

2. Directors as trustees

The 'trustee' means a person who holds and manages the property for W-benefit of other persons. Though the directors are not the trustees in the strict sense, but to some extent they have always been considered and treated as the trustee.

The directors are the trustees of company's money and property which comes into their hands or which is actually under their control. As trustees of company's money and property, the directors must account for the proper use of such money and property. In case of misapplication, they are liable to refund or restore the same to the company.

3. Directors as managing partners

We know that the directors are appointed to manage and control the affairs of the company. Thus, to this extent, the position of the directors is also similar to that of managing partners. They manage the company's affairs for their own benefit and also for the general benefit of the company.

It will be interesting to know that though the legal position of the directors is discussed under the above three heads, but strictly speaking, they do not hold the position of agents or trustees or managing partners exclusively.

3.9 MANAGING DIRECTOR (M.D)

Q23. Who is a Managing Director? How he is appointed?

Ans :

(Imp.)

Meaning

A 'managing director' is the director who is entrusted with the substantial powers of management of the affairs of the company and includes a director occupying the position of a managing director by whatever name called [Section 2(54)]. The substantial powers of management may be conferred upon a director in various ways, such as by an agreement with the company, or by a resolution of the company, or by a resolution of the Board of Directors, or by company's memorandum, or articles of association. The substantial powers of management means the powers to take decision regarding some policy matters e.g., pricing of products, adoption of new techniques, buying and selling, appointment of employees etc.

It may, however, be noted that conferring powers to do administrative acts of routine nature does not make director the managing director e.g., the power to affix the common seal of the company on any document, to draw or endorse any cheque on the account of the company, to sign any certificate of share, or to direct registration of transfer of any share.

Following points are important to note in respect of the managing director of a company:

1. A managing director occupies a dual capacity, namely, that of a director as well as employee of the company. The remuneration payable to him is taxable as salary.

2. A managing director is essentially a director of the company, and thus he must also be the director of the company.
3. If the managing director ceases to be a director, he *automatically* ceases to be a managing director.
4. Any director (whether rotational or non-rotational) may be appointed as a managing director. If rotational director is appointed as a managing director, then provisions of retirement by rotation shall apply to him even if his term of office (maximum 5 years) has not yet expired.

Appointment of a Managing Director

The provisions relating to appointment of managerial personnel (i.e. managing director, whole-time director or manager) are provided in Section 196 of the Companies Act, 2013 which are as under:

1. **Appointment for 5 years:** No company shall appoint or re-appoint any person as its managing director, whole-time director or manager for a term exceeding 5 years at a time [Section 196(2)].
2. **No simultaneous appointment of a managing director and manager:** No company shall appoint or employ at the same time a managing director and a manager [Section 196(1)].
3. **Compliance of eligibility requirements:** A person shall be eligible for appointment as a managing director, whole-time director or manager only if he satisfies all the eligibility requirements as specified in Part I of Schedule V of the Companies Act, 2013. These requirements will be discussed in Art. 13.4 in the following pages.
4. **Approval of Board:** The terms and conditions of appointment and remuneration payable to the managing director, whole-time director or manager shall be approved by the Board of Directors at a meeting [Section 196(4)].
5. **Approval of general meeting:** The appointment and remuneration of these managerial personnel shall also be approved

by the company by a resolution at the next general meeting of the company [Section 196(4)].

6. **Approval of Central Government:** If the appointment of managing director, whole-time or manager is not in accordance with the eligibility conditions laid down in Schedule V the Companies Act, 2013, then the appointment must also be approved by the Central Government [Section 196(4)].
7. **Filing of return:** A return in the prescribed form shall be filed with the Registrar within 60 days of appointment of the managerial person.

Q24. Explain the disqualifications of a managing director.

Ans :

The disqualifications of a managing director, whole-time director and manager are provided in Section 196(3) of the Companies Act, 2013. The following disqualifications cannot be appointed as a managing director, whole-time director or manager:

1. A person who is below the age of 21 years or has attained the age of 70 years. However, a person who has attained the age of 70 years may be appointed by passing a *special resolution* if justification for appointing such person is given in the explanatory statement attached to the notice for such resolution.
2. A person who is an undischarged insolvent, or a person who has, at any time, been declared an insolvent by the court.
3. A person who suspends payment to his creditors, or a person who has, at anytime suspended payment to his creditors.
4. A person who makes or has made a composition with his creditors.
5. A person who has at any time, been convicted by a court of an offence and sentenced for a period of more than 6 months.

3.10 CHAIRMAN

3.10.1 Powers

Q25. Who is a chairman? Explain the power of a chairman.

Ans :

(Imp.)

In order to successfully conduct the meeting in a fair manner, a chairman is needed. Usually all the meetings are presided over by the chairman of the board of directors. The appointment of the board chairman is controlled and monitored by the articles of association.

If in case the chairman does not report immediately after 15 minutes of his appointment for the meeting, or if incase the chairman is not ready to be the chairman then in such a situation the directors who are present must select and elect anyone of them as the chairman of the meeting.

If suppose the director is not ready to be the chairman within 15 minutes after him being selected as the chairman for the meeting then the members must select anyone out of them as the chairman of the meeting. After the completion of the meeting a poll will be conducted and then chairman will be selected for other meetings i.e., he would be presiding over the future meetings or the meetings which would be conducted in the future.

Powers

According to the Act and articles of the company, the following are the different powers and duties of the chairman of the company.

1. According to Sec. 178 of the act the chairman has the power to announce the result of voting by showing hands or by show of hands.
2. According to Sec. 179 of the act the chairman has the power to order a poll and must be ordered to be taken by him if in case the members demand so as being mentioned in Sec. 179.
3. According to Sec. 184 of the act the chairman has the power to make an appointment of the scrutiniser and to scrutinize the votes registered on the poll and to report to him.

4. According to Sec. 184 the chairman holds the power to abolish or eliminate any of the scrutiniser from the office anytime prior to the poll's result and can fill his place by another person.
5. According to Sec. 185 the chairman has the power to control and carry out the meeting and poll in any manner.
6. According to the Sec. 193 of the act, the chairman holds the power to remove few issues from the meetings minute if in case.
 - (a) He considers it as defamatory of any person.
 - (b) He considers it as irrelevant or inappropriate for the processing or which is dangerous for the welfare of the company.
7. The chairman has the power to control the proceedings of the meeting, enable the speakers to speak in the meeting and fix certain time for speaking, inspect and clear out the confusion of the meeting and remove those persons who makes use of the personal references and inappropriate methods.
8. The chairman has the power to look into the provisions of the companies act, articles of the company and the other laws which the company follows or is associated with.
9. The chairman has the power to make sure that the correct minutes are being prepared/drafted.
10. The chairman has the power to sign the minutes of the meeting within the particular time on the act.

Short Question and Answers

1. Chartered company

Ans :

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.

2. Registered Company

Ans :

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:

- i) Limited companies
- iii) Unlimited companies

i) Limited companies: A limited company is one in which the liability of the members is limited i.e., the members are liable upto a limited amount, and beyond that limit they cannot be asked to contribute anything towards the payment of company's liabilities.

ii) 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 utilized for the payment of company's liabilities.

3. Memorandum of Association.

Ans :

Meaning

The 'memorandum of association' briefly called the memorandum is the first important document to be filed with the Registrar at the time of formation of the company.

Definition

The 'memorandum' is legally defined in Section 2(56) of the Companies Act, 2013, as under:

'Memorandum' means memorandum of association of a company as originally formed or as altered from time to time in pursuance of any previous company laws or of this Act.

Thus, legally a memorandum means:-

- (a) A memorandum as originally formed by the company, or
- (b) A memorandum as altered by the company from time to time.

The memorandum of association of every company must have the following clauses:

- 1. Name Clause
- 2. Registered Office Clause
- 3. Objects Clause
- 4. Liability Clause
- 5. Capital Clause

4. Articles of Association.*Ans :***Meaning**

The 'articles of association', briefly called 'articles', is the second important document which has to be filed with the Registrar at the time of registration of the company.

Definitions

The 'articles of association' is legally defined in Section 2 (5) of the Companies Act, 2013 as under:

"Articles' means articles of association of a company as originally framed or as altered from time to time or applied in pursuance of any previous company law or of this Act.

Thus, legally the articles means-

- (a) The articles as originally framed; or
- (b) The articles altered or applied by the company from time to time.

5. What is a Prospectus.*Ans :*

The term prospectus is defined in Section 2 (70) of the Companies Act, 2013, which reads as under:

"A prospectus means any document described or issued as prospectus and includes:

- (a) A shelf prospectus referred in Section 31; or
- (b) A red-herring prospectus referred in Section 32; or
- (c) Any notice or circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a body corporate

In other words, a prospectus means any invitation issued to the public inviting it to take shares or debentures of the company. Such invitation may be in the form of (a) a shelf prospectus; or (b) red-herring prospectus; or (c) a document or a notice, circular, advertisement, etc. The only requirement is that the invitation must be made (or issued) to the public.

6. Define the term Redherring prospectus.*Ans :*

A public company is required to issue a prospectus to the public when it wants to raise money by issue (i.e., allotment) of shares or debentures.

A company may also make an offer of securities (i.e., shares, etc.) by issuing a red herring prospectus prior to the issue of prospects.

A 'red herring prospectus' means a prospectus which does not include complete particulars of the (a) quantum of securities, or (b) price of securities included therein.

7. Meeting*Ans :*

The business of the company is carried on by the selected representatives of the members, called the directors. The directors take decisions by calling their meetings. There are also certain matters which are to be decided by the whole body of shareholders of the company. The shareholders also decide the matters by calling their meetings from time to time. A meeting may be defined as a gathering or assembly of a number of persons for transacting any lawful business. It may be noted that every gathering of persons does not constitute a meeting. A meeting would be valid if it is held by following the prescribed rules and regulations. A company meeting to be valid, must be convened and held as per the provisions of the Companies Act, 1956 and the rules framed thereunder. The matters are decided by passing resolutions at the meetings.

8. A quorum*Ans :*

Quorum implies to the minimum number of members required to conduct and validate a meeting. Presence of Quorum is necessary to validly transact business at a meeting. If it is not present, then proceedings of the meeting will be invalid.

According to section 103 of companies Act, 2013 Quorum required for any other company is minimum of two members. Whereas under Articles it is prescribed that quorum shall be more than one.

Following is the Quorum prescribed in section 103 of the companies Act, 2013 for public companies,

- (i) If number of members present on the date of meeting is less than 1,000 then the Quorum required is 5
- (ii) If number of members present is more than 1,000 but lesser than 5,000, then the quorum required is 15.
- (iii) If number of members present is more than 5,000, then the quorum required is 30.

9. Board Meetings.

Ans :

The Board of Directors of a Company should hold Board Meetings as frequently as necessary. They should hold atleast one meeting in three months or four such meetings in a calendar year. The decisions taken by the directors at various Board Meetings should be recorded in the form of resolutions in a separate register known as " Minutes Book".

The Board Meetings should be, generally, held at the Registered Office of the Company. However, they may decide to hold the meetings at any other place of their convenience such as factory | of the company, showroom of the company, any hotel, or residence of any director etc. It can also be held in a running car or a bus or an aeroplane.

The date of next Board Meeting is decided at the end of every Board meeting. Therefore, the directors of the company will be aware of the date. But written notices, be given to the directors before reasonable time to their residential address in India otherwise a penalty of Rs. 1000 may be imposed on the officer responsible for such failure. The quorum (minimum number of directors to be present to hold the meeting validity) to be present to hold a Board Meeting is one-third of the total number of directors or two directors whichever is more the meeting should not be held without the presence of quorum.

10. Who is a manager of a company?

Ans :

A 'manager' is an individual person who has the management of the whole or substantially waste of the affairs of the company [Section 2 (53)]. He is, therefore, an important managerial personnel of the company who is entrusted with the management of all the affairs of the company.

Following points are important to note in respect of manager of a company:

- i) Only an individual can be appointed as a manager [Section 2(53)].
- ii) A company cannot appoint or employ at the same time a manager and a managing director [Section 196(1)]. However, a company can simultaneously employ a manager and whole-time director(s).

11. Qualifications of a Directors

Ans :

Section 270 of the act specifies the following provisions which needs to be incorporated into the company's Articles of association.

- i) Minimum share qualification must be disclosed in the prospectus.
- ii) Each director is entitled to attain his allotted shares within a period of two months after his appointment.
- iii) Directors must hold only those, shares whose notional value should not exceed ` 5000.
- iv) Share qualification must not be associated with share warrants.

12. Who is a Managing Director?

Ans :

A 'managing director' is the director who is entrusted with the substantial powers of management of the affairs of the company and *includes* a director occupying the position of a managing director by whatever name called [Section 2(54)]. The substantial powers of management may be conferred upon a director in various ways, such as by an agreement with the company, or by a resolution of the company, or by a resolution of the Board of Directors, or by company's memorandum, or articles of association. The substantial powers of management means the powers to take decision regarding some policy matters e.g., pricing of products, adoption of new techniques, buying and selling, appointment of employees etc.

13. Disqualifications of a managing director.

Ans :

- i) A person who is below the age of 21 years or has attained the age of 70 years. However, a person who has attained the age of 70 years may be appointed by passing a *special resolution* if justification for appointing such person is given in the explanatory statement attached to the notice for such resolution.
- ii) A person who is an undischarged insolvent, or a person who has, at any time, been declared an insolvent by the court.
- iii) A person who suspends payment to his creditors, or a person who has, at anytime suspended payment to his creditors.
- iv) A person who makes or has made a composition with his creditors.
- v) A person who has at any time, been convicted by a court of an offence and sentenced for a period of more than 6 months.

14. Who is a chairman?

Ans :

In order to successfully conduct the meeting in a fair manner, a chairman is needed. Usually all the meetings are presided over by the chairman of the board of directors. The appointment of the board chairman is controlled and monitored by the articles of association.

If in case the chairman does not report immediately after 15 minutes of his appointment for the meeting, or if incase the chairman is not ready to be the chairman then in such a situation the directors who are present must select and elect anyone of them as the chairman of the meeting.

If suppose the director is not ready to be the chairman within 15 minutes after him being selected as the chairman for the meeting then the members must select anyone out of them as the chairman of the meeting. After the completion of the meeting a poll will be conducted and then chairman will be selected for other meetings i.e., he would be presiding over the future meetings or the meetings which would be conducted in the future.

15. Extraordinary general meeting.

Ans :

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).

16. Class meeting*Ans :*

It is the meeting of a particular class of shareholders. Generally, the companies have two classes of shareholders, namely (a) equity shareholders and (b) preference shareholders. In order to discuss the matters affecting one class, only a meeting of the particular class of shareholders is held. It may be noted that at a class meeting, only the shareholders of the particular class have the right to be present e.g., 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 entitled 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 approved at the meeting by a special resolution.

