CORPORATE LEGAL FRAME WORK

MBA 3RD SEMESTER STUDY MATERIAL

SANJEEV INSTITUTE OF PLANNING AND MANAGEMENT, KAKINADA

UNIT-- I: Significance of Business Laws—Indian Contract Act, 1872: Meaning and classification of contracts—Essential of a valid contract—Performance of acontract-- Discharge of contract—Remidies for breach of contract.

UNIT-II: The Sale of Goods Act, 1930: Meaning and Essentials of contract of sale—Sale and Agreement to sell—Conditions and Warranties—Transfer ofproperty-- Performance of a contract of sale—Unpaid seller.

UNIT-III: The Indian Partnership Act, 1932: Meaning and Essentials of partnership-- Registration of partnership—Kinds of partners—Rights and Liabilities of Partners—Relations partners to third parties—Dissolution.

UNIT-IV: The Consumer Protection Act, 1986: Meaning of Consumer, Service,

Goods, Deficiency, Defect, Unfair Trade Practices—Rights of Consumers—Machinery for redressal of Grievances—Remedies available to injured consumers

UNIT-V: The Companies Act, 2013: Nature and Registration—Kinds of Companies—Memorandum of Association—Article of Association—Kinds of Shares—Powers and duties of Directors—winding up.

…
…
…
…

SUGGESTED BOOKS:

** N.D.Kapoor—Commercial Law—Sultan chand publishers, New Delhi.

** S N Maheswaru & Suneed Maheswari—Commercial Laws—Mayoor Paper Backs—NOIDA

** Tulisian P.C.—Business Laws—Tata Mc Graswhill Publishing house—New Delhi

** Kucchal—Business Law—Vikas Publishing House, New Delhi.

** Avatar Singh—Mercantile Law--EBC—New Delhi.

UNIT-- I: Significance of Business Laws—Indian Contract Act, 1872: Meaning and classification of contracts—Essential of a valid contract—Performance of a contract Discharge of contract—Remidies for breach of contract.

Introduction :

Commercial law or business law is the body of law which governs business and commerce and is often considered to be a branch of civil law and deals both with issues of private law and public law. Commercial law regulates corporate contracts, hiring practices, and the manufacture and sales of consumer goods. Many countries have adopted civil codes which contain comprehensive statements of their commercial law. In the United States, commercial law is the province of both the Congress under its power to regulate interstate commerce, and the states under their police power. Efforts have been made to create a unified body of commercial law in the US: the most successful of these attempts has resulted in the general adoption of the Uniform Commercial Code.

Indian Contract Act 1872

Introduction

The Indian Contract Act brings within its ambit the contractual rights that have been granted to the citizens of India. It endows rights, duties and obligations on the contracting parties to help them to successfully conclude business- from everyday life transactions to evidencing the businesses of multi-national companies. The Indian Contract Act, 1872 was enacted on 25th April, 1872 [Act 9 of 1872] and subsequently came into force on the first day of September 1872. The essence of the India Contract Act has been modelled on that of the English Common Law.

The extent of modifications made in the Act as per the Indian conditions and its adaptability to the Indian economy is an important area of research. In this regard it is pertinent to note that since the enactment of the Act there have been no amendments and thus the Law that was made in 1872 still stands good. However, these are questions of interpretation that not only depend on the text of the Act, but also on the English authorities that framed the law and before it, the subsequent development of law.

The history of the Act brings to light the very origin of the economic processes and in this regard, the importance of contracting in order to conduct one's business in everyday life. The prevalent system in the ancient times was barter and it was based on the mutual principle of give and take. This was confined to commodities as there was no medium of exchange as is seen in the form of money today and this system can be traced back in time to the Indus Valley Civilization (the earliest human civilization). The system still finds relevance in the contemporary world, where it can be found in commercially and economically underdeveloped areas.

However, the relevancy of such a system in modern times is questioned as the complexity in the nature of the economic systems as well as the increasing demand and supply systems due to the change in the wants and needs of the human beings came to the fore. Also, money had evolved as the medium of exchange such that the value of every commodity could now be

quantified. Thus, in such an era of greater economic transaction one finds the existence of Contract Laws and with it, their relevance.

The Indian Contract Act codifies the way we enter into a contract, execute a contract and implement provisions of a contract and effects of breach of a contract.

