



MEASI
Institute of Management



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Management

434C1F – LEGAL SYSTEMS IN BUSINESS

MBA 1ST SEMESTER

UNITWISE STUDY NOTES

Prepared by

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VISION & MISSION STATEMENTS

Vision

To be an oasis of knowledge to the seeker, to nurture one's creativity and research acumen, and to instil a unique blend of leadership, innovative spirit and empathy in response to the ever-evolving business ecosystem.

Mission

- Provide a pedagogy that blends academic rigor and experiential learning.
- Inculcate an entrepreneurial mindset through curated activities
- Establish a conducive environment for research.
- Foster a culture of innovation and collaboration to progress in a dynamic business landscape.
- Promote humanistic values to produce socially responsible leaders.

Program Educational Objectives (PEOs)

PEO 1 – Employability: To develop students with industry specific knowledge & skills to meet the industry requirements and also join public sector undertaking through competitive examinations.

PEO 2 - Entrepreneur: To create effective business service owners, with a growth mindset by enhancing their critical thinking, problem solving and decision-making skills.

PEO3 – Research and Development: To instil and grow a mindset that focusses efforts towards inculcating and encouraging the students in the field research and development.

PEO 4 – Contribution to Business World: To produce ethical and innovative business professionals to enhance growth of the business world.

PEO 5 – Contribution to the Society: To work and contribute towards holistic development of society by producing competent MBA professionals.



Program Outcome

PO1 - Problem Solving Skill; Apply knowledge of management theories and practices to solve business problems.

PO2 - Decision Making Skill; Foster analytical and critical thinking abilities for data-based decision making.

PO3 - Ethical Value; Ability to develop value based leadership ability.

PO4 - Communication Skill; Ability to understand, analyze and communicate global, economic, legal and ethical aspects of business.

PO5 - Individual and Leadership Skill; Ability to lead themselves and others in the achievement of organizational goals, contributing effectively to a team environment.

PO6 - Employability Skill; Foster and enhance employability skills through subject knowledge.

PO7 - Entrepreneurial Skill; Equipped with skills and competencies to become an entrepreneur.

PO8 - Contribution to community; Succeed in career endeavors and contribute significantly to the community.

Program Specific Objectives

PSO 1: Finance: The students should demonstrate proficiency in analyzing financial statements, evaluating investment opportunities and making financial decision to maximize shareholders' value.

PSO 2: Marketing: Students should be able to create a comprehensive marketing plan that integrates effective communication strategies, leading to customer success and the accomplishment of marketing objectives.

PSO 3: Logistics: Students will acquire knowledge of inventory management for domestic and global supply chains, thereby developing problem-solving skills in logistics to optimize supply chain efficiency.

PSO 4: Business Analytics: The students should able to analyze data, communicate insights, take data-driven decisions and solve business problems effectively.



SYLLABUS

Subject Code	Subject Name	Category	L	T	P	O	Credits	Inst. Hours	Marks		
									CIA	External	Total
434C1F	Legal Systems in Business	Core	4	-	-	-	4	60	25	75	100
Course Objectives											
C1	To create knowledge and understanding on law of contracts										
C2	To describe about sale of goods and Negotiable instrument act										
C3	To have an overall understanding about partnership act and company law.										
C4	To familiarize various labor laws for effective administration of Human Resource of an organization.										
C5	To provide insights and awareness about consumer protection act, Cyber-crimes, Intellectual property Rights.										
SYLLABUS											
UNIT	Details							No. of Hours	Course Objectives		
I	The Law of Contracts: Definition of Contract Offer and Acceptance – Essential Elements of a Valid Contract: Free Consent – Competency of Parties – Lawful Consideration – Legality of Object. Void, Voidable, Unenforceable and Illegal Contracts – Performance of Contracts – Privity of Contracts – Assignment of Contracts – By Whom Contract must be Performed – Time and Place of Performance – Performance of Reciprocal Promises – Contracts which need not be performed, Discharge of Contracts : By Performance, By Agreement, By Impossibility, By Lapse of Time, By Operation of Law and By Breach of Contracts – Remedies for Breach of Contracts.							12	C1		
II	Sale of Goods Act: Definition of a Sale and a Contract of Sale – Difference between (1) Sale and an Agreement to Sell (2) Sale and a Contract Form (3) Sale and Bailment (4) Sale and Mortgage of Goods (5) Sale and Time Purchase Conditions and Warranties – Passing of Property of Goods – Rights of an Unpaid Seller. Negotiable Instruments Act: Negotiable Instruments in General: Cheques, Bills of Exchange and Promissory Notes – Definition and Characteristics							12	C2		
III	Partnership Act: Evolution – Definition of Partnership – Difference between Partnership and Joint Family Business – Kinds of Partnerships – Registration – Rights and Liabilities of Partners – Dissolution.							12	C3		



	Company Law: Evolution of Company Form of Organisation – Companies Separate Legal Entity – Comparison of Company with Partnership and Joint Hindu Family Business – Kinds of Companies – Comparison of Private and Public Companies – Formation of Companies – General Idea About Memorandum and Articles of Association, Prospectus, Statement in lieu of Prospectus – Management of Companies – General Idea of Management of Companies – Officers, Meetings – Resolutions – Account and Audit – Winding up of Companies – General Idea of the Different Modes of Winding Up.		
IV	Labour Law: Factories Act, Minimum Wages Act, Industrial Disputes Act, Employees Compensation Act, Payment of Bonus Act 1965. Payment of Gratuity Act 1972. ESI Act, Employees Provident Fund and Miscellaneous Provisions Act 1952, Maternity Benefits Act, Child labour Abolition & Regulation Act, 1986- Inter-state Migrant Workmen (Regulation of Employment & Conditions of services) Act 1979- Bonded Labour system (Abolition) Act 1976- Sexual Harassment of women at Workplace (Prevention, Prohibition & Redressal) Act 2013- Contract Labour (Regulation and Abolition) Act- Four Labour Codes and Rules- RTI Act 2005.	12	C4
V	Consumer Protection Act, Competition Act 2002, Cyber Crimes, IT Act 2008 – Intellectual Property Rights: Types of Intellectual Property – Trademarks Act 1999 – The Copyright Act 1957 – International Copyright Order, 1999 – Design Act, 2000; UNICITRAL – United Nations Commission on International Trade Law.	12	C5
Total		60	
Course Outcomes			
Course Outcomes	On completion of this course, students will;	Program Outcomes	
CO1	Have knowledge on understandings on law of contract.	PO4, PO6, PO7	
CO2	Know the sale of Goods & Negotiable instrument act.	PO6	
CO3	Have understandings on partnership and company law	PO6, PO7	
CO4	Have familiarize with various labour laws.	PO5, PO6, PO7	
CO5	Possess insights & awareness about consumer protection Act Cyber Crimes, Intellectual Property Rights.	PO8	



Reading List	
1.	http://www.legalserviceindia.com/article/
2.	http://www.freebookcentre.net/Law/Law-Books.html 2
3.	https://www.mooc-list.com/course/business-law-wma
4.	https://ilj.law.indiana.edu/
References Books	
1.	Kapoor ND., Legal Systems in Business, Edition 2 (2021), Sultan Chand & Sons.
2.	Rao, P.M., Mercantile Law, PHI Learning, 2011.
3.	Majumdar, A. K. and Kapoor, G.K., Company Law, 15 th Edition, Taxmann Publications Pvt. Ltd., 2012.
4.	Majumdar, A. K. and Kapoor, G.K., Company Law and Practice, 17 th Edition, Taxmann Publications Pvt. Ltd., 2012.
5.	Intellectual Property Laws, Universal Law Publishing, 2012.
6.	Daniel Albuquerque , Legal systems in Business, Oxford University Press India, 2 nd Edition, 2015.

	PO 1	PO 2	PO 3	PO 4	PO 5	PO 6	PO 7	PO 8
CO 1				2		2	2	
CO 2						2		
CO 3						2	2	
CO 4					2	2	2	
CO 5								2

3-Strong 2-Medium 1-Low



UNIT –I

The Law of Contracts: Definition of Contract Offer and Acceptance – Essential Elements of a Valid Contract: Free Consent – Competency of Parties – Lawful Consideration – Legality of Object. Void, Voidable, Unenforceable and Illegal Contracts – Performance of Contracts – Privity of Contracts – Assignment of Contracts – By Whom Contract must be Performed – Time and Place of Performance – Performance of Reciprocal Promises – Contracts which need not be performed, Discharge of Contracts : By Performance, By Agreement, By Impossibility, By Lapse of Time, By Operation of Law and By Breach of Contracts – Remedies for Breach of Contracts.

1. THE INDIAN CONTRACT ACT, 1872:

1.1. Introduction

The law relating to contracts is contained in the **Indian contract Act, 1872**. This Act is based mainly on English common law. It extends to the whole of India and came into force on the first day of September 1872 (sec.1 Indian contract act 1872). The Act deals with:-

- (1) The general principles of the law of contract (**sec.1 – 75**) and
- (2) Some special contracts (**sec.124 – 238**).

1.1.1. General principles: The General principles of law of contract include Formation of a contract, essential elements, performance or breach and remedies for breach of contracts.

1.1.2. Special contracts: - The special contracts deals with Indemnity and guarantee, Bailment and pledge, Law of agency.

1.2. Definition of contract:-

- (1) A contract is an agreement made between two or more parties which the law will enforce.
- (2) According to **Sec.2 (h)** of the Indian Contract Act “an agreement enforceable by law is a contract”
- (3) **Pollack’s** defines “every agreement and promise enforceable at law is a contract”.

If we analyze the definitions of contract, we find that a contract essentially consist of two important words.

- (1) Agreement
- (2) Enforceable by law

1.2.1. Agreement:-

Agreement is defined as “every promise and every set of promises, forming consideration for each other”

[**Sec.2 (e)**], A promise is defined thus, “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.

Therefore to form an agreement, there must be a proposal or offer by one party and its acceptance by the other.



To sum up, Agreement = Offer + Acceptance

On analyzing the above definition of agreement the following characteristics are evident.

a) **There must be two persons:** There must be two or more persons, one person cannot enter into an agreement with himself.

b) **Consensus ad idem:**

This means that the parties to the agreement must have agreed about the subject matter of the agreement in the same sense and at the same time. Unless, there is consensus ad idem, there can be no contract.

Example:- A, who owns two horses named 'Rajhans' & 'Hansraj', is selling Raghans to B. B thinks he is purchasing horse Hansraj. There is no consensus ad idem and consequently no contract.

1.2.2. Obligations (Enforceable by law):

An agreement to become a contract must give rise to a legal obligation or duty. An agreement which gives rise to a social obligation is not a contract.

Example: A, invites B to a dinner and B accepts the invitation, it is a social agreement it does not give rise to contractual obligations is not enforceable in a court of law.

1.2.3. Conclusion:

From the above we conclude that two or more persons enter into an agreement that agreement is enforceable by law it becomes a contract.

Contract = Agreement + Enforceable at law.

Thus all contracts are agreements, but all agreements are not contracts.

1.3. Essential Elements of a valid contract:-

According to **Sec.10** to become a contract, an agreement must have the following essential elements.

1. Offer & Acceptance
2. Intention to create legal relationship
3. Lawful consideration
4. Capacity of parties – competency
5. Free & Genuine consent
6. Lawful object
7. Agreement not declared void
8. Certainty & possibility of performance
9. Legal formalities

1.3.1. Offer & Acceptance:-

- There must be two parties to an agreement.
- One party making the offer and other party accepting it.
- The terms of the offer must be definite.



- 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.

1.3.2. Intention to create legal relationship:-

- 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.

1.3.3. Lawful consideration:-

- An agreement to be enforceable by law must be suffered by consideration.
- Consideration means an advantage or benefit moving from one party to the other.
- 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.
- It need not necessarily be in cash or kind.
- It may be past, present or future.
- But it must be real and lawful.

1.3.4. 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, &
 - (c) Is not disqualified from any law.

1.3.5. Free & Genuine consent:-

- There must be free & genuine consent of the parties.
- 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.
- There is absence of free consent, if the agreement is induced by co-ercion, undue influence, fraud, misrepresentation.

1.3.6. Lawful object:-

- The object of the agreement must be lawful
- It means that the object must not be (a) illegal (b)immoral (c) opposed to public policy
- If an agreement suffers from any legal flaw it would not be enforceable by law

1.3.7. Agreement not declared void:-



- An agreement not enforceable by law is said to be void

1.3.8. Certainly & possibility of performance :-

- The agreement must be certain & not vague or indefinite

1.3.9. Legal formalities :-

- There are some other formalities also which have to be complied with in order to make an agreement legally enforceable
 - In some cases, the document in which the contract is incorporated is to be stamped
- In some other cases a contract, besides being a written one, has to be registered

1.4. Classification of contract:

- Contracts may be classified
- (1) According to validity;
 - (2) According to formation; &
 - (3) According to performance.

1.4.1. Classification according to validity :-

According to validity contracts can further be classified into

- A. Valid contract;
- B. Voidable contract;
- C. Void contract;
- D. Illegal contract; &
- E. Unenforceable contract.

A. Valid contract:

A contract is based on an agreement. An agreement becomes a contract, when all the essential elements are present. In such a case, the contract is a valid contract.

B. Voidable contract:

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 or others, is a voidable contract [sec.2 (i)].

This happens when the essential element of free consent in a contract is missing.

Example: A promises to sell his car to B for Rs.2000. His consent is obtained by use of force. The contract is voidable at the option of A.

C. Void contract:

A contract which ceases to be enforceable by law becomes void when it becomes void when it ceases to be enforceable [sec.2 (i)]. A contract, when originally entered into, may be valid & binding on the parties.



Example: A contract to impart goods from a foreign country. It may break out between the importing country & the exporting country.

D. Illegal contract:

An illegal agreement is one which breaks some rule of basic public policy or which is criminal in nature or which is immoral.

Example: B borrows Rs.5000 from A & enters into a contract, with an alien to import prohibited goods. A knows of the purpose of the loan. The transaction between B & A is collateral to the main agreement is illegal.

E. Unenforceable contract:

An Unenforceable contract is one which cannot be enforced in a court of law because of some technical defect such as absence of writing or by lapse of time.

1.4.2. Classification according to formation:-

According to formation contracts can further be classified into

- A. Express contract
- B. Implied contract
- C. Quasi contract

A. Express contract:

If the terms of a contract are expressly agreed upon (whether by words spoken or written) at the time of formation of the contract, the contract is said to be an express contract.

B. Implied contract:

An implied contract is one which is inferred from the acts or conduct of the parties or course of dealings between them.

C. Quasi contract:

Strictly speaking, a quasi contract is not a contract at all. A contract is intentionally entered into by the parties. it rests on the ground of equity that “a person shall not be allowed to enrich himself unjustly at the expense of another”

Example: T, a tradesman, leaves goods at C’s house buy mistake. C treats the goods as his own. C is bound to pay for the goods.

1.4.3. Classification according to performance:-

According to performance contracts can further be classified into

- A. Executed contract;
- B. Executory contract;
- C. Unilateral or one – sided contract;&
- D. Bilateral contract.



A. Executed contract:

‘Executed’ means that which is done. An executed contract is one in which both the parties have performed their respective obligation.

Example: A agrees to paint a picture for B for Rs.100. when A paints the picture & B pays the price, (i.e.) when both the parties perform their obligation, the contract is said to be executed.

B. Executory contract:

‘Executory’ means that which remains to be carried into effect. An Executory contract is one in which both the parties have yet to perform their obligation.

Thus in the above example

The contract is Executory if A has not yet painted the picture & B has not paid the price.

C. Unilateral or one – sided contract:

A Unilateral or one – sided contract is one in which only party has to fulfill 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 .

D. Bilateral contract:

A Bilateral contract is one in which the obligation on the part of both the parties to the contract are outstanding at the time of the formation of the contract.

1.5. OFFER & ACCEPTANCE:-

1.5.1. OFFER:

A person is said to have made a proposal when he “signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence” [sec.2 (a)].

For example: A says to B, ”will you purchase my car for Rs.5000?” A in this case ,is making an offer to B as he signifies to B his willingness to sell his car to B for Rs.5000 with a view to obtaining B ‘s assent to purchase the car .

The person making the offer is known as the **offeror, proposer or promisor** & the person to whom it is made is called the **offeree or proposee**. When the offeree accepts the offer, he is called the **acceptor or promisee** [sec. 2(c)].

How an Offer is made:-

1. Express Offer

Definition: An offer made in clear, direct terms, either verbally or in writing.



Example: You explicitly offer to sell your car to a friend for a specific price.

2. Implied Offer

Definition: An offer made through the conduct of a party rather than explicit words.

Example: A bus company consistently running the same routes and charging the same fares implies an offer to provide service at those rates.

3. General Offer

Definition: An offer made to the public at large, which can be accepted by anyone who meets the terms and conditions.

Example: An advertisement offering a reward for finding a lost pet.

4. Specific Offer

Definition: An offer made to a particular person or a defined group of people, and only that specific person or group can accept it.

Example: X offering to buy a specific car from Y for a certain price.

5. Cross Offer

Definition: Two identical offers made simultaneously by two parties to each other, without knowledge of the other's offer.

Example: Party A offers to sell a car to Party B for Rs.10,000, and at the same time, Party B offers to buy the same car from Party A for Rs.10,000, unaware of the other's offer.

6. Counter Offer

Definition: An offeree's response to an offer that modifies its terms, thereby rejecting the original offer and creating a new one.

Example: You offer to buy a car for Rs.9,000, and the seller responds by offering to sell it for Rs.9,500.

7. Standing Offer

Definition: An offer that is intended to be valid for a specified period and can be accepted at any time during that period.

Example: A contract with a supplier to provide goods over a period of six months at a fixed price.

Legal rules as to Offer:-

1. Offer must be such as in law is capable of being accepted & giving rise to legal relationship.
2. Terms of offer must be definite unambiguous and certain and not loose and vague.
3. Offer must be communicated.



4. Offer must be made with a view to obtaining the assent.
5. Offer should not contain a term the non compliance of which may be assumed to amount to acceptance.
6. A statement of price is not an offer.

1.5.2. ACCEPTANCE:

This means when the offeree signifies his assent to the offeror the offer is said to be accepted. An offer when accepted becomes a promise [sec.2 (b)]

Types of Acceptance:-

Acceptance may be given by the following types

1. **Express acceptance:** When it is communicated by words, spoken or written or by doing some required act.
2. **Implied acceptance:** When it is to be gathered from the surrounding circumstances or the conduct of the parties
3. **Acceptance of particular offer:** When an offer is made to a particular person , it can be accepted by him alone
4. **Acceptance of general offer:** When an offer is made to world at large, any person to whom the offer is made can accept it.

Legal rules as to Acceptance:

1. It must be absolute & unqualified i.e., it must conform to the offer.
2. It must be communicated to the offeror.
3. It must be according to the mode prescribed or usual & reasonable mode.
4. It must be given within a reasonable time
5. It cannot precede an offer
6. It must show an intention on the part of the acceptor to fulfill terms of the promise.
7. It must be given by the party or parties to whom the offer is made.
8. It must be given before the offer lapse or before the offer is withdrawn
9. It cannot be implied from silence.

1.6. CONSIDERATION:

Consideration is a technical term used in the sense of **quid pro quo** (i.e., something in return).

When a party to an agreement to do something, he must to get “**something**” in return. This “something” is defined as consideration. In the word of Pollock, “consideration is the price for which the promise of other is brought, & the promise thus given for value is enforceable”.

Sec.2 (d) defines consideration as follows:“ when at the desire of promisor, the promise or any other person has done or abstained from doing or does or abstains from doing , or promise to do or to abstain from doing , something , such act or abstinence or promise is called a consideration for the promise”.



Legal rules as to Consideration:-

1. It must move at the desire of the promisor,
2. It may be past, present or future,
3. It need not be adequate,
4. It must be real & not illusory,
5. It must be something which the promisor is not already bound to do,
6. It must not be illegal, immoral or opposed to public policy.

1.7. CAPACITY TO CONTRACT:

Capacity means competence of the parties to enter into a valid contract.

According to **sec. 10**, an agreement becomes a contract if it is entered into between the parties who are competent to contract.

According to **sec. 11**, every person is competent to contract who

- a) Is of the age of majority,
- b) Is of sound mind, &
- c) Is not disqualified from any law.

Thus **sec. 11** declares the following persons to be incompetent to contract.

- 1) Minors,
- 2) Persons of unsound mind, &
- 3) Persons disqualified by any law.

1. Minors:

According to **sec. 3** of the Indian majority Act 1875, a minor is a person who has not completed 18 years of age. In the following two cases, he attains majority after 21 years of age.

- (1) Where a guardian of a minor's person or property has been appointed under the Guardians and Wards Act 1890, or
- (2) Where the superintendence of a minor's property is assumed by a court of wards.

2. Persons of unsound mind:

Sec. 12 lays down a test of soundness of mind. It reads as follows: A person is said to be of sound mind for the purpose of making a contract, if at the same time when he makes it, he is capable of understanding it and of forming a rational judgement as to its effect upon his interest.