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Choose the Correct Answers

1. Section 12 of Companies Act 1956, deals with [a]
(a) Incorporation (b) Share capital
(c) Number of Directors (d) Share holders
2. The application for registration of a company should be presented to the _____ of the state appointed under Companies Act 1956. [b]
(a) Controller (b) Registrar
(c) Governor (d) Registration officer
3. Which of the following is not a clause of memorandum of association [d]
(a) Situation (b) Capital
(c) Subscription (d) Directors
4. Which of the following clause of Memorandum of Association cannot be altered [d]
(a) Name (b) Object
(c) Situation (d) Liability
5. When the registered office of a company is changed within a city then it has to be intimated to the registrar within _____ days of such change. [c]
(a) 60 (b) 45
(c) 30 (d) 7
6. "Men may come and men may go but the company exist"- this explains which characteristics of the company as per companies Act 1956 [b]
(a) Separate legal entity (b) Perpetual Succession
(c) Capacity to sue (d) None of the above
7. _____ are the company created by special act of the legislature. [d]
(a) Registered company (b) Public Ltd Company
(c) Private Ltd Company (d) Statutory company
8. A private company means a company which has a minimum paid up capital of Rs. _____ [a]
(a) 1,00,000 (b) 5,00,000
(c) 50,00,000 (d) None of the above
9. A private company means a company which has a minimum paid up capital of Rs. _____ [b]
(a) 1,00,000 (b) 5,00,000
(c) 50,00,000 (d) None of the above
10. _____ cannot give invitation to the public to subscribe for any shares in or debentures of the company. [c]
(a) Subsidiary company (b) Statutory Company
(c) Private company (d) Registered company

11. What is the proportion of total directors that can be given permanent appointment in the company? [b]
(a) $\frac{2}{3}$ (b) $\frac{1}{3}$
(c) $\frac{1}{4}$ (d) $\frac{1}{6}$
12. A director appointed to fill up a casual vacancy will hold office [c]
(a) For 5 years from the date of appointment.
(b) For 3 years from the date of appointment.
(c) Upto the date of which the person in whose place he is appointed would have held the office.
(d) Upto the date of next Board meeting.
13. A person already holding the office of director in 15 companies, can hold the office of director in _____ more companies. [c]
(a) 3 (b) 4
(c) 5 (d) none of these
14. Essential of company meeting _____. [a]
(a) Two or more persons (b) Three or more persons
(c) 100 members (d) All
15. Components of meeting _____. [d]
(a) Chairman (b) Secretary
(c) Participants (d) All
16. Special aspects of company meeting _____. [d]
(a) Notice (b) Agenda
(c) Proxy (d) All
17. Type of company resolution _____. [a]
(a) Special resolution (b) Normal resolution
(c) Undertaking resolution (d) All
18. Format of minutes of meeting _____. [a]
(a) Name of the company (b) General content
(c) Ordinary information (d) Venue of meeting
19. Content of minutes of meeting _____. [a]
(a) Specific content (b) Normal content
(c) Future content (d) All

Fill in the Blanks

1. Minimum number of members required to apply for incorporation certificate in a public ltd company is _____.
2. The application for registration of a company should be presented to the registrar of the state in which the _____ of the company is to be situated.
3. Number of documents to be submitted, by a public ltd company, to the registrar while applying for incorporation of the company is _____.
4. The address of the registered office of the company must be notified to the registrar within _____ days of registration, if it is not done at the time of incorporation.
5. The certificate of capital will be issued by _____.
6. The articles of association needs to be signed by _____.
7. Number of clauses in Memorandum of Association is _____.
8. A Government Company means any company in which not less than 51% of the paid-up share capital is held by _____.
9. A copy of the _____ must accompany each from of application for shares offered to the public.
10. If the company can make arrangements for raising the capital privately so that pubic appeal is unnecessary, the company is required to prepare a _____.
11. The liabilities of _____ are numerous as per the ICA, 2013.
12. Certain powers are exercisable only at _____ and certain powers are exercisable with the approval of company in _____.
13. Directors are _____ of the company.
14. AGM stands for _____.
15. EGM stands for _____.
16. Element of minutes of meeting _____.
17. Requisites of a valid meeting _____.
18. The notice period of board meeting _____.

ANSWERS

1. 7
2. Business office
3. 7
4. 30
5. Controller of capital issues
6. Subscribers of memorandum

7. 6
8. Central and State Government
9. Prospectus
10. Statement in lieu of Prospectus
11. Directorss
12. Board meetings, general meeting
13. Trustees
14. Annual General Meeting
15. Extraordinary General Meeting
16. Decision
17. Proper authority
18. 7 days

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UNIT IV

Consumer Protection Law

Introduction to consumer protection law in India - Consumer councils - Redressal machinery - Rights of consumers - Consumer awareness. Pollution Control Law - Air, water, and environment pollution control.

4.1 CONSUMER PROTECTION LAW

Q1. Write about consumer protection law?

Ans :

Introduction

The Consumer Protection Act was passed, in the year 1986 by the Parliament of India to honour the representations made by a number of Consumers' Associations in the country. The main object of this law is to protect the consumers of goods and services from the unfair trade practices by the traders.

The law came into force from 15th April, 1987 and extends to the whole of India except the state of Jammu and Kashmir.

This law has given very clear definitions of goods, services, consumers, unfair trade practices etc. This has constituted Consumer Protection Councils for the overall supervision of the working of this Act. It has also constituted Consumer Redressal Forums and Commissions at district level, state level and national level for the settlement of consumer disputes.

Q2. Define the following terms :

- (i) Complainant
- (ii) Consumer
- (iii) Consumer disputes
- (iv) Restrictive trade practices
- (v) Unfair trade practices

Ans :

(i) Complainant

Complainant means

- (a) A consumer; or

- (b) Any voluntary consumer association registered under the Companies Act, 1956 (1 of 1956) or under any other law for the time being in force; or
- (c) The Central Government or any State Government, who or which makes a complaint;
- (d) One or more consumers, where there are numerous consumers having the same interest. Who or which makes a complaint.

(ii) Consumer: Consumer means any person, who

- (a) 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 consideration paid or promised or partly who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or
- (b) Hires or avails of any services 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 beneficiary of such services other than the person who '[hires or avails of] the services for consideration paid or

promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of, the first mentioned person.

- iii) **Consumer Dispute:** Consumer dispute means a dispute where the person against whom a complaint has been made, denies or disputes the allegations contained in the complaint;
- iv) **Restrictive Trade Practices:** Restrictive trade practice means any trade practice which requires a consumer to buy, hire or avail of any goods, or, as the case may be services as a condition precedent for buying, hiring or availing of other goods or services.
- v) **Unfair Trade Practices:** Unfair trade practice means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice.

It has been held that a person buying goods for resale or for use in large scale profit making activity is not a consumer and hence not entitled to protection under this Act. However, a student has been held to be a consumer of a service of an educational institute.

4.1.1 Introduction to Consumer Protection Law in India

Q3. What are the features and objectives of consumer protection Act 1986?

(OR)

State the features and objectives of consumer protection law.

Ans :

The Consumer Protection Act was passed, in the year 1986 by the Parliament of India to honour the representations made by a number of Consumers' Associations in the country. The main object of this law is to protect the consumers of goods and services from the unfair trade practices by the traders.

This law came into force from 15th April, 1987 and extends to the whole of India except the state of Jammu and Kashmir.

This law has given very clear definitions of goods, services, consumers, unfair trade practices etc. This has constituted Consumer Protection Councils for the overall supervision of the working of this Act. It has also constituted Consumer Redressal Forums and Commissions at district level, state level and national level for the settlement of consumer disputes.

Features

Features of Consumer Protection Act, 1986 and filing of complaints :

1. Simple formalities
2. Advocates not compulsory
3. Consumers themselves can conduct cases
4. Complaints may be sent even through Registered Post
5. Registered Consumer Organisations or Government can also file complaint on behalf of consumer(s)
6. Less expensive
7. Compensation can be claimed for the loss suffered including mental agony

Objectives

1. **Better protection of interests of consumers :** The Act seeks to provide for better protection of the interests of consumers. For that purpose, the Act makes provision for the establishment of Consumer Councils and other authorities for the settlement of consumer disputes and for matters connected therewith (Preamble to the Act).
2. **Protection of Rights of consumers :** The Act seeks, inter alia, to promote and protect the rights of consumers such as.
 - a) The right to be protected against marketing of goods or services which are hazardous to life and property :

- b) The right to be informed about the quality, quantity, potency, purity, standard and price of goods or services so as to protect the consumers against unfair trade practices :
- c) The right to be assured, wherever possible, access to goods and services at competitive prices :
- d) The right to be heard and to be assured that consumers interest will receive due consideration at appropriate forums
- e) The right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers : and
- f) Right to consumer education.

3. Consumer Protection Councils : The above objects are sought to be promoted and protected by the Consumer Protection Councils established at the Central and State levels.

4. Quasi-judicial machinery for speedy redressal of consumer disputes : The Act seeks to provide speedy and simple redressal to consumer disputes. For this purpose, there has been set up a quasi-judicial machinery at the district, State and Central levels. There quasi-judicial bodies are supposed to observe the principles of natural justice and are empowered.

- a) To give reliefs of a specific nature, and
- b) To award, wherever appropriate, compensation to consumer.

Penalties for non-compliance of the orders given by the quasi-judicial bodies have also been provided.

The Act provides following remedies to an aggrieved consumer :

- Removal of defects in goods or deficiency in service.
- Replacement of defective goods with new goods of similar description which shall be free from any defect.

- Return of price paid by the consumer.
- Payment of compensation for any loss or injury suffered by the consumer.
- Discontinue the restrictive, or unfair trade practice, and not to repeat it.
- Withdraw the hazardous goods from being offered for sale and not to offer them for sale.
- Provide for adequate cost to the aggrieved party.

Q4. Discuss the important provisions of Consumer Protection Act, 1986.

OR

Critically evaluate the legal provisions for consumer protection in India.

Ans : (Imp.)

The consumer protection act, 1986 was approved and enforced on 15 April, 1987. It is supported by consumer protection rules, 1987. The act was completely modified by consumer protection (Amendment) Act 1993 and was enforced from 18 June, 1993. The 1993 amendment gave provisions for the following,

- (i) To expand the scope of the act so that the consumers can file class action complaints and the complaints associated with restrictive trade practices implemented by a trader.
- (ii) To assist the self employed consumers for filing complaints in front of the redressal agencies if the goods purchased by them have any defect.
- (iii) To increase the "services" associated with housing constructions.
- (iv) To assist in filing the class complaints on behalf of the consumer groups with same interest.
- (v) To form the constitution of selection committees for selecting the non-judicial members of different redressal agencies.
- (vi) To enhance the monetary jurisdiction of district forums state commissions/national commission.
- (vii) To grant additional powers to the redressal agencies by giving costs to the parties for

ordering to eliminate the defects or deficiency from the services and to empower with authority to recall the goods which have the chances of affecting the safety of the public etc.

(viii) To levy punishment on the complainant if they make minor or insignificant complaints and,

(ix) To restrict the period of filing complaints to one year.

The Consumer Protection (Amendment) act, 2002 again modified the act with major insertions and enforced it from 15 March 2003.

The amendments of 2002 mainly aimed at providing fast solutions to the consumer complaints by consumer disputes redressal agencies by executing the orders effectively, expanding the scope of provisions of the act for making them effective, eliminating the gaps in the act and streamlining the procedures. The amendments contains the following provisions,

- (i) Provisions for creating benches of the national commission and state commissions and maintaining circuit benches of these commissions.
- (ii) Specifying the period for admitting complaints, issuing notices to opposite party and deciding the complaints. The similar provisions were also developed for appeals.
- (iii) The interruptions are not allowed and only the verbal orders specifying the reasons can be made,
- (iv) Increasing the financial limits of jurisdiction of the consumer disputes redressal agencies for assisting the district forums to handle the complaints relating to the value of goods or services and claims of compensation upto ` 20 lakhs, the financial limits of jurisdiction of state commissions were also fixed from ` 20 lakhs to ` 1 crore and national commission above ` 1 crore.
- (v) Provision to charge fee while filing complaints in front of the consumer disputes redressal agencies.

(vi) Provision for depositing, before the admission of appeal i.e., either 50 percent of fine amount of compensation or the amounts specified below which ever is less need to be deposited.

(a) In case of district forum appeal to the state commission, the amount is ₹25,000.

(b) In case of state commission appeal to the national commission, the amount is ₹35,000 and

(c) In case of national commission appeal to the supreme court, the amount is ₹50,000.

(vii) The services used for commercial purposes were excluded from the range of the consumer disputes redressal agencies.

(viii) Specifying the minimum qualifications and disqualifications required for members of consumer disputes redressal agencies.

(ix) Provision for re-appointing the president and members of district forum, state commissions and the national commission for the next five years.

(x) Provisions of the act were also extended to service providers who are engaged in unfair or restrictive trade practices or provides hazardous services.

(xi) Including the sales of fake goods or services as unfair trade practices.

(xii) Discussing the powers of Judicial Magistrate of the first class on the consumer disputes redressal agencies for examining the offences under the act.

(xiii) Provision for recovery of amounts which the consumer disputes redressal agencies are ordered to be paid as land revenue arrears.

(xiv) Provision for the issue of interim order by consumer disputes redressal agencies, if it is required by such agencies.

(xv) Provision for replacing the legal heir or representative in case of death of complainant or the opposite party.

(xvi) District consumer protection councils were formed for encouraging and protecting the rights of the consumers at the district level.

4.2 CONSUMER COUNCILS

Q5. Explain the functions of Consumer Councils in India.

(OR)

Explain the provisions of the consumer protection act regarding establishment, objectives and meeting of the central, state and district consumer protection councils.

Ans :

(Imp.)

Sections 4 to 8 of the Act provide for establishment and objectives of consumer protection councils. The provisions of the Act in this regard are being summarised below :

1. The Central Consumer Protection Council (Sections 4 to 6).

(A) Establishment (Section 4): The central government shall by notification establish a central protection council effective from such date as may be notified in the notification. The central consumer protection council shall consist of the following members :

- (i) The Minister Incharge of the consumer affairs in the Central Government as the Chairman;
- (ii) Such number of other officials or non-official members representing such interest as may be prescribed.

The central government has notified the consumer protection rules 1987. According to these rules, the number of members of the central consumer protection council is not to exceed 150. They include the following :

- (i) The Minister In-charge of Consumer Affairs in the Central Government who shall be the Chairman of the Central Council.
- (ii) The Minister of State (where he is not holding independent charge) or Deputy Minister [in charge of Consumer Affairs in the Central Government] who shall be the Vice Chairman of the Central Council;

- (iii) The Minister Incharge of Consumer Affairs in States;
- (iv) Eight Members of Parliament - five from the Lok Sabha and three from the Rajya Sabha;
- (v) The secretary of the national commissioner for scheduled castes and scheduled tribes;
- (vi) Representatives of the central government departments and autonomous organisations concerned with consumer interests - not exceeding twenty;
- (vii) Representatives of the consumer organisations or consumers -not less than thirty-five;
- (viii) Representatives of women - not less than ten;
- (ix) Representatives of farmers, trade and industries-not exceeding twenty;
- (x) Persons capable of representing consumer interest not specified above-not exceeding fifteen;
- (xi) The Secretary Incharge of the Consumer Affairs in the Central Government shall be the member-secretary of the Central Council.

The term of the Council shall be 3 years.

(B) Meetings of the central council (section 5) : The meeting of the central council can be called at such time and place as the chairman may think fit. It may meet as and when necessary. However, there should be at least one meeting of the central council in a year.