Contract :

A **contract** is a voluntary arrangement between two or more parties that is enforceable by law as a binding legal agreement. Contract is a branch of the law of obligations in jurisdictions of the civil law tradition. Contract law concerns the rights and duties that arise from agreements.

Contracts on the basis of creation:

a) **Express contract:** Express contract is one which is made by words spoken or written. **Example No. 1**: X says to Y, will you buy a car for Rs. 100000? Y says to X, I am ready to buy you car for Rs. 100000. It is an express contract made rally. **Example No. 2:**X writes a letter to Y, I offer to sell my car for Rs. 100000 to you. Y send a letter to Y, I am ready to buy you car for Rs. 100000. It is an express contract made in writing.

b) **Implied contract:** An implied contract is one which is made otherwise than by works spoken or written. It is inferred from the conduct of a person or the circumstance of the particular case. **Example**: X, a coolie in uniform picks up the bag of Y to carry it from railway platform to the without being used by Y to do so and Y allow it. In this case there is an implied offer by the coolie and an implied acceptance by the passenger. Now, there is an implied contract between the coolie and the passenger is bound to pay for the services of the coolie.

c) **Quasi or constructive contract**: It is a contract in which there is no intention either side to make a contract, but the law imposes contract. In such a contract eights and obligations arise not by any agreement between the practice but by operation of law. e.g where certain books are delivered to a wrong address the addresses is under an obligation to either pay for them or return them.

Contracts on the basis of execution:

a) **Executed contract:** It is a contract where both the parties to the contract have fulfilled their respective obligations under the contract. Example: X offer to sell his car to Y for Rs. 1 lakh, Y accepts X offer. X delivers the car to y and Y pays Rs. 1 lakh to X. it is an executed contract.

b) **Executory contract:** It is a contract where both the parties to the contract have still to perform their respective obligations. Example: X offers to sell his car to y for Rs. 1 lakh. Y accepts X offer. It the car has not yet been delivered by X and the price has not yet been paid by Y, it is an Executory contract.

c) **Partly executed and partly executory contract:** It is a contract where one of the parties to the contract has fulfilled his obligation and the other party has still to perform his obligation. E.g X offers to sell his car to y for Rs. 1 lakh on a credit of 1 month. Y accepts X offer. X sells the car to Y. here the contract is executed as to X and Executory as to Y.

Contracts on the basis of enforceability:

a) **Valid contract:** A contract which satisfies all the conditions prescribed by law is a valid contract. E.g. X offers to marry y. y accepts X offer. This is a valid contract.

b) **Void Contract:** the term void contract is described as under section 2(j) of I.CA, 1872, A contract which cases to be enforceable by law becomes void when it ceases to be enforceable. In other words, a void contract is a contract which is valid when entered into but which subsequently became void due to impossibility of performance, change of law or some other reason. E.g. X offers to marry Y, Y accepts X offer. Later on Y dies this contract was valid at the time of its formation but became void at the death of Y.

c) **Void Agreement:** According to Section 2(g), an agreement not enforceable by law is said to be void. Such agreements are void- ab- initio which means that they are unenforceable right from the time they are made. E.g. in agreement with a minor or a person of unsound mind is void ab-initio because a mino or a person of unsound mind is incompetent to contract.

d) **Voidable contract:** According to section 2(i) of the Indian contract act, 1872, arrangement which is enforceable by law at the option of one or more of the parties thereon but not at the option of the other or other, is a voidable contract. In other words, A voidable contract is one which can be set aside or avoided at the option of the aggrieved party. Until the contract is set aside by the aggrieved party, it remains a valid contract. For e.g. a contract is treated as voidable at the option of the party whose consent has been obtained under influence or fraud or misinterpretation. E.g. X threatens to kill Y, if the does not sell his house for Rs. 1 lakh to X. Y sells his house to X and receives payment. Here, Y consent has been obtained by coercion and hence this contract is void able at the option of Y the aggrieved party. If Y decides to avoid the contract he will have to return Rs. 1 lakh which he had received from X. If Y does not exercise his option to repudiate the contract within a reasonable time and in the meantime Z purchases that house from X for 1 lakh in good faith. Y can not repudiate the contract.

e) **Illegal Agreement:** An illegal agreement is one the object of which is unlawful. Such an agreement cannot be enforced bylaw. Thus, illegal agreements are always void – ab- initio (i.e. void from the very beginning) e.g. X agrees to y Rs. 1 lakh Y kills Z. Y kill and claims Rs. 1 lakh. Y cannot recover from X because the agreement between X and Y is illegal and also its object is unlawful.

f) **Unenforceable contract:** It is contract which is actually valid but cannot be enforced because of some technical defect (such as not in writing, under stamped). Such contracts can be enforced if the technical defect involved is removed.