(1) 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.

(2) Idiots:



An Idiot is a person who has completely lost his mental powers. He does not exhibit understanding of even ordinary matters. Idiot is permanent.

(3) Drunken or Intoxicated persons:

A drunker or intoxicated person suffers from temporary incapacity to contract at the time when he is so drunk or intoxicated that he is incapable of forming a rational judgment.

3. Persons disqualified by any law:

(1) Alien enemy:

An alien enemy is a person who is not a subject of the republic of India. He may be (a) An Alien friend or (b) An Alien enemy.

(2) Corporations:

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. It has to act within the powers of memorandum of association. If it acts beyond the powers of memorandum it leads to ultra vires Act. Further it cannot enter into contracts of a strictly personal nature as it is an artificial and not a natural person.

(3) Insolvents:

When a debtor is adjusted insolvent, his property vests in the official receiver or official assignee. He is incapable of entering into a contract.

(4) Convicts:

A convict when undergoing imprisonment is incapable of entering into a contract.

1.8. FREE CONSENT:

Meaning of Consent:

“Two or more persons are said to consent when they agree upon the same thing in the same sense” (Sec. 13).

Meaning of Free Consent:

Consent is said to be free when it is not caused by (Sec. 14)

- a) Co-ercion (Sec. 15),
- b) Undue influence (Sec. 16),
- c) Fraud (Sec. 17),
- d) Misrepresentation (Sec. 18),&
- e) Mistake (Sec. 20, 21 & 22).



(A) Co-ercion:

When a person is compelled to enter into a contract by the use of force by the other party or under a threat, “co-ercion” is said to be employed.

Co-ercion is the committing, or threatening to commit, any Act forbidden by the Indian Penal Code, 1860 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 (**Sec. 15**).

(B) Undue influence:

Sec. 16(1) defines undue influence as follows: “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 on unfair advantage over the other”.

(C) Misrepresentation and Fraud:

A statement of fact which one party makes in the course of negotiations with a view to inducing the other party to enter into a contract is known as a misrepresentation

A representation when wrongly made either innocently a misrepresentation may be

1. An innocent or unintentional misrepresentation.
2. An intentional deliberate or wilful misrepresentation with an intent to deceive or defraud the other party

The former is called “Misrepresentation” and the latter “Fraud”.

(D) Mistake:

Mistake may be defined as on erroneous belief about something. It may be a mistake of law or a mistake of fact.

Mistake of law:

- Mistake of law of the country
- Mistake of law of a foreign country

(1) Mistake of law of the country:

Ignorantia juris non excusat, (i.e.) ignorance of law is no excuse, A party cannot be allowed to get any relief on the ground that it had done a particular act in ignorance of law.

(2)Mistake of law of a foreign country:

Such a mistake is treated as mistake of fact.

Mistake of fact:

Mistake of fact may be



(1) Bilateral mistake where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement there is a bilateral mistake.

(2) Unilateral mistake when in a contract only one of the parties is mistaken regarding the subject matter or in expressing or understanding the terms or the legal effect of the agreement, the mistake is a unilateral mistake.

1.9. **VOID AGREEMENT:**

A void agreement is one which is not enforceable by law [Sec. 2 (g)]. Such an agreement does not give rise to any legal consequences and is void ab initio.

The following agreements have been expressly declared to be void by the contract Act:-

1. Agreement by incompetent parties (**Sec. 11**),
2. Agreement made under a mutual mistake of fact (**Sec. 20**),
3. Agreement the consideration or object of which is unlawful (**Sec. 23**),
4. Agreement the consideration or object of which is unlawful in part (**Sec. 24**),
5. Agreement made without consideration (**Sec. 25**),
6. Agreements in restraint of marriage (**Sec. 26**),
7. Agreements in restraint of trade (**Sec. 27**),
8. Agreement in restraint of legal proceedings (**Sec. 28**),
9. Agreement the meaning of which is uncertain (**Sec. 29**),
10. Agreement by way of wager (**Sec. 30**),
11. Agreements contingent on impossible events (**Sec. 36**),
12. Agreements to do impossible Act (**Sec. 56**).

1.10. **PERFORMANCE OF CONTRACT:**

Performance of a contract takes place when the parties to the contract fulfill their obligations arising under the contract within the time and in the manner prescribed.

Sec. 37(Para 1) lays down that the parties to a contract must either perform or offer to perform, their respective promises.

Offer to perform (Sec. 38):

Sometimes it so happens that the promisor offer to perform his obligation under the contract at the proper time and place but the promisee does not accept the performance. This is known as ‘attempted performance’ or ‘tender’.

Privity of Contracts:



Privity of Contract: Only the parties to a contract are bound by it and can enforce it. A “stranger to a contract” has **no right** to sue upon it, even if the contract is made for their benefit.

Since enforceability is based on *mutual consent*, only parties who gave consent can sue/be sued.

Strangers to a contract = No locus standi (no right to sue).

Exceptions to Privity in Indian Law

Indian courts allow certain exceptions where a **third party (beneficiary)** can enforce rights:

1. **Trust or Beneficiary Rights**
 - If a contract is made for the benefit of a third party who is a beneficiary, they can enforce it.
2. **Marriage/Family Settlements**
 - Family arrangements made to benefit members can be enforced by such members.
3. **Acknowledgement of Payment or Liability**
 - If a party acknowledges to a third person that they owe money or obligation, the third party can sue.
4. **Agency**
 - Contracts entered by an agent on behalf of the principal bind the principal.
5. **Assignment of Contract**
 - Rights under a contract can be assigned to a third person, who then can sue.
6. **Covenants running with land**
 - Certain land-related obligations and benefits bind future owners.
7. **Statutory Exceptions**
 - Certain Indian statutes confer rights on third parties (e.g., consumer protection laws, insurance laws)

Assignment of Contract:

Assignment of a contract means transfer of contractual rights and liabilities under the Contract to a third party. It may take place by –

1. Act of the Parties: This is subject to the following rules:

(i) Contracts involving personal skill or ability or other qualifications cannot be assigned.

(ii) A promisor cannot assign his liabilities or obligations under a contract.

(iii) The rights and benefits under a contract may be assigned if the obligation under the contract is not of a personal nature.

(iv) An actionable claim can always be assigned but the assigned to be complete and effectual must be effected by an instrument in writing. Notice of such assignment must also be given to the debtor.



2. Operation of Law: This takes place in case of death or insolvency of a party to the contract.

By whom must contracts be performed?

- 1 Promisor himself,
- 2 Agent,
- 3 Legal representatives,
- 4 Third parties, &
- 5 Joint promisors.

Who can Demand performance?

It is only the promisee who can demand performance of the promise under a contract.

Death of a promisee:

In case of death of the promisee, his legal representatives can demand performance.

Time and Place of Performance:

Time and place of performance of a contract are matters to be determined by agreement between the parties themselves. Where no time for performance is specified, the promisor must perform the promise within a reasonable time. If no time and place is fixed for the performance of the promise, the promisor must apply to the promisee to fix the day and time for performance.

Reciprocal promises:

Promises which form the consideration or part of the consideration for each other are called “Reciprocal promises” [Sec. 2 (f)].

These promises have been classified by:

1) **Mutual and independent:**

where each party must perform his promise independently and irrespective of the fact whether the other party has performed, or is willing to perform, his promise or not, the promises are mutual and independent.

Example: In a contract of sale, **B** agrees to pay the price of goods on **10th** instant. **S** promises to supply the goods on **20th** instant. The promises are mutual and independent.

2) **Conditional and dependent:**

Where the performance of the promise by one party depends on the prior performance of the promise by the other party, the promises are conditional and dependent.



Example: A promises to remove certain debris lying in front of B's house provided B supplies him with the cart.

The promises in this case, are conditional and dependent. A need not perform his promise if B fails to provide him with the cart.

3) **Mutual and concurrent:**

Where the promises of both the parties are to be performed simultaneously, they are said to be mutual and concurrent.

1.11. DISCHARGE OF CONTRACT:

Discharge of contract means termination of the contractual relationship between the parties. A contract is said to be discharged when it ceases to operate (i.e.,) when the rights and obligations created by it comes to an end.

A contract may be discharged,

1. By Performance,
2. By Agreement or consent,
3. By Impossibility,
4. By Lapse of time,
5. By Operation law, &
6. By Breach of contract.

1. Discharge by Performance:

Discharge by performance takes place when the parties to the contract fulfill their obligations arising under the contract within the time and in the manner prescribed. In such a case, the parties are discharged and the contract comes to an end.

It may be by

- a) Actual performance
- b) Attempted performance or tender.

2. Discharge by Agreement or consent:

The various cases of discharge of a contract by mutual agreement are

- a) Novation
- b) Rescission
- c) Alteration
- d) Remission
- e) Merger



A. Novation (Sec. 62):

Novation takes place when a new contract is substituted for an existing one between the same parties

B. Rescission:

Rescission of a contract takes place when or some of the terms of the contract are cancelled.

C. Alteration:

Alteration of a contract may take place when one or more of the terms of the contract is altered by the mutual consent of the parties to the contract. In such a case, the old contract is discharged

D. Remission:

Remission means acceptance of a lesser fulfillment of the promise made

E. Merger:

Merger takes place when an inferior right accruing to a party under a contract merges into a superior right accruing to the same party under the same or some other contract

Example: P holds a property under lease. He later buys the property. His rights as a lease merge into his rights as an owner.

3. Discharge by impossibility of performance:

According to **sec.56** impossibility of performance may fall into either of the following categories

(1) Impossibility existing at the time of agreement: An agreement to do an act impossible in itself is void. This is known as pre-contractual or initial impossibility.

The fact of impossibility may be –

- a) Known to the parties
- b) Unknown to the parties

(2) Impossibility arising subsequent to the formation of contract (or) supervening impossibility

4. Discharge by lapse of time:

The limitation act, 1963 lays down that a contract should be performed within a specified period called period of limitation. If it is not performed, the contract is terminated.

5. Discharge by operation of law:

A contract may be discharged independently of the wishes of the parties. (i.e.,) by operation of law. This includes:

- a) By death
- b) By merger
- c) By insolvency



d) By unauthorized alteration of the terms of a written agreement.

6. Discharge by breach of contract:

It occurs when a party to the contract without lawful excuse does not fulfill his contractual obligation or by his own act makes it impossible that he should perform his obligation under it. It confers a right of action damages on the injured party.

Breach of contract may be-

- (1) Actual breach of contract
 - a) At the time when the performance is due.
 - b) During the performance of the contract.
- (2) Anticipatory breach of contract.

1.12. REMEDIES FOR BREACH OF CONTRACT:

When a contract is broken, the injured party (i.e., the party who is not in breach) has one or more of the following remedies.

- a) Rescission of the contract
- b) Suit for damages
- c) Suit upon quantum meruit
- d) Suit for specific performance of the contract
- e) Suit for injunction

1. Rescission:

When a contract is broken by one party, the other party may be sue to treat the contract as rescinded & refuse farther performance. In such a case, he is absolved of all his obligation under the contract.

Example: A promises B to supply 10 bags of cement on a certain day. B agrees to pay the price after the receipt of the goods. A does not supply the goods. B is discharged from liability to pay the price.

2. Damages:

Damages are monetary compensation allowed to the injured party by the court for the loss or injury suffered by him by the breach of a contract.

3. Quantum meruit:

“Quantum meruit” literally means “as much as earned” or “as much as is merited”. When a person has done some work under a contract, & the other party repudiates the contract, or some event happens which makes the farther performance of the contract impossible, then the party who has performed the work can claim remuneration for the work he has already done.



4. Specific performance:

In certain cases of breach of a contract, damages are not an adequate remedy. The court may, in such cases, direct the party in breach to carry out his promise according to the terms of the contract.

5. Injunction:

Where a party is in breach of a negative term of a contract (i.e., where he is doing something which he promised not to do), the court may, by issuing an order, restrain him from doing what he promised not to do. Such an order of the court is known as an ‘injunction’

Questions:

1. Define contract
2. Explain the essential features of a valid contract?.
3. What is/define offer
4. What is /define acceptance
5. Explain the different classification of contracts?
6. What is free consent?
7. Who are all the parties incompetent to enter into contract?
8. What is void agreement? Explain the different types of void agreement?
9. What is performance of contract? By whom contracts must be performed?
10. What is meant by discharge of contract? What are the different methods of discharge?
11. What are all the remedies for breach of contract?

UNIT –II

Sale of Goods Act: Definition of Sale and a Contract Of Sale – Difference between (1) Sale and an Agreement to Sell (2) Sale and a Contract form (3) Sale and Bailment (4) Sale and Mortgage of Goods (5) Sale and Time Purchase Conditions and Warranties – Passing of Property of Goods – Rights of an Unpaid Seller.

Negotiable Instruments Acts: Negotiable Instruments in General: Cheques, Bills of Exchange and Promissory Notes – Definition and Characteristics

2.1. SALE OF GOODS ACT 1930:

2.1.1.Introduction:

The sale of goods is the most common of all commercial contracts. A knowledge of its main principles is of the utmost importance to all classes of the community. The law relating to it is contained in the sale of goods act, 1930. Prior to this act, the law of sale of goods was contained in chapter VII of the Indian contract act, 1872.

2.1.2. Formation of contract of sale:



Contract of sale of goods:

A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. The term 'contract of sale' is a generic term & includes both a sale & an agreement to sell.

Sale & agreement to sell:

Where under a contract of sale, the property in the goods is transferred from the seller to the buyer, the contract is called a 'sale' but where the transfer of the property in the goods is to take place at a future time or subject to some conditions therefore to be fulfilled, the contract is called an 'agreement to sell'.

2.1.3. Essentials of a contract of sale:

The following essential elements are necessary for a contract of sale

1. **Two parties:** There should be two parties namely the buyer and seller to enter into a valid contract of sale.
2. **Goods:** There must be some goods to enter to a contract of sale. It is the subject matter of the contract of sale.
3. **Price:** The consideration for a contract of sale must be money consideration called the 'price'.
4. **Transfer of general property:** 'Property' here means 'ownership'. Transfer of property in the goods is another essential of the contract of sales of goods.
5. **Essential elements of a valid contract:** Apart from the above contract of sale must consist of other essential elements of a valid contract like agreement, free consent, capacity to contract, consideration etc.

2.1.4. Distinction between sale & agreement to sell:

1. Transfer of property:

In a sale, the property in the goods passes from the seller to the buyer immediately so that the seller is no more the owner of the goods sold. In an agreement to sell, the transfer of property in the goods is to take place at a future time or subject to certain conditions to be fulfillment

2. Type of goods:

A sale can only be in case of existing & specific goods only. An agreement to sell is mostly in case of future & contingent goods

3. Risk of loss:

In a sale, if the goods are destroyed, the loss falls on the buyer. In an agreement to sell, if the goods are destroyed the loss falls on the seller.

4. Consequences of breach:

In a sale, if the buyer fails to pay the price of the goods or if there is a breach of contract by the buyer, the seller can sue for the price. In an agreement to sell if there is a breach of contract by the buyer, the seller can only sue for damages & not for the price.

Sale and Bailment:



Sale and Bailment are two different types of contracts. A contract of sale is a straight forward contract where a person may buy goods, services or property from a seller in exchange for remuneration, usually in the form of money. This amount is decided between the buyer and seller as appropriate for the value of goods, services or property.

Bailment, on the other hand is slightly different than sale. The definition of 'Bailment' states that it is “the contractual transfer of possession of assets or property for a specific objective. In bailment, the deliverer of the asset is the bailor, and the receiver is the bailee. In a bailment transaction, ownership is never transferred, and the bailor is generally not entitled to use the property while it's in possession of the bailee. In these ways, bailment differs from gifting and leasing.”

Distinction between Sale and Bailment:

	Sale	Bailment
Possession	Possession of goods is transferred to the buyer.	Possession of goods is transferred to the bailee.
Ownership	Ownership is transferred to the buyer.	Ownership resides with the bailor.
Usage	The buyer may use the goods in any way he likes.	A bailee can use the goods only according to the directions of the bailor.
Return	There is no return of goods from the buyer to the seller, unless there is breach.	The goods are returned after the specified time or accomplishment of the purpose.
Consideration	The consideration is the price in terms of money.	The consideration is an undertaking to return the goods after the accomplishment of the purpose.
Charges	The question of any charges to be paid by the seller to buyer or vice versa does not arise.	The bailor has to repay the charges which the bailee has incurred in keeping the goods safe.
Duration	Final. Once the sale is transacted, the seller keeps the goods until he decides to sell them to another.	Temporary. The bailee has to return the goods to the bailor once the specified time is passed.

Mortgage:

A legal agreement that conveys the conditional right of ownership on an asset or property by its owner (the mortgagor) to a lender (the mortgagee) as security for a loan. The lender's security



interest is recorded in the register of title documents to make it public information, and is voided when the loan is repaid in full.

Virtually any legally owned property can be mortgaged, although real property (land and buildings) are the most common. When personal property (appliances, cars, jewelry, etc.) is mortgaged, it is called a chattel mortgage.

Difference between sale and Mortgage:

Feature	Sale	Mortgage
Ownership	The ownership of the property is absolutely and permanently transferred from the seller to the buyer.	Ownership remains with the borrower (mortgagor); only a right to possess or use the property as security is given to the lender (mortgagee).
Purpose	To exchange the property for a payment (price).	To secure a debt or loan.
Consideration	A price paid in money.	An interest in the property is given as a security, with the consideration being the loan or debt.
Rights of Seller/Borrower	The seller loses all rights, title, and interest in the property.	The borrower retains ownership and can reclaim the property upon full repayment of the loan.
Rights of Buyer/Lender	The buyer receives complete rights, title, and enjoyment of the property.	The lender has the right to take possession of or sell the property if the borrower defaults on the loan.
Relationship	A simple buyer-seller relationship.	A debtor-creditor relationship with a security interest in the property.
Duration	A permanent transfer of ownership.	A temporary transfer of interest in the property, effective only until the loan is repaid.

2.1.5. Meaning of goods:

[Sec.2 (7)] defines 'goods' as every kind of movable property other than actionable claims & money. Actionable claim means a debt, a person may have against another & which he may recover by suit & money means legal tender money. Except these two, all other types of movable property are 'goods' under the act. Movable articles like furniture, clothing etc., & share & debentures are goods.



Classification or types of goods:

1. Existing goods:

Existing goods are goods which are already in existence & which are physically present in some person's possession & ownership

Existing goods may either:-

(a) Specific & ascertained goods

Specific goods are goods which can be clearly identified & recognized as separate things.

(b) Generic & unascertained goods

These are the goods which are not identified

2. Future goods:

According to **sec.2 (6)** future goods are goods which will be manufactured or produced or acquired by the seller after the making of the contract of sale.

3. Contingent goods:

According to **sec.6 (2)** contingent goods are the goods the acquisition of which by the seller depends upon a contingency which may or may not happen. Contingent goods come within the class of future goods.

2.1.6. Condition & warranties:

Whether any statement or representation made by the seller with reference to the goods is a stipulation forming part of the contract. A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty [**sec.12 (1)**]

Condition [sec.12 (2)]:

A condition is a stipulation which is essential to the main purpose of the contract.

Warranty [sec.12 (3)]:

A warranty is a stipulation which is collateral to the main purpose of the contract

Distinction between a condition & warranty:

Condition	Warranty
1. A condition is a stipulation essential to the purpose of the contract.	1. A warranty is a stipulation collateral main purpose of the contract.
2. In the case of breach of conditions, the aggrieved party may repudiate the contract, refuse to perform own obligations, bring an action for breach of contract and can reject the goods which do not correspond to stipulated conditions.	2. In the case of breach of a warranty, the aggrieved party can claim only damages. But has no right to repudiate the contract.



3. In some cases, a breach of a condition may be treated as a breach of warranty.

3. A breach of a warranty may not be treated as a breach of condition.

Implied condition & warranties in sales contract:

Sec.14-17 of the sales of the goods act contains a list of condition & warranties which are implied in a contract for the sales of goods.

Implied condition:

1. Condition as to title:

There is an implied condition on the part of the seller that.

- (a) In the case of a sale, he has a right to sell the goods, &
- (b) In the case of an agreement to sell, he will have the right to sell the goods at the time when the property is to pass.

2. Sale by description:

Where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description

3. Condition as to quality or fitness:

Normally, in a contract of sale there is no implied condition as to quality or fitness of the goods for a particular purpose. the buyer must examine the goods thoroughly before he buys them in order to satisfy himself that the goods will be suitable for the purpose for which he is buying them.

4. Condition as to merchantability:

Where goods are brought by description from a seller who deals in goods of that description there is an implied condition that the goods shall be of merchantable quality

5. Condition implied by usage of trade:

An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade

6. Sale by sample:

If any goods sold based on sample, there is an implied condition that the goods shall correspond with the sample.