(C) Objectives of the central council (Section 6): The basic objective of the Central Council is to promote and protect the rights of the consumers. Such rights may relate to:

- (i) The right to be protected against the marketing of goods and services which are hazardous to life and property;
- (ii) The right to be informed about the quality, quantity, potency, purity,

- standard and price of goods or services, as the case may be, so as to protect the consumer against unfair trade practices;
- (iii) The right to be assured, wherever possible, access to a variety of goods and services at competitive prices;
 - (iv) The right to be heard and to be assured that consumer's interests will receive due consideration at appropriate forum;
 - (v) The right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers; and the right to consumer education.
2. The state consumer protection councils (Sections 7 & 8)
 - (A) Establishment [Section 7(1) & (2)] : The State Government shall, by notification, establish w.e. from such date as it may specify in the notification a State Consumer Protection Council. Such council shall consist of the following members :
 - (i) The minister incharge of consumer affairs in the state government as chairman;
 - (ii) Such number of other official or non-official members representing such interests as may be prescribed by the State Government.
 - (m) Such number of other official members not exceeding ten as may be nominated by the Central Govt.
 - (B) **Meeting of the State Council (Section 7(3)):** The State Council shall meet as and when necessary and at such time and places as may be thought fit by the Chairman of the Council. However, there must be atleast two meetings of the Council in a year.
 - (C) **Objectives of the State Council (Section 8):** The basic objective of every state council is to promote and protect within the State the rights of the consumers. Such rights are similar to the rights of the consumers as discussed above in the heading, 'Objectives of Central Council'.
 3. The District Consumer Protection Council (Sections 8A & 8B)
 1. The State Government *shall* establish for every district by notification a council to be known as the District Consumer Protection Council* with effect from such date as it may specify in such notification.
 2. The District Consumer Protection Council (hereinafter referred to as the District Council shall consist of the following members, namely :
 - (i) The Collector of the district (by whatever name called), who shall be its Chairman, and
 - (ii) Such number of other official and non-official members representing such interests as may be prescribed by the State Government.
 3. The District Council shall meet as and when necessary but not less than two meetings shall be held every year.
 4. The District Council shall meet at such time and place within the district as the Chairman may think fit and shall observe such procedure in regard to the transaction of its business as may be prescribed by the State Government.

4.3 REDRESSAL MACHINERY

Q6. Enumerate briefly the establishment and working of different consumer dispute Redressal agencies established under the consumer protection act 1986.

(OR)

What is the Jurisdiction of a consumer dispute redressal forum? In what manner is a complaint filled before it? What procedure is followed by it after receiving a complaint.

(OR)

In what ways consumer protection Act 1986 can help the consumers in redressal of grievances?

(OR)

What are consumer disputes redressal agencies under consumer protection Act? Explain the role District Forum as redressal agency.

(OR)

What is the machinery available under the consumer protection act, 1986 to redress the consumer's grievances? Explain the role of state commission in this regard.

Ans :

(Imp.)

The consumer Protection Act 1986, recommends for the appointment of independent Agencies for the settlement of disputes between consumers and traders. These agencies are appointed by the Central and State Governments. The Judgements given by these agencies will be final. They cannot be questioned in any general Court of Law.

Redressal Forums

In order to carry out purposes and objects of the Act, the following agencies are established as:

Consumer Disputes Redressal Agencies

1. **District Forum:** A Consumer Disputes Redressal Forum known as the 'District Forum' is established by the State Government in each District of the State [Sec. 2(h) & Sec. 9 (a)]. The State Government may, if it deems fit establish more than one District Forum in a district.

The District forum receives complaints against those traders who reside within the district limits or carry on business within the boundaries of the district. They accept components upto the value of Rs. 20 lakhs. The forum consists of one President and two members. The president- should be a person qualified to be appointed as the district judge.

The two members including one woman member should be the persons of ability, integrity, understanding and having knowledge of subjects like economics, commerce, accountancy, business law and

administration. They are appointed by the State Government with the recommendations of a selection committee. Their office period is 5 years or the age of 65 years which ever is earlier. Their salary or honorarium is fixed and paid by the State Government.

Procedure for redressal : The District Forums receive complaints from the consumers and issue notices to the traders. They are requested to reply within a period of 30 days either in person or through their advocate. The time may be extended for a further period of 15 days. The Forum gives an opportunity to the traders for explaining the reasons for the defect in goods or services.

The sample of the goods are sent for laboratory tests in case of need, provided the consumer deposits testing charges. If the traders fails to give reply or appear before the Forum in time, it can take a decision ex-parte. The Forum enjoys the powers of a Civil Court. It can give judgements in the following manner.

- a) Ordering the trader to remove the defects pointed out by the laboratory test, or
 - b) To replace the goods with new ones if the defect cannot be removed, or
 - c) To return the price of the goods to the consumer together with legal charges if the replacement is not possible, and
 - d) To pay compensation to the consumer if any loss or injury is suffered by him, and
 - e) To instruct the trader not to repeat the unfair trade practice and sale of hazardous goods in the future
 - f) To withdraw the defective goods from the market which are supplied to other traders but not yet sold to the consumers.
2. **State Commission :** A Consumer Disputes Redressal Commission known as the 'State Commission' is established by the State Government in the State [Sec. 2 (p) & Sec. 9 (b)].

The State Commission is empowered to accept appeals over the value of Rs. 20 lakhs but not exceeding one crore rupees against the traders having place of business in the state. It can also accept complaints against the judgements given by various district forums within the boundaries of the state. The State Forum will also have one president and two members. The president should be a person who is qualified to be or had been a judge in the High Court of the state.

Other two members including a woman member should be nominated by the State Government as per the recommendations of the selection committee of the state. They should be of persons of ability, integrity, understanding and having adequate knowledge and experience in the problems relating to consumers' affairs and practical knowledge in subjects like economics, commerce, accountancy, business law and administration etc. They can hold office for a period of 5 years subject to a maximum age of 67 years. Their salary or honorarium is fixed and paid by the State Government.

The procedure for receiving complaints, issuing notices to the traders, giving judgements, etc. will be the same as the District forum. However, it enjoys the powers of a High Court of the state.

3. **National Commission** : A National Consumer Disputes Redressal Commission known as 'National Commission' is established by the Central Government [Sec.2 (k) & Sec. 9 (c)].

The National Forum is empowered to accept appeals against traders for sale of goods and services valued above one Crore rupees. It can also accept complaints against any state forum in the country. The judgements given by consumer redressal agencies cannot be questioned in any civil court.

The National Forum enjoys the powers of the Supreme court regarding consumers' matters. It will have one president and four members including one woman member. The president should be qualified to be appointed as a judge

of the Supreme Court of India or had been a Judge of the Apex Court. The members of the forum should be persons having ability, integrity and understanding. They should also have knowledge and experience in the matters relating to consumer affairs and subjects like economics, commerce, business law, administration, etc.

They can hold office for a period of 5 years or upto 70 years of age which ever is earlier. Their salary or honorarium is fixed and paid by the Central Government. As far as the procedures for receiving and disposing of the complaints and powers are concerned, they are same as in the case of district forum and state commission.

Penalties for Offences : A trader against whom a complaint is filed in any of the Consumer Redressal Agencies may be imposed with a punishment in the form of imprisonment for not less than one month upto 3 years or a fine not less than Rs. 2,000 upto Rs. 10,000 or with both. These penalties are over and above the compensation payable to the consumer and repairing or replacement of the goods. However, the presidents of the agencies are empowered to reduce the penalties if they really feel that the trader was innocent and he did not have any intention to deceive the consumer.

Examples

- i) **Issac Mathew Vs. Maruthi Udyog Ltd.** : In this case, a damaged Maruthi Car was repaired, renovated and sold as a new one. The District forum declared it as an unfair trade practice and ordered to be replaced.
- ii) **Kailash Kumari Vs. Narendra Electronics** : In this case, a defective Television set was ordered to be replaced and compensation paid.
- iii) **Vinod Seth Vs. Ratan Road Lines** : In this case, a transport company was held liable for the loss of goods and mental agony of the customer.

A three tier system of Consumer Disputes Redressal Agencies in the Districts, States and the Centre is envisaged by Section 9 of the Act. The

District Forum is at the base level. Next in hierarchy is State Commission. Both District Forums and State Commission are constituted in each State.

At National or Central level and at the top of hierarchy is National Commission. The object of setting up these Forums is to provide inexpensive litigation without much of legal technicalities and formalities.

The functions of the Commissions are quasi judicial in nature. Though it has powers of a Civil Court, strictly speaking it is not a Civil Court. Final appeal from orders of National Commission lies to Supreme Court.

4.4 RIGHTS OF CONSUMERS

Q7. Discuss briefly about Rights of Consumer.

Ans :

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.

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.

4.5 CONSUMER AWARENESS

Q8. Explain the concept of consumer awareness.

Ans :

In a world of information asymmetry the government has the responsibility to redress this imbalance. In Government of India, the Department of Consumer Affairs is the focal point for different Departments and organizations to make the consumers aware of market realities as well as the rights of the consumers and the manner in which they can educate themselves and also enforce their rights. Accordingly, the "Jago Grahak Jago" campaign has become immensely popular and is now being used by several Departments to communicate with consumers.

Increase in consumer awareness has propelled manufacturers and traders to ensure quality service to consumers. Resultant to that number of cases filed in National and State Commission have come down from total of 40,391 in the year 2007 to 22,101 in the year 2011. Similarly, number of cases filed in District Consumer Forums have also come down from 1,53,738 to 78,440 during the same period.

Q9. Discuss in detail about consumerism.

Ans :

"Consumerism" in terms of marketing concept refers to a philosophy of rendering services to V number of consumers in order to satisfy their diversified needs. While providing such services, if the sellers or producers follow unfair trade practices or exploit the consumers, the Government

intervenes in between to protect the interest of all the consumers and to work for the benefit and interest of society at large.

With, the changing nature of socioeconomic environment, it was observed that frequently the market place exploitations are brought to the notice of the public policy makers that is either through media, consumer awareness groups or through the consumers themselves. The public policy maker takes protective measures and conducts consumer awareness programmes to convey and promote desired behaviours of sellers and producers. It adopts the following regulative measures to protect the interest of consumers.

- (a) Restricting marketing of harmful goods and services.
- (b) Establish standards such as food labels on food products.
- (c) Prohibiting the actions that mislead and deceive the consumers.

Consumerism can be understood as consumer movement or action taken by the governments and other consumer protection groups to safeguard the interest of the buyers.

Definition

According to Philip Kotler "Consumerism is an organized movement or action taken by the citizens and government to protect the rights and powers of consumers in relation to the sellers of goods and services".

Consumerism in India

In India, the consumers usually face exploitation from sellers due to lack of proper education which inhibits them to defend and understand the complex process of marketing. They very often become the victim of false allegations for products, misled by illusory advertisements and packaging of goods followed by imperfect after-sales- service. Thus, because of the above observed abuses, there is a growing consumer awareness which has led to the growth of consumerism and increasing demand for consumer protection interest in India.

Effective consumerism is an important factor in order to minimize waste and promote the economy of a country.

Ineffective consumerism can have the following drawbacks.

- (i) Uncontrolled production of goods resulting in inferior quality products.
- (ii) Unchecked adulteration of various goods causing health and hygienic problems.
- (iii) Unprofessional after sales-services leading to discontentment and stress.
- (iv) Increased waste production leading to depletion of natural resources and environmental imbalance. Effective consumerism includes the following,

- (a) Verification about the standard of the product must be done before purchasing/accepting it from the market.
- (b) The generation of waste must be minimized.
- (c) Recycling of waste must be encouraged.
- (d) Effective regulations must be imposed.

Q10. What are the effects of consumerism on the environment?

Ans :

The term consumerism, from the point of view of environment can be described as consumption of a variety of resources and products of nature.

The enormous productive capacities of the planet has led to consumption of a variety of goods and services beyond the minimal and basic human needs and desires with least concern to the short-term or long-term effects on the planet, or life in other nations or in future generations. The insatiable consumerism has led to the degradation of the environment because of over-consumption of natural resources.

Effective consumerism is an important factor in order to minimize waste and promote the economy of a country.

Effect of Consumerism on the Environment

We are at present in a situation, where environmental degradation and pollution are the resultant impacts of consumerism all over the world.

The rate of consumption of goods is ever increasing which is causing enormous environmental devastation of course, all of us need consumer goods, but the impact these products or the production process have on the environment has to be minimized.

Often, in most modern day societies, people have a tendency to increase their buying and spending capacity and purchase more goods so that they can feel better or can keep up with others, thus leading to increase in products at home, causing an increase in the number of products manufactured, resulting in increase in environmental crisis. The production, processing, and consumption of goods needs the use of natural resources, setting up factories and factory complexes, whose operation results in the generation of toxic by-products, while the usage of consumer goods themselves generates pollutants and waste, that can damage the environment. The rich industrialized nations procure goods that are produced elsewhere by underdeveloped nations at low cost.

The environmental devastation is showing itself in the form of climate change. The latest reports indicate that the climate change and its resulting effect will continue to worsen in the future. Therefore, in order to save the environment, increase in the consumption of goods should not be encouraged.

A classic example is that of plastic bags, to show how consumerism can affect our environment. They pose a great environmental problem as they keep accumulating in the environment. Plastics are non-biodegradable and mostly eco-unfriendly. A large number of livestock die due to consumption of plastic material and its littering cause choking of drains and sewers. The plastic manufacturing industries release extremely toxic effluents that pollute the soil, air and water, resulting in serious consequences for public health.

In conclusion, it can be said that environmental degradation and pollution are the resultant effects of ever increasing consumerism. Our attention must be focussed on the sustainable consumption of goods, that should be pursued in a manner that does not overburden the natural environment. In a simpler sense, sustainable development and changes in our life-style must be

promoted and encouraged to enable us to hand a better world for everyone, now and for generations to come.

4.6 POLLUTION CONTROL LAW

Q11. What is pollution? Explain different types of pollution.

Ans :

(Imp.)

Pollution in the environment is the creation of man. Man has the job of protecting environmental pollution as he has realized that his trusts with nature have to be primarily pollution free. State, citizens and courts, are required to identify the causes and cure them, be careful from giving rise to causes of pollution where environment is still unpolluted. Retaining pollution at controlled levels is the aim and object of the law making bodies and enforcers.

(i) Air Pollution

The term air pollution refers to the contamination of the air around us with pollutants that cause harm to humans, other living organisms, the natural environment and the atmosphere. The pollutants include smoke and soot formed by burning of fuel to power the motor vehicles, chlorofluorocarbons (CFCs) used in air conditioners and refrigerators, smoke and heavy metals (like lead and mercury) discharged by burning of rubbish, the greenhouse gases emitted as vehicular exhaust, power plants, industries, homes, etc.

ii) Water Pollution

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.

iii) Environment Pollution

The term environmental pollution refers to all the ways and means by which the environment or surroundings are polluted by human activities. The major types of environmental pollution are air pollution, water pollution, land (soil) pollution, marine pollution, noise pollution, thermal pollution and radioactive pollution. The pollutants in the environment can injure health, harm the environment and damage the property.

Q12. Write about environment protection act 1986 ?**(OR)****Explain pollution control law in detail.***Ans :*

The Environmental Protection Act, 1986 is one of the most important Acts laid down by the Constitution of India. It consists of 26 sections distributed in four chapters.

Environment Protection Act, 1986

According to this Act,

- (i) The central government has to prepare standards to evaluate the quality of air, water, soil.
- (ii) Preparation of various measures to be taken for prevention of accidents causing pollution and the immediate remedy to be taken if they occur.

Section 2 of this Act describes terms like 'environment, environment pollution, environmental pollutant and hazardous substance'.

Section 3 of this Act deals with various measures to be taken for safeguarding the environment.

- (i) Preparation of standards for various environmental pollutants.
- (ii) Restricting the areas of industrial establishment.
- (iii) Ranking the hazardous substances.
- (iv) Establishment of laboratories for carrying out research on issues regarding environmental pollution, that provides training and dissemination of information.
- (v) Testing of samples collected from the factory premises to check if they are abiding to the required standards.

Additionally, the Central Government can introduce new environment - related standards, restrictions and prohibitions.