- **ESSENTIALS OF A VALID CONTRACT**

According to Section 10, "All agreements are contracts if they are made by the free consent of the parties competent to contract, for a lawful consideration and with a lawful object and are not hereby expressly declared to be void."

The analysis of the provisions of Section 10 shows that a valid contract must have the following essential elements:

1. Proper Offer and Acceptance There must be at least two parties- one making the offer and the other accepting it. Such offer a4ny acceptance must be valid. An offer to be valid must fulfil certain conditions, such as it must intend to create legal relations, its term, must be certain and unambiguous, it must be communicated to the person to whom it is made, etc. An acceptance to be valid must folds certain conditions, such as it must be absolute and unqualified, it must be made in the prescribed manner, it must be communicated by an authorised person before the offer lapses.

2. Intention to Create Legal Relationship There must be an intention among the parties to create a legal relationship. In case of social or domestic agreements, the usual presumption is that the parties do not intend to create legal relationship but in commercial or business agreements, the usual presumption is that the parties intend to create legal relationship unless otherwise agreed upon.

Example: X invited Y to a dinner Y accepted the invitation. It is a social agreement. If X fails to serve dinner to Y, Y cannot go to the courts of law for enforcing the agreement. Similarly, if Y fails to attend the dinner, X cannot go to the courts of law for enforcing the agreement.

But even a business agreement may not be enforceable by law where the agreement so provides e.g. in Rose & Frank Co. v. Crompton Bros. (1925) A.C. 445, the agreement entered into stated that it will not be subject to legal jurisdiction in the law courts, the agreement was not enforceable by law as the parties never agreed to create legal obligations despite being a business agreement.

3. Capacity of Parties The parties to an agreement must be competent to contract. In other words, they must be capable of entering into a contract. According to Section 11 of Indian Contract Act, 1872. "every person is competent to contract who is of the age of majority according to the law to which he is subject and who is of sound mind and is not disqualified from contracting by any law to which he is subject."

In other words. the person must be major, must be of sound mind and must not be declared disqualified from contracting by any law to which he is subject. If the parties to agreement are not competent to contract, then no valid contract comes into existence.

Example: X a minor borrowed Rs 8,000 from Y and executed mortgage of his property in favour of the lender. This was not a valid contract because X is not competent to contract. Therefore, the mortgage was not valid and the money advanced to minor could not be recovered.

4. Lawful Consideration An agreement must be supported by lawful consideration. Consideration means something in return. According to Section 23 of the Indian Contract Act, 1872, **"the consideration is considered lawful unless it is forbidden by law or is fraudulent or involves or implies injury to the person or property of another or is immoral or is opposed to public policy."**

Example : X agrees to sell his car to Y for Rs. 1,00,000. Here Y's promise to pay Rs. 1,00,000 is the consideration for X's promise to sell the car and X's promise to sell the car is the consideration for Y's promise to pay 1,00,000.

5. Free Consent There must be free consent of the parties to the contact. According to Section 14, "Consent is said to be free when it is not caused by (i) coercion, (ii) undue influence, (iii) fraud, (iv) misrepresentation, or (v) mistake". If the consent of the parties is not free, then no valid contract comes into existence.

Example: X threatens to kill Y if he does not sell his house to X. Y agrees to sell his house to X. In this case, Y's consent has been obtained by coercion and therefore, it cannot be regarded as free.

6. Lawful Object The object of an agreement must be lawful. According to Section 23 of the Indian Contract Act, 1872, "the object is considered lawful unless it is forbidden by law or is fraudulen1t or involves or implies injury to the person or property of another or is immoral or is opposed to public policy."

Example : X, Y and Z enter into an agreement for the division among them of gains acquired or to be acquired by them by fraud. The agreement is void because its object is unlawful.1

Example II: X lets a flat on hire to Y a prostitute, knowing that it would be used for immoral purposes. The agreement is void because its object is for immoral purposes.1

7. Agreement not Expressly Declared Void The agreement must not have been expressly declared void under the provisions of Sections 24 to 30 of the Indian Contract Act, 1872. Under these provisions, agreement in restraint of marriage, agreement in restraint of legal proceedings, agreement in restraint of trade and agreement by way of wager have been expressly declared void.