7. Conditions to wholesomeness:

In the case of eatables & provision in addition to the implied condition as to merchantability, there is another implied condition that the goods shall be wholesome

Implied warranties:

1. Warranty of quiet possession:

There is an implied warranty that the buyer shall have & enjoy quiet possession of the goods. If the buyer is in any way disturbed in the enjoyment of the goods is in consequence of the sellers defective title to sell, he can claim damages from the seller.



2. Warranty of freedom from encumbrances:

In addition to the previous warranty, the buyer is entitled to a further warranty that the goods are not subject to any change or right in favour of a third party. If his possession is in any way disturbed by reason on the existence of any change or encumbrance shall have a right to claim damages for breach of warranty

3. Warranty as to quality or fitness by usage of trade:

An implied warranty as to quality or fitness for a particular purpose may be annexed by the usage of trade

4. Warranty to disclose 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 is ignorant of the danger, he must warn the buyer of the portable danger otherwise he will be liable in damages.

2.1.7. Caveat emptor:

This means “let the buyer beware” i.e., in a contract of sale of goods the seller is under no duty reveal unflattering truths about the goods sold. Therefore, when a person buys some goods, he must examine them thoroughly. If the goods turn out to be defective or do not suit his purpose or if he depends upon his own skill or judgment & makes a bad selection, he cannot blame anybody excepting himself.

Exceptions:

The doctrine of caveat emptor has certain important exceptions

1. Fitness for buyer’s purpose: In certain circumstances, the buyer makes his purpose clear to seller and buys the goods relying upon his skill and judgment, then there is an implied condition that the goods shall be fit for the buyer’s specific purpose. In such cases the doctrine of caveat emptor does not apply.

2. Sale under a patent or trade name: In case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition that the goods shall be reasonably fit for any particular purpose.

3. Merchantable quality: Sometimes, the goods are sold by description. In such cases, there is an implied condition that the goods shall be of merchantable quantity.

4. Usage of trade: The implied conditions as to fitness and merchantability are applicable only if certain requirements are fulfilled. However the implied condition as quality or fitness for a particular purpose may be attached by the custom or usage of trade.

5. Consent by fraud: where the consent of the buyer in a contract of sale, is obtained by the seller by fraud, the doctrine of caveat emptor does not apply.

2.1.8. Transfer of property:

(1) Specific goods:

The rules relating to transfer of property in specific goods are as follows.

A. Passing of property at the time of contract



- B. Passing of property delayed beyond the date of the contract
 - a. Goods not in a deliverable state
 - b. When the price of goods is to be ascertained by weighing etc.

(2) Unascertained goods:

Where is a contract for the sale of unascertained goods, the property in the goods does not pass to the buyer until the goods are ascertained. Until the goods are ascertained there is merely an agreement to sell

(3) Goods sent on approval or on sale or return:

When goods are delivered to the buyer on approval or on sale or return or other similar terms, the property there in passes to the buyer

- 1. When he signifies his approval or acceptance to the seller
- 2. When to the does any other act adopting the transaction

2.1.9. Performance of contract:

Performance of contract of sale means as regards the seller, delivery of the goods to the buyer, & as regards the buyer, acceptance of the delivery of the goods & payment for them, in accordance with the terms of the contract of sale (Sec.31).

2.1.10. Delivery of goods:

Delivery means voluntary transfer of possession of goods from one person to another [Sec.2 (2)]. Delivery of goods may be actual, symbolic, or constructive.

1. Actual delivery:

Where the goods are handed over by the seller to the buyer or his duly authorized agent, the delivery is said to be actual.

2. Symbolic delivery:

where goods are bulky and incapable of actual delivery, the delivery may be symbolic. Handling over of the key of a warehouse to the buyer is symbolic delivery of the goods.

3. Constructive delivery (or) delivery by attornment:

Where the third person who is in possession of the goods of the seller at the time of the sale acknowledges to the buyer that he holds the goods on his behalf, there takes place a delivery by attornment or constructive.

Example: A sells to B, 10bags of wheat lying in C's godown. A gives an order to C, asking him to transfer the goods to B. C assents to such order and transfers the goods in his books to B. This is a delivery by attornment.

Rules as to delivery of goods:-

- 1. **Mode of delivery:** delivery of goods may be



- (1) Actual,
- (2) Symbolic &
- (3) Constructive.

2. Delivery and payment – concurrent conditions: delivery of the goods and payment of the price must be according to the terms of the contract.

3. Effect of part delivery: a delivery of part of the goods in progress of the delivery of the whole has the same effects for the purpose of passing the property in such goods as a delivery of the whole.

4. Buyer to apply for delivery: a part from any express contract, the seller of goods is not bound to deliver them until the buyer applies for delivery.

5. Place of delivery: where the place at which delivery of the goods is to take place is specified in the contract, the goods must be delivered at the place during business hours on a working day.

6. Time of delivery: where under the contract of sale of seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time.

7. Goods in possession of a third party: when at the time of the sale, the goods are with a third party, there is no delivery by the seller to the buyer until such third party acknowledges to the buyer that he holds them on his behalf.

8. Delivery of wrong quantity (sec.37): the delivery of the quantity of goods contracted for should be strictly according to the terms of the contract.

A defective delivery entitles the buyer to reject the goods.

- a) Delivery of goods less than contracted for.
- b) Delivery of goods in excess of the quantity contracted for.
- c) Delivery of goods contracted for mixed with the other goods.

9. Cost of delivery: unless otherwise agreed, all expenses of and incidental to making of delivery are borne by the seller, but all expenses of and incidental to obtaining of delivery are borne by the buyer.

10. Installment deliveries (sec.38): unless otherwise agreed, the seller is not entitles to deliver the goods by installments and if he does so, the buyer is not bound to accept the goods.

2.1.11. Rights and duties of the buyer:

Rights of the buyer:

1. The first right of the buyer is to have delivery of the goods as per the terms of the contract. (sec.37).
2. Right to reject the goods for defective delivery, short/excess supply (sec.37 (1) (2)).
3. The buyer of the goods is not bound to accept delivery of the goods in installments and can repudiate the contract, unless otherwise agreed. (sec.38 (1)).
4. Right to notice of insurance (sec.39).
5. Right to examine the goods delivered (sec.41).
6. Right to sue for breach of contract.
 - Suit for damages (sec.57).
 - Suit for price



- Suit for specific performance (sec.58).
- Suit for breach of warranty (sec.59)
- Repudiation of contract before due date (sec.60).
- Suit for interest (sec. 61(2) (b)).

Duties of the buyer:

1. Duty to accept the goods and pay for them in exchange for possession (sec.31).
2. Duty to apply for delivery (sec.35).
3. Duty to demand delivery at a reasonable hour sec. (36(4)).
4. Duty to accept installment delivery and pay for it (sec. 38 (2)).
5. Duty to intimate the seller where he rejects the goods (sec.43).
6. Duty to take delivery.
7. Duty to pay price.
8. Duty to pay damages for non – acceptance (sec.56).

2.1.12. Who is an unpaid seller?

A seller of goods is deemed to be an unpaid seller when –

- (1) The whole of the price has not been paid or tendered.
- (2) A bill of exchange or other negotiable instrument has been received as a conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonor of the instrument or otherwise.

Rights of unpaid seller:

An unpaid seller has two fold rights

1. Rights of unpaid seller against the goods
2. Rights of unpaid seller against the buyer personally.

1. Rights of unpaid seller against the goods:

An unpaid seller has the following rights against the goods

1. Right of lien
2. Right of stoppage of goods in transit
3. Right of resale

1. Right of Lien:

The term Lien means the right to retain possession of goods and refuse to deliver them to the buyer until the price due in respect of them is paid or tendered.

2. Right of stoppage of Goods in transit:

The right of stoppage in transit means the right of stopping the goods while they are in transit, to regain possession and to retain them till the full price is paid.

3. Right to Resale:

The law gives to the unpaid seller a limited right to resell the goods in the following cases.



- a) Where the goods are of a perishable nature
- b) Where such a right is expressly stated in the contract.
- c) Where the seller has given a notice to the buyer of his intention to resell, if the buyer does not pay the price within a reasonable time.

2. **Rights of Unpaid seller against the Buyer Personally:**

The rights of unpaid seller against the buyer personally are

1. Suit for price
2. Suit for damages.

1. **Suit for price:**

The buyer wrongfully neglects or refuses to pay the price according to the terms of the contract; the seller is entitled to sue the buyer for price.

2. **Suit for damages:**

Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue him for damages.

2.2. NEGOTIABLE INSTRUMENTS ACT, 1881:

2.2.1. Introduction:

The term “negotiable instrument” literally means “a document transferable by delivery”. In India, the law relating to negotiable instruments is contained in the Negotiable Instruments Act, 1881 which came into force 1st march 1882. A negotiable instrument is a method of transferring a debt from one person to another. The term ‘negotiable instrument’ as such is not defined in the Negotiable instruments Act. Sec.13 however says that “a Negotiable instrument means a promissory note, bill of Exchange or cheque payable either to order or bearer”.

Characteristics of negotiable instruments:

The characteristics of a negotiable instrument are as follows

1. **Freely transferable:** They can be transferred from one person to another like cash, i.e., the property (ownership) in the instrument can be transferred by mere delivery.
2. **Title of holder free from all defects:** A bonafide transferee for value (known in law as a holder in due course) of a negotiable instrument gets a complete, independent and indefeasible title to the instrument even though there was some defect in the title of the transferor.
3. **Recovery:** The holder in due course can sue upon a negotiable instrument in his own name for the recovery of the amount.
4. **Presumptions:** Certain presumptions apply to all negotiable instruments, unless contrary is proved. These presumptions are dealt with in secs. 118 and 119 and are as follows.



- (a). **Considerations:** Every negotiable instrument is presumed to have been made, drawn, accepted, indorsed, negotiated or transferred, for consideration.
- (b). **Date:** Every negotiable instrument bearing a date is presumed to have been made or drawn on such date.
- (c). **Time of acceptance:** When a bill of exchange has been accepted, it is presumed that it was accepted within a reasonable time of its date and before its maturity.
- (d). **Time of transfer:** every transfer of a negotiable instrument is presumed to have been made before its maturity.
- (e). **Order of indorsements:** The indorsements appearing upon a negotiable instrument are presumed to have been made in the order in which they appear thereon.
- (f). **Stamp:** When an instrument has been lost, it is presumed that it was duly stamped.
- (g). **Holder presumed to be a holder in due course:** Every holder of a negotiable instrument is presumed to be a holder in due course (sec.118).
- (h). **Proof of protest:** In a suit upon an instrument which has been dishonoured, the court, on proof of the protest, presumes the fact of dishonour, until such fact is disproved (sec.119).

The above presumptions are rebuttable by evidence, If anyone challenges any of these presumptions, he has to prove his allegation. Again, these presumptions would not arise where an instrument has been obtained by any offence, fraud or unlawful consideration.

Types of negotiable instruments:

Negotiable instruments may be

1. Negotiable by Statute, or
2. Negotiable by Custom or usage

1. **Instruments negotiable by statute:** The Negotiable Instruments Act mentions only three kinds of negotiable instruments (sec.13). These are: promissory notes, bill of exchange and cheques. These instruments are negotiable by statute.

2. **Instruments negotiable by custom or usage:** There are certain other instruments which have acquired the character of negotiability by the usage or custom of trade.

2.2.2. Promissory Note

A promissory note is an instrument in writing containing an unconditional undertaking signed by the maker, to pay a certain sum of money only to, or to the order of a certain person, or to the bearer of the instrument (Sec.4).

The person who makes the promissory note is called the **Maker**; the person to whom the payment is to be made is called the **payee**.



Specimen of a Promissory Note

Rs.7000	Chennai, August 07, 2013		
Seven Months after date I promise to pay Madan Mohan or order the sum of seven thousand rupees, for value received.			
	<table border="1"><tr><td>Stamp</td></tr><tr><td>Signature</td></tr></table>	Stamp	Signature
Stamp			
Signature			
To, Modan Mohan 707, Perumal koil street Chennai – 600 007			

Essentials Features of Promissory Note

1. It must be in writing.
2. It must contain an express undertaking or promise to pay.
3. The promise to pay should be unconditional.
4. It must be signed by the maker.
5. The parties, i.e., the maker and the payee, must be certain.
6. The sum payable must be certain.
7. It must contain a promise to pay money.

2.2.3. Bill of Exchange

A bill of exchange is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument (sec.5)

Parties to a bill:

There are three parties to a bill of exchange viz, the drawer, the drawee and the payee.

The person who makes the bill is called the **drawer**.

The person who is directed to pay is called the **drawee**.

The person to whom the payment is to be made is called the **payee**.



Specimen of a bill of exchange

Ramu of Chennai buys goods on credit from somu of Bangalore for Rs.7000 to be paid 3 months after date. Somu buys goods from Gopu of chennai for Rs.700 on similar terms. Now somu may order Ramu to pay the sum of Rs.7000 to Gopu. This order will be a bill of exchange.

Rs.7000	Bangalore, march, 17, 2013
Three months after date pay to Gopu or order the sum of seven thousand rupees, for value received.	
To,	Stamp somu
Ramu 234, peters Road, Chennai – 14.	Sd/-
In case of need with IOB, Chennai	Accepted Ramu

Essentials Features of Bill of Exchange

1. The bill of exchange must be in *writing*
2. There must be an *order to pay*
3. The order must be *unconditional*.
4. The drawee must *sign the instrument*.
5. There must be *three distinct persons*
6. The sum must be *certain*
7. The medium of payment must be *money and money only*.

2.2.4. Cheque

A cheque is a bill of exchange drawn on a specified banker and payable on demand (Sec.6)
A cheque is a species of a bill of exchange; but it has the following two additional qualifications viz.,
(1). It is always drawn on a specified banker, and
(2). It is always payable on demand.



The Usual form of Bank cheque is a follows:

No.....	Date..... 201
INDIAN OVERSEAS BANK Parys corner, Chennai – 600 002	
Pay..... or bearer the sum of	
Rs.....	
Rs.....	
Sd/-	

Essential Features of cheque

1. A cheque can be payable either to order or bearer
2. A cheque is an instrument in writing
3. A cheque is payable on demand
4. A cheque can be drawn only on the branch where the customer is having an account.
5. Notice of dishonor is not necessary in the case of dishonour of cheque
6. Cheques are not necessary to present for acceptance
7. Cheques are not required to be stamped in India.

Questions

1. Define contract of sale
2. What is agreement to sell?
3. Distinguish between sale and agreement to sell.
4. What are the essentials of a sales contract?
5. What is Bailment?
6. What is Mortgage?
7. Distinguish between sale and bailment.
8. Define the term conditions and warranties
9. Distinguish between conditions and warranties.
10. What are the implied conditions and warranties in a sales contract?
11. Explain the rules for transfer of property?
12. Who is an unpaid seller? What are the rights of an unpaid seller?
13. Define the following term: 1. Negotiable Instruments 2. Cheque 3. Promissory Notes 4. Bill of exchange.
14. Explain the characteristics of following 1. Negotiable instruments 2. Cheque, 3. Promissory Note, 4. Bill of Exchange.



UNIT –III

Partnership Act: Evolution – Definition of Partnership – Difference between Partnership and Joint Family Business – Kinds of Partnerships – Registration – Rights and Liabilities of Partners – Dissolution.

Company Law: Evolution of Company From of Organisation – Companies Separate Legal Entity – Comparison of Company with Partnership and Joint Hindu Family Business – Kinds of Companies – Comparison of Private and Public Companies – Formation of Companies – General Idea About Memorandum and Articles of Association, Prospectus, Statement in lieu of Prospectus – Management of Companies – General Idea of Management of Companies – Officers, Meeting – Resolutions – Account and Audit – Winding up of Companies – General Idea of the Different Modes of Winding Up.

PATNERSHIP ACT:

Evolution: The Indian Partnership Act evolved from the principles established in the Indian Contract Act of 1872, which included partnership law in its Chapter XI. Due to increasing business complexity, a dedicated partnership act was deemed necessary, leading to the enactment of the Indian Partnership Act, 1932. This comprehensive Act, which came into effect on October 1, 1932, superseded the partnership provisions in the 1872 Act, forming the modern legal framework for partnerships in India.

Definition of Partnership: Section 4 of the partnership Act of defines partnership as “Partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all”

Difference between Partnership and Joint Family Business:

Feature	Partnership	Joint Family Business (JFB/HUF)
Origin/Creation	Arises from a contract or agreement between partners.	Arises from status by operation of law, based on being part of a Hindu joint family.
Governing Law	Governed by the <u>Indian Partnership Act, 1932</u> , and contract law.	Governed by Hindu law and its principles.
Membership	Can be individuals of any religion, caste, or gender.	Membership is restricted to members of a Hindu joint family.
Admission of New Members	Requires the consent of all existing partners.	Membership and rights are acquired by birth (sons have rights from birth).
Position of Females	Females can be full-fledged partners with equal rights.	Historically, membership was restricted to male members only. After the <u>Hindu Succession Act, 1956</u> , females gain co-

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		sharer status but not full coparcener rights by birth.
Management	All partners are involved in management, or authority is delegated as per the partnership deed.	Managed by the senior-most male member, known as the <u>Karta</u> .
Liability	Partners have unlimited liability, which can be joint and several.	The liability of the Karta is unlimited, while other family members have limited liability to the extent of their share.
Number of Members	Subject to statutory limits; for instance, a maximum of 10 partners for banking and 20 for other businesses.	No maximum limit on the number of members.

Kinds of Partnership:

There are three kinds of partnership

- 1. Partnership at will:** In partnership at will, there is no fixed partnership period of duration for partnership. In the partnership agreement no specific provision on determination of there is the partnership.
- 2. Partnership for a fixed period:** In this case a fixed period is mentioned. A partnership is created for a fixed period on expiry of which partnership comes to an end.
- 3. Particular Partnership:** This partnership is constituted to carry on a particular business.

Registration of a Partnership Firm:

1. An application in the prescribed form along with the prescribed fee.
2. The application is to be submitted to the registrar of firms of the state in which any place of business of the firm is situated or proposed to be situated.
3. The application contains the name of the firm, its place or principal place of business, other places of business, date of joining by each partner, full name and permanent address of each partner, duration of the firm and the fact that a minor, if any, is admitted to the benefits of partnership.
4. The application is to be signed by all the partners or by their authorized agents, and duly witnessed.
5. When the Registrar is satisfied that requirements as to registration been duly complied with, he will register the firm by entering the particulars in the Register of firms.



Rights of a Partner:

The rights of a partner are given below

1. Right to take part in the business.
2. Right to have access to books and accounts.
3. Right to profits.
4. Right to remuneration.
5. Right to receive interest on capital.
6. Right to indemnity.

Duties and Liabilities of partners:

The duties and liabilities of partners are given below

1. Duty to act in good faith and common advantage
2. To render proper accounts.
3. To give full information.
4. To identify for fraud.
5. To act with due diligence.
6. To indemnify for willful neglect
7. To contribute for losses.
8. Not to compete
9. Joint and several liabilities for the acts of the firm
10. Proper use of property.

Dissolution of partnership:

Closing down of a partnership is called dissolution of partnership. The dissolution of a partnership takes place by agreement between the parties.

Dissolution of Firm:

It is the complete severance of the relationship of partnership between all the partners. Dissolution of firm implies dissolution of partnership as well as discontinuance of partnership business.

Modes of Dissolution of Firms:

Compulsory dissolution:

A firm is compulsorily dissolved by the adjudication of all partners or all the partners but one as insolvent.

Dissolution on the happening of certain event;

- By the death of the partner
- If it is constituted for a fixed term.
- If a partner becomes insolvent.
- The completion of the particular adventure or adventures.



Dissolution by court:

The court may dissolve a firm on the following grounds:

- Insanity
- Permanent incapacity
- Misconduct.
- Persistent breach of agreement
- Transfer of interest
- Business working at a loss
- Any other ground which is just and equitable.

COMPANY LAW (Companies Act 2013)

Introduction:

Indian companies were previously governed by the Companies Act of 1956. The old Companies Act of 1956 comprises 15 schedules and 658 sections. However, a significant modification made in 2013, they are now governed by the Companies Act of 2013. After receiving the assent of the President of India on **29 August 2013**. The section 1 of the companies Act 2013 came into force on 30 August 2013. Some of the provisions of the Act have been implemented by a notification published on **12th September, 2013**. It is important to remember that even though the 2013 Act is now in effect, businesses registered under the previous Act are still considered. The Companies Act of 2013 comprises 7 schedules and 470 sections.

Definition of Company:-

Lindley.L.J. defines a company as “an association of many persons who contribute money or money’s worth to a common stock, and employ it in some common trade or business, and who share the profit or loss arising there from. The common stock so contributed is denoted in money and is the capital of the company. The persons who contribute it, or to whom it belongs, are members. The proportion of capital to which each member is entitled is his share. Shares are always transferrable although the right to transfer them is often more or less restricted”.

Characteristics of a company:-

1. **Separate legal entity:** A company is in law regarded as an entity separate from its members. In other words, it has an independent corporate existence.
2. **Limited liability:** A company may be a company limited by shares or a company limited by guarantee.
3. **Perpetual succession:** A company is a juristic person with a perpetual succession. Perpetual succession, therefore, means that a company’s existence persists irrespective of the change in the composition of its membership.