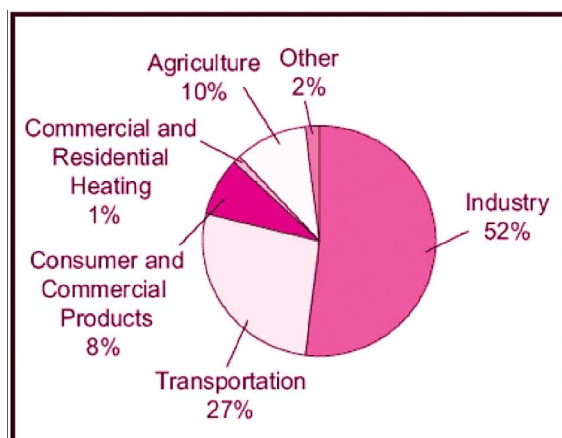
The enforcement of the above Act in a stringent manner is an important prerequisite for its success apart from safeguarding the environment and sustaining its inherent quality.

Some of the important rules made under the Act are enlisted below,

- (i) The Environment (Protection) Rules, 1986.
- (ii) The Hazardous Wastes (Management and Handling) Rules, 1989.
- (iii) The Manufacture, Storage and Import of Hazardous Chemical Rules, 1989.
- (iv) The Hazardous Microorganism Rules, 1989.
- (v) The Chemical Accident (Emergency Planning, Preparedness and Response) Rules, 1996.
- (vi) The Bio-medical Waste (Management and Handling) Rules, 1998.
- (vii) The Recycled Plastics Manufacture and Uses Rules, 1999.
- (viii) The Municipal Solid Waste (Management and Handling) Rules, 2000.
- (ix) The Noise Pollution (Regulation and Control) Rules, 2000.
- (x) The Ozone Depleting Substances (Regulation and Control) Rules, 2000.

4.6.1 Air Pollution**Q13. 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
2. Vehicular emissions
3. Domestic emissions

The most common air pollutants in urban areas include Sulphur dioxide (SO₂), Nitrogen oxides (NO & NO₂), 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.

Q14. Explain briefly about Prevention and Control of Air 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.
- (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.

4.6.2 Water Pollution

Q15. Define 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.

Causes

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.

Q16. Explain Prevention and Control of Water Pollution.

Ans :

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.

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.
- (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.
- (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.

4.6.3 Environment Pollution Control

Q17. 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.

Q18. 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, population explosion, urbanization, over-exploitation of resources, etc. are some of the factors which have contributed to environmental deterioration.

Q19. What are the factors which the Government should consider while restricting the location of industries?

Ans :

(Imp.)

Following factors need to be considered by government while prohibiting or restricting the location of industries.

1. The maximum amount of environmental pollutants for a specific area needs to be determined.
2. Standardized environmental quality related aspects needs to be formulated for a particular area.
3. Analyzing and restricting the emission or discharge of environmental pollutants from industries, processes and operations.
4. Environmental factors such as climate features, location, topographic factors of the area where an industry needs to be rehabilitated.
5. Identifying the biologically diversified area which needs to be preserved. Such identification is the responsibility of the central government.
6. Utilization rate of the environmental compatible land.
7. Estimating the net adverse environmental impact which is likely to be caused by an industrial process or operation.
8. Identifying the most proximal sanctuary, national park which are in compliance with the wild life protection Act, 1972.
9. Proximity to human settlement.
10. All those factors which are playing a crucial role in the protection of an environment of a specific location where the government wishes to establish an industry.

Procedure

The central government must adopt the following procedure for prohibiting or restricting the location of industries.

1. After identifying a specific area which is not suitable for the location of industry needs to be declared in the official Gazette by issuing a written notice specifying the intention to do.
2. The issued notice must contain a brief description about the industry, processes and operations. It must also provide information related to the reasons for the imposition of such restrictions on the location of industry.
3. If any individual is having any objection regarding the issued notice he needs to file his objection with the central government within the 60 working days from the date on which the notification had been issued.
4. After 120 working days from the date of the publication of notice, the central government is required to consider all the objections filed against a specific area which is being prohibited by the government. After inspecting the relevant facts, the central government must declare it as a proper location or an improper location (or restricted location) for the location of industries or for carrying out the processes or operations.

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Short Question and Answers

1. Consumer protection law

Ans :

The Consumer Protection Act was passed, in the year 1986 by the Parliament of India to honour the representations made by a number of Consumers' Associations in the country. The main object of this law is to protect the consumers of goods and services from the unfair trade practices by the traders.

The law came into force from 15th April, 1987 and extends to the whole of India except the state of Jammu and Kashmir.

This law has given very clear definitions of goods, services, consumers, unfair trade practices etc. This has constituted Consumer Protection Councils for the overall supervision of the working of this Act. It has also constituted Consumer Redressal Forums and Commissions at district level, state level and national level for the settlement of consumer disputes.

2. Complainant

Ans :

Complainant means

- (a) A consumer; or
- (b) Any voluntary consumer association registered under the Companies Act, 1956 (1 of 1956) or under any other law for the time being in force; or
- (c) The Central Government or any State Government, who or which makes a complaint;
- (d) One or more consumers, where there are numerous consumers having the same interest. Who or which makes a complaint.

3. Consumer

Ans :

Consumer means any person, who

- (a) 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 consideration paid or promised or partly who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

- (b) Hires or avails of any services 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 beneficiary of such services other than the person who '[hires or avails of] the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of, the first mentioned person.

4. Unfair Trade Practices

Ans :

Unfair trade practice means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice.

5. District Forum

Ans :

A Consumer Disputes Redressal Forum known as the 'District Forum' is established by the State Government in each District of the State [Sec. 2(h) & Sec. 9 (a)]. The State Government may, if it deems fit establish more than one District Forum in a district.

The District forum receives complaints against those traders who reside within the district limits or carry on business within the boundaries of the district. They accept complaints upto the value of Rs. 20 lakhs. The forum consists of one President and two members. The president- should be a person qualified to be appointed as the district judge.

The two members including one woman member should be the persons of ability, integrity, understanding and having knowledge of subjects like economics, commerce, accountancy, business law and administration. They are appointed by the State Government with the recommendations of a selection committee. Their office period is 5 years or the age of 65 years whichever is earlier. Their salary or honorarium is fixed and paid by the State Government.

6. State Commission

Ans :

A Consumer Disputes Redressal Commission known as the 'State Commission' is established by the State Government in the State [Sec. 2 (p) & Sec. 9 (b)].

The State Commission is empowered to accept appeals over the value of Rs. 20 lakhs but not exceeding one crore rupees against the traders having place of business in the state. It can also accept complaints against the judgements given by various district forums within the boundaries of the state. The State Forum will also have one president and two members. The president should be a person who is qualified to be or had been a judge in the High Court of the state.

Other two members including a woman member should be nominated by the State Government as per the recommendations of the selection committee of the state. They should be of persons of ability, integrity, understanding and having adequate knowledge and experience in the problems relating to consumers' affairs and practical knowledge in subjects like economics, commerce, accountancy, business law and administration etc. They can hold office for a period of 5 years subject to a maximum age of 67 years. Their salary or honorarium is fixed and paid by the State Government.

The procedure for receiving complaints, issuing notices to the traders, giving judgements, etc. will be the same as the District forum. However, it enjoys the powers of a High Court of the state.

7. 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.

8. Consumerism

Ans :

"Consumerism" in terms of marketing concept refers to a philosophy of rendering services to V number of consumers in order to satisfy their diversified needs. While providing such services, if the sellers or producers follow unfair trade practices or exploit the consumers, the Government intervenes in between to protect the interest of all the consumers and to work for the benefit and interest of society at large.

With, the changing nature of socioeconomic environment, it was observed that frequently the market place exploitations are brought to the notice of the public policy makers that is either through media, consumer awareness groups or through the consumers themselves. The public policy maker takes protective measures and conducts consumer awareness programmes to convey and promote desired behaviours of sellers and producers. It adopts the following regulative measures to protect the interest of consumers.

9. What is pollution ?

Ans :

Pollution in the environment is the creation of man. Man has the job of protecting environmental pollution as he has realized that his trysts with nature have to be primarily pollution free. State, citizens and courts, are required to identify the causes and cure them, be careful from giving rise to causes of pollution where environment is still unpolluted. Retaining pollution at controlled levels is the aim and object of the law' making bodies and enforcers.

10. Air Pollution

Ans :

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.

11. Causes of Air Pollution

Ans :

- i) 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.
- ii) Use of harmful chemicals like pesticides, insecticides, herbicides etc., in agriculture.
- iii) The domestic sewage is discharged into water bodies like rivers and oceans.
- iv) The industrial effluents are discharged into the environment.

12. Define Water Pollution

Ans :

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.

13. 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, population explosion, urbanization, over-exploitation of resources, etc. are some of the factors which have contributed to environmental deterioration.

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Choose the Correct Answers

1. Consumer Protection Act is significant to [d]
(a) Immovable Goods (b) Movable Goods
(c) Particular Goods and Services (d) All Goods and Services
2. How many rights does a consumer have under the Consumer Protection Act [b]
(a) 8 (b) 6
(c) 4 (d) 5
3. Under the Consumer Protection Act, the rights of a consumer do not include to be [c]
(a) Safety (b) Choose
(c) Presented (d) Informed
4. When the seller manipulates the price, it is known as [c]
(a) Caveat Emptor (b) Unfair trade practices
(c) Restricted trade practices (d) None of the above
5. Under this act, the minimum age of forum member of a district forum should be [c]
(a) 30 (b) 40
(c) 35 (d) 65
6. The maximum age for a state commission member should be [d]
(a) 60 (b) 35
(c) 70 (d) 67
7. The maximum age national commission member should be [c]
(a) 60 (b) 35
(c) 70 (d) 65
8. Which of the following forum can reappoint the same person as to its member [d]
(a) National commission (b) State commission
(c) District commission (d) None of the above
9. In which forum it is compulsory to have a female member [d]
(a) National commission (b) State commission
(c) District commission (d) All of the above
10. Within how many days the opposite party has to answer after they are informed about the complaint? [a]
(a) 30 (b) 5
(c) 20 (d) 15

11. Rights of consumer are protected under [a]
(a) Consumer protection 1986 (b) Consumer protection 1990
(c) Consumer protection 1982 (d) Consumer protection 1991
12. The consumer has the right to get compensation against unfair trade practices under right to [c]
(a) Right to choose (b) Right to seek redressal
(c) Right to safety (d) None of the above
13. Which of the following are the ways and means of consumer protection? [c]
(a) Self-regulation by the business (b) Business associations
(c) Government (d) All of the above
14. _____ is the standardized mark on jewellery [c]
(a) ISI (b) FPO
(c) Hallmark (d) CERC
15. _____ are made to hear complaints of the value less than 5 lakhs. [a]
(a) Consumer forum at district level (b) State commission
(c) National commission (d) None of the above
16. Which of the following are the primary causes of water pollution? [c]
(a) Plants (b) Animals
(c) Human activities (d) None of these
17. Which of the following is mainly responsible for the causes of water pollution? [d]
(a) Afforestation (b) Oil refineries
(c) Paper factories (d) Both b and c

Fill in the Blanks

1. _____ means any trade practice which requires a consumer to buy, hire or avail of any goods.
2. _____ means a trade practice which, for the purpose of promoting the sale.
3. The consumer protection act, 1986 was approved and enforced on _____ .
4. The _____ receives complaints against those traders who reside within the district limits or carry on business within the boundaries of the district.
5. The _____ Forum is empowered to accept appeals against traders for sale of goods and services valued above one Crore rupees.
6. _____ in terms of marketing concept refers to a philosophy of rendering services to V number of consumers in order to satisfy their diversified needs.
7. Effective _____ is an important factor in order to minimize waste and promote the economy of a country.
8. _____ in the environment is the creation of man.
9. The term _____ refers to the contamination of the air around us with pollutants that cause harm to humans, other living organisms.
10. The term _____ refers to all the ways and means by which the environment or surroundings are polluted by human activities.
11. _____ pollution is the contamination of water bodies.
12. The word 'environment' is derived from the French word 'environner', which means _____.
13. Wild life protection Act, _____.

ANSWERS

1. Restrictive trade practice
2. Unfair trade practice
3. 15 April, 1987
4. District forum
5. National
6. Consumerism
7. Consumerism
8. Pollution
9. Air pollution
10. Environmental Pollution
11. Water
12. To encircle
13. 1972

UNIT V

Business Ethics

Ethical and Value based Considerations - Need and Justification - Business ethics and efficiency - Social responsibility of business - Fair and just cooperation among owners, managers, workers and customers - Fair Market Wages - Integrity and ethical consideration in business operations - Indian value system and it's relevance in Management.

5.1 BUSINESS ETHICS

Q1. Define the term ethics and business ethics.

Ans :

i) Ethics

The term "ethics" is derived from the Greek word "ethos" which refers to character or customs or accepted behaviors. The Oxford Dictionary states ethics as "the moral principle that governs a person's behaviour or how an activity is conducted". The synonyms of ethics as per Collins Thesaurus are - conscience, moral code, morality, moral philosophy, moral values, principles, rules of conduct, standards.

Ethics refers to well-founded standards of right and wrong that prescribe what humans ought to do, usually in terms of rights, obligations, benefits to society, fairness, or specific virtues.

Ethics is a set of principles or standards of human conduct that govern the behavior of individuals or organizations. Using these ethical standards, a person or a group of persons or an organization regulate their behavior to distinguish between what is right and what is wrong as perceived by others. It is not a natural science but a creation of the human mind. For this reason, it is not absolute and is open to the influence of time, place and situation.

- Ethics can be defined as the discipline dealing with moral duties and obligation, and explaining what is good or not good for others and for us.

- Ethics is the study of moral decisions that are made by us in the course of performance of our duties.
- Ethics is the study of characteristics of morals and it also deals with the moral choices that are made in relationship with others.
- Ethics is concerned with truth and justice, concerning a variety of aspects like the expectations of society, fair competition, public relations, social responsibilities and corporate behavior.

Definitions

1. **According to Keith Davis** and associates define ethics as a set of rules that define right and wrong conduct.
2. **According to Shea**, ethics are the principles of conduct governing an individual or profession and "standards of behaviour".
3. **According to Brian Harvey**, ethics stands for a practice as well as a reflection on that practice.
4. **According to Oxford dictionary** defines ethics as morals, treating of moral questions, morally correct, honourable.
5. Ethics can be defined as principles of behaviour that differentiates between the right from the wrong.

ii) Business Ethics

Business ethics is a form of applied ethics. In broad sense ethics in business is simply the application moral or ethical norms to business. Business ethics refers to a 'code of conduct' which businessmen are expected to follow while dealing

with others. 'Code of conduct' is a set of principles and expectations that are considered binding on any person who is member of a particular group. The alternative names for code of conduct are 'code of ethics' or 'code of practice'.

Business ethics comprises the principles and standards that guide behaviour in the conduct of business.

Businesses must balance their desire to maximize profits against the needs of the stakeholders. Maintaining this balance often requires trade-offs. To address these unique aspects of businesses, rules - articulated and implicit, are developed to guide the businesses to earn profits without harming individuals or society as a whole.

The coverage of business ethics is very wide as it deals with norms relating to a company and its employees, suppliers, customers and neighbors, its fiduciary responsibility to its shareholders. It reflects the philosophy of business, one of whose aims is to determine the fundamental purposes of a company.

Business ethics stands for the saneness or purity of purpose that is upheld through carefully designed actual practices of business enterprises. It is an embodiment of conscience concern towards execution of business processes in tune with the nobility of the purpose.

Definitions

1. According to Keith Davis, business ethics are the application of general ethical rules to business behaviour.
2. John Donaldson defines, business ethics as a study of moral (ethical) matters pertaining to business, industry or related activities, institutions or practices and beliefs.
3. Business ethics can be defined as the desired norms of behaviour particularly dealing with commercial transactions.
4. Business ethics mainly deals with the assessment and application of moral norms and values, to the various transactions, institutions, technologies and other activities on which success of the business is dependent.
5. Business ethics acts as the rules of business conduct with which the performance of the business activities, behaviour of managers could be assessed.