Example : X promised to marry none else except Y and in default pay her Rs 1,00,000. X married to Z and Y sued X for the recovery of Rs 1,00,000. It was held that Y was not entitled to recover anything because this agreement was in restraint of marriage and as such void.

8.Certainty of Meaning The terms of the agreement must be certain and unambiguous. According to Section 29 of the Indian Contract Act, 1872, "agreements the meaning of which is not certain or capable of being made certain are void." Example: X a dealer in different types of oils agreed to sell 100 tonnes of oil to Y. This agreement is void on the ground of uncertainty because it is not clear what kind of oil is intended to be sold. If, however, the meaning of the agreement could be made certain from the circumstances of the case, it will be treated as a valid contract. Example: X who is a dealer in mustard oil, agreed to sell 100 tonnes of oil to Y. This agreement is valid because the meaning of the agreement could be easily ascertained from the circumstances of the case.

9. Possibility of Performance The terms of the agreement must be such as are capable of performance. According to Section 56, "an agreement to do an impossible act is void."

Example : X agrees with Y to discover treasure by magic and Y agrees to pay Rs 1,000 to X. This agreement is void because it is an agreement to do an impossible act. Example II: X agrees with Y to enclose some area between two parallel lines and Y agrees to pay Rs 1,000 to X. This agreement is void because it is an agreement to do an impossible act.

10. Legal Formalities The agreement must comply with the necessary formalities as to writing, registration, stamping etc. if any required in order to make it enforceable by law.

Example : An oral agreement for arbitration is unenforceable because the law requires that arbitration agreement must e in writing.

The term '**Performance of contract**' means that both, the promisor, and the promisee have fulfilled their respective obligations, which the contract placed upon them. For instance, **A** visits a stationery shop to buy a calculator. The shopkeeper delivers the calculator and **A** pays the price. The contract is said to have been discharged by mutual performance.

Types of Performance

Performrance, as an action of the performing may be actual or attempted.

Actual Performance:

When a promisor to a contract has fulfilled his obligation in accordance with the terms of the contract, the promise is said to have been actually performed. Actual performance gives a discharge to the contract and the liability of the promisor ceases to exist. For example, A agrees to deliver10 bags of cement at B's factory and B promises to pay the price on delivery. A delivers the cement on the due date and B makes the payment. This is actual performance.

Actual performance can further be subdivided into substantial performance, and partial Performance

Substantial Performance:

This is where the work agreed upon is almost finished. The court then orders that the money must be paid, but deducts the amount needed to correct minor existing defect. Substantial performance is applicable only if the contract is not an entire contract and is severable. The rationale behind creating the doctrine of substantial performance is to avoid the possibility of one party evading his liabilities by claiming that the contract has not been completely performed. However, what is deemed to be substantial performance is a question of fact to be decided in both the case. It will largely depend on what remains undone and its value in comparison to the contract as a whole.

Partial Performance

This is where one of the parties has performed the contract, but not completely, and the other side has shown willingness to accept the part performed. Partial performance may occur where there is shortfall on delivery of goods or where a service is not fully carried out.

There is a thin line of difference between substantial and partial performance. The two following points would help in distinguishing the two types of performance.

Partial performance must be accepted by the other party. In other words, the party who is at the receiving end of the partial performance has a genuine choice whether to accept or reject. Substantial performance, on the other hand, is legally enforceable against the other party.

Payment is made on a different basis from that for substantial performance. It is made on quantum meruit, which literally means as much as is deserved. So, for example, if half of the work has been completed, half of the negotiated money would be payable. In case of substantial performance, the party that has performed can recover the amount appropriate to what has been done under the contract, provided that the contract is not an entire contract. The price is thus, often payable in such circumstances, and the sum deducted represents the cost of repairing defective workmanship.

Attempted Performance

When the performance has become due, it is sometimes sufficient if the promisor offers to perform his obligation under the contract. This offer is known as attempted performance or more commonly as tender. Thus, tender is an offer of performance, which of course, complies with the terms of the contract. If goods are tendered by the seller but refused by the buyer, the seller is discharged from further liability, given that the goods are in accordance with the contract as to quantity and quality, and he may sue the buyer for.breach of contract if he so desires. The rationale being that when a person offers to perform, he is ready, willing and capable to perform. Accordingly, a tender of performance may operate as a substitute for actual performance, and can effect a complete discharge.