4. **Common seal:** Since a company has no physical existence, it must act through its agents and all such contracts entered into by its agents must be under the seal of the company. The common seal acts as the official signature of the company.
5. **Transferability of shares:** The capital of a company is divided into parts, called shares. These shares are, subject to certain conditions, freely transferrable, so that no shareholder is permanently or necessarily wedded to company.
6. **Separate property:** As a company is a legal person distinct from its members, it is capable of owning, enjoying and disposing of property in its own name. Although its capital and assets are contributed by its shareholders, they are not the private and joint owners of the property. The company is the real person in which all its property is vested and by which it is controlled, managed and disposed of.
7. **Capacity to sue:** A company can sue and be sued in its corporate name. It may also inflict or suffer wrongs.

Lifting or piercing the corporate veil:

A company is a legal person distinct from its members. This principle may be referred to as “The veil of incorporation”. There is a veil between a company and its members keeping them both separate from each other. However sometimes it becomes necessary to lift this veil and find out the realities of the company. The court may investigate the real affairs, ownership, etc, of the company. This is called Lifting or piercing the corporate veil.

Exceptions:

The various cases in which corporate veil have been lifted are as follows.

1. Protection of revenue.
2. Prevention of fraud or improper conduct.
3. Determination of character of a company whether it is enemy.
4. Company avoiding legal obligations.
5. Company acting as agent or trustee of the shareholders.
6. Protecting public policy.



Comparison of Company with Partnership and Joint Hindu Family Business:

Partnership firm and Company:

Basis of Comparison	Partnership Firm	Company
Meaning	When two or more persons agree to carry on a business and share the profits & losses mutually, it is known as a Partnership firm.	A company is an association of persons who invests money towards a common stock, for carrying on a business and shares the profits & losses of the business.
Governing Act	Indian Partnership Act, 1932	Indian Companies Act, 2013
How it is created?	Partnership firm is created by mutual agreement between the partners.	The company is created by incorporation under the Companies Act.
Registration	Voluntary	Obligatory
Minimum number of persons	Two	Two in case of private company and Seven in case of public company.
Audit	Not Mandatory	Mandatory

Basis of Comparison	Partnership Firm	Company
Management of the concern	Partners itself.	Directors
Liability	Unlimited	Limited
Contractual capacity	A partnership firm cannot enter into contracts in its own name	A company can sue and be sued in its own name.
Minimum capital	No such requirement	1 lakh in case of private company and 5 lakhs in case of public company.
Use of word limited	No such requirement.	Must use the word 'limited' or 'private limited' as the case may be.
Legal formalities in dissolution / winding up	No	Yes



Partnership firm and Hindu Joint Family Business:

Basis of Comparison	Partnership Firm	Hindu Joint Family Business
Formation	The relation of partnership arises from contract, and not from status	The relation of Hindu Joint Family Business arises from status and not from contract. It arises by operation of law.
Right by birth	In partnership firm members will have no right by birth.	In Hindu joint family business son gets right by birth.
Legislation	Every partnership firm is governed by the provisions of Indian Partnership Act, 1932, Indian Contract Act 1872 etc.	Every Joint family Firm is governed by the codified Hindu Laws.
Rights and Duties	In partnership rights and duties of partners are determined by the provisions of Partnership Act and Partnership Agreement. .	In Hindu Joint family Firm rights and duties of members of the family are controlled by such general principles of Hindu law which contract the transactions of joint family.

Basis of Comparison	Partnership Firm	Hindu Joint Family Business
Membership	A partnership firm may be constituted irrespective of the members' caste and religion.	A joint Hindu family firm is limited to Hindu Religion, that too the caste to which the members belong.
Dissolution	In absence of an agreement of contrary intention on death or insolvency of any partner Partnership Firm Dissolves.	A joint Hindu Family firm does not dissolve on the death of any family member. Successor of the deceased gets his interest and business of the firm continues as usual.
Introduction Of Members	No person can be introduced as a partner without the consent of all the members.	A member of Hindu joint family acquires an interest in the firm business by birth, marriage, adoption etc. No consent of other members necessary. Other members cannot deprive his right.

Basis of Comparison	Partnership Firm	Hindu Joint Family Business
Accounts	In partnership any member can ask for the account of acts done by his co-partners. Any partner can ask for details of profit and loss also.	In Hindu joint family any member cannot ask for account of profit and loss of serving his relation with the business.
Principle Of Agents	Partnership is a specific application of the principles of agency. It is often said "The law of partnership is undoubtedly, a branch of the law of principle and Agent".	The principal of agency does not apply in case of Joint Hindu family firm.
Liability	In Partnership every partner is the principal and agent of the firm, therefore, all the partners are liable for the acts done by any partner for the conduct of the business of the firm.	Manager of a Hindu joint family firm is vested with a right to take loan, pledge family property for the conduct of the business, but other members of the family do not have these right.



Kinds of companies: Companies may be classified into various kinds on the following basis.

1. Classification on the basis of incorporation:

- (a) **Statutory companies:** these are the companies which are created by a special acts of the legislature. (e.g.) RBI, SBI, LIC, Industrial Finance Corporations, UTI, etc.
- (b) **Registered companies:** these are the companies which are formed and registered under the companies act, 1956 or were registered under any of the earlier companies acts.

2. Classification on the basis of liability:

(a) **Companies with limited liability**

(i) **Companies limited by shares:** Where the liability of the members of a company is limited to the amount unpaid on the shares, such a company is known as a company limited by shares.

(ii) **Companies limited by guarantee:** Where the liability of the members of a company is limited to a fixed amount

(b) **Companies with unlimited liability**

3. Classification on the basis of number of members:

- (a) Private company.
- (b) Public company.

4. Classification on the basis of control:

- (a) Holding company.
- (b) Subsidiary company.

5. Classification on the basis of ownership:

(a) **Government Company:** 51% of paid-up share capital is held by –

- (i) The central government, or
- (ii) Any state government or government, or
- (iii) Partly by the central government and partly by one or more state governments.

(b) **Non-Government Company:** 50% of paid-up share capital is held by citizen of India.

(c) **Foreign Company:** It means any company incorporated outside India which has an established place of business in India [Sec.591(1)]



Distinction between a Public company and a Private company:

Private company	Public company
Minimum paid-up capital is Rs.1,00,000	Minimum paid-up capital is Rs.5,00,000
Minimum number of persons required to form a private company is 1.	Minimum number of persons required to form a public company is 7.
Maximum number of members cannot exceed 200	There is no restriction on maximum number of members
A private company must have at least 2 directors.	A public company must have at least 3 directors.
Prohibits any invitation to general public to subscribe for shares or debentures.	A public company invites the general public to subscribe for shares or debentures.
The right to transfer shares and debentures is restricted by articles.	The shares and debentures are freely transferrable.
A private company enjoys some special privileges.	There are no such privileges.
No restriction applied for total managerial remuneration.	Total managerial remuneration cannot exceed 11% of net profit.

Special privileges of a Private company: The companies Act, 2013 gives a large number of privileges to private companies.

1. A private company need not file a prospectus or a statement in lieu of prospectus in the matter of allotment of shares.
2. A private company can commence business immediately on incorporation.
3. A private company need not hold the statutory meeting or file the statutory report.
4. A private company may have only minimum of 2 and a maximum of 50 members.
5. A private company need not have more than 2 directors.
6. The overall maximum managerial remuneration of 11% does not apply to a pvt. co.
7. The rules regarding appointment of directors of a pvt. company are less stringent.
8. The directors of a private company need not retire by rotation.

When does a Private company become a public company?

1. **Conversion by default:** Where a default is made by a private company in complying with the essential requirements of a private company (viz., restriction on transfer of shares, limitation of the number of members to 200 and prohibition of invitation to the public to buy shares or debentures), the company ceases to enjoy the privileges and exemptions conferred on a private company.
2. **Conversion by choice or violation:** If a private company so alters its articles that they do not contain the provisions which make it a private company, it shall cease to be a private company as on the date of alteration.



Formation of a company:-

Promoter – They do all the necessary preliminary work incidental to the formation of a co.

Documents to be filed with the registrar: The following documents duly stamped together with the necessary fees are to be filed with the registrar.

1. The Memorandum of Association duly signed by the subscribers.
2. The Articles of Association if any signed by the subscribers to the memorandum of association.
3. The agreement if any which the company proposes to enter into with any individual for appointment as its managing or whole time director or manager.
4. A list of the directors who have agreed become the first directors of the company.
5. A declaration stating that all the requirements of the companies act and other formalities relating to registration have been complied with. Such declaration shall be signed by any of the following persons.
 - An advocate of the Supreme Court or high court.
 - A secretary or a chartered accountant or
 - A person named in Articles of Association as a director, manager or secretary.

Certificate of Incorporation:

When the requisite documents are filed with the registrar, the registrar is satisfied as to the compliance of statutory requirements. We register in his books and issue a Certificate of Incorporation.

- A private company can commence business immediately after its incorporation.
- A public company has to obtain certificate to commence business before it can commence business.

Memorandum of Association:

It contains the fundamental conditions upon which alone the company is allowed to be incorporated. It lays down the area of operation of the company. It also regulates the external affairs of the company in relation to outsiders.

Contents of Memorandum (Sec.4):-

1. **The name clause [Sec.4(a)]:** A company may subject to the following rules, select any suitable name –
 - (a) Undesirable name to be avoided.
 - (b) Injunction if identical name adopted.
 - (c) 'Limited' or 'Private Limited' as the last word or words of the name.
 - (d) Prohibition of use of certain names.



- The names, emblems or official seal of the United Nations Organization (UNO), World Health Organization (WHO), Indian National Flag, Emblem or official seal of the central or state government, President of India or Governor of State.
- 2. **The registered office clause [Sec.4(b)]:** Every company shall have a registered office from the day on which it begins to carry on business, or as from the 30th day after the date of its incorporation, whichever is earlier.
- 3. **The objects clause [Sec. 4(c)]:** The objects of a company shall be clearly set forth in the memorandum, for a company can do is within, or incidental to, the objects stated in the memorandum.
- 4. **The liability clause [Sec. 4(d)]:** The memorandum of a company limited by shares or by guarantee shall also state that the liability of its members is limited.
- 5. **The capital clause [Sec. 4(e)]:** The memorandum of a company, having a share capital, shall state the amount of the share capital with which the company is to be registered and the division thereof into shares of a fixed amount. The capital with which a company is registered is called ‘registered’, ‘authorized’ or ‘nominal’ capital.
- 6. **The association clause [Sec. 4(e)]:** The association clause states that the several persons, whose name and addresses are subscribed, are desirous of being formed into a company in pursuance of this Memorandum of Association.

Articles of Association: (Sec.5)

The Articles of Association of a company and its bye-laws are regulations which govern the management of its internal affairs and the conduct of its business. They define the duties, rights, powers and authority of the shareholders and the directors in their respective capacities and of the company and the mode and form in which the business of the company is to be carried out.

Contents of Articles:

Articles usually contain provisions relating to the following matters:

1. Share capital, rights of shareholders, variation of these rights, payment of commissions share certificates.
2. Lien on shares.
3. Calls on shares.
4. Transfer of shares.
5. Transmission of shares.
6. Forfeiture of shares.
7. Conversion of shares into stock.



8. Share warrants.
9. Alteration of capital.
10. General meetings and proceedings thereat.
11. Voting rights of members, voting and poll, proxies.
12. Directors, their appointment, remuneration, qualification, powers and proceedings of Board of directors.
13. Manager.
14. Secretary.
15. Dividends and reserves.
16. Accounts, audit and borrowing powers.
17. Capitalization of profits.
18. Winding up.

Distinction between Memorandum and Articles:

Memorandum	Articles
It is the charter of the company & defines the company's relationship with outside world.	They are the regulations for the internal management of the company.
It defines the scope of the activities of the company, or the area beyond which the actions of the company cannot go.	They are the rules for carrying out the objects of the company as set out in the memorandum.
It, being the charter of the company, is the supreme document.	They are subordinate to the memorandum.
Every company must have its own memorandum.	A company limited by shares need not have articles of its own.
There are strict restrictions on its alteration.	They can be altered by a special resolution, to any extent, provided they do not conflict with the memorandum and the companies Act.

Doctrine of Ultra-Vires:

Ultra means 'beyond' and Vires means 'powers'. The term Ultra-Vires a company means that the doing of the act is beyond the legal power and authority of the company.

Doctrine of Indoor Management:

The outsiders dealing with the company are entitled to assume that as far as the internal proceedings of the company are concerned, everything has been regularly done. They need not inquire into the regularity of the internal proceedings as required by the Memorandum and the Articles. They can presume that all is being done regularly. This limitation of the doctrine of constructive notice is known as the "Doctrine of Indoor Management" or Turquand Rule.



Prospectus:

A prospectus has been defined in [Sec. 2(70)] of the Act as “any document described or issued as a prospectus and includes any notice, circular advertisement or other document inviting deposits from the public or inviting offers from the public for the subscription or purchase of any shares in or debentures of a body corporate.

Contents of a Prospectus:

Part I of Schedule II:

1. General Information.
2. Capital structure of the company.
3. Terms of the present issue.
4. Particulars of the issue.
5. Company, management and project.
6. Particulars in regard to the company and other listed Registered companies: these are the companies which are formed and registered under the companies act, 1956 or were registered under any of the earlier companies under the same management which made any capital issue during the last 3years.
7. Outstanding litigation pertaining to.
8. Management perception of risk factors.

Part II of Schedule II:

1. General Information.
2. Financial Information
 - (a) Report by the auditors.
 - (b) Report by the accountants.
3. Statutory and other Information.

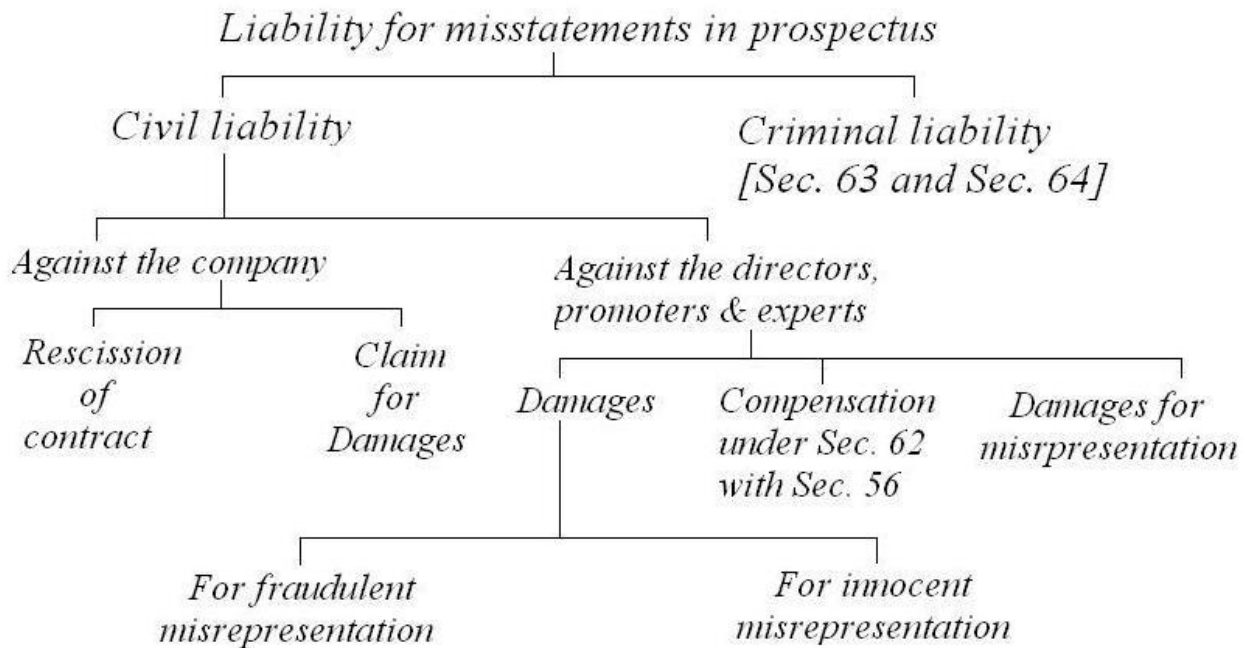
Statement in Lieu of Prospectus:

Where a public company does not invite public to subscribe for its shares, but arranges to get money from private sources, it need not issue a prospectus to the public. In such case, the promoters are required to prepare a draft prospectus known as a “Statement in lieu of prospectus”.

A public company having a share capital and not issuing a prospectus must atleast 3days before the first allotment of shares or debentures, file with the registrar for registration a Statement in lieu of prospectus.



Misstatements in Prospectus:



Powers of Directors:

1. **General powers of the Board (Sec. 179):** The Board of directors of a company is entitled to exercise all such powers and to do all such acts and things as the company is authorized to exercise and do.
2. **Powers to be exercised at Board meetings (Sec. 179):** The Board of directors of a company shall exercise the following powers on behalf of the company by means of resolutions passed at the meeting of the Board.
 - (a) Make calls on shareholders in respect of money unpaid on their shares.
 - (b) Issue of debentures.
 - (c) Borrow money otherwise than on debentures.
 - (d) Invest the funds of the company.
 - (e) Make loans.
3. **Powers to be exercised with the approval of company in general meeting :** The Board of directors shall exercise the following powers only with the consent of the company in general meeting.
 - (a) To sell, lease or otherwise dispose the whole or substantially the whole of the undertaking of the company.



- (b) To remit or give time for repayment of any debt due to the company.
- (c) To invest the amount of compensation received by the company in respect of compulsory acquisition.
- (d) To borrow money where the money is to be borrowed.
- (e) To contribute to charitable and other funds not directly relating to the business of the company or the welfare of its members.

Duties of Directors: (sec.166)

The directors have the following duties.

1. Fiduciary Obligation: Since the company is an artificial person. It acts through the agency of natural person who are known as its directors with a view to enable the directors to carry out their duties as agents.
2. Duty to care: The directors should work very carefully. He should take every care so that the company gets more profits.
3. Duty to attend the Board meetings: Board meetings are the appropriate places for the decisions and policy making of the company. So it is the duty of the directors to attend the Board meetings regularly.
4. Duty not to delegate:
5. Duty to disclose interests:

Liabilities of Directors:

The liabilities of directors are discussed by the following 4 heads.

1. Liabilities to third parties:

- (a) **Under the act:** Directors are personally liable.
 - (i) Failure to repay application money.
 - (ii) Irregular allotment of shares.
 - (iii) Failure to pay Bill of Exchange, Cheques, Promissory note.
- (b) **Independently of the Act:**
 - (i) Directors are not personally liable on contracts on behalf of the company.
 - (ii) He is also personally liable if he acts in his own name.

2. Liability to the company:

- (a) Ultra-Vires acts.
- (b) Negligence.
- (c) Breach of trust.
- (d) Misfeasance (willful misconduct).

3. Liability for breach of statutory duties: They are liable to penalties.



4. Liability for acts of his co-directors: A Director is not liable for the acts of his co-director.

Meetings:

The meetings of a company may be classified as follows:

1. General Meetings which includes

- (1). Statutory meetings
- (2). Annual General Meetings
- (3). Extraordinary meetings

These meetings are called general meetings of a company as these are meetings of all the members of the company.

2. Meetings of creditors and debenture-holders

- (a). during the lifetime of the company, and
- (b). at the time of winding up of the company.

3. Meetings of Directors

1. General Meetings of shareholders:

(1). Statutory Meeting (sec.173) :

Every company limited by shares and every company limited by guarantee and having a share capital shall, within a period of not less than one month nor more than **six** months from the date at which the company is entitled to commence business, hold a general meeting of the members of the company. This meeting is called the **statutory meeting**. This is the first meeting of the shareholders of a public company and is held only once in the lifetime of a company.

(2). Annual General Meeting (sec.96):

Every company shall in each year hold in addition to any other meetings general meetings as its annual general meetings and shall specify the meetings as such in the notice calling it. There shall not be an interval of more than 15 months between one annual general meeting of the company and the next.

(3). Extraordinary General Meeting (sec.100):

A statutory meeting and an annual general meeting of a company are called ordinary meetings. Any meeting other than these meetings is called an extraordinary general meetings. It is called for transacting some urgent or special business which cannot be postponed till the next annual general meeting. It may be convened

- (1). By the Board of directors on its own or on the requisition of the members;or
- (2). By the requisitionists themselves on the failure of the Board of directors to call the meeting.

Requisites of a Valid Meeting:

A meeting can validly transact any business if the following requirements are satisfied:

1. Proper authority
2. Notice of Meeting (sec.101)



3. Quorum for meeting (minimum no. of members who must be present in order to constitute a valid meeting and transact business thereat) (Sec.103)
4. Chairman of the meeting (sec.104)
5. Minutes of Meeting (Minutes are a record of what the company and directors do in meetings) (sec.118)

Proxies (Sec.105):

A proxy is an authority to represent and vote for another person at a meeting. A member entitled to attend and vote at a meeting may vote either in person or by proxy.