Q2. What are the different types of business ethics.

Ans :

(Imp.)

Types of business ethics are as follows:

1. **General Business Ethics:** General business ethics is concerned with basics of business. **For example**, to fulfil one objective of company it is unethical to hamper the interest of any other group. It includes following areas:
 - i) Corporate social responsibility is associated with the controversy among the organisations and communities regarding the ethical rights and liabilities.
 - ii) The liabilities regarding trust, stakeholder and shareholder's conceptions are the issues centered on ethical rights and liabilities among a corporation and its shareholders.
 - iii) Changes in laws, e.g., ethical arguments related to corporate homicide.
 - iv) Ethical issues related to company-company alliance, e.g., acquisitions and takeovers.
 - v) Organisational political brochure or pamphlets.
 - vi) Unethical business activities.
2. **Functional Business Ethics:** Business comprises of several functions like production, marketing, HR, finance, etc. Functional business ethics refers to ethical issues which arise in the functional areas of business and ethical guidelines to solve those issues. Thus, it accommodates financial ethics, human resource management ethics, marketing ethics, intellectual property rights ethics, and production ethics.
3. **International Business Ethics:** Origin of business ethics lies in the year 1970s, but it took an international scenario after 1991. As a result of globalisation, the unethical issues also started occurring.

Q3. What are the characteristics of business ethics.

Ans : (Imp.)

- (i) **A Discipline:** Business ethics are the guiding principles of business function. It is the knowledge through which human behaviour is learnt in a business situation.
- (ii) **Ancient Concept:** Business ethics is an ancient concept. It has its origin with the development of human civilization.
- (iii) **Personal Dignity:** The principles of ethics develop the personal dignity. Many of the problems of ethics arise due to not giving dignity to individual. All the business decisions should be aimed by giving dignity to the customers, employees, distributors, shareholders and creditors, etc. otherwise they develop immorality in the business conducts.
- (iv) **Related to Human Aspect:** Business ethics studies those activities, decisions and behaviors which are concerned with human aspect. It is the function of the business ethics to notify those decisions to customers, owners of business, government, society, competitors and others on good or bad, proper or improper conduct of business.
- (v) **Study of Goals and Means:** Business ethics is the study of goals and means for the rational selection of sacred objects and their fulfillment. It accepts the principles of Pure goals inspire for pure means and Means justifies the end. It is essential that goals and means should be based on morals.
- (vi) **Different from Social Responsibility:** Social responsibility mainly relates to the policies and functions of an enterprise, whereas business ethics to the conduct and behaviour of businessmen. But it is a fact that social responsibility of business and its policies is influenced by the business ethics.
- (vii) **Greater than Law:** Although the law approves various social decisions, but the law is not greater than ethics. Law is usually related to the minimum control of social customs whereas ethics gives importance to individual and social welfare actions.

Q4. Explain the scope of business ethics.

Ans : (Imp.)

The scope of business ethics can be explained in the following levels:

1. The business ethics at societal level

- i) Focus towards poor and exploited sectors of the society,
- ii) Equal treatment for all sections and groups, i.e., following a non-discrimination policy,
- iii) Ensure that business activities are not harmful for the environment,
- iv) Conserve scarce and depleting resources,
- v) Help in raising the standard of living of the society at large.

2. Business Ethics at Stakeholder's Level

Stakeholders includes five parties, i.e., employees, customers, shareholders, banks, government.

- i) Employees
 - a) Conducive work environment,
 - b) Better recommendations,
 - c) Participative management,
 - d) Well being amenities.
 - e) Job security,
- ii) Customers
 - a) Improved quality of goods,
 - b) Availability of goods and services at reasonable cost,
 - c) Fair pricing,
 - d) Transparency about product information.
- iii) Shareholders
 - a) Surety of raise in capital,
 - b) Regular dividends to the investors,
 - c) Transparency between organization and shareholders,

- d) Safeguard shareholder's interest while merging, takeovers, and amalgamations.
 - iv) Banks and other Lending Institution
 - a) Ensuring security of borrowed funds,
 - b) Quick settlement of loans.
 - v) Government
 - a) Following instructions and protocols,
 - b) Payment of taxes and duties timely.
 - c) Proper involvement in the growth of country.
- 3. Business Ethics at Internal Policy Level**
- i) Impartial policies related to recruitment and employee appraisal.
 - ii) Motivation to employees for achieving higher objectives in life,
 - iii) Proper communication in organization.
- 4. Business Ethics at Personal Policy Level**
- i) Not to mistreat others for personal benefits,
 - ii) Non-involvement in politics for individual growth,
 - iii) Increased chance of promotion,
 - iv) No personal usage of office resources and amenities.
 - v) Encouraging mutual trust,
 - vi) Cooperation among employees,
 - vii) Fair practice for personal gain,
 - viii) Promotion of non-violence,
 - ix) Value of assets and resources.

Q5. What are the objectives of business ethics

Ans :

The objectives of business ethics are:

- (i) **Personal level:** At personal level the policy should be set that not to misuse the properties of the others or of the organization keeping

the promises and extending the mutual help, not to seek quick gains and not to indulge in politics to gain power.

- (ii) **Internal policy level:** The business organization should follow fair practices in dealing with employees and other stakeholders. The organization should have open and better communication at all levels. The organization leadership should motivate employees for better productivity and for common good.

- (iii) **Societal level:** The social concerns like no discrimination concerned for the down trodden be the prime concerns of the business organizations. Optimal use of scarce resources, clean environment and ensuring better quality of life to all the stakeholders should be stressed in the internal policies.

- (iv) **Stakeholder's level:** The organization should take care of the maximum number of stakeholders and follow ethical means with shareholders, customers, suppliers, employees, banks and financial institutions, government and all others that are connected with the organization.

Q6. Explain the Elements and features of Business Ethics.

Ans :

(Imp.)

Elements

1. Values

Values are the moral beliefs held by an individual, an organization and a society. Values represent moral convictions and are relatively permanent. For example, a company may charge reasonable prices due to its value systems inspite of its monopoly position in the industry.

2. Rights

Rights are the claims of the individual or organization. For example, every citizen of India enjoys certain rights under the country's constitution.

3. Duties

Duties are the obligations of a person or an organization. For example, every citizen has the duty to follow the country's law.

Features**1. Code of conduct**

Business ethics is a code of conduct. It tells what to do and what not to do for the welfare of the society. All businessmen must follow this code of conduct.

2. Based on moral and social values

Business ethics is based on moral and social values. It contains moral and social principles (rules) for doing business. This includes self-control, consumer protection and welfare, service to society, fair treatment to social groups, not to exploit others, etc.

3. Gives protection to social groups

Business ethics give protection to different social groups such as consumers, employees, small businessmen, government, shareholders, creditors, etc.

4. Provides basic framework

Business ethics provide a basic framework for doing business. It gives the social cultural, economic, legal and other limits of business. Business must be conducted within these limits.

5. Voluntary

Business ethics must be voluntary. The businessmen must accept business ethics on their own. Business ethics must be like self-discipline. It must not be enforced by law.

6. Requires education and guidance

Businessmen must be given proper education and guidance before introducing business ethics. The businessmen must be motivated to use business ethics. They must be informed about the advantages of using business ethics. Trade Associations and Chambers of Commerce must also play an active role in this matter.

7. Relative Term

Business ethics is a relative term. That is, it changes from one business to another. It also changes from one country to another. What is considered as good in one country may be taboo in another country.

8. New concept

Business ethics is a newer concept. It is strictly followed only in developed countries. It is not followed properly in poor and developing countries.

Q7. Explain the various approaches of business ethics.

Ans :

When business people speak about "business ethics" they usually mean one of three things:

1. Avoid breaking the law,
2. Avoid action, and
3. Avoid actions that are bad for one's image.

Businesses are especially concerned with these three factors since they involve loss of money and reputation. There are four different ways of deriving standards of business ethics:

1. Profit Motive Approach

Some business people argue that there is a symbiotic relation between ethics and business for a profit-oriented business feels adopting food ethical policies will naturally lead of food business. In other words, good ethics results in good business. Moral business practices are profitable.

This has also disadvantages which are given as follows:

- i) Many moral business practices will have an economic advantage only in the long-run. In other words, this may not suit the short-term businesses and may provide little incentive for businesses that are designed exclusively to seek short-term profits. When competition grows, survival would be a serious problem.
- ii) Some moral business practices may not be economically viable even in the long-run. For example, this might be the case

with retaining older workers who are inefficient, as opposed to replacing them with younger and more efficient workers.

- iii) Moral business practices that are good for business depend upon what produces profit. In different segments, the same practices might not be economically viable. Thus, any overlap that exists between morality and profit is both limited and incidental.

2. Legal Approach

This approach assumes that moral obligations in business are restricted to what the law requires. Moral principles are beyond the requirement of law. The unreasonableness of such a moral requirement is all the more evident in societies that do have a strong external source of morality.

3. Moral Obligations Approach

The third approach to business ethics is that morality must be introduced as a factor that is external to both profit motive and law. This is the view of most philosophers of business ethics. It is expressed most clearly in a well-known business ethics essay as "Proper ethical behaviour exists on a plane above the law. The law merely specifies the lowest common denominator of acceptable behaviour. The most convenient way to explore this approach is to consider, among other. The five supra- legal moral principles suggested by philosophers are as follows:

- i) **Harm Principle:** Businesses should avoid causing unwarranted harm.
- ii) **Fairness Principle:** All business practices should be fair.
- iii) **Human Rights Principle:** Businesses should respect human rights.
- iv) **Autonomy Principle:** Businesses should not infringe on the rationally reflective choices of people.
- v) **Veracity Principle:** Businesses should not be deceptive in their practices.

4. Social Approach

This approach enables the company in to operate such a way that it actively recognizes the central role that business plays in the structure of society by initiating innovative ways to improve the quality of life of a broad community.

5.1.1 Need and Justification

Q8. Explain the need for business ethics.

Ans : (Imp.)

Business ethics is essential because of the following reasons,

1. Operation of Business within the Society

Business acts as an important and the most significant component of a society as its functioning helps in improving the welfare of the society. Social sanction is a prerequisite for gaining acceptance by the society without which no organization can think of its survival. If business undergoes either expansion or diversification, then it is able to attract more number of customers. By serving the societal needs, organizations are able to create good image in the minds of public.

2. For Long-term Success, Business is Required to Exist on Ethical Grounds

For achieving the long-term success, business needs to be ethical and socially responsible. For the survival of business, mere generation of profit alone isn't essential as it also requires to take appropriate actions for improving the standards of the individuals and society at large.

3. Acts as a Responsible Corporate Citizen

Business ethics act as the driving forces for the society which are responsible for bringing its economic development. Thus, the narrow scope and restricted goals needs to be avoided.

Q9. What are the different ways of justifying the ethics?

Ans : (Imp.)

The need of business is critical as it serves the human needs in terms of goods and services. The need of business was expressed by Estes in his book

'The Tyranny of the Bottom Line'. Estes also focused on accounting procedures for investors to gain dominate measures of corporate success.

Rasmussen, Malloy and Agarwal (2003) observed the relationship existing between functioning and profit for public services bodies and commercial enterprises. According to them, public servants ethics are governed by external and cosmopolitan sources. On the other hand, commercial enterprises are governed by self-chosen principles and by personal ethics.

The four perspectives as per Graafland (2002) are as follows,

- (a) Win-win in which ethical behaviour enhances profit.
- (b) A licence to operate in which minimum compliance is essential.
- (c) An 'acceptable' profits perspective to assure financial continuity.
- (d) An integrate perspective.

The different ways by which ethics are justified are as follows,

- (i) Money matters
- (ii) Bankruptcy
- (iii) Late payment of accounts
- (iv) Corruption
- (v) Delayed capital expenditure
- (vi) Bribery
- (vii) Secret commissions
- (viii) Shadow economy
- (ix) Tipping
- (x) Corporate matters and
- (xi) Corporate philanthropy.

(i) Money Matters

Information related to money matters is a critical aspect for business. There should exist trust in the integrity of financial reporting in order to make sensible business decisions. The central aspect to be focussed should be on how money is obtained and the utilization of such money.

(ii) Bankruptcy

It is considered as a legitimate way of formalising a situation where there are no chances to pay all debts. Issues related to bankruptcy need to be lengthy and these issues should relate only to the case of bankruptcy. A person who desire to repudiate debts can utilize in such a way that it is net intended by commercial law. There is a permission, of both reorganization of both corporations and individuals in the 'chapter 11' of the United State Bankruptcy Code. Those who desire to get provision can avail the benefits by following the rules of bankruptcy court's supervision. The purpose behind this act is to help, save and to develop the companies to the extent possible in order to minimize the number of corporate collapses.

The 'recommendations' of the committee consists of a 'scheme of insolvency laws' by analysis of 'sick industrial companies', 'institutional machinery', 'pursuit of individual claims', 'the stacking order of priorities' 'compromises and arrangements' and a number of other relevant considerations.

(iii) Late Payment of Accounts

The last payment of debts specially for businesses which are small is a significant problem. The few factor which are vital for small and new businesses are liquidity and cash flow. Companies possessing liquidity problems are forced into bankruptcy by paying debts on time. This leads to argument for legislative provisions to be enacted in order protect the vulnerable.

(iv) Corruption

The serious problem to all business enterprises is 'corruption'. The international organization, transparency international are focusing that corruption flourishes in society are considered as antidote.

(v) Delayed Capital Expenditure

According to Wei, Cahan and Allen (2005), the increased level of insider trading is

concerned with decreased pay performance sensitivity. The long-term interests of a company largely depend upon long-term perspectives, it is, in other words, important to invest in the future.

(vi) Bribery

Bribery in some countries leads to create a psyche whereas in some countries the wheels of business are carried out by careful application of 'sweeteners'. The American Foreign Corrupt Practices Act forbids bribery but allows facilitating payments.

(vii) Secret Commissions

Any form of economic extortion leads to abhorrent. A business from a country can have a contract which says, to make secret payment for supply of a product from foreign source. Various countries have different ways of explaining secret commissions (bribes). In Italy the secret commission is called a "la bustarella", in Mexico it is 'la mordida' in Africa it is 'dash' in Germany it is 'schimengeld'.

(viii) Tipping

Tipping does not have any rules and thus misapplications of financial practices finds expression in diverse ways. The tipping is practised in commercial transactions with the advent of migration and tourism. Compulsory tipping is considered as a form of moral blackmail because, it imposes double tax on consumers without their consent.

(ix) Corporate Matters

Existence of varied alternatives possible for commercial decisions increases the complexity which acts as the issue relating to corporate matters. In the view of Andrews (1984), the complexity is compounded by the role of boards and of CEOs, where the organization, is large enough that it may require the board, CEO and other functionaries to operate in different ways.

(x) Corporate Philanthropy

In business practices, the concept of corporate philanthropy is followed. The

success of such philanthropic activities by industry are based on commitment, decision-making priorities, periodic evaluation and the active participation of employees. Therefore, a company's interest in relation to corporate philanthropy need to rest purely on altruism.

5.2 BUSINESS ETHICS AND EFFICIENCY

Q10. Write about Business Ethics and Efficiency.

Ans :

Business ethics defines now a company integrates core values - such as honesty, trust, respect, and fairness - into its policies, practices, and decision making. Business ethics also involves a company's compliance with legal standards and adherence to internal rules and regulations. The scope of business ethics has expanded to encompass a company's actions with regard not only to how it treats its employees and obeys the law, but to the nature and quality of the relationships it wishes to have with stakeholders including shareholders, customers, business partners, suppliers, the community, the environment, indigenous peoples, and even future generations.