In this regard, **Section 38 of Indian Contract Act** says:

'Where a promisor has made an offer of performance to the promisee, and the offer has not been accepted, the promisor is not responsible for non-performance, nor does he thereby lose his rights under the contract. For example, **A** contracts to deliver to **B**, 100 tons of basmati rice at his warehouse, on 6 December 2015. **A** takes the goods to **B**'s place on the due date during business hours, but **B**, without assigning any good reason, refuses to take the delivery. Here, **A** has performed what he was required to perform under the contract. It is a case of attempted performance and **A** is not responsible for non-performance of **B**, nor does he thereby lose his rights under the contract.'

Discharge of a contract implies termination of contractual obligations. This is because when the parties originally entered into the contract, the rights and duties in terms of **contractual obligations** were set up. Consequently when those rights and duties are put out then the contract is said to have been discharged. Once a contract stands discharged, parties to it are no more liable even though the obligations under the contract remain incomplete.

A Contract is deemed to be discharged, that is, concluded and no longer binding, in the following circumstances:

- Discharge by performance.
- Discharge of Contract by Substituted Agreement.
- Discharge by lapse of time.
- Discharge by operation of law.
- Discharge by Impossibility of Performance.
- Discharge by Accord and Satisfaction.
- Discharge by breach.

We shall examine each of them as follows.

Discharge by performance

Where both the parties have either carried out or tendered (attempted) to carry out their obligations under the contract, is referred to as discharge of the contract by performance. Because performance by one party constitutes the occurrence of a constructive condition, the other party's duty to perform is also triggered, and the person who has performed has the right to receive the other party' s performance. The overwhelming majority of **contracts** are discharged in this way.

Discharge of Contract by Substituted Agreement

A contract emanates from an agreement between the parties. It thus follows that, the contract must also be discharged by agreement. Therefore, what is required, inevitably, is mutuality. **Discharge by substituted agreement**arises when a contract is abandoned, or the terms within it are altered, and both the parties are in conformity over it.

For example, A and B enter into some agreement, and A wants to change his mind and not to carry out his terms of the contract. If he does this unilaterally then he will be in breach of contract to B. However, if he approaches B and states that he would like to be released from his liabilities under the contract then the latter might agree. In that case the contract is said to be discharged by (bilateral) agreement. In effect B has promised not to sue A if he does not perform his part of the contract and the consideration for his promise is A 's promise not to sue B. Discharge by agreement may arise in the following ways.

Novation

The term novation implies the substitution of a new contract for the original one. This arrangement may be either with the same parties or with different parties. For a novation to be valid and effective, the consent of all the parties, including the new one(s), if any, is essential. Moreover, the subsequent or second agreement must be one capable of enforcement in law, the consideration for which is the exchange of promises not to enforce the original contract.

Rescission

This refers to cancellation of all or some of the material terms of the contract. If the contracting parties mutually decide to do so, the respective contractual obligations of the parties stand terminated.

Alteration

This refers to a change in one or more of the terms of a contract with the consent of all the contracting parties. Alteration results in a new contract but parties to it remain the same. Here the assumption is that both the parties are to gain a fresh but different benefit from the new agreement. Remission This means the acceptance (by the promisee) of a lesser sum than what was contracted for, or a lesser fulfillment of the promise made. As per Section 63, 'every promisee may (a) remit or dispense with it, wholly or in part, or (b) extend the time of performance, or (c) accept any other satisfaction instead of performance'.

Waiver

The term waiver implies abandonment or relinquishment of a right. Where a party deliberately abandons its rights under the contract, the other party is released of its obligations, otherwise binding upon it.

Discharge by lapse of time

A contract stands discharged if not enforced within a specified period called the 'period of limitation'. The Limitation Act, 1963 prescribes the period of limitation for various contracts. For instance, period of limitation for exercising right to recover an immovable property is

twelve years, and right to recover a debt is three years. Contractual rights become time barred after the expiry of this limitation period. Accordingly, if a debt is not recovered within three years of its payment becoming due, the debt ceases to be payable and is discharged by lapse of time.