Resolutions: (sec.114)

The questions which generally come for consideration at the general meeting of a company are presented in the form of proposals called motions. A motion may be proposed by the chairman of the meeting or by any other member of the company. Before it is placed before the meeting by the chairman for discussion, it must be seconded by someone. The motion, after the close of discussion, is formally put to vote by a show of hands. It may either be carried or rejected. If a sufficient number of members demand, the motion may be put to poll. The final result is declared after the poll is taken. If a motion is carried, it becomes a 'resolution'.

Kinds of Resolutions:

There are three kinds of resolutions under the Companies Act, 1956.

1. Ordinary Resolution (sec.114(1))

An ordinary resolution is a resolution passed at a general meeting of a company by a simple majority of votes.

2. Special Resolution (Sec.114(2)):

A special resolution is one which satisfies the following conditions:

- (a) The intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting.
- (b) The notice has been duly given of the general meeting.
- (c) The votes cast in favour of the resolution by members entitled to vote are not less than 3 times the number of votes cast against the resolution by members so entitled and voting.
- (d) An explanatory statement setting out all material facts concerning the subject-matter of the special resolution.

3. Resolutions requiring a special notice (sec.115):

A resolution requiring a special notice is not an



Winding Up:

Winding up or liquidation of a company represents the last stage in its life. It means proceedings by which a company is dissolved. The assets of the company are disposed of; the debts are paid off out of the realized assets, and the surplus, if any, is then distributed among the members in proportion to their holdings in the company.

Modes of Winding up: (sec.270) There are two modes of winding up of a company.

1. Winding up by the Tribunal (Sec. 271).
2. Voluntary Winding up (Sec. 304).
 - (a) Members Voluntary Winding up.
 - (b) Creditors Voluntary Winding up.

1. Winding up the Tribunal: (Sec.271) It is also known as compulsory winding up.

Grounds for Compulsory Winding up:

- (1) Special resolution of the company.
- (2) Default in delivering the statutory report to the registrar or in holding statutory meeting.
- (3) Failure to commence or suspension of business.
- (4) Reduction in membership.
- (5) Inability to pay its debts.

Petitions (Sec. 272):

1. Petition by the company.
2. Petition by any creditor or creditors.
3. Petition by any contributors.
4. Petition by the registrar.
5. Petition by the central government.

2. Voluntary Winding up

- a) Members Voluntary Winding up.
- b) Creditors Voluntary Winding up.

Questions:

1. Define partnership.
2. Differentiate between partnership and Joint Family Business
3. What are the different kinds of partnership?
4. Explain the procedure for registration of partnership?
5. What are the rights and liabilities of partners?
6. What is dissolution of partnership? What are the different modes of dissolution?
7. Define company.
8. Explain the characteristics of a company.



9. What are the different kinds of classifications of a company's?
 10. Distinguish between the public and private companies.
 11. What are the special privileges' enjoyed by a private company?
 12. Explain the procedure for formation of a company?
 13. What is memorandum of Association? What are its contents?
 14. What is Articles of Association? What are its contents?
 15. Distinguish between the memorandum and articles.
 16. What is prospectus? What are its contents?
 17. What is statement in lieu of prospectus? Explain the liability for misstatements in prospectus?
 18. What are the powers, duties and liabilities of directors of a company?
 19. Explain the different types of meetings of a company?
 20. What is Proxies?
 21. What are resolutions? What are its kinds?
 22. What is winding up? Explain the different modes of winding up of a company?
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UNIT –IV

Labour Law: *Factories Act, Minimum Wages Act, Industrial Disputes Act, Employees Compensation Act, Payment of Bonus Act 1965. Payment of Gratuity Act 1972. ESI Act, Employees Provident Fund and Miscellaneous Provisions Act 1952, Maternity Benefits Act, Child labour Abolition & Regulation Act, 1986- Inter-state Migrant Workmen (Regulation of Employment & Conditions of services) Act 1979- Bonded Labour system (Abolition) Act 1976- Sexual Harassment of women at Workplace (Prevention, Prohibition & Redressal) Act 2013- Contract Labour (Regulation and Abolition) Act- Four Labour Codes and Rules- RTI Act 2005.*

THE FACTORIES ACT, 1948

The Factories Act, 1948 came into force on the 1st day of April 1949, its object is to regulate the conditions of work in manufacturing establishments which come within the definition of the term 'factory' as used in the act.

What is a Factory?

A factory is a premises where on 10 or more persons are engaged if power is used or 20 or more persons are engaged if power is not used, in a manufacturing process.

Provisions relating to Health, safety and welfare , Health (sec.11 to 20)

1. Cleanliness (sec.11)
2. Disposal of wastes and effluents (sec.12)
3. Ventilation and temperature (sec.13)
4. Dust and fume (sec.14)
5. Artificial Humidification (sec.15)
6. Overcrowding (sec.16)
7. Lighting (sec.17)
8. Drinking water (sec.18)
9. Latrines and urinals (sec.19)
10. Spittoons (sec.20)

Safety (sec.21 to 41)

1. Fencing of machinery (sec.21)
2. Work on near machinery in motion (sec.22)
3. Employment of young persons on dangerous machines (sec.23)
4. Striking gear and devices for cutting off power (sec.24)
5. Self acting machines (sec.25)
6. Casing of new machinery (sec.26)
7. Prohibition of employment of women and children near cotton openers (sec.27)
8. Hoists and lifts (sec.28)
9. Lifting machines, chains, ropes and lifting tackles (sec.29)
10. Revolving machinery (sec.30)
11. Pressure Plant (sec.31)
12. Floors, stairs and means of access (sec.32)



13. Pits, sumps, openings in floors, etc (sec.33)
14. Excessive weights (sec.34)
15. Protection of eyes (sec.35)
16. Precautions against dangerous fumes (sec.36)
17. Precautions against explosive or inflammable dust, gas etc. (sec.37)
18. Precautions incase of fire (sec.38)
19. Safety of building and machinery (sec.40)
20. Maintenance of building (sec.40A)
21. Safety officers (sec.40.B)

Welfare (sec.42 to 50)

1. Washing facilities (sec.42)
2. Facilities for storing and drying clothing (sec.43)
3. Facilities for sitting (sec.44)
4. First aid appliances (sec.45)
5. Canteens (sec.46)
6. Shelters, rest rooms and lunch rooms (sec.47)
7. Crèches (sec.48)
8. Welfare officers (sec.49)

Working Hours of Adults

The rules as to the regulation of hours of work of adult workers in a factory and holidays are as follows.

Working hours

1. Working hours (sec.51)
Not allowed to work more than 48 hours in any week.
2. Daily hours (sec.54)
Not more than 9 hours in any day.
3. Intervals for rest (sec.55)
No worker shall work for more than 5 hours before he has an interval for rest of at least half an hour.

Spread over

Including his intervals for rest they shall not spread over more than Ten and Half hours in any day.

Rules regarding Employment of adults

Night shifts

Works on a shift which extends beyond midnight his weekly and compensatory holiday means a period of holiday for 24 consecutive hours beginning when his shift ends.

Double Employment



No adult worker shall be required or allowed to work in any factory on any day on which he has already been working in any other factory.

Notice of periods of work

There must be displayed in every factory notice showing periods of work of adults, classifications of works in groups according to nature of their work, shifts and relays etc.

Holidays

Weekly holidays

Every adult worker in a factory shall be allowed a holiday during a week. No adult worker shall be required or allowed to work in a factory on the first day of the week which is Sunday. But manager can substitute for Sunday any of the 3 days preceding or following it.

Compensatory holidays

Where a worker is deprived of any of the weekly holidays under sec.52 he shall be allowed compensatory holidays of equal number to the holidays so left.

Employment of young persons

1. Prohibition of employment of young children (sec.67)
 - not completed his 14th year
2. Non – adult workers to carry tokens (sec.68)
 - A child completed his 14 year may allowed to work in a factory if.
 - A certificate of fitness
 - Such child or adolescent carries a token giving a reference to such certificate.
3. Working hours and notice of periods of work for children.
 - No child shall be employed or permitted to work in any factory
 - a) For more than four and half hours a day
 - b) During the night shift (10.00 pm – 6.00 am)
4. Period of work of children limited to 2 shifts.
5. Child workers entitled to weekly holidays.
6. Prohibition if the child worker has already been working in another factory.
7. Female child to work only between 8.00 am to 7.00 pm
8. Display of notice of work of child workers
9. Register of child workers.

Employment of women

1. Prohibition of work on or near machinery in motion
2. Prohibition of employment near cotton – openers
3. Crèches



4. Working hours
5. Restriction on employment of women on dangerous operations.

THE MINIMUM WAGES ACT, 1948

The philosophy behind the implementation of this act is to prevent exploitation of labour by paying less wages. This Act empowers the state and central governments to fix minimum rate of wages for different kinds of employment listed in the schedule of the Act. This act also provides for a review of the rates of minimum wages at intervals not exceeding 5 years.

Objectives of the Act:

1. The main objectives of the act is to secure the welfare of the workers in a competitive labour market by fixing of minimum rates of wages in certain employment.
2. This act is intended to prevent the exploitation of unorganized workers by the capitalist class.
3. This act gives statutory recognition to the well accepted principles that an employee must get at least a bare minimum wages for his work.
4. The act gives safeguard in the matter of minimum wages to those class of workers whose bargaining power is very poor.

Minimum Wages:

The term minimum wages means the minimum payment that an employer has to pay to an employee for a particular work. The appropriate government is vested with the power of fixing the rate of minimum wages and the employer is bound to give such rates irrespective of the extent of his profit or financial condition or the availability of workmen at lower wages.

Fixation and Revision of Wages (Sec.3 to 5)

Fixing of minimum rates of wages (sec.3): The responsibility for fixing the minimum rates of wages is that of the appropriate government. Sec.3

- a) Shall fix the minimum rates of wages payable to employees employed in an employment specified in part I or part II of the schedule

Minimum rate of wages (sec.4): Any minimum rate of wages fixed or revised by the appropriate government in respect of scheduled employment under sec.3 may consists of –

A basic rate of wages and cost of living allowance. The rate of cost of living allowance shall be adjusted at such intervals and in such manner as the appropriate government may direct.

Procedure for fixing and revising minimum wages (sec.5): Sec.5 provides 2 separate modes of procedure for fixing and revising minimum wages.

The provisions of sec.5 are as follows:

- a) Appointment of committees.
- b) Publication of proposals in the official Gazette.
- c) Consultation with advisory board.



THE INDUSTRIAL DISPUTES ACT, 1947

What is an Industrial Dispute?

‘Industrial dispute’ means any dispute or difference between

- 1) Employers and employees
- 2) Employers and workmen or
- 3) Workmen and workmen.

Which is connected with

- a) The employment or non employment
- b) The terms of employment
- c) The conditions of labour of any person.

Definitions

1) Lay – off (sec.2 (kkk))

Lay off means the failure, refusal or inability of an employer to give employment to a workman due to

- Shortage of coal, power or raw material
- Accumulation of stocks
- The breakdown of machinery
- Natural calamity or for any other connected reasons.

2) Lock – out (sec.2(1))

It means the temporary closing of a place of employment or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him.

3) Retrenchment (sec.2(oo))

It means ‘to end’ conclude, or cease. The term as used in the industries dispute act means the termination by the employer of the service of a workman for any reason whatsoever, otherwisethan as punishment inflicted by way of disciplinary action.

4) Strike (sec.2(q))

It means

- 1) A cessation of work by a body of persons employed in any industry acting in combination.
- 2) A concerted refusal of any member of persons who are have been so employed to continue to work or to accept employment.
- 3) Refusal under a common understanding of any number of such person to continue to work or to accept employment.

5)Unfair Labour Practice (sec.2(ra))

It means any of the practices specified in the fifth schedule which declares certain labour practices as unfair on the part of employment and their trade unions and on the part of workmen and their trade unions.



Procedure for settlement of Industrial disputes and Authorities under the Act.

Conciliation Machinery

The authorities that make use of conciliation as a method of settlement of industrial disputes are.

1. Works committees
2. Conciliation officers
3. Boards of conciliation
4. Courts of Inquiry

Adjudication Machinery

The foresaid authorities endeavour to compose any industrial difference of opinion or settle the industrial dispute before it may be adjudicated upon by

1. Labour courts
2. Industrial Tribunals
3. National Tribunals.

THE PAYMENT OF BONUS ACT, 1965

Bonus defines as something given in addition to what is ordinarily received by or strictly due to a recipient.

Calculation of amount payable as Bonus

The Act has laid down a detailed procedure for calculating the amount of bonus payable to employees.

1. Computation of Gross profits (sec.4)
 - Calculated as per First schedule (for Banking company)
 - Calculated as per second schedule (for Non banking company)
2. Deductions from Gross profits (sec.6)
 - Amount by way of depreciation
 - Any amount by way of development rebate, investment allowance, development allowance.
 - Direct Tax which an employer is liable to pay for the accounting year.
 - Sums specified in respect of the employer in the third schedule.
3. Computation of available surplus
4. Allocable surplus

Out of available surplus 67% in case of company and 60% in case of Banking company shall be Allocable surplus.

The amount available to payment of bonus to employees.

Minimum Bonus

8.33% of salary or wage earned by the employee during the accounting year

Maximum Bonus

Allocable surplus exceeds the amount of Minimum Bonus Maximum bonus to be paid that is 20% of salary or wage of the accounting year.

Set on and set off of Allocable surplus



1. Any accounting year the allocable surplus exceeds the amount of maximum bonus payable to the employees the excess shall carry forward for being **seton** in the succeeding accounting year.
2. There is no available surplus or the allocable surplus in respect of that year falls short of the amount of minimum bonus payable shall be carried forward for being **set off**.

Eligibility for bonus

Every employer shall be entitled to be paid by his employer in an accounting year bonus. If he worked in the establishment for not less than thirty working days in the accounting year.

Disqualification for bonus

- a) Fraud
- b) Violent behavior while on the premises of the establishment.
- c) Theft, misappropriation of any property of the establishment.

THE WORKMAN'S COMPENSATION ACT, 1923

The Act considers compensation payable by an employer to his workmen in case of an accident as a measure of relief and social security. It enables a workman to get compensation irrespective of his negligence. It also lays down the various amounts payable in case of an accident depending upon the type and extent of injury.

Definitions:

Dependent (sec.2(d)): dependent refers to person who depends upon another for his livelihood.

Disablement: Disablement means loss of capacity to work or to move. Disablement of a workman may result in loss or reduction of his earning capacity.

Disablement may be (1) partial, or (2) total

1. Partial disablement (sec.2 (1) (g)): This means any disablement as reduces the earning capacity of a workman as a result of some accident. Partial disablement may be temporary or permanent.
2. Total disablement (sec.2 (1) (i) : It refers to that condition where a workman becomes unfit for every type of work and is not able to get job anywhere due to that disablement.

Rules Regarding workman's compensation:

Employer's liability for compensation (sec.3):

An employer is liable to pay compensation to a workmen for

- 1). Personal injury caused to him by accident as well as for any
 - 2). Occupational disease contracted by him.
1. **Personal injury by accident:** An employer is liable to pay compensation to a workmen if personal injury is caused to him by accident **arising out of and in the course of his employment** (sec.3(1)).



2. **Occupational diseases:** workers employed in certain occupations are exposed to certain diseases which are inherent in those occupations.

Amount of compensation:

The amount of compensation payable to a workman depends on-

1. The nature of the injury caused by accident.
2. The monthly wages of the workmen concerned, and
3. The relevant factor for working out lump-sum equivalent of compensation amount as specified in schedule IV.

New sec.4 provides for compensation for-

1. Death
2. Permanent total disablement,
3. Permanent partial disablement, and
4. Temporary disablement, whether total or partial,

For determining the amount of compensation, sec.4 has to be read with schedule IV

1. **Compensation for death [sec.4(1)(a)]:** where death results from an injury, the amount of compensation shall be equal to 50 percent of the monthly wages of the deceased workman multiplied by the relevant factor as given in column 2 of schedule IV for completed years of age or Rs.50,000, whichever is more.
2. **Compensation for permanent total disablement [sec.4(1) (b)]:** where permanent total disablement results from an injury, the amount of compensation payable shall be equal to 60 percent of the monthly wages of the injured workmen multiplied by the relevant factor, or Rs.60,000, whichever is more.
3. **Compensation for permanent partial disablement [sec.4(1) (c)]:** part II of schedule I to the act gives a long list of injuries deemed to result in permanent partial disablement along with the percentage of loss of earning capacity which is deemed to result in each case. The amount of compensation shall be such percentage of the compensation which have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury.
4. **Compensation for temporary disablement – total or partial [sec.4 (1) (d), (2) and (3)]:** where temporary disablement, whether total or partial, results from the injury, the amount of compensation shall be a half-monthly payment of the sum equivalent to 25 percent of monthly wages of workmen. i.e., 25 percent of monthly wages of the workman shall be payable every half month. The half-monthly payment shall be payable on the 16th day-
 1. From the date of disablement where such disablement lasts for a period of 28days or more, or
 2. After the expiry of a waiting period of 3days from the date of disablement where such disablement lasts for a period of less than 28 days. Thereafter the compensation shall be payable half-monthly during the disablement or during a period of 5 years, whichever period is shorter.



THE PAYMENT OF GRATUITY ACT, 1972

Gratuity is a kind of retirement benefit, like provident fund or pension. It is a payment which is intended to help an employee after his retirement whether the retirement is the result of the rules of superannuation or of some physical disability. The general principle underlying gratuity schemes is that by faithful service over a long period the employee is entitled to claim a certain amount as retirement benefit. Thus it is earned by an employee as a reward for long and meritorious service.

Payment and Forfeiture of Gratuity and exemption (sec. 4 and 5):

Payment of gratuity (sec.4):

Sec. 4 deals with circumstances in which gratuity becomes payable to an employee and the cases when gratuity may be forfeited. The various provisions of sec.4 are discussed below.

- 1. Gratuity payable on termination of employment:** gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than 5 years –
 - (a). on his superannuation, or
 - (b). on his retirement or resignation, or
 - (c). on his death or disablement due to accident or disease
- 2. Rate of gratuity:** For every completed year of service or part thereof in excess of 6 months, the employer shall pay gratuity to an employee at the rate of 15 days' wages based on the rate of wages last drawn by the employee concerned.
- 3. Maximum gratuity:** The amount of gratuity payable to an employee shall not exceed Rs.3,50,000 (The Amendment Act of 1998).
- 4. Forfeiture of gratuity:** The gratuity of an employee whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damages or loss so caused.

Compulsory Insurance and Protection of Gratuity (sec.4-A and 13):

Compulsory Insurance (sec.4 – A):

According to sec.4-A every employer shall obtain an insurance for his liability for payment towards the gratuity under the Act from the life insurance corporation or any other prescribed insurer with effect from such date as may be notified by the appropriate government in this behalf.

Protection of gratuity (sec. 13):

No gratuity payable under this Act and no gratuity payable to an employee employed in any establishment, factory, mine, oilfield, plantation, port, railway company or shop exempted under sec.5 shall be liable to attachment in execution of any decree or order of any civil, revenue or criminal court.

Determination and Recovery of Gratuity (sec.7 and 8):

Determination of the amount of gratuity (sec.7)

Application for Gratuity: An employee who is eligible for payment of gratuity under the Act, or any person authorized, in writing, to act on his behalf, shall send an application to the employer ordinarily within 30 days from the date the gratuity became payable for payment of such gratuity.



Determination of gratuity: As soon as gratuity becomes payable the employer shall determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable.

Payment of gratuity: The employer shall arrange to pay the amount of gratuity within 30 days from the date it becomes payable to the person to whom the gratuity is payable.

Payment of Interest: This is a new provision made by the Amendment Act of 1987. If the amount of gratuity payable by the employer is not paid within a period of 30 days, the employer shall pay simple interest at such rate, not exceeding the rate notified by the central government from time to time.

Dispute as to gratuity: If there is any dispute-

- a. As to the amount of gratuity payable to an employee under the Act,
- b. As to the admissibility of any claim of, or in relation to, an employee for payment of gratuity, or
- c. As to the person entitled to receive the gratuity.

The employer shall deposit with the controlling authority such amount as he admits to be payable by him as gratuity [sec.7 (4) (a)]

Where there is a dispute with regard to any matter or matters specified, the employer or employee or any other person raising the dispute may make an application to the controlling authority for deciding the dispute [sec.7(4) (b)].

Power of the controlling authority: The controlling authority for the purpose of conducting an inquiry as to the amount of gratuity payable to an employee or as to the admissibility of any claim of or in relation to an employee for payment of gratuity, or as to the person entitled to receive the gratuity, shall have the same powers as are vested in a court.

Appeal: Any person aggrieved by an order of the controlling authority may, within 60 days from the date of the receipt of the order, prefer an appeal to the appropriate government or such other authority as may be specified by the appropriate government in this behalf.