Companies have found that ethics policies and programs with some or all of the following elements go a long way toward building an ethical culture, reducing risk, and demonstrating a commitment to integrity:

- (i) Strong, visible support from top management,
- (ii) Ensuring that ethical values (e.g. honesty), and not only performance values (e.g. innovation), figure prominently in mission statement and codes of conduct
- (iii) Appointing ethics officers, creating innovative ethics training formats, and setting up ethics help lines;
- (iv) Carrying out ongoing evaluations/audits of ethical performance, with rewards and sanctions; and

- (v) Creating board ethics and/or corporate responsibility committees. Companies are also making a major push to globalize their ethics initiatives, aligning them with their core values in ways that are meaningful to a diverse workforce spread across dozens of countries.

Objectives

1. To understand the importance of Business Ethics.
2. To understand the various steps in the implementation of Ethics in an Organization.

5.3 SOCIAL RESPONSIBILITY OF BUSINESS

Q11. Explain the evolution of the concept of Social responsibility of business.

Ans : (Imp.)

Social responsibility means being responsible and committed towards the welfare of the society and also to be answerable for the activities and operations of the business corporate.

Earlier, usually all the business enterprises operated with the primary objective of "profit generation" and a person/business was considered successful as long as he earned money and was not bankrupt. No one was pressurised to take responsibility for the welfare and development of the society i.e., follow CSR. This was a time when man was considered as "economic man". However, this scenario has been changed in today's business wherein the corporates have become more socially responsible. The different stages/elements in the evolution of the concept of social responsibility of business as follows:

1. Business as Economic Activity

In the initial stages, business was considered as an activity which was meant for economic benefit (profits) only. The businessmen had no obligations for the upliftment of the society.

2. Changes by 1920's

By 1920's this perception started changing and the business enterprises were increasingly recognized as the public society and were regarded as an integral part of the business

environment. Businessmen felt that what was not good for the society was not good for the business too. Thus social order started gaining importance.

3. Purchasing Power of Public

Another important phase in the evolution of social responsibility was that businessmen recognized that there can be no business without the demand for goods and without purchasing power of the public. Thus, business policy started focussing upon providing higher wages and lower prices of goods and services. Thus, the concept of social responsibility became more prominent. It also led to the evolution of a new relationship between the public and business. In present day, businesses are deemed to fulfill their moral and social responsibility by disclosing the use of profits to the public.

Keith Davis states that, "Social responsibility has become that hallmark of mature, global civilization".

Concept of Social Responsibility

The conceptual meaning and role of business has undergone a significant change over the last century. Although, profit is considered as a major factor influencing business, equal importance is also being given to the needs and requirement of the society in which the business operates.

Popular English economist, Alfred Marshall considered that business firms need to consider forces/elements outside economic activities and focus on factors like workers education, societal welfare, public services and so on. Immense research was conducted in order to identify elements/attitude of social responsibility. However, it is a challenging task due to the following two reasons,

1. Social responsibility includes a series of subjective judgements which cannot be easily measured.
2. It includes many relationships, thus its nature is very complex.

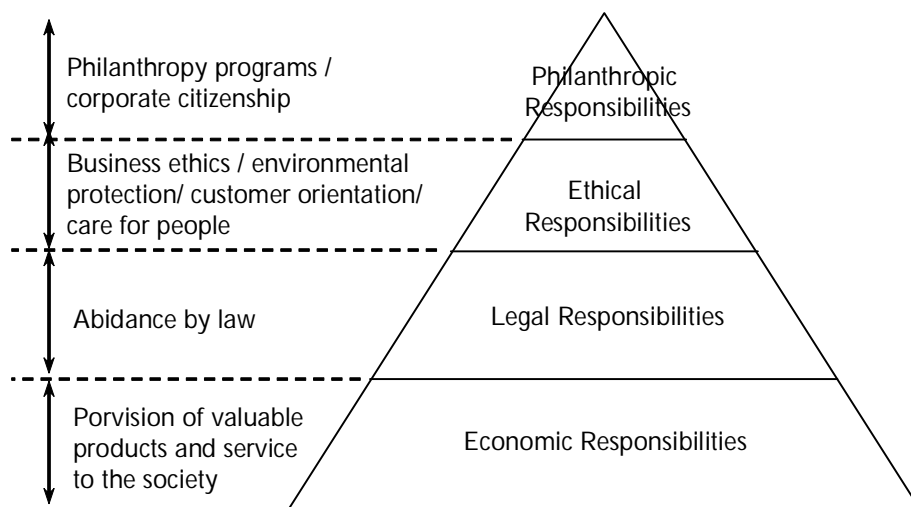
Q12. Explain the approaches to social responsibility.*Ans :*

1. **Obstructionist Approach:** Organizations which follow this approach usually do not take any initiative towards social responsibility. They work solely for profit generation and may even act unethically or illegally. All this, may result in damaged reputation and financial losses to the organization.
2. **Defensive Approach:** Organizations following this approach show at least the bare minimum commitment towards social development. They perform all their social responsibilities as stated by the law.
3. **Accommodative Approach:** This approach calls for doing the right thing at the right time. Firms that follow this approach are quite accommodative and this approach acts as the acknowledgment to the need to support social welfare schemes.
4. **Proactive Approach:** Organizations that follow this approach go out of the way and participate in various, social welfare schemes. They are characterized by a very strong commitment to go for social responsibility.

Q13. What are the dimensions of Social responsibility of business?*Ans :***(Imp.)**

- (i) **Economic Responsibility:** A corporation has to meet its economic responsibilities in terms of reasonable return to investors, fair compensation to employees, goods at fair prices to customers, etc. Thus, meeting economic responsibility is the first-layer of responsibility and also the basis for the subsequent responsibilities. The fact remains that meeting economic responsibility is must for all corporations to survive in the time.
- (ii) **Legal Responsibility:** The legal responsibility of business corporations demands that businesses abide by the law of land and play by the rule of the game. Laws are the codification of do's and don'ts in the society.

Abiding by laws is the prerequisite for any corporation to be socially responsible. Corporate history is replete with instances where violation of laws disallowed corporations to run any longer. Enron, Union Carbide, Global Trust Bank, etc. are some of such illustrative corporate cases of social rejection and boycott.



(iii) **Ethical Responsibility:** These responsibilities refer to obligations which are right, just, and fair to be met by corporations. Just abiding by law, procedure, and rule and regulations does not make business conduct always as ethical or good. The conduct of corporations that go beyond law and contribute to social well being is called ethical.

Hence, corporations have an ethical responsibility to do, even going beyond law and rule and regulations, what proves good for the society. In other words, ethical responsibilities consist of what is generally expected by society from corporations over and above economic and legal expectations.

(iv) **Philanthropic Responsibility:** The Greek word 'philanthropy' means literally 'the love of the fellow human.' The use of this idea in business context incorporates activities that are, of course, within the corporation's discretion to improve the quality of life of employees, local communities, and ultimately society at large.

Making donations to charitable institutions, building of recreational facilities for employees and their families, support for educational institutions, supporting art and support activities, etc. are the examples of philanthropic responsibilities discharged by the corporations. It is important to note that the philanthropic activities are desires of corporations, not expected by the society.

Q14. What are the arguments for social responsibility of business?

Ans :

1. Public needs have changed, leading to changed expectations. Business received its charter from society and consequently has to respond to the needs of the society.
2. Improvement of the social environment benefits both society and business. Society gains through better neighborhoods and employment opportunities; business benefits from a better community, since community is the source of its work force and the consumer of its products and services.

3. Social involvement discourages additional govt, regulation and intervention. The result is greater freedom and more flexibility in decision making for business.
4. Business has a great deal of power which, it is reasoned, should be accompanied by an equal amount of responsibility.
5. Modern society is an interdependent system, and the internal activities of the enterprise have an impact on the external environment.
6. Social involvement may be in the interest of stockholders.
7. Social involvement creates a favorable public image. Thus a firm may attract customers, employees and investors.
8. Business has the resources. Business should use its talented managers, specialists, and capital resources to solve some of societies problems.

Q15. What are the arguments against social responsibility of business?

Ans :

1. The primary task of business is to maximize profit by focusing strictly on economic activities. Social involvement could reduce economic efficiency.
2. In the final analysis, society must pay for the social involvement of business through higher prices. Social involvement would create excessive costs for business, which cannot commit its resources to social action.
3. Social involvement can weaken the international Balance of Payments. The cost of social programs, the reasoning goes would have to be added to the price of the product. Thus our companies selling in international markets would be at a disadvantage when competing with companies in other countries which do not have these social costs to bear.
4. Business has enough power, and additional social involvement would further increase its power and influence.

5. Businesspeople lack the social skills to deal with the problems of the problems of society. Their training and experience is with economic matters and their skills may not be pertinent to social problems.
6. There is lack of accountability of business to society. Unless accountability can be established, business should not get involved.

Today many businesses are involved in social action. A decision as to whether companies should extend their social involvement requires a careful examination of the arguments for and against such actions. Certainly society's expectations are changing and the trend seems to be toward greater social responsiveness. In fact, most respondents in a study of Harvard Business Review readers consider social responsibility a legitimate and achievable aim for business. Still, the mission of the organization must be taken into account.

Q16. Explain the importance of social responsibility.

Ans :

Interesting aspect of social responsibility in the modern era is that, being socially responsible is not a matter of choice to a very large extent. It has become a business compulsion.

Behaving in a socially responsible manner gives business benefits to organizations. It may involve costs in short run but has proved beneficial in the long run.

For companies operating on a multinational basis, community involvement can be helpful in supporting efforts to enter new markets, attract potential employees, and establish or strengthen the reputation of the company, its brand and products.

Social responsibility of business is important from the following point of view.

1. **From employees' point of view:** with the help of companies employment and healthy working condition, social responsibility of business is important for employees.

2. **From Customer point of view:** under social responsibility, business follows ethical practice and manufacture the product which is as per expected quality and reasonable price.
3. **From investor point of view:** business who understand value of social responsibility is provide protection to the investor fund with help of development and growth of its business as well as expected return to investors with profit earn by it.
4. **From Suppliers point of view:** the importance of social responsibility is also require to perform in case of suppliers as they are one to provide raw material to business as well as other required material. When they are paid on time as well as reasonable demands of them are satisfied company, suppliers are loyal to business.
5. **From government point of view:** when business pay regular taxes, follow the norms of government then it is consider as social responsibility of business which is duly fulfill by it.
6. **From Society point of view:** business need to work in society, some importance of social responsibility is also define from society point of view. The business provide good product, try to maintain clean environment, provide opportunity to participate to business as well as work for the overall development of society, these are the some example of it.

Q17. Define corporate social responsibility. What are the benefits of CSR?

Ans :

According to Forbes (2010), corporate social responsibility works in two ways. The company gives back to the society, in turn, people get to know about the company who helped them most and cater to their products and services.

According to Infosys founder, Narayan Murthy, "Social responsibility is to create maximum shareholders value, working under the circumstances, where it is fair to all its stakeholders, workers, consumers, the community, government and the environment."

Benefits

The scale and nature of the benefits of CSR for an organization can vary depending on the nature of enterprise, and are difficult to quantify, though there is large body of literature exhorting business to adopt measures beyond financial ones. The business case for CSR within a company will likely rest on one or more of these arguments.

1. **Human resources:** A CSR programmed can be an aid to recruitment and retention, particularly within the competitive graduate student market. Potential recruits often ask about a firm's CSR policy during an interview, and having a comprehensive policy can give an advantage.
2. **Risk management** managing risk is a central part of many corporate strategies. Reputation as take decades to build up can be ruined in hours through incident such as corruption scandals or environmental accident. These can also draw unwanted attention from regulators, courts, governments and media. Building a genuine culture of 'doing the right thing' within a corporation can offset these risk.
3. **Brand differentiation** in crowded market places, company's striving for a unique selling proposition. That can separate them from the competition in the minds of consumers. CSR can play role in building customer loyalty based on distinctive ethical values.
4. **License to operate corporation** are keen to avoid interference in there business through taxation. By taking substantive voluntary steps, they can pursuit governments that they are taking issues such as health & safety, diversity, or the environment seriously as good corporate citizen with respect to labor standards and impacts on the environment.

Q18. Expalin different types of CSR?

Ans :

Corporate social responsibility can be categorised as follows:

1. **Environmental Corporate Social Responsibility:** Concern about environment and concrete efforts to improve environment constitute the most vital corporate social responsibility. According to a survey by PricewaterhouseCoopers, majority of U.S. respondents opined that the most important issue for the companies of the future would be reduction in carbon emissions. Today, governments and environment-conscious groups are encouraging business organisations to reduce carbon emissions and pollution and procure their raw material from sustainable sources.
2. **Human Rights Related Corporate Social Responsibility:** It refers to the responsibility of companies to ensure that there are no violations of human rights while conducting any business activity. Examples of human rights violation are, ill-treating or exploiting workers; paying meagre wages and extracting unlaibly excessive work; compelling workers to work in an environment not meeting mandatory requirements or in hazardous conditions. To ensure fulfilment of this responsibility, the government has laid down strict stipulations in labour laws. The complexity of this issue is increased in today's global business scenario; **for example**, the components of a product are manufactured in one country and the product is assembled out of these in another country. It then becomes necessary to conform to the human rights-related requirements of both the countries.
3. **Financial Corporate Social Responsibility:** Financial corporate social responsibility refers to the responsibility of companies to be transparent in their financial dealings and to report financial results accurately and without manipulations. Shareholders today are very vigilant about financial and accounting standards maintained by companies and are sharp enough to unearth frauds and manipulations. Examples of financial malpr are those of Enron and their auditors Arthur Anderson; and in India, the Saradha and Satyam scams.

4. **Political Corporate Social Responsibility:** This refers to the responsibility of companies to do business with repressive governments. This, some say, is desirable because it helps such regimes come out of their repressive cocoons and move towards being free and liberal regimes. However, some do not subscribe to this view. Far from it being a responsibility, they forbid doing business with repressive regimens, a glaring example of which is the embargo by several western governments against the apartheid government in South Africa in the 1980s.

5.4 FAIR AND JUST COOPERATION AMONG OWNERS, MANAGERS, WORKERS AND CUSTOMERS

Q19. Explain briefly about cooperation between managers and owners.

Ans :

(Imp.)

Good corporate governance must not be regarded as rigid system rather it should be considered as change management framework. Changes in adopting corporate strategies and crisis situations develop moments of truth which leads to emergence of conflicts between owners and managers or between owners themselves. These conflicts may develop new visions and may delay restructuring decisions or new profitable business projects.

The classical OD approaches does not emphasize on conflicts prevailing between owners and their representing corporate governance bodies. Aligning the strategic priorities of stakeholders inside and outside organizational boundaries is more linked with OD programs, conflicts relating to strategic views of owners and managers are not emphasized by OD initiatives. In emerging market economy, it is necessary for owners to understand their functions and dysfunctions in organizational learning process.

The outcome of organizational change processes can be predicted by analyzing the interaction between owners and managers. A survey revealed that effectiveness of management turnover being corporate governance mechanism represents the proof that supervisory board is not an efficient corporate governance mechanism for changing low

performing managers. The representatives of owners does not protect the interests of the shareholders better than representatives of employees and managers.

Q20. Discuss about cooperation between employee and workers.

Ans :

Cooperation between employers and workers is an element without which no tangible progress can be achieved. Both employer and worker members have common interest and the favourable results at workplace can be obtained from cooperation not from confrontation. Government have never inspected whether there is cooperation between employers and workers.