Discharge by Impossibility of Performance

Sometimes after a contract has been established, something might occur, though not at the fault of either party, which can render the contract impossible to perform, or illegal, or radically different from that originally undertaken.

However, if whatever happens to prevent the contract from being performed

- has not been caused by either party
- could not have been foreseen, and
- its effect is to destroy the basis of the contract

then the courts will, generality, state that the contract has become impossible to perform. If that happens then the contract is discharged and neither party will have any liability under it. Section 56 of the Indian Contract Act clearly provides that an agreement to do an act impossible in itself is void

The performance of a contractual obligation may become subsequently impossible on a number of grounds.

Discharge of operation of law

A contract stands discharged by operation of law in the following circumstances.

Unauthorized material alteration of a written document

A party can treat a contract discharged (i.e., from his side) if the other party alters a term (such as quantity or price) of the contract without seeking the consent of the former.

Statutes of Limitations

A contract stands discharged if not enforced within a specified period called the 'period of limitation'. The Limitation Act, 1963 prescribes the period of limitation for various contracts. For instance, limitation period for exercising right to recover an immovable property is twelve years and right to recover a debt is three years. Contractual rights become time barred after the expiry of this limitation period. Accordingly, if a debt is not recovered within three years of its payment becoming due, the debt ceases to be payable and is discharged by lapse of time.

Insolvency

A discharge in bankruptcy will ordinarily bar enforcement of most of a debtor's contracts.

Merger

A contract also stands discharged through a merger that occurs when an inferior right accruing to party in a contract amalgamates into the superior right ensuing to the same party. For instance, A hires a factory premises from B for some manufacturing activity for a year, but 3 months ahead of the expiry of lease purchases that very premises. Now since A has become the owner of the building, his rights associated with the lease (inferior rights) subsequently merge into the rights of ownership (superior rights). The previous rental contract ceases to exist.

Discharge by Accord and Satisfaction

To discharge a contract by accord and satisfaction; the parties must agree to accept performance that is different from the performance originally promised. It may be studied under the following sub-heads.

Accord

An accord is an executory contract to perform an act that will satisfy an existing duty. An accord suspends, but does not discharge, the original contract.

Satisfaction

Satisfaction is the performance of the accord, which discharges the original contractual obligation.

If the obligor refuses to perform

The obligee can sue on the original obligation or seek a decree for specific performance on the accord.

Discharge of contract by breach

Breach occurs where one party to a contract fails to perform its contractual obligations, or the performance is defective. A breach of contract does not per se bring a contract to an end. The breach may give to the aggrieved party the right to terminate the contract but it is for the non-breaching side to decide whether or not to exercise that option. The aggrieved party has a right of election; that is to say, it can choose either to affirm the contract or to terminate it. However, once that decision has been taken, it is, in principle, irrevocable.

A Breach may be anticipatory or actual.

Anticipatory Breach

Also known as 'breach by repudiation', anticipatory breach occurs when one party states, before the arrival of the date fixed for performance, without justification that it cannot or will not carry out the material part of the contractual obligations on the agreed date or that it intends to perform in a way that is inconsistent with the terms of the contract. This may also occur where one party by some action makes performance impossible. For instance, A, after agreeing to sell his car to B on a fixed date, sells it to C. This is anticipatory breach.

Effect of anticipatory breach

Where there is an anticipatory breach, the non-breaching party may either

- rescind the contract, or
- treat the contract in force and wait for the time of performance. In first case, it can immediately sue for damages, i.e., it is not required to wait for the time for performance to expire.

For example, [D agreed to employ P] as a courier for three months commencing on June 1. Before the said date D told P that his services would not be required. This was to be an anticipatory breach of contract and it entitled P to sue D for damages immediately. If the non-breaching party elects to treat the contract operative, it waits until the time of performance and then holds the other party liable for the non-performance. Thus, by doing so the non-breaching party is giving an opportunity to the breaching party to still perform, if it can, in order to get a valid discharge.

Actual Breach

Actual breach refers to the failure to perform contractual obligations when performance is due. Failure to perform obligations is the most common form of breach, wherein a seller fails

to deliver the goods by the appointed time, or where, although delivered, the goods are not up to the mark in respect of quality or quantity specified in the contract.

Effect of actual breach

Breach is described as a method of discharge although it may not automatically discharge the contract. Breach of contract leads to two main remedies, namely breach of condition, and breach of warranty.