Recovery of gratuity (sec.8):

If the amount of gratuity payable under the Act is not paid by the employer, within the prescribed time, to the person entitled thereto, the latter shall make an application to the controlling authority.

Inspectors (sec.7-A and 7-B):

The Amendment Act, 1984 has inserted two new sections, i.e., sec. 7-A and Sec. 7-B dealing with the appointment of Inspectors for the purpose of the Act and their powers.



THE EMPLOYEES' STATE INSURANCE ACT, 1948

The act is a piece of social security legislation conceived as a means of extinction of the evils of the society, namely, want, disease, dirt, ignorance and indigence. The act confers benefit on employees against sickness, maternity and other disabilities. These benefits are secured by financial contributions to the scheme both by employers and employees.

Who is an insurable workman?

Every employee of a factory or establishment to which the act applies is an insurable person. Sec.38 states that subject to the provisions of the act, all employees in factories or establishments to which the Act applies shall be insured in the manner provided by the act.

Administration of the Scheme (chapter II, sec.3 to 25):

The Employees State insurance scheme is being administered by the Employees State Insurance Corporation (E.S.I. Corp.) which has been set up by the Central Government under the Act (sec.3). A standing committee has been constituted from among the members of the E.S.I. Corporation to act as an executive body for the administration of the scheme under the general superintendence and control of the E.S.I. Corporation. A medical Benefit council has been set up to advice the E.S.I. Corporation on medical questions. Further the E.S.I. Corporation may appoint Inspectors for the purpose of the Act. (sec. 45).

Finance and Audit (chapter III, sec.26 to 37):

The act provides for the creation of a Fund called the Employees' state Insurance Fund (E.S.I. Fund) for (1). Payment of benefits to the insured persons,

- (2). Meeting cost of administration, and
- (3). Making provisions for other authorized purposes.

The E.S.I. Fund is mainly derived from contributions from employees and employers. All such contributions and all other moneys received on behalf of the E.S.I. Corporation shall be paid into the E.S.I. Fund. The E.S.I. fund shall be held and administered by the E.S.I Corporation for the purpose of the Act.

Audit:

The accounts of the E.S.I. Corporation shall be audited annually by the comptroller and Auditor-General of India.

Contributions (chapter IV, sec. 38 to 45-B):

Subject to the provisions of the Act, all the employees in factories and establishments to which the act applies shall be insured (sec.38). The scheme of Employees state insurance is contributory. As such both the employers and employees have to pay their contributions in accordance with the provisions of the Act. The contributions payable by an employee is known as employee's contribution and the contribution payable by an employer is known as employer's contribution.

Rate of contribution:

Prior to the amendment of the Act in 1984, the employees were divided into 9 groups and their contribution varied according to wages and the employer's contribution was exactly double the employees' contribution. The Amendment act of 1984 delinked the employer's contribution from the employee's contribution.

Method of Calculation:



Rule 51 lays down the method of calculation of the employees' and the employers' contribution. According to it the amount of contribution for a wage-period shall be paid at a fixed percentage of wages.

(a). employer's contribution, a sum equal to 5 percent of the total wage bill of all employees rounded to the next higher multiple of 5 paise.

(b). employee's contribution, a sum equal to 2.25 percent of his wages rounded to the next higher multiple of 5 paise.

Benefits (chapter V, sec. 46 to 73):

The Act provides for 6 types of benefits to which the insured persons, their dependents or certain other persons are entitled. These benefits are as follows:

1. Sickness benefit.
2. Maternity benefit.
3. Disablement benefit.
4. Dependants benefit.
5. Medical benefit.
6. Funeral expenses.

Adjudication of Disputes and Claims (chapter VI, sec. 74 to 83):

Secs. 74 and 75 of the Act lay down that where a dispute arises under the provisions of the act, the matter in the dispute shall be decided by the Employees' Insurance court constituted under sec.74 and not by a civil court. Sec. 75 lays down the matters which shall be decided by this court.

Penalties (chapter VII, sec. 84 to 86):

Secs. 84 to 86 provide for penalties for certain offences. These penalties were substantially increased by the Employees' state Insurance (amendment) Act,1975, which also introduced three new sections, i.e., secs.85-A, 85-B and 85-C. The Amendment Act, 1989 has made these penal provisions more stringent.

- Punishment for false statement (sec.84)
- Punishment for failure to pay contributions, etc. (sec.85)
- Enhanced punishment after previous conviction (sec. 85-A)
- Power to recover damages (sec.85 –B)
- Prosecution (sec. 86)
- Offences by companies (sec. 86 – A)

Miscellaneous (chapter VIII, sec.87 to 100):

Exemptions

Secs. 87 to 91 –A of the Act provide for the following exemptions:

- exemption of a factory or establishment or class of factories or establishments (sec.87)
- exemption of persons or class of persons (sec.88)
- E.S.I. Corporation to make representation (sec.89)
- Exemption of factories or establishments belonging to government or any local authority (sec. 90)
- Exemption from one or more provisions of the Act (sec.91)



- Exemptions to be either prospective or retrospective (sec. 91-A)
The Amendment Act 1989 has inserted the following two new sections:

- Misuse of benefits (sec.91-B)
- Writing off of losses (sec.91 – C)
- Power of central government to give directions (sec.92)
- Liability in case of transfer of establishment (sec.93-A)
- Delegation of powers (sec.94-A)
- Power of central government to make rules (sec.95)
- Power of state government to make rules(sec.96)
- Power of E.S.I. Corporation to make regulations (sec.97)
- Medical care for the families of insured persons (sec.99)
- Power to remove difficulties (sec.99-A)

THE EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT, 1952

The scheme of provident funds, as a social security measure, are meant to induce employees to save a portion from their present earnings for a rainy day.

The object of the employees provident funds and miscellaneous provisions Act, 1952 is to provide for the institution of provident funds and family pension and deposit linked insurance schemes for employees in factories and other establishments.

(I). EMPLOYEES PROVIDENT FUND SCHEME (1952):

Sec. 5 empowers the central government to frame, by notification in the Official Gazette, a scheme to be called the Employees' Provident Fund Scheme, for the establishment of provident funds under the act for employees or any class of employees.

Establishment of Fund: As soon as may be after the framing of employees Provident Fund scheme, there shall be established employees provident fund in accordance with the provisions of the Act and the Employees provident Fund scheme [sec.5(1)]. The fund shall vest in and be administered by the central Board constituted under sec.5-A[sec.5(1-A)].

Contributions (sec.6): The principal duty is laid upon the employer to put the employees provident fund and family pension schemes into operation and to make contributions of both their and employees share to the funds and to deduct from the wages of the employees their share.

Statutory rate of contribution: The employer's contribution to the Employees Provident Fund shall be 10 percent of the basic wages, dearness allowance and retaining allowance, for the time being payable to each of the employees.

(II). EMPLOYEES PENSION SCHEME AND FUND (1995):

By the labour provident fund laws (Amendment) Act, 1972, Provision was made for the creation of an Employees' Family Pension Fund and Family Pension scheme. By the Employees'



Provident Funds and Miscellaneous Provisions (Amendment) ordinance, 1995, the family pension scheme has been replaced by pension scheme.

Framing of Employees pension scheme:

Sec. 6-A of the Act empowers the Central Government to frame a scheme, by notification in the official Gazette, to be called the employees pension scheme for the purpose of providing pension and life assurance benefits to the employees of any establishment to which this act applies [sec.6-A(1)]

Establishment of Employees' Pension Fund:

Soon after the framing of employees pension scheme, a pension fund was established. The contributions amount are paid from time to time into the pension fund in respect of every employee covered by the family pension scheme.

(III). EMPLOYEES DEPOSIT LINKED INSURANCE SCHEME AND FUND (1976):

The employees' Deposit linked Insurance scheme (called Insurance scheme) was introduced by the Amendment Act of 1976.

Framing of Employees' Deposit linked Insurance Scheme:

According to new Sec.6-C (introduced by the Amendment Act of 1976), the central Government may, by notification in the official Gazette, frame a scheme to be called the employees' Deposit linked Insurance Scheme for the purpose of providing life insurance benefits to the employees of any establishment or class of establishment to which this act applies [sec.6-C(1)].

Establishment of Employees' Deposit linked Insurance Fund:

Soon after the framing of the employees Deposit linked Insurance Scheme, there was established an Employees' Deposit-linked Insurance Fund (Known as Insurance Fund).

CLARIFICATION PERTAINING TO CONTRIBUTIONS

After revision in wage ceiling from Rs.5,000 to Rs.6,500 per month, the Government will continue to contribute 1.16 per cent up to the actual wage or maximum @ Rs.6,500 per month towards Employees' Pension Scheme. The employer's share in the Pension scheme will be Rs.541 w.e.f. 1-6-2001.

Under Employees' Deposit linked Insurance Scheme, the contributions @ 0.50 per cent is required to be paid up to a maximum limit of Rs.6,500. The employer will pay administrative charges @0.01 per cent on a maximum limit of Rs.6,500.

ADMINISTRATION OF THE SCHEMES:

Central Board (sec. 5-A): The central Government may, by notification in the official Gazette, constitute a Board of Trustees called the Central Board for administration the Employees Provident Fund, Pension fund and employees deposit linked Insurance fund established under the schemes. The board shall consist of the following persons as members, namely:

- a). a Chairman and Vice-Chairman appointed by the Central Government



Executive Committee: (sec.5-AA as introduced by the Amendment Act of 1988) to assist the central Board of Trustees in the discharge of its functions, the Amendment Act of 1988 has made a provision for the setting up of an Executive Committee by introducing new sec.5-AA to the Act.

State Board: (sec.5-B). The Central Government is empowered to constitute for any state a Board of trustees called the state board in consultation with that state government, by notification in the official Gazette.

Appointment of Officers:

- Appointment of Central Provident Fund Commissioner
- Appointment of a Financial Advisor and Chief Accounts Officer.

THE MATERNITY BENEFIT ACT, 1961

Introduction:

Maternity Benefit is a benefit given to the mothers-to-be or the mothers of the newly born with fully paid leave from employment along with other benefits before and after the delivery of the child, with a motive to facilitate the women in taking care of the child.

Applicability:

Under the scope of **Section 2(1)(a)**, the Act applies to all establishments including:

- Factories,
- Plantations,
- Mines,
- Shops or establishments covered under the ambit of law having 10 or more than 10 employees. (As provided by the 2017 amendment) This includes the private sector as well.

NOTE: The Maternity benefit Act shall be applied to any and all establishments having 10 or more than 10 employees.

Eligibility:

In **Section 5(2)** of the Act, it is mentioned that a woman, to be eligible for the maternity benefits under the Act, has to be employed in the establishment for not less than 80 days in the twelve months immediately preceding the expected delivery of the woman. (The period has been reduced from 160 days to 80 days by the virtue of 2017 amendment)

Duration of Leave:



As per the provisions mentioned in the Act, the duration of the maternity leave in different cases is as follows:

- **26 weeks**, for a woman with up to 2 surviving children. The woman, at discretion, can take up to 8 weeks of maternity leave before the delivery and the remaining 18 weeks after the delivery.
- **12 weeks**, for a woman already having 2 or more children. Herein, the woman, at discretion, can take up to 6 weeks of leave before the delivery and the remaining 6 weeks after the delivery of the child.
- **12 weeks**, for a woman who has adopted a child below the age of 3 months from the date of handover of the child.
- **12 weeks**, for a commissioning mother, i.e., a mother who puts her embryo in another woman (another woman is called the host/surrogate) from the day of handover of such child.
- **6 weeks**, for a woman who has gone through miscarriage from the date of termination of pregnancy, on the production of proof, as mentioned in **Section 6** of the Act.

Kind of Work:

The women employee cannot be employed to complete tasks of the following nature under the ambit of **Section 4** of the Act:

- Work of arduous nature
- Work involving long hours of standing
- Work that is likely to intervene with the pregnancy or the normal growth of the fetus
- Work which is likely to cause her miscarriage
- Work can adversely affect her health.

Benefits Provided:

Monetary Benefits: Under the ambit of Section 5 (1), every woman is entitled to receive maternity benefits calculated at the rate of average daily wage for the period of her actual



absence i.e., for the whole of the maternity leave (including the period preceding the delivery, the actual delivery date, and the period post-delivery)

Nursing Breaks: As per Section 11 of the Act, every woman is entitled to 2 nursing breaks of the prescribed duration for nursing the child until the child turns 15 months old, apart from the rest interval allowed, through her daily course of work.

Creche Facility: As per Section 11(A) of the Act (added via 2017 amendment) every establishment with more than 50 employees is prescribed to have a creche facility for the baby and the mother should be allowed 4 visits to the creche in a day which shall include the nursing breaks and the rest intervals allowed to her.

Work From Home: As per Section 5 (5) of the Act (as inserted by the 2017 amendment) if the job profile of the women facilitates, the employer may allow the provision of work from home to such women after the completion of the maternity break. The period and conditions of such work can be mutually decided between the employer and the employee.

Medical Bonus: The woman is entitled to receive an amount of Rs. 1000 from the employer in case the pre-natal and post-natal care is not provided by the employer at zero cost as mentioned in **Section 8(1)** of the Act.

Prevention from dismissal: The Act under the provision of **Section 12** makes it unlawful for the employer to dismiss or deprive an employee of claiming maternity benefits as prescribed by the Act. Except in the cases of gross misconduct by the woman employee.

Payment of Maternity Benefits Under Different Circumstances:

As per the provisions of the act, in cases of death, the maternity benefit will be provided accordingly:

- Wherein both, the mother and child survive then, the maternity benefits will be provided as per 26 weeks.



- In case the woman survives but the child doesn't even then the maternity benefit of the duration of leave shall be provided. Herein as per **Section 7** of the Act, the maternity benefit will be provided to the legal representative or nominee.
- If the mother dies and the child survives, the maternity benefit will still be provided for the child.
- In the case where both, the mother and the child die then the maternity benefit till the time of the death will be provided, which will also include the day of the death.
- In the case where the mother died and the child survived but later died too, the maternity benefit will be provided till the day of the child's death.

Notice:

- As per the provisions of **Section 6** of the Act, a women employee is required to submit a written notice to her employer about the maternity leave mentioning the nominee in case of death.
- The notice should mention the date from which she will be on leave which shall not be more than 8 weeks from the expected date of delivery.
- In case of failure of submitting the notice before delivery, the same can be done after the delivery has been done. In case of failure, the women can be deprived of maternity benefits.
- In case of failure of submitting the notice before delivery, the same can be done after the delivery has been done.
- In case of failure, the women can be deprived of maternity benefits.

Restrictions as to Resignation:

As per the provisions of the act, there are no restrictions as to the resignation of the women employee after claiming the maternity benefits under the Act.



Payment of the Maternity Benefit:

As per the provisions of Section 6(5) of the Act, the amount for maternity benefits preceding the date of delivery shall be paid in advance and for the period after the delivery, the payment shall be made within 48 hours of production of proof.

THE CHILD LABOUR PROHIBITION & REGULATION ACT, 1986

Introduction:

- The Act addresses itself to the issue of Child Labour which is social concern.
- This Act prohibits the engagement of children below the age of 14 years in certain employments and regulates the conditions of work of children in certain other employments.

Prohibition Of Employment Of Children:

- The Act prohibits employment of child in about 13 occupations and about 51 processes.

Regulatory Provisions:

- The Act provides no child shall be permitted or required to work between 7p.m. and 8 a.m., for more than 3hrs. before he has an interval for rest at least one hour.
- Every child employed in an establishment shall be allowed in each week a holiday for one whole day.

Administrative Machinery:

- All the Inspecting Officers of the Labour Deptt. are notified as inspectors for the purpose of this Act.
- On received complaints inspections are conducted by the inspectors.
- For any violation prosecution is filled in the Court of respective area Metropolitan Magistrate by the Inspectors.

Penalties

- Whoever employs or permits any child to work in the occupations and processes in which employment of children is prohibited shall be punishable with imprisonment up to one year with fine not less than Rs. 10,000/- or with both.



- For other contraventions the penalty is up to one months imprisonment or with fine up to Rs. 10,000/- or with both.

INTER – STATE MIGRANT WORKMEN (REGULATION OF EMPLOYMENT & CONDITIONS OF SERVICES) ACT, 1979

Object:

To regulate the employment of inter-state migrant workmen and to Provide for their conditions of service and for matters connected therewith.

Applicability:

It extends to the whole of India and applies to:

- (1) Every establishments in which 5 or more inter-state migrant workmen (whether or not in addition to other workmen) are employed or who were employed on any day of the preceding twelve months (
- 2) To every contractor who employed 5 or more interstate migrant worker (whether or not in addition to other workmen) on any day of the Preceding twelve months.

Who Is An Inter-state Migrant Workman:

Any person who is recruited by or through a contractor in one state under an agreement or other arrangement for employment in an establishment in another state whether with or without the knowledge of the Principle employer. (Section-2e)

Registration of Establishments:

- Every principle employer of an establishment to which this Act applies shall make an application for registration in triplicate in Form No.1 to the registering officer, along with the Prescribed fees.
- On receipt of an application, registering officer shall issue a registration certificate in Form-II



Prohibition Against Employment Of Inter-state Migrant Workmen Without Registration:

No principle employer shall employ inter-state migrant workmen in the establishment unless a certificate of registration is obtained under this Act. (Section-6)

Licensing of Contractors:

No contractor shall

(I) Recruit any person in a state for the purpose of employing him in any establishment situated in another state except without obtaining a recruitment licence issued by the licensing officer of the area where the recruitment is done.

(II) Employ any interstate workmen without obtaining an employment licence received from the licensing officer of the area where the establishment is situated. (Section-8)

Licensing of Contractors

(II) Employ any interstate workmen without obtaining an employment licence received from the licensing officer of the area where the establishment is situated. (Section-8)

Grant Of Licences:

The contractor shall apply for a recruitment licence in triplicate in Form-IV to the licensing officer having jurisdiction in relation to the area wherein recruitment is made

Duties and Obligations of the Contractors:

I. Every contractor shall furnish to the specified authorities the particulars regarding recruitment and employment of migrant workmen within 15 days from the date recruitment/ the date of employment/ any change occurs in any of the particulars already furnished in Form-X.

II. Issue to every inter-state migrant workman a passbook affixed with a passport size Photograph with the following particulars: Date of recruitment, Date of employment, Wage Period, Name and address workman etc. (Section-12 read with Rules 21 & 23).

Duties and Obligations of the Contractors:

III. Every contractor shall send half yearly return in form XXIII (in duplicate to the licensing officer not later than 30 days from the close of the half year commencing from 1st January

Journey Allowance:



The contractor shall pay a journey allowance of a sum not less than the fare from their place of residence of the workman to the place of work to the workman for the outward and return journeys. The Workman is also entitled to payment of wages during the period of such journeys as if he were on duty. (Section-15)

Reporting Of Fatal Accidents:

- In case of fatal accidents or serious bodily injury to any migrant workmen, the contractor shall immediately send telegram to the specified authority of both state and also next of kin of the workman.
- The contractor shall further send a written report to the specified authority and the next of the kin by read. post within 24 hours of the occurrence of the accident, with the following particulars:

Reporting Of Fatal Accidents:

1. Name of the migrant workman.
2. Date, place and nature of accident.
3. Condition of the migrant workman.
4. Action taken by the contractor or principal employer.
5. Remarks.

The contractor shall also be liable to provide other welfare amenities such as canteen, crèche, drinking water, latrine etc. as specified in the Rules.

Register And Records:

Every Principal employer shall maintain registers of contractors. Every employer and contractor shall maintain a register of persons employed, service Certificate, displacement cum outward journey allowance sheet and return journey allowances register, muster roll, wages register, deduction register and overtime register as stipulated in Notice showing the rates of wages, hour of work wages periods etc. shall be exhibited in a conspicuous place the ESH Rules 47 to 54

Penalties:

Offences under this Act shall be punishable with imprisonment for a term which may extend to 2 years or with fine which may extend to Rs.2000/- or with both. For a continuing contravention after a conviction shall be punishable with an additional fine which may extend to Rs.100/- every day during which such contravention continues. (Section-24 to 26)



BONDED LABOUR SYSTEM (ABOLITION) ACT, 1976

What is Bonded Labour?

- Bonded labour is debt bondage and is a form of slavery that has been practiced for ages.
- It is known as the worst form of modern slavery and is a profitable business as most of the labourers are made to work for maximum time with minimal payment.
- It also includes forced work by an employer for a fixed time without being paid, often as a way of repaying debt.
- A person becomes a bonded labourer when his/ her labour is demanded as means of repayment for a loan.

Definitions:

- The term 'bonded labour' has been defined by the National Commission on Labour as "labour which remains in bondage for a specific period for the debt incurred"

The Salient Features of Bonded Labour Act:

- Bonded labour was declared illegal in the country in 1976. Thus, today it is against the law to withhold any person for forced labour
- Identification and rehabilitation of bonded labour
- Formulate schemes and committees at the district level
- Punishment up to three years, with fine for withholding any person for forced labour
- Any property attached with the bonded debt stands freed and discharged from the date of enforcement of the Act
- Employer cannot evict the bonded labourers from the accommodation provided

Situational Work Performed by Bonded Labourers:

- Brick kiln
- Stone quarry
- Mining
- Zari industry
- Agriculture in various forms and kinds
- Rice mill
- Domestic slavery in metropolitan cities
- Construction sites

The relevant provisions laying down the punishments for these offences are as under:

Section 9- Creditor not to accept payment against extinguished debt.