One of the essential element of organization is cooperation between management and workers and their representatives. The required flexibility can be ensured through details relating to types of mechanisms which facilitate cooperation and their functions.

A survey was conducted by many countries stated that development of structures for cooperation existing between management, workers and their representatives and explanation about the nature and composition of those structures based on size and functions of the enterprise is required. If cooperation is not regulated, then it is encouraged through different promotional programmes or involved in collective bargaining arrangements.

Q21. Explain about the cooperation between workers and customers.

Ans :

Mainly the tensions which exist in the employment relationship have an impact on the rules of employment and power relationships. If management is attaining the goals of an organization through people then it is contend that managers are successful as these goals match up with the aims and desires of workers and customers. Such matching of reciprocal needs among workers and employers is referred to as a 'psychological contract'.

It is not certain that human beings behave expectedly or consistently, even in the similar set of situations. People include citizens, employees and

customers. These multiple identities of people may bring distinct and conflicting expectations of an organization. As a result, the management of the employment relationship becomes an uncertain process under which a blend of contradictory principles require the need to control and also to gain the worker's consent.

In Lucas (1995), the response of an individual worker to the organisational rules can be seen through three ways i.e., to comply with or to be deviant in employment or to terminate their employment. However, these responses are exact same to Marchington's (1992) i.e., 'getting on', 'getting by' and 'getting back'. These behaviours are used in situations where both the customer care and service quality dependent on the utilization of worker's tacit skills in terms of technical and attitudinal elements.

At workplace level, personal relationships are very much closely connected to success and morale. Usually managers need to 'muck-in' whenever required. In small workplaces, of a single leader like owner, has to inspire his loyalty from the workforce, since the worker's respect required to be earned.

5.5 FAIR MARKET WAGES

Q22. What are Fair Market Wages?

(OR)

Define fair market wages?

Ans : (Imp.)

- The basic performance of wage and salary administration is to establish and maintain an equitable wage and salary structure. Without a sound policy of wage administration, wages are often determined on the basis of personalized, arbitrary decisions without regard for the overall wage structure, which will demoralise the employees who were discriminated and paid low wages.
- If work is not the consideration and personal whims and fancies dominated payment of wages not only the work will suffer, but employees by and large remain demoralised.
- It is therefore necessary that wages and salaries are fixed purely on considerations of work if one wants to achieve the objectives

of the organisation and if once wants to keep the morale of the employees intact. Wage administration is therefore a systematic procedure for establishing a sound compensation structure.

- By reducing inequities between employee's earnings, a good salary administration raises individual morale and reduces inter-personal and inter-group conflict in the organizations.
- It also sets wages high enough to permit the organisation to recruit the satisfactory employees, and motivates people to work for pay increases and promotions.
- A good salary administration would reduce employee grievances and union representations
- Finally, it enables the management to exercise centralised control over the largest single item of cost i.e. wages and salaries.

Q23. What are the factors to be considered in formulation of fair wages?

Ans : (Imp.)

1. Ability to Pay

The ability of an industry to pay will influence wage rate to be paid, if the concern is running into losses, then it may not be able to pay higher wage rates. A profitable enterprise may pay more to attract good workers. During the period of prosperity, workers are paid higher wages because management wants to share the profits with labor.

2. Demand and Supply

The labour market conditions or demand and supply forces to operate at the national and local levels and determine the wage rates. When the demand for a particular type of skilled labour is more and supply is less than the wages will be more. One the other hand, if supply is more demand on the other hand, is less then persons will be available at lower wage rates also.

According to Mescon, the supply and demand compensation criterion is very closely related to the prevailing pay comparable wage and on-going wage

concepts since, in essence to all these remuneration standards are determined by immediate market forces and factors.

3. Prevailing Market Rates

No enterprise can ignore prevailing wage rates. The wage rates paid in the industry or other concerns at the same place will form a base for fixing wage rates. If a unit or concern pays low rates then workers leave their jobs whenever they get a job somewhere else. It will not be possible to retain good workers for long periods.

4. Cost of Living

In many industries wages are linked to enterprise cost of living which ensures a fair wages to workers. The wage rates are directly influenced by cost of living of a place. The workers will accept a wage which may ensure them a minimum standard of living.

Wages will also be adjusted according to price index number. The increase in price index will erode the purchasing power of workers and they will demand higher wages. When the prices are stable, then frequent wage increases may not be required

5. Bargaining of Trade Unions

The wage rates are also influenced by the bargaining power of trade unions. Stronger the trade union, higher will be the wage rates. The strength of a trade union is judged by its membership, financial position and type of leadership.

6. Productivity

Productivity is the contribution of the workers in order to increase output. It also measures the contribution of other factors of production like machines, materials, and management. Wage increase is sometimes associated with increase in productivity. Workers may also be offered additional bonus, etc., if productivity increases beyond a certain level. It is common practice to issue productivity bonus in industrial units.

5.6 INTEGRITY AND ETHICAL CONSIDERATION IN BUSINESS OPERATIONS

Q24. Explain about Integrity in Business Operations.

Ans :

(Imp.)

Integrity is defined as doing the right thing even if no one is Wound. It is the ability of a person to do things with honesty, reliability and fairness. Culture plays an important role in defining what exactly integrity is, as it includes values, beliefs, morals etc. Integrity is very important aspect of business through which companies as well as individual behaviour can be known. One of the important aspect of integrity is that managers can stand firm, resist temptation and does not misuse their position. Integrity is bound up with business ethics and forms social responsibility.

Integrity is helpful in business in the following ways.

1. Trust
2. Reputation.

1. Trust

Trust is the basic level for building relationships among employer and employee or consumer and company. Trusting an individual or an agency shows the confident and ability of fairness towards that person who promised to do something with responsibility.

The employers and employees can share their views and opinions if trust is placed in the business. Trust and integrity are interconnected with each other. Organizations and individual use integrity to determine the extension of trust. The decisions regarding the end and continuation of business relationships are based on the this basic determination.

2. Reputation

Businesses are more concerned about their regulation in the market. If business is run with integrity, the reputation of the company rises and there will be a positive affect on productivity and sales.

Employee selection process can be done with integrity for changing its scope and making the process more productive. After selection process, at the time of providing training to the employees seminars are given on integrity. If any company require more integrity in their business operations, this relief can be get through different ways provided by managers for employees to keep tab on integrity of each other.

Thus, if the company is more steadfast if their values and beliefs the same will be followed by the employees in building their own integrity.

5.7 INDIAN VALUE SYSTEM AND IT'S RELEVANCE IN MANAGEMENT

Q25. Explain about Indian Value system.

Ans :

- Values are the specific beliefs and attitudes followed by an individual in their behaviour. They are considered as standards through which individual can evaluate his own actions, whether right or wrong. Any culture can be understood by analyzing its value system. Value system indicates motives and ends of the culture and also preserves the principles and wisdom of any culture.
- Basically value system includes beliefs and opinions passed on to children by their parents, it is ongoing process which is passed on from generation to generation.
- Indian value system comprises of culture wherein some rules and regulations are taught to children from their childhood. Individuals learn values from home, school and religious places by their parents, teachers and religious leaders. But now with changing environment, young people are influenced mainly through television or Internet.
- In India, some values are considered as very important even though the rest of the world accepts it or not. Normally, Indian emphasize more on values such as peaceful coexistence, spirituality, respect to elders, recourse to nature, artistic expression, seeking prosperity, strong bonding of family, respecting even the tools of trade, joyousness and hospitality.

- Sometimes, Indian values are misunderstood or misrepresented like "dowry". Dowry is being banned by law and considered as social evil but it is a common practice in India. It is practiced in different cultures of different countries.
- Change is compulsory and is a constant phenomenon similarly values must also change if not then society becomes immoral and inactive. Before disobeying the values and norms, it is necessary to enquire that change is required and which part of society requires change.
- Many values which Indian parents give to their children will not attract to outside world. India is considered to be a wonderful country because of these beliefs only.

Q26. State the significance of Value in Management System.

Ans :

(Imp.)

To understand any culture, value system is first considered. The value system means the motives and ends of the culture, which have been defined and considered as ultimate and paramount by their wisest men. Thus, the principles and wisdom of any culture happen to be preserved in the form of its value system.

A value system is a set of consistent ethic values and measures used for the purpose of ethical or ideological integrity. A well-defined value system is a moral code.

Following are points highlight the role of values in management:

1. Development of Employees

Managers can use the value system for the all-round development of their employees. Values aid to vision. These help to develop the knowledge and moral growth of employees.

2. Motivation

Values can act to awake your hidden talents in you. You have it all in you to go ahead with courage and faith to realize your full potential. Motivating oneself and motivating

others to call for ethical and right values in organizations. Values give a right support in staying motivated all the time, no matter how de-motivating and stressful situations are there.

3. Underlie Managerial Behavior

The study of values is fundamental to the understanding of managing and organizational behavior the value orientations of managers underlie managerial behavior.

4. Determine behavior

Values underlie and to a large extent determine behavior in the organization. Thus, the manager can bring change in the desired way through the behavior of employees.

5. Helps in bringing change

Organizations are united through values. Values are facilitated organizational change when they are re-assessed and brought in line with the organizational structure objectives. This practice has already transformed several individuals and organizations.

6. Determine attitudes

Values lay the foundation for the understanding of attitudes, motivations, and perceptions.

7. Promote leadership

Managers are people who exercise their 'leadership by values'. They can be effective leaders by practicing the spiritual values in their managing jobs.

8. Bring creativity

Managers can remain creative in uncertain and ever-changing times by observing many ethical values. Many classic values help increase cognitive abilities that results in a new way of viewing some problems and situations.

9. Managing in Borderless

Business and management are no longer confined to a national state but are really borderless. Managerial task and decisions are not regulated by various international governments. In many "lawless lands" the

responsibility of managers is greater than ever. Hence, value-based management has become a prime necessity. Managers must perform by the need of moral and professional values, not merely laws.

10. Involve in Managerial Goals

Values are pervasive because they involve in the selection of missions, goals, and adjectives. The job of planning, organizing and controlling the behavior of individuals should also be compatible with managers' values.

11. Guide to life, profession, and character

Moral, ethical and professional values determine the character of employees and managers. They guide their profession and life. They should guide the real character of our lives as we serve our nations. Value can become the basis for the behavior of its members.

12. Personality Development

Managers remain interested in developing the personality of their employees and fellow members. Personality is the sum total of a variety of factors. But the selection of moral and basic values is an important factor because values provide thoughts, right desire, and zeal to change in the right direction.

13. Work Ethic

Skill, initiative, habits, attitude, work manners, interpersonal vision, a challenge to change, and the quality of work produced constitute important elements in the mindset of any worker today. Ethical and timeless value place a strong role in doing a good job. Values can create a belief that work has intrinsic value for its own sake.

Short Question and Answers

1. Ethics

Ans :

The term "ethics" is derived from the Greek word "ethos" which refers to character or customs or accepted behaviors. The Oxford Dictionary states ethics as "the moral principle that governs a person's behaviour or how an activity is conducted". The synonyms of ethics as per Collins Thesaurus are - conscience, moral code, morality, moral philosophy, moral values, principles, rules of conduct, standards.

Ethics refers to well-founded standards of right and wrong that prescribe what humans ought to do, usually in terms of rights, obligations, benefits to society, fairness, or specific virtues.

Ethics is a set of principles or standards of human conduct that govern the behavior of individuals or organizations. Using these ethical standards, a person or a group of persons or an organization regulate their behavior to distinguish between what is right and what is wrong as perceived by others. It is not a natural science but a creation of the human mind. For this reason, it is not absolute and is open to the influence of time, place and situation.

- Ethics can be defined as the discipline dealing with moral duties and obligation, and explaining what is good or not good for others and for us.
- Ethics is the study of moral decisions that are made by us in the course of performance of our duties.
- Ethics is the study of characteristics of morals and it also deals with the moral choices that are made in relationship with others.
- Ethics is concerned with truth and justice, concerning a variety of aspects like the expectations of society, fair competition, public relations, social responsibilities and corporate behavior.

Definitions of Ethics

- i) **According to Keith Davis** and associates define ethics as a set of rules that define right and wrong conduct.
- ii) **According to Shea**, ethics are the principles of conduct governing an individual or profession and "standards of behaviour".
- iii) **According to Brian Harvey**, ethics stands for a practice as well as a reflection on that practice.
- iv) **According to Oxford dictionary** defines ethics as morals, treating of moral questions, morally correct, honourable.

2. Business Ethics

Ans :

Business ethics is a form of applied ethics. In broad sense ethics in business is simply the application moral or ethical norms to business. Business ethics refers to a 'code of conduct' which businessmen are expected to follow while dealing with others. 'Code of conduct' is a set of principles and expectations that are considered binding on any person who is member of a particular group. The alternative names for code of conduct are 'code of ethics' or 'code of practice'.

Business ethics comprises the principles and standards that guide behaviour in the conduct of business.

Businesses must balance their desire to maximize profits against the needs of the stakeholders. Maintaining this balance often requires trade-offs. To address these unique aspects of businesses, rules - articulated and implicit, are developed to guide the businesses to earn profits without harming individuals or society as a whole.

The coverage of business ethics is very wide as it deals with norms relating to a company and its employees, suppliers, customers and neighbors, its fiduciary responsibility to its shareholders. It reflects the philosophy of business, one of whose aims is to determine the fundamental purposes of a company.

Business ethics stands for the saneness or purity of purpose that is upheld through carefully designed actual practices of business enterprises. It is an embodiment of conscience concern towards execution of business processes in tune with the nobility of the purpose.

Definitions

- i) According to Keith Davis, business ethics are the application of general ethical rules to business behaviour.
- ii) John Donaldson defines, business ethics as a study of moral (ethical) matters pertaining to business, industry or related activities, institutions or practices and beliefs.

3. Objectives of business ethics

Ans :

The objectives of business ethics are:

- (i) **Personal level:** At personal level the policy should be set that not to misuse the properties of the others or of the organization keeping the promises and extending the mutual help, not to seek quick gains and not to indulge in politics to gain power.
- (ii) **Internal policy level:** The business organization should follow fair practices in dealing with employees and other stakeholders. The organization should have open and better communication at all levels. The organization leadership should motivate employees for better productivity and for common good.
- (iii) **Societal level:** The social concerns like no discrimination concerned for the down trodden be the prime concerns of the business organizations. Optimal use of scarce resources, clean environment and ensuring better quality of life to all the stakeholders should be stressed in the internal policies.
- (iv) **Stakeholder's level:** The organization should take care of the maximum number of stakeholders and follow ethical means with shareholders, customers, suppliers, employees, banks and financial institutions, government and all others that are connected with the organization.

4. Explain the need for business ethics.

Ans :

Business ethics is essential because of the following reasons,

1. Operation of Business within the Society

Business acts as an important and the most significant component of a society as its functioning helps in improving the welfare of the society. Social sanction is a prerequisite for gaining acceptance by the society without which no organization can think of its survival. If business undergoes either expansion or diversification, then it is able to attract more number of customers. By serving the societal needs, organizations are able to create good image in the minds of public.

2. For Long-term Success, Business is Required to Exist on Ethical Grounds

For achieving the long-term success, business needs to be ethical and socially responsible. For the survival of business, mere generation of profit alone isn't essential as it also requires to take appropriate actions for improving the standards of the individuals and society at large.

3. Acts as a Responsible Corporate Citizen

Business ethics act as the driving forces for the society which are responsible for bringing its economic development. Thus, the narrow scope and restricted goals needs to be avoided.

5. Social responsibility of business.

Ans :

Social responsibility means being responsible and committed towards the welfare of the society and also to be answerable for the activities and operations of the business corporate.