Breach of a condition This is a major term, known as material breach, which entitles the injured party to damages, and gives it an option to treat the contract as subsisting or discharged.

Breach of a warranty This is a minor term, known as non-material breach, which entitles the non-breaching party to damages. It does not have the right to repudiate the contract, although a non-material breach can give it the right to defer performance until the breach is made good. However, once the breach is remedied, the non-breaching party must go ahead and render its performance, minus any damages caused by the breach.

Thus, it is clear from the above that not every breach entitles the injured party to treat the contract as discharged.

Rescission of the Contract

When one party to the contract breaches the contract, the other party need not perform his part of the obligations. The aggrieved party may rescind the contract. In such cases, the injured / aggrieved party can either rescind the contract of file a suit for damages. In general, rescission of the contract is accompanied by a suit for damages.

Suit for damages

The aggrieved party of the contract is entitled for monetary compensation when the contract is breached. The objective of Suit for damages is to put the aggrieved / injured party in a position in which he would have been had there been performance and not breach. The aggrieved / injured party must be able to prove the actual loss or no damages will be awarded. Damages can be of four kinds.

1. Ordinary or General Damages
2. Special Damages
3. Exemplary or Punitive Damages
4. Nominal Damages

Suit for Quantum Merit

The term "Quantum Merit" is derived from Latin which means "what one has earned". The injured party can file a suit upon quantum merit and may claim payment in proportion to work done or goods supplied. Sections 65 to 70 deal with the provisions relating to suit for Quantum Merit.

Suit for Specific Performance

The suit for Specific Performance is regulated by the Specific Relief Act, 1963. Specific Performance means the actual carrying out of the contract as agreed. The Court may grant for specific performance where it is just and equitable to do. Specific Performance may be granted under the following grounds.

1. Lack of standard for ascertaining the damages
2. Where compensation is not adequate relief

3. Substantial work done by the plaintiff.

The Court cannot grant the remedy of specific performance in the following situations.

1. Where monetary compensation is an adequate relief
2. Where the Court cannot supervise the actual execution of the work
3. Where the Contract is for personal services
4. Where the Contract is not enforceable by either party against the other.

Suit for Injunctions

Injunction is an order of the Court restraining a person from doing a particular act. Where the efendant is doing something which he is promised not to do, then the injured party will get a right to file a suit for injunctions

Types of Damages in Contract Law

The term damages is to be understood as Compensation. Whenever one of the party in the Contract comes across breach of Contract, the other party has some rights. Out of those rights, they has the right to sue for damages i.e. damages for breach of contract. The objective of court in arranging for compensation is to bring the situation as if there is no Contract between the parties. The following are different types of damages in contract law.

1. General Damages
2. Specific Damages
3. Nominal Damages
4. Vindictive Damages
5. Liquidated Damages.

General Damages:

The loss arising out of breach of Contract Can be divided into two parts, namely direct loss and indirect loss. If only direct loss is compensated it is called general damages.

- A case on this Point is Hobbs Vs London and South Western Railway Company. In this case Mr. A Travels by train along with his wife, to reach a particular destination. On account of main repair, the train gets stopped. Then it becomes inevitable choice to go on Foot. Thus they have taken risk physically. In the mean by, it rains heavily and A`s wife gets caught by cough and cold. A files a Suit on Railway Company claiming compensation for physical risk as well as illness. Here physical risk is direct loss and illness is indirect loss. Court decides only general damages here.

Specific Damages:

In case where indirect loss also is Compensated besides loss, it is called Specific Damages. To get specific damages, concerned special situation must be communicated.

- A case on this point is Simpson Vs London and North Western Railway Company. In this case Mr. A is a farmer he wants to sell his agriculture products in an agricultural fair which is going on at a particular place. For the purpose of transportation, A handover his agricultural Products to a Railway Company. While making delivery to the Railway Company, he gives clear instructions to the same in connection with transportation, without any delay. But, the Railway Company makes delay and the goods reach the destination after

closure of fair. A claims Compensation to inconvenience which is direct loss. And also loss of profit which is indirect loss. A`s special situation is Communicated, Court arranges for specific damages.

Nominal Damages :

At times, on account of breach of Contract, the other party may not come across any loss. Though it is the situation, the other party can file a Suit. Then Court decides a very little amount of