Section 16- Compelling a person to work in bonded labour system.

Section 17- Advancing money in a bonded labour system.



Section 18- Punishment for enforcing and extracting bonded labour under the bonded labour system.

Section 19- Punishment for omission or failure to restore possession of property to bonded labourers.

Section 20- Abetment to be an offence.

- For all the above offences, shall be punishable with imprisonment for a term which may extend to three years and also with fine which may extend to two thousand rupees
- The Act also lays down the functions to be carried out by the District Magistrate to implement the provisions of the Act to eradicate the bonded labour system.

SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION & REDRESSAL) ACT, 2013 OR POSH ACT, 2013

Introduction:

The POSH Act 2013 was made to regulate the crimes that are committed against the woman in their workplace, it's preamble states that-

- The extent of the Act is to the whole of India including Jammu & Kashmir after the exclusion of Article 370.
- If a Woman is sexually harassed at a workplace her three fundamental Rights get infringed, Articles 14 and 15 under which she has Equality before the law as well as Prohibition of discrimination against sex, gender & religion since she is facing all the issues and harassment against her due to her gender, she is hindered from working, as a result, sexual harassment should not only be avoided but should be eliminated.



- Under Article 21 every person is provided the right to practice any profession, but due to sexual harassment women keep away from practicing their professions which makes it more convincing to eliminate sexual harassment.
- Apart from that, the Government of India signed a convention for the protection of Women in 1993 with the UN as a result of which this act was essential.

Definitions and Sections in POSH Act, 2013:

Section 2 (a) - Aggrieved woman:

The definition of Aggrieved woman says, any woman who claims to be the victim of Sexual harassment at workplace comes under term “Aggrieved woman”

Section 2(n) - Sexual Harassment:

Under section 2(n) term sexual harassment is defined as-

If any person without consent of a woman physically touches her or advances, means trying to molest her or rape her that should be sexual harassment.

If any person asks for sexual favors for the consideration of Promotion or Increment then that should also come under sexual harassment.

If any person mentally harasses any woman for the denial of prior sexual favors asked by him that should also be included.

Showing pornography and making sexual remarks are also included in sexual harassment.

Section 2(o) - workplace:

Under [section 2\(o\)](#) term *workplace* is defined as -

- A workplace can be a government office or a private office.
- If a woman goes out of the office due to any work purpose that should also be included.
- If there is any car provided to a woman by the office that should also be included under the term workplace.
- If a woman goes to a house as a maid, house helper & cook that house should also be included as her workplace.
- Being in an NGO if a woman goes out for any purpose should also be included.

Broadly, we can say that any place where a woman is going to work or to earn money to carry out her livelihood that place should be considered a workplace.

Section 3 – The Prevention of Sexual Harassment:

Under [section 3](#) of the act, *the prevention of sexual harassment*, defined as -

- If a person says that preferential treatment will be provided if a woman keeps sexual relations with the man then this should be put under the category of sexual harassment.



- If a person causes any verbal threat to a woman saying her life cycle will be interrupted by him if sexual favors are not provided then this should be put under the category of sexual harassment.
- If a starts to humiliate a woman due to the failure of sexual favors asked then that should also fall under the category of sexual harassment.

Section 4 – The Requirement of a Special Committee:

[Section 4](#) of the act, *defined the requirement of a special committee* for the sexual harassment victim

- If an organization has more than 10 employees then there should be a special committee for women to redress the issues relating to the same regard.
- If the employees are less than 10 then there is no need for such an organization, women can take their concerns to the committee formed at the district level.
- It is the duty of every employer to form such a committee.

Constitution of the committee:

There should be four members on the committee-

- The first should be, a Chairman or Presiding officer, who should be the senior in the organization, two members should be either legal or should be knowledgeable enough to work in the same regard.
- The last member should be a part of an NGO that is working for the welfare of such people. At least, two of the members should be women of the committee.

Whom to complain if there is no such association?

If a woman is a maid or works at a small company or is simply from an unorganized sector then where should one file a complaint?

Under section 6 of the said act, Local committees are to be formed on a district basis and all the women can file complaints here.

If a woman resides away from the district committee then it is also under the provision that a Nodal officer has to be assigned, and the case will be transferred to the Local committee and the investigation will take place

Under section 6 of the said act, a Complaint of sexual harassment has to be made, woman victim of sexual harassment should give a written complaint to the internal committee or the Local committee within the limitation of 3 months.



If in case an aggrieved woman complains after 3 months after the incident that took place with her, then her case should not be taken, but if she gives a reasonable excuse for the delay then her case may be given a benefit of doubt.

Section 10 – Conciliation:

Under section 10 of the said act, Conciliation can take place if a woman does not want to take the case to the court than on the written application, Conciliation can take place, the conciliation should not include money exchange. It means that the respondent asks for forgiveness, and so is provided by the Accused woman.

Section 11 – Inquiry into the Compliant:

- Under section 11 of the act, *Inquiry into the Complaint* will take place that will be conducted by the committee and if the committee finds out that the case is true and not malicious then the committee within 7 days will file a complaint to the police Under 509 of Indian penal code.

Section 12 – During the Pendency:

Under section 12 of the said act, *During the pendency* of the case or at the time of Internal committee investigation, if the woman feels that she cannot attend the office due to the presence of the accused person here, then she can ask internal committee to-

- Either shift the office of the accused person.
- Or either shift the office of the Aggrieved Woman herself.
- Or to be granted leave for the time being.

In that case, the Internal committee will forward the request to the employer for further do.

Section 14 – Punishment for False or Malicious compliant and False evidence:

- Under section 14 of the said act, *Punishment for False or malicious complaint and False evidence*, if a woman maliciously files a false complaint against any employee under this act,
- After investigation, it is found that the case filed by her was fraudulent then her case should be dismissed and the same should be communicated to the employer or the district officer to take action against the woman under section 9 or the as per the provision of Service rules of the organization.



- But in case there is no evidence found, against the accused, woman but the said facts had happened with the woman then there any further procedure will not take place but no case against the woman will be filed at the police station.

Section 19 – Duties of Employer :

Under section 19 of the said act, Duties of Employer, one should provide a safer environment to the woman so that she won't face such a crucial situation at her workplace.

The employer should display at a prominent place about Sexual Harassment and should make people aware of the consequences of such an act apart from that, the Internal committee should be provided with the basic necessities that are required to run a department.

Employers should also assist the aggrieved woman in filing such complaints and should help her to get justice.

CONTRACT LABOUR (REGULATION AND ABOLITION) ACT, 1970

Introduction:

- Contract labour is the system of employing labourers through a contract by a contractor for a specified period.
- A workman is known as a contract labourer when they are assigned to a work of an establishment for a specific period through a contract by a contractor with or without the knowledge of the principal employer.
- Contract workmen are indirect employees; a contract worker is a daily wager or the daily wages are accumulated and given at the end of the month.
- It is the responsibility of the contractor to hire, supervise and remunerate contract labourers.
- In India, contract labourers are used in various industries varying from skilled to semi-skilled jobs.
- Before and after independence the status and condition of contract labour were analysed by numerous commissions, committees, Labour Bureau Ministry of Labour, etc. and it was found that the major characteristics of contract labour are poor economic conditions of the workers, casual nature of employment, lack of job security, etc.



Therefore the legislature enacted the [Contract Labour \(Regulation & Abolition\) Act, 1970](#) (which came into force on 10th February, 1971) to regulate the adequate functioning of the contract labourers and to prevent the exploitation of contract labourers by the hands of management.

Objective and scope of the Act:

The objective and scope of the Act are:

- To prevent exploitation of contract labour.
- To provide proper and habitable working conditions.
- To regulate the functioning of the advisory boards.
- To lay down the rules and regulations regarding the registration procedure of the establishments employing contract labour.
- To state the necessary requirements and the procedure of licensing of contracts.
- To provide the penal provisions in case of violation of offences under the Act.

Applicability: The act is applicable to:

- Every establishment in which twenty or more workmen are employed or were employed on any day of the preceding twelve months as contract labour,
- Every contractor who employs or who employed on any day of the preceding twelve months twenty or more workmen.

Not Applicable:

The act is not applicable to the establishments which perform work of casual or intermittent nature. Intermittent nature of work means:

- If the work is seasonal and is not performed for more than 60 days
- Other cases, if it was performed for less than 120 days in the preceding 12 months
- The Act is not applicable to a person who is appointed in an advisory or managerial capacity.

Essential provisions of the Contract Labour (Regulation & Abolition) Act, 1970:

The essential provisions of the Contract Labour (Regulation & Abolition) Act, 1970 are stated below.

- Composition of the advisory boards

Central Advisory Board:



- The Central Advisory Board consists of a Chairman appointed by the Central government, the Chief Labour Commissioner,
- The Central Government may nominate eleven to seventeen members to represent the government, railways, coal industry, mining industry, contractors, workmen and members from any other fields which, in the opinion of the Central Government ought to be represented on the Central Advisory Board.

State Advisory Board

- [Section 4](#) of the Contract Labour (Regulation & Abolition) Act, 1970 states the composition of the State Advisory Board.
- It consists of a Chairman appointed by the state government, the Labour Commissioner of that state and in their absence, any other officer will be appointed by the state government
- The state government may nominate nine to eleven members to represent that government, industry, contractors, workmen and members from any other fields which, in the opinion of the state government, ought to be represented on the State Advisory Board.

Registration of certain establishments

Licensing of contractors

Procedure for appeal

[Section 15](#) of the Act states that any person aggrieved under any provision of the Act may appeal to an appellate officer appointed by the appropriate government within thirty days from the date on which the order is communicated to them.

Payment of wages

- It is the responsibility of the contractor to pay the required wages to each worker employed under contract labour before the expiry of the stipulated period.
- If the contractor fails to make the payment within the stipulated period then the principal employer shall be liable to make payment of wages in full or the unpaid balance due.
- The wages are to be fixed by the Commissioner of Labour.

Welfare and health of contract labour:

Under Chapter 5 of the Act, it is the duty of the principal employer to ensure that the contractor provides the following facilities adhering to the rules laid down by the appropriate government.

- If the contractor is employing more than one hundred workmen by contract labour then one or more canteens shall be provided and maintained by the contractor for the use of such contract labour.
- Concerning the work of an establishment where contract labour is required to halt at night, the contractor must provide and maintain restrooms or other suitable facilities which shall be sufficiently lighted, ventilated, clean and comfortable.
- The contractor is liable to provide other facilities such as drinking water, latrines and urinals (separate for men and women), washing facilities, first-aid, etc.

Infringement of provisions concerning employment labour:



- [Section 23](#) of the Contract Labour (Regulation & Abolition) Act, 1970 regulates the proper functioning of the provisions of the Act, it states that if anyone violates any provisions or any rules concerning the employment of contract labour or contravenes any condition of a licence granted under this Act will be punished with imprisonment for a term that may extend to three months or with fine which may extend to one thousand rupees or both.
- The Act further states that if any offence is committed by a company infringing any provisions of the Act then the company, as well as every person responsible during the time of the commission of the offence, will be held liable.

NEW LABOUR CODES, 2020

New Labour Codes, 2020:

- The Central Government on recommendations of The Second National Commission on Labour proposed to replace 29 existing Labour Laws with four Codes to simplify and modernize labour regulation.
- The major challenge was to facilitate employment growth while protecting workers' rights.
- The Labour Codes which were passed in both the Houses of the Parliament and received Presidential Assent are as follows:
 - 1 - Occupational Safety, Health & Working Conditions Code, 2020
 - 2 - Social Security Code
 - 3 - Industrial Relations Code
 - 4 - Wages Code

1. The Occupational Safety, Health and Working Conditions Code, 2020:

The Occupational Safety, Health and Working Conditions Code, 2020 was introduced in Lok Sabha on 19 September 2020 and was passed on 22 September 2020. The Bill was passed in Rajya Sabha on 23 September 2020. It received Presidential assent on 28 September 2020.

Aim:

The code aims to consolidate and amend the laws regulating the occupational safety, health and working conditions of the persons employed in an establishment and for matters connected therewith or incidental thereto.



Laws Replaced:

The Occupational Safety, Health and Working Conditions Code, 2020 replaces 13 existing Laws:

- (a) The Factories Act, 1948
- (b) The Mines Act, 1952
- (c) The Dock Workers (Safety, Health and Welfare) Act, 1986
- (d) The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996
- (e) The Plantations Labour Act, 1951
- (f) The Contract Labour (Regulation and Abolition) Act, 1970
- (g) The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979
- (h) The Working Journalist and other News Paper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955
- (i) The Working Journalists (Fixation of rates of wages) Act, 1958
- (j) The Motor Transport Workers Act, 1961
- (k) The Sales Promotion Employees (Condition of Service) Act, 1976
- (l) The Beedi and Cigar Workers (Conditions of Employment) Act, 1966
- (m) The Cine-Workers and Cinema Theatre Workers Act, 1981.

The Code has fourteen chapters which are as under

Chapter 1 – Preliminary

Chapter 2 – Registration

Chapter 3 – Duties of Employer and Employees etc.

2) The Code on Social Security, 2020:

The Code on Social Security, 2020 was introduced in Lok Sabha on 19 September 2020 and was passed on 22 September 2020. The Bill was passed in Rajya Sabha on 23 September 2020. It received Presidential assent on 28 September 2020.

Aim:



It aims to extend social security to all employees and workers either in the organised or unorganised or any other sectors

Laws Replaced:

The Code on Social Security, 2020 replaces 9 existing laws:

- (a) The Employees' Provident Funds and Miscellaneous Provisions Act, 1952
- (b) Payment of Gratuity Act, 1972
- (c) Employees' Compensation Act, 1923
- (d) Maternity Benefit Act, 1961
- (e) Employees' State Insurance Act, 1948
- (f) Workers Cess Act, 1996
- (g) Cine Workers Welfare Fund Act, 1981
- (h) Building and Other Construction and Unorganised Workers' Social Security Act, 2008
- (i) Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959.

The Code has fourteen chapters which are as under

Chapter 1 - Preliminary

Chapter 2 – Social Security Organisations

Chapter 3 – Employees Provident Fund

3) The Industrial Relations Code, 2020:

The Industrial Relations Code, 2020 was introduced in Lok Sabha on 19 September 2020 and was passed on 22 September 2020. The Bill was passed in Rajya Sabha on 23 September 2020. It received Presidential assent on 28 September 2020.

Aim:

It aims to consolidate and amend the laws relating to Trade Unions, conditions of employment in industrial establishment or undertaking, investigation and settlement of industrial disputes.

Laws Replaced:

The Industrial Relations Code, 2020 replaced 3 existing laws:

- (a) The Trade Unions Act, 1926
- (b) The Industrial Employment (Standing Orders) Act, 1946



(c) The Industrial Disputes Act, 1947.

The Code has fourteen chapters which are as under

- Chapter 1 - Preliminary
- Chapter 2 – Bi- Partite Forums
- Chapter 3 – Trade Unions
- Chapter 4 – Standing Orders
- Chapter 5 – Notice of Change
- Chapter 6 – Voluntary Reference of Disputes to arbitration

The Code has fourteen chapters which are as under

- Chapter 1 - Preliminary
- Chapter 2 – Social Security Organisations
- Chapter 3 – Employees Provident Fund

4) The Code on Wages, 2019:

The Code on Wages, 2019 was introduced in Lok Sabha on 23 July 2019 and was passed on 30 July 2019. The Bill was passed in Rajya Sabha on 2 August 2019. It received Presidential assent on 8 August 2019.

Aim:

It aims to regulate wage and bonus payments in all employments (industry, business, trade and manufacture).

Laws Replaced:

The Code on Wages replaces 4 existing Laws:

- (a) Minimum Wages Act, 1948
- (b) Payment of Wages Act, 1936
- (c) Payment of Bonus Act, 1965
- (d) Equal Remuneration Act, 1976

The Code has nine chapters which are as under:

- Chapter 1 – Preliminary
- Chapter 2 – Minimum Wages
- Chapter 3 – Payment of Wages



- Chapter 4 – Payment of Bonus
- Chapter 5 – Advisory Board
- Chapter 6 – Payment of Dues, Claims & Audit
- Chapter 7 – Inspector-cum-Facilitator
- Chapter 8 – Offences and Penalties
- Chapter 9 – Miscellaneous

THE RIGHT TO INFORMATION (RTI) ACT, 2005

Introduction:

- Pursuant to the 77th report of the Parliamentary Standing committee headed by Sri Pranab Mukherjee, the Right to Information Act, 2005 (“the Act”) was enacted.
- The Act came into force on 12th October 2005.
- The preamble of the Act declares that the Act provides for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority.

Scheme Of The Act

The Act is divided into six chapters and two schedules.

Chapter I : Deals with preliminary aspects, definitions, scope and extent of the Act.

Chapter II : Deals with the right to information and obligations of public authorities.

Chapters III & IV: Deals with constitution of the Central Information Commission and the State Information Commission.

Chapter V : Deals with appeals and penalties.

Chapter VI : Deals with Miscellaneous aspects.

Right to Information:

- The Act defines “right to information” as the right to access information accessible under the Act which is held or under the control of a public authority [Sec. 2 (j)].



- Section 3 of the Act provides that subject to the provisions of the Act, all citizens shall have the right to information.
- The question that then arises is against whom is this right enforceable? The right to information conferred on citizens by the Act is enforceable against public authorities. “Public authority” is defined in Sec.2 (h) of the Act.
- Section“2 (h) “public authority” means any authority or body or institution of self Government established or constituted:
 - a) by or under the Constitution;
 - b) by any other law made by the Parliament;
 - c) by any other law made by the State legislature;
 - d) by notification issued or order made by the appropriate Government, and includes any
 - (i) body owned, controlled or substantially financed;
 - (ii) non-government organization substantially financed, directly or indirectly by funds provided by the appropriate Government.”

Right to Information:

- Since the provisions of the Act are applicable only to public authorities as defined in Sec. 2(h), the Act imposes certain obligations (Sec. 4) on public authorities cataloging, indexation and computerization of records within a reasonable time.
- Public authorities are mandated by the Act to periodically publish information regarding its organization, employees, rules, regulations, remuneration received by its employees, budgetary allocations, proposed expenditures etc.
- The Act provides for suo motu provision of information to the public through various media.

Public Information Officers (PIO):

- The Act provides for constitution of an executive wing to enforce the right to information conferred on citizens by the Act.
- Every public authority is required to appoint public information officers (“PIO”) for providing information to persons requesting information under the Act (Sec. 5).



- A PIO shall receive and dispose of applications seeking information in accordance with and within the time frame prescribed in Secs. 6 & 7 of the Act.

Exemption From Disclosure Of Information :

Sec. 8 of the Act sets out certain information that is exempt from disclosure.

When a request is made to a public authority seeking information that falls within any of the following categories.

- (a) Information that would affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation within foreign state or lead to incitement of an offence;
- (b) Information expressly forbidden by any court of law or disclosure of which may constitute contempt of court;
- (c) Information, the disclosure of which would cause breach of privilege of Parliament or state legislature;
- (d) Information including trade secrets or intellectual property, the disclosure of which would harm the competitive position of third parties;
- (e) Information available to a person in his fiduciary relationship;
- (f) Information received in confidence from a foreign Government;
- (g) Information that would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence to a law enforcement agency;
- (h) Information that would impede the process of investigation;

Exemption From Disclosure Of Information :

- (i) Information which relates to personal information the disclosure of which has no relationship to any activity or interest, or which would cause unwarranted invasion of privacy of the individual;
- (j) Where disclosure of information would involve an infringement of copyright subsisting in a person other than the State.

Central And State Information Commissions:



Constitution: The Act envisages the constitution of Central and State Information Commissions (Sec. 12 & Sec. 15).

- The Central Information Commission shall be headed by a Chief Information Commissioner assisted by such number of Central Information Commissioners, who shall be appointed by the President of India.
- Similarly, the State Information Commission shall be headed by a State Chief Information Commissioner assisted by such number of State Information Commissioners, who shall be appointed by the Governor

Appeals (Sec. 19):

A two-tier appeal mechanism is provided under the Act for persons who do not receive information from a PIO or who are aggrieved by a decision of the PIO.

First Appeal: A first appeal shall lie to an officer who is senior in rank to the PIO in the concerned public authority within 30 days.

Second Appeal: The second appeal shall lie to the Central or the State Information Commission, as the case may be. The second appeal shall lie within 90 days.