Earlier, usually all the business enterprises operated with the primary objective of "profit generation" and a person/business was considered successful as long as he earned money and was not bankrupt. No one was pressurised to take responsibility for the welfare and development of the society i.e., follow CSR. This was a time when man was considered as "economic man". However, this scenario has been changed in today's business

wherein the corporates have become more socially responsible. The different stages/elements in the evolution of the concept of social responsibility of business as follows:

1. Business as Economic Activity

In the initial stages, business was considered as an activity which was meant for economic benefit (profits) only. The businessmen had no obligations for the upliftment of the society.

2. Changes by 1920's

By 1920's this perception started changing and the business enterprises were increasingly recognized as the public society and were regarded as an integral part of the business environment. Businessmen felt that what was not good for the society was not good for the business too. Thus social order started gaining importance.

6. Explain the approaches to social responsibility.

Ans :

1. **Obstructionist Approach:** Organizations which follow this approach usually do not take any initiative towards social responsibility. They work solely for profit generation and may even act unethically or illegally. All this, may result in damaged reputation and financial losses to the organization.
2. **Defensive Approach:** Organizations following this approach show at least the bare minimum commitment towards social development. They perform all their social responsibilities as stated by the law.
3. **Accommodative Approach:** This approach calls for doing the right thing at the right time. Firms that follow this approach are quite accommodative and this approach acts as the acknowledgment to the need to support social welfare schemes.
4. **Proactive Approach:** Organizations that follow this approach go out of the way and participate in various, social welfare schemes. They are characterized by a very strong commitment to go for social responsibility.

7. Define corporate social responsibility.

Ans :

According to Forbes (2010), corporate social responsibility works in two ways. The company gives back to the society, in turn, people get to know about the company who helped them most and cater to their products and services.

According to Infosys founder, Narayan Murthy, "Social responsibility is to create maximum shareholders value, working under the circumstances, where it is fair to all its stakeholders, workers, consumers, the community, government and the environment."

8. Define fair market wages

Ans :

- The basic performance of wage and salary administration is to establish and maintain an equitable wage and salary structure. Without a sound policy of wage administration, wages are often determined on the basis of personalized, arbitrary decisions without regard for the overall wage structure, which will demoralise the employees who were discriminated and paid low wages.
- If work is not the consideration and personal whims and fancies dominated payment of wages not only the work will suffer, but employees by and large remain demoralised.
- It is therefore necessary that wages and salaries are fixed purely on considerations of work if one wants to achieve the objectives of the organisation and if once wants to keep the morale of the employees intact. Wage administration is therefore a systematic procedure for establishing a sound compensation structure.
- By reducing inequities between employee's earnings, a good salary administration raises individual morale and reduces inter-personal and inter-group conflict in the organizations.
- It also sets wages high enough to permit the organisation to recruit the satisfactory employees, and motivates people to work for pay increases and promotions.
- A good salary administration would reduce employee grievances and union representations.

9. Integrity in Business Operations.

Ans :

Integrity is defined as doing the right thing even if no one is Wound. It is the ability of a person to do things with honesty, reliability and fairness. Culture plays an important role in defining what exactly integrity is, as it includes values, beliefs, morals etc. Integrity is very important aspect of business through which companies as well as individual behaviour can be known. One of the important aspect of integrity is that managers can stand firm, resist temptation and does not misuse their position. Integrity is bound up with business ethics and forms social responsibility.

Integrity is helpful in business in the following ways,

- i) Trust
- ii) Reputation.

i) Trust

Trust is the basic level for building relationships among employer and employee or consumer and company. Trusting an individual or an agency shows the confident and ability of fairness towards that person who promised to do something with responsibility.

The employers and employees can share their views and opnions if trust is placed in the business. Trust and integrity are interconnected with each other. Organizations and individual use integrity to determine the extension of trust. The decisions regarding the end and continuation of business relationships are based on the this basic determination.

ii) Reputation

Businesses are more concerned about their regulation in the market. If business is run with integrity, the reputation of the company rises and there will be a positive affect on productivity and sales.

10. Indian Value system.

Ans :

- Values are the specific beliefs and attitudes followed by an individual in their behaviour. They are considered as standards through which individual can evaluate his own actions, whether right or wrong. Any culture can be understood by analyzing its value system. Value system indicates motives and ends of the culture and also preserves the principles and wisdom of any culture.
- Basically value system includes beliefs and opinions passed on to children by their parents, it is ongoing process which is passed on from generation to generation.
- Indian value system comprises of culture wherein some rules and regulations are taught to children from their childhood. Individuals learn values from home, school and religious places by their parents, teachers and religious leaders. But now with changing environment, young people are influenced mainly through television or Internet.
- In India, some values are considered as very important even though the rest of the world accepts it or not. Normally, Indian emphasize more on values such as peaceful coexistence, spirituality, respect to elders, recourse to nature, artistic expression, seeking prosperity, strong bonding of family, respecting even the tools of trade, joyousness and hospitality.

Choose the Correct Answers

1. The word ethics is derived from [c]
(a) Latin word 'ethike'. (b) Greek word 'ethik'
(c) Greek word 'ethike' (d) Latin word 'ethik'
2. 'It is difficult but not impossible to conduct strictly honest business' is famous quote by: [a]
(a) Mahatma Gandhi (b) Adam Smith
(c) George Bernard Shaw (d) Peter Drucker
3. The term 'business ethics' came into common use in year _____ [c]
(a) 1950 (b) 1960
(c) 1970 (d) 1980
4. Ethics is a set of _____ of human conduct that govern the behavior of individuals or organization. [c]
(a) Principles (b) Standards
(c) Principles or standards (d) None of the above
5. _____ is about obeying and adhering to rule and authority. [d]
(a) Ethics (b) Code
(c) Conduct (d) Compliance
6. Which of the following is an unethical business practice? [d]
(a) Collusion (b) False Communication
(c) Insider Trading (d) All of the above
7. Administrative corruption includes 'gifts' to the _____ [d]
(a) Factory inspector
(b) Boiler Erection
(c) Pollution control board inspectors
(d) All of the above
8. Business ethics is based on well accepted _____ [a]
(a) Moral and social values (b) Social values only
(c) Moral values only (d) None of the above
9. Business ethics has a _____ application. [a]
(a) Universal (b) Natural
(c) Practical (d) None of the above

10. _____ are beliefs about what is right and wrong or good or bad. [d]
(a) Morals (b) Motivators
(c) Cultures (d) Ethics
11. Business Ethics is _____ in nature. [b]
(a) Absolute (b) Not absolute
(c) Permanent (d) None of the above
12. The relevance of ethics is in its [c]
(a) Context (b) Principles
(c) Application (d) Understanding
13. Business malpractice does not include [c]
(a) Black arketming (b) Adulteration
(c) Adv ertising (d) Duplication
14. Ethics refers to a _____ that guides an individual while dealing with others. [c]
(a) Code (b) Conduct
(c) Code of conduct (d) Rules of conduct
15. Ethics in compliance means [a]
(a) It is about obeying and adhering to rules and authority.
(b) It deals with the moral principles behind the operation and regulation of marketing.
(c) It deals with the duties of a company to ensure that products and production processes do not cause harm.
(e) None of the above
16. _____ made it important for businesses to have an ethics code, something in writing about what one ought to do, and what to strive for. [c]
(a) The Ethics & Code Conduct Act, 2000
(b) The Sarbanes-Ethics of Code Conduct Act, 2001
(c) The Sarbanes-Oxley Act, 2002
(d) None of the above
17. Compliance is about obeying and adhering to _____. [a]
(a) Rules an authority (b) Discipline
(c) Laws (d) All of the above
18. An expert who is confidentially available to solve the ethical dilemmas is known as _____. [a]
(a) Ethic coach (b) Ethics trainer
(c) Ethics guide (d) None of the above

19. Which of the following statements about business ethics is true? [b]
- (a) It concerns the impact of a business activities on society.
 - (b) It refers to principles and standards that determine acceptable behavior in the world of business.
 - (c) It relates to an individual's values and moral standards and the resulting business decisions he or she makes.
 - (d) What is ethical is determined by the public, government regulators, interest groups, competitors and individual's personal moral values.
20. Top managers demonstrate commitment to ethical business practices with [a]
- (a) The adoption of written codes of ethics.
 - (b) Employee empowerment.
 - (c) Decentralized decision making practices.
 - (d) Collusion with other companies.

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Fill in the Blanks

1. _____ is a set of principles or standards of human conduct that govern the behavior of individuals or organizations.
2. _____ is the study of moral decisions that are made by us in the course of performance of our duties.
3. _____ are the guiding principles of business function.
4. Business ethics is based on _____ and _____.
5. Business ethics provide a basic framework for doing _____.
6. The need of business is critical as it serves the human needs in terms of _____ and _____.
7. Information related to _____ is a critical aspect for business.
8. _____ means being responsible and committed towards the welfare of the society.
9. _____ which follow this approach usually do not take any initiative towards social responsibility.
10. Good _____ must not be regarded as rigid system rather it should be considered as change management framework.
11. _____ is the basic level for building relationships among employer and employee or consumer and company.

ANSWERS

1. Ethics
2. Ethics
3. Business ethics
4. Moral, Social values
5. Business
6. Goods, Services
7. Money matters
8. Social responsibility
9. Organizations
10. Corporate governance
11. Trust

FACULTY OF MANAGEMENT
BBA IV - Semester (CBCS) Examination
MODEL PAPER - I
BUSINESS LAW AND ETHICS

Time : 3 Hours]

[Max. Marks : 80

PART - A (5 × 4 = 20 M)

Answer any five questions

ANSWERS

- | | | |
|----|--------------------------------|----------------------|
| 1. | (a) Define contract | (Unit - I, SQA. 2) |
| | (b) Mercantile law | (Unit - I, SQA. 1) |
| | (c) Define bailment | (Unit - II, SQA. 3) |
| | (d) Define agent and principal | (Unit - II, SQA. 1) |
| | (e) Memorandum of Association | (Unit - III, SQA. 3) |
| | (f) Consumer | (Unit - IV, SQA. 3) |
| | (g) Ethics | (Unit - V, SQA. 1) |
| | (h) Define fair market wages | (Unit - V, SQA. 8) |

PART - B (5 × 12 = 60 M)

Answer any five questions.

- | | | |
|----|---|------------------------|
| 2. | (a) Define acceptance ? Explain the essential elements of a valid acceptance. | (Unit - I, Q.No. 10) |
| | OR | |
| | (b) Discuss the validity of contracts by minor. | (Unit - I, Q.No. 17) |
| 3. | (a) Discuss rights and duties of a bailor and bailee in a contract of bailment. | (Unit - II, Q.No. 9) |
| | OR | |
| | (b) When will a pledge made by a non-owner of the goods be valid? | (Unit - II, Q.No. 14) |
| 4. | (a) Explain different types of companies. | (Unit - III, Q.No. 3) |
| | OR | |
| | (b) Write a note on Redherring prospectus. | (Unit - III, Q.No. 10) |
| 5. | (a) What are the features and objectives of consumer protection Act 1986? | (Unit - IV, Q.No. 3) |
| | OR | |
| | (b) What is pollution? Explain different types of pollution. | (Unit - IV, Q.No. 11) |
| 6. | (a) Explain the various approaches of business ethics. | (Unit - V, Q.No. 7) |
| | OR | |
| | (b) Explain briefly about cooperation between managers and owners. | (Unit - V, Q.No. 19) |

FACULTY OF MANAGEMENT
BBA IV - Semester (CBCS) Examination
MODEL PAPER - II
BUSINESS LAW AND ETHICS

Time : 3 Hours]

[Max. Marks : 80

PART - A (5 × 4 = 20 M)*Answer any five questions***ANSWERS**

- | | |
|---|----------------------|
| 1. (a) Agreement | (Unit - I, SQA. 3) |
| (b) Distinguish between Void Contract and Voidable Contract | (Unit - I, SQA. 5) |
| (c) Types of goods | (Unit - II, SQA. 9) |
| (d) Define the term sale and agreement to sell. | (Unit - II, SQA. 7) |
| (e) Articles of Association | (Unit - III, SQA. 4) |
| (f) Rights of Consumer | (Unit - IV, SQA. 7) |
| (g) Objectives of business ethics | (Unit - V, SQA. 3) |
| (h) Define corporate social responsibility. | (Unit - V, SQA. 7) |

PART - B (5 × 12 = 60 M)*Answer any five questions.*

- | | |
|---|------------------------|
| 2. (a) Define offer? Explain the legal rules relating to a valid offer. | (Unit - I, Q.No. 8) |
| OR | |
| (b) Under what circumstances is the object or consideration of a contract deemed unlawful? Illustrate with example. | (Unit - I, Q.No. 27) |
| 3. (a) Explain the rights and duties of an agent. | (Unit - II, Q.No. 5) |
| OR | |
| (b) What are the differences between contract of Indemnity and contract of Guarantee? | (Unit - II, Q.No. 19) |
| 4. (a) What are the differences between private company and public company. | (Unit - III, Q.No. 4) |
| OR | |
| (b) Explain the legal provisions relating to Extraordinary general meeting. | (Unit - III, Q.No. 13) |
| 5. (a) Explain the functions of Consumer Councils in India. | (Unit - IV, Q.No. 5) |
| OR | |
| (b) What is Air Pollution? What are the causes of Air Pollution? | (Unit - IV, Q.No. 13) |
| 6. (a) What are the different ways of justifying the ethics? | (Unit - V, Q.No. 9) |
| OR | |
| (b) What are the factors to be considered in formulation of fair wages? | (Unit - V, Q.No. 23) |

FACULTY OF MANAGEMENT
BBA IV - Semester (CBCS) Examination
MODEL PAPER - III
BUSINESS LAW AND ETHICS

Time : 3 Hours]

[Max. Marks : 80

PART - A (5 × 4 = 20 M)*Answer any five questions***ANSWERS**

- | | |
|--|-----------------------|
| 1. (a) Define acceptance | (Unit - I, SQA. 7) |
| (b) Define Fraud | (Unit - II, SQA. 10) |
| (c) Rights of an Agent | (Unit - II, SQA. 2) |
| (d) Disqualifications of a managing director | (Unit - III, SQA. 12) |
| (e) Extraordinary general meeting | (Unit - III, SQA. 15) |
| (f) What is environmental pollution ? | (Unit - IV, SQA. 13) |
| (g) Indian Value system. | (Unit - V, SQA. 10) |
| (h) Business Ethics | (Unit - V, SQA. 2) |

PART - B (5 × 12 = 60 M)*Answer any five questions.*

- | | |
|---|------------------------|
| 2. (a) Explain Essential elements of a valid Contract. | (Unit - I, Q.No. 10) |
| OR | |
| (b) Explain various Remedies for a Breach of a Contract. | (Unit - I, Q.No. 17) |
| 3. (a) Define agent and principal. Explain essential relationships of agent and principal. | (Unit - II, Q.No. 1) |
| OR | |
| (b) Distinguish between a contract of Sale and an Agreement to sell. | (Unit - II, Q.No. 22) |
| 4. (a) What is Articles of Association? Explain the contents of Articles of Association. | (Unit - III, Q.No. 7) |
| OR | |
| (b) Explain the Qualification - Disqualification of a director. | (Unit - III, Q.No. 19) |
| 5. (a) Enumerate briefly the establishment and working of different consumer dispute Redressal agencies established under the consumer protection act 1986. | (Unit - IV, Q.No. 6) |
| OR | |
| (b) Define Water Pollution? What are the causes of Water Pollution? | (Unit - IV, Q.No.15) |
| 6. (a) What are the dimensions of Social responsibility of business? | (Unit - V, Q.No. 13) |
| OR | |
| (b) State the significance of Value in Management System. | (Unit - V, Q.No. 26) |