Penalties:

The Act empowers (Sec. 20) an Information Commission to impose a penalty of Rs.250/- per day (not exceeding Rs.25,000/-) in the following cases, till an application requesting information is received or till such information is accepted:

-
- Not accepting an application seeking information;
 - Delaying disclosure of information without reasonable cause;
 - Malafide denial of information;
 - Knowingly giving incomplete, incorrect or misleading information;
 - Destroying information that has been requested;
 - Obstructing furnishing of an information in any manner.
-

In addition to the imposition of penalty on errant PIOs, the Information Commission is also empowered to recommend disciplinary action against the erring PIO.

Questions:

1. What is a factory?
 2. Explain the provisions relating to 1. Health 2. Safety 3. welfare
 3. What are the provisions for employment of young person's?
 4. What are the provisions for employment of women?
 5. What is Minimum wages?
-



6. Explain the objectives of Minimum wages Act 1948?
 7. Explain the procedure for fixing and revising minimum wages?
 8. What is an Industrial dispute?
 9. Define the term 1. Lay-off 2. Retrenchment 3 Lock-out 4. Strike 5.Unfair labour practice.
 10. Explain the procedure for settlement of Industrial Dispute?
 11. Define Bonus.
 12. Explain the procedure for calculating the amount of bonus payable to employees.
 13. Explain the concept “seton” and “setoff”
 14. Explain the eligibility and disqualification for getting bonus?
 15. What is disbursement?
 16. What are the rules regarding workman compensation?
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UNIT –V

Consumer Protection Act, Competition Act 2002, Cyber Crimes, IT Act 2008 – Intellectual Property Rights: Types of Intellectual Property – Trademarks Act 1999 – The Copyright Act 1957 – International Copyright Order, 1999 – Design Act, 2000; UNICITRAL – United Nations Commission on International Trade Law.

CONSUMER PROTECTION ACT, 1986.

Introduction:

- The Consumer Protection Act, 1986 (COPRA) was an [Act](#) by the [Parliament of India](#) elected to protect the interests of consumers in [India](#).
- It was replaced by the [Consumer Protection Act, 2019](#).
- It was made for the establishment of consumer councils and other authorities for the settlement of consumer's grievances and matters connected with it.
- The act was passed in Assembly in October 1986 and came into force on December 24, 1986.

Consumer Protection Council:

- Consumer Protection Councils are established at the national, state and district level to increase consumer awareness.
- They guide consumers on how to file cases in the Consumer Disputes Redressal Commissions.

Who is a consumer ?

According to [Sec-2\(1\)\(d\)](#) of the Act, a consumer is a person who purchases any goods or services or hires or avails the services of some person for his own personal use and not for manufacturing or resale of that good.

Major Definitions:

Complaint:

According to [Sec-2\(1\)\(c\)](#) any allegation made by the consumer regarding any restrictive or unfair trade practice which the traders have adopted such as goods bought by a consumer are defective, services hired or availed by him suffer some deficiency, trader has charged an excessive price of the goods mentioned in the complaint, goods or services which are hazardous to the life and



property of the consumer has been offered for sale to the public by the trader or the service provider.

Consumer Dispute: According to [Sec-2\(1\)\(e\)](#) of the act it is a situation when a person denies the allegations filed against him in a complaint.

Person: According to [Sec-2\(1\)\(m\)](#) of the act the word person includes a registered or unregistered firm, a Hindu undivided family, co-operative society and any other association which is registered as a person under the Societies Registration Act of 1860.

Service: According to [Sec-2\(1\)\(o\)](#) service means any description or any facility which is provided to the potential users and is not rendered free of charge or under a contract of personal service.

The Rights of the Consumer

- **Right to Safety-** Before buying, a consumer can insist on the quality and guarantee of the goods. They should ideally purchase a certified product like ISI or AGMARK.
- **Right to Choose-** Consumer should have the right to choose from a variety of goods and in a competitive price.
- **Right to be informed-** The buyers should be informed with all the necessary details of the product, make her/him act wise, and change the buying decision.
- **Right to Consumer Education-** Consumer should be aware of his/her rights and avoid exploitation. Ignorance can cost them more.
- **Right to be heard-** This means the consumer will get due attention to express their grievances at a suitable forum.
- **Right to seek compensation-** The defines that the consumer has the right to seek redress against unfair and inhumane practices or exploitation of the consumer.

Duties of a consumer

Accordingly, there are various duties such as:-

- On purchasing of goods or hiring of any services, it is the duty of the consumer to pay for the same.
- While purchasing something it is his duty to check weights, balances, prices etc. and also to give a careful reading to the labels.



District Consumer Disputes Redressal Forum:

- Each and every district has a District Consumer Disputes Redressal Forum.
- According to Sec-11 of this act, this forum has the jurisdiction to entertain complaints and disputes only where the value of the goods or services and the value of the compensation claimed does not exceed Rs 1 Crore.
- The District Forum shall have the same powers as that of a civil court.
- The District forum shall consist of a President i.e. the head of the commission who is or has been or is qualified to be a district judge and two other members possessing a bachelors degree from a recognized university and one of them shall be a woman.
- The members of a commission shall be the persons of ability, integrity and standing and have adequate knowledge and experience regarding the field of a consumer.
- Each and every member of the district forum shall either hold the office for a term of 5 years or up to the age of 65 years, whichever is earlier.

State Consumer Disputes Redressal Commission:

Each and every State has a State Commission.

- According to Sec-17 of the act, the pecuniary jurisdiction of a State Commission for entertaining complaints or issues where the value of goods or services and the value of the compensation claimed exceeds Rs. 1 Crore but is less than Rs. 10 crore.
- The State Commission shall consist of a President and the other two members.
- The President shall be a person who is or has been qualified to be a Judge of High Court and the other two members shall be possessing a bachelors degree from a recognized university. Out of two members, one shall be a woman.
- The members of a commission shall be the persons of ability, integrity and standing and have adequate knowledge and experience regarding the field of a consumer.
- Each and every member of the district forum shall either hold the office for a term of 5 years or up to the age of 67 years, whichever is earlier

National Consumer Disputes Redressal Commission:

- The National Commission was instituted in 1988.
- It is headed by a sitting or retired Judge of the Supreme Court of India.



- According to Sec-21 of the act, the pecuniary jurisdiction of a National Commission for entertaining complaints or issues where the value of goods or services and the value of the compensation claimed is more than Rs. 10 crore.
- In addition to the President of the commission, it shall consist of 4 other members, out of which at least one shall be a woman.
- All of these members shall fulfil the following conditions to be able to qualify as a member in the National Commission:
 1. Their age should not be less than 35 years of age.
 2. They shall be possessing a bachelors degree from a recognized university.
 3. They shall be a person of ability, integrity and standing and have adequate knowledge and experience regarding the field of a consumer.
- Every member of the commission shall hold office for a term of 5 years or up to the age of 70 years whichever is earlier.

How to file a Complaint?

- The very first step before filing a complaint the aggrieved party should do is to send a notice to the service provider from whom the goods were purchased or the service was availed informing him about the defects in the goods or the deficiency in the service or unfair practice.
- This notice is sent to the trader or the aggrieved party in order to see if that company or trader is willing to give the compensation or offer any other remedy.
- If in case the trader or service provider is not willing to provide with any remedy, the aggrieved party shall go ahead with filing a formal complaint.
- The next step is to file a formal complaint under the Consumer Protection Act of 1986.
- Here the aggrieved party does not need to hire a lawyer in order to file a complaint.
- He can file the complaint on his own. **The aggrieved party just need to write down the following contents on a plain paper:**
 - Name, description and the address of the complainant and of the opposite party or parties
 - Facts relating to the complaint and time and venue where it arose



- All the possible documents in support of the allegations contained in the complaint
 - The relief or the remedy claimed by the complainant
 - The complaint should consist of signatures of the complainant or his authorized agent
- The next step after the drafting of the complaint is to choose the appropriate authority under whom the complaint is to be filed.
 - The complainant shall choose the authority according to pecuniary jurisdiction of his complaint i.e. the total value of the goods or services and the compensation claimed by him.
 - It is to be noted here that the complainant can also file an online complaint on www.consumerhelpline.gov.in
 - Furthermore, the complainant needs to pay the prescribed court fees according to the pecuniary value of his case.
 - The Forum under which the complaint has been filed by the aggrieved party is under a mandate to provide the resolution to the parties within a period of 30 days.
 - If it fails to adhere with the same the party can move to the next commission.

COMPETITION ACT, 2002:

Introduction:

- The Competition Act, 2002 is a law that governs commercial competition in India.
- It replaced the erstwhile Monopolies and Restrictive Trade Practices Act, 1969.
- The Competition Act aims to prevent activities that have an adverse effect on competition in India.

History of the Competition Act, 2002:

- The Monopolies Inquiry Commission was established in April 1964 under Justice KC Das Gupta, a [Supreme Court](#) judge.



- The objective of the commissions was to inquire about the effect and extent of monopolistic and restrictive trade practices in important sectors of the Indian economy.
- The Monopolies and Restrictive Practices Act of 1969 was enacted to limit the concentration of wealth in a few hands and limit monopolistic practices, but it was too archaic in its definitions of what is a ‘monopolistic practice’.
- Thus, it was decided that a new law governing competition in India was required.

Keeping the above purpose in mind the Competition Act was introduced in [Lok Sabha](#) on 6 August 2001

Definitions under the Competition Act:

The following are the definitions cited under the Competition Act

- 1. Acquisition:** Acquisition is defined as the direct or indirect agreement to acquire shares, voting rights or control of assets over any enterprise.
- 2. Cartel:** A cartel is defined as an association of producers, sellers who limit control distribution, sale or promotions on goods through an arrangement previously made.
- 3. Position:** A dominant position means a position of power held by an enterprise in the related market. It enables the enterprise to function freely and influence the market to its directions.
- 4. Predatory pricing:** Predatory pricing is where the price of goods and services is reduced to well below the cost of production in order to eliminate competition.
- 5. Rule of reason:** The interpretation of activity on the basis of business justification, market impact on competition and on the consumer.

Salient Features:

The following are the features of the Competition Act:

- 1. Anti Agreements:** Any individual or enterprises shall not deal in production supply or distribution that may cause a negative impact regarding competition in India. Any existence of such agreements is considered illegal.
- 2. Abuse of dominant position:** In the event, an enterprise or an associated individual, it is found to indulge in practices that are unfair or discriminatory in nature shall be considered an

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abuse of dominant position. If a party is found to be in abuse of its position, then they will be subjected to an investigation from the concerned authorities.

3. Combinations: As per the act a combination is defined as terms which lead to acquisitions or mergers. But should such combinations cross the limits as put forth by the Act, then the parties involved would be under the scrutiny of the Competition Commission of India.

4. Competition Commission of India: The [Competition Commission of India](#) is an independent body with the powers to enter into contracts and should the contracts be broken they can sue the parties involved. The Commission consists of a maximum of six members who are tasked with sustaining and promoting the interests of consumers in order to foster an ideal environment for economic competition.

The other function of the Commission is to advise the Government of India regarding competition in the economy and create public awareness on the same issue.

CYBER CRIME - INFORMATION TECHNOLOGY ACT, 2000.

Cyber Crimes:

- In order to define Cyber Crime, we can say, it is a crime associated with or committed with the help of computers.
- To put it in simple words ‘an offence or a crime in which a computer is used can be said to be a cyber crime’.

Classifications of Cyber Crimes:

- The number of Cyber Crimes committed is increasing with each passing day, and it is very difficult to find out as to what is actually a cyber crime and what is the conventional crime.
- However, to deal with this challenge, the most common cyber crimes can be categorized and discussed under the following heads:
 - i. Cyber Crime Against Person;
 - ii. Cyber Crime Against Property;
 - iii. Cyber Crime Against Government;



- iv. Cyber Crime Against Society

i. Cyber Crime Against Person;

- (i) Harassment via E-Mails
- (ii) Cyber-Stalking
- (iii) Dissemination of Obscene Material
- (iv) Malware
- (v) Defamation
- (vi) Hacking
- (vii) Cracking
- (viii) E-Mail Spoofing
- (ix) SMS Spoofing
- (x) Carding
- (xi) Cheating & Fraud
- (xii) Child Pornography
- (xiii) Phishing
- (xiv) Vishing
- (xv) Bot networks
- (xvi) Assault by Threat
- (xvii) Buffer overflow

ii. Cyber Crime Against Property;

- (i) Intellectual Property Crimes
- (ii) Software piracy
- (iii) Cyber Squatting
- (iv) Cyber Vandalism
- (v) Hacking Computer System
- (vi) Transmitting Virus
- (vii) Packet Sniffing
- (viii) Cyber Trespass
- (ix) Salami Attack
- (x) Internet Time Thefts
- (xi) Trojan and Rats
- (xii) Data Diddling
- (xiii) Email account hacking



iii. Cyber Crime Against Government;

- (i) Cyber Terrorism
- (ii) Web defacement
- (iii) Cyber Warfare
- (iv) Use of Internet and Computers by terrorists
- (v) Distribution of pirated software
- (vi) Possession of Unauthorized Information

iv. Cyber Crime Against Society

- (i) Child Pornography
- (ii) Cyber Trafficking
- (iii) Online Gambling
- (iv) Financial Crimes
- (v) Forgery

Information Technology Act , 2000:

- To promote electronic transactions and to give favourable consideration to the Model Law on e-commerce, the Government of India has led to the enactment of Information Technology Act, 2000.
- The Information Technology Act, 2000, got Presidential Assent on 9 June and was made effective from 17 October, 2000.

Objectives of Information Technology Act, 2000:

The Information Technology Act 2000 has been enacted with the following objectives:

1. To give legal recognition to any transaction this is done by electronic way or use of internet
2. To give legal recognition to digital signature for accepting any agreement via computer.
3. To provide facility of filling document online relating to school admission or registration in employment exchange.
4. To facilitate that any company can store their data in electronic storage.
5. To stop computer crime and protect privacy of internet users.
6. To give legal recognition for keeping books of accounts by bankers and other companies in electronic form.
7. To make more power to IPO, RBI and Indian Evidence act for restricting electronic crime.

Chapters And Provisions:

There are 13 chapters in law and all provision is included in this chapters.



Chapter I: Preliminary

This chapter deals with the introduction applicability and scope of the Act.

Chapter II: Digital Signature and Electronic Signature

This chapter states that any contract which is done by subscriber can be executed through online medium too; if he signs the electronic agreement by digital signature. Then it will be valid and will be called e-contract. In this case the verification of digital signature can be on the basis of key pair

Chapter III: Electronic Governance

This chapter explains the detail that all electronic records of government are acceptable unless any other law has any rules regarding written or printed record.

Chapter IV: Attribution, Acknowledgement and Dispatch of Electronic Records

This chapter deals with receipts or acknowledgement of any electronic record. Every electronic record has any proof that is called receipt and it should be in the hand who records electronic way.

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Chapter V: Secure Electronic Records and Secure Electronic Signatures

This chapter discusses the powers to organization for securing the electronic records and secure digital signature. They can secure by applying any new verification system.

Chapter VI: Regulation of Certifying Authorities

This chapter states that government of India will appoint controller of certifying authorities and he will control all activities of certifying authorities. “Certifying authority is that authority who issues digital signature certificate.”

Chapter VII: Electronic Signature Certificates



In this chapter powers and duties of certifying authority is given. Certifying Authority (C.A.) will issue digital signature certification after getting Rs. 25000. If it is against public interest, then C.A. can suspend the digital signature certificate.

Chapter VIII: Duties of Subscribers

This chapter tells about the duties of subscribers regarding digital signature certificate. It is the duty of subscriber to accept that all information in digital signature certificate that is within his knowledge is true

INTELLECTUAL PROPERTY RIGHTS:

Introduction:

- Intellectual property (IP) rights are the rights awarded by the society to individuals or organizations principally over creative works: Inventions, literary and artistic works, and symbols, names, images, and designs used in commerce.
- They give the creator the right to prevent others from making unauthorized use of their property for a limited period.
- IPR is a general term covering patents, copyright, trademark, industrial designs, geographical indications, protection of layout design of integrated circuits and protection of undisclosed information (trade secrets).
- IPRs refer to the legal ownership by a person or business of an invention/discovery attached to particular product or processes which protects the owner against unauthorized copying or imitation. (Source: Business Guide to Uruguay Round, WTO, 1995)

IPR Developments In India:

1947: Patents & Designs Act, 1911

1995: India joins WTO

1998: India joins Paris Convention/PCT

1999: Patent amendment provided EMR retrospectively from 1/1/95

2003: 2nd amendment in Patents Act

Term of Patent – 20 years after 18 months publication

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Patent Tribunal Set up at Chennai

2005: Patents (Amendment) Act 2005

1999 – 2005: Plant Varieties and Farmers' Rights Act & Biodiversity Act. Designs, TM/Copyright Acts updated GI Registry set up at Chennai. IP Acts TRIPS Compliant

Types of IPRs:

The intellectual property are classified into different types

1. Patents
2. Trademarks
3. Copyright
4. Designs
5. Trade Secrets
6. Geographical Indications
7. Integrated Layout circuit Designs
8. Plant varieties and farmers rights
9. Biological Diversity and Traditional knowledge.

Patents:

In India the law relating to patents – Patents Act, 1970 was enforced on April 20, 1972. A patent is an exclusive right granted for an invention, which is a product or a process that provides a new way of doing something, or offers a new technical solution to a problem. It provides protection for the invention to the owner of the patent. The protection is granted for a limited period, i.e. 20 years.

Trademarks:

A trademark is a distinctive sign, which identifies certain goods or services as those produced or provided by a specific person or enterprise. Trademarks may be one or combination of words, letters, and numerals. They may also consist of drawings, symbols, three dimensional signs such as shape and packaging of goods, or colours used as distinguishing feature.

A trademark provides to the owner of the mark the exclusive right to use it to identify goods or services, or to authorize others to use it in return for some consideration (payment).

Enactment of the Indian Trademarks Act 1999 is a big step forward from the Trade and Merchandise Marks Act 1958.

Copyrights:

India has one of the most modern copyright protection laws in the world. Major development in the area of copyright during 1999 was the amendment to the copyright Act of 1957 to make it fully compatible with the provisions of the TRIPS Agreement. Called the copyright (Amendment) Act, 1999,



this amendment was signed by the president of India on December 30, 1999 and came into force on January 15, 2000.

Copyright Act of 1957 provides protection to all original literary, dramatic, musical and artistic works, cinematography, films and sound recordings. It has also included sectors such as satellite broadcasting, computer software and digital technology under Indian copyright protection in the new Act.

The other important development during 1999 was the issuance of the International copyright order, 1999 extending the provisions of the copyright act to nationals of all world trade organization (WTO) member countries.

Designs:

On May 25, 2000, the new Design Act was publicly notified. The international classification will now come into effect and priority may now be claimed from applications filed in the world trade organization and the Paris convention countries. The design registration in India is intended to protect designs, which have an industrial or commercial use, and protects only for the appearance of the article and not how it works.

Trade Secrets:

Trade secrets are confidential business information that give a company a competitive edge. Unlike other forms of intellectual property (IP), India does not have a specific, codified law for trade secrets. Instead, they are protected through contractual agreements and common law principles.

Geographical Indications:

A Geographical Indication (GI) is a sign used on products that have a specific geographical origin and possess a quality or reputation due to that origin. GIs are governed by the Geographical Indications of Goods (Registration and Protection) Act, 1999.

Integrated Circuit Layout Designs:

This type of IP protects the physical, three-dimensional layout of an integrated circuit. In India, it is protected under the Semiconductor Integrated Circuits Layout-Design (SICLD) Act, 2000.



Plant Varieties and Farmers' Rights:

This unique Indian law balances the rights of plant breeders with those of farmers and researchers. The Protection of Plant Varieties and Farmers' Rights (PPV&FR) Act, 2001, is a *sui generis* (of its own kind) system of protection

Biological Diversity and Traditional Knowledge :

This area of IP is concerned with the conservation of biological resources, their sustainable use, and the fair and equitable sharing of benefits arising from their commercial utilization. It is primarily governed by the Biological Diversity Act, 2002

UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW

What Is the United Nations Commission on International Trade Law (UNCITRAL)?

- The term United Nations Commission on International Trade Law (UNCITRAL) refers to a [subsidiary](#) body of the [United Nations](#) General Assembly.
- Established in 1966, UNCITRAL is the core legal body of the U.N.'s system in the field of international trade law.
- The official function of UNCITRAL is to modernize and harmonize the rules of international business.
- The organization is responsible for helping to facilitate international trade and investment.
- It is headquartered in New York with annual sessions held alternatively in Vienna.

Key Takeaways:

- The United Nations Commission on International Trade Law is a subsidiary body of the United Nations General Assembly.
- UNCITRAL was established in 1966 and is headquartered in New York.



- The organization is responsible for helping to facilitate international trade and investment.
- The organization operates on the premise that international trade benefits all global participants.
- UNCITRAL's mandate includes dispute resolution, electronic commerce, and the sale of goods.

Questions:

1. Who is an insurable workman?
 2. Explain the types of benefits to the insured person as per ESI Act 1948?
 3. What is gratuity?
 4. Explain the provisions for determination and recovery of gratuity?
 5. What is IPR?
 6. What is Trade Mark?
 7. What is copyright?
 8. What is patents?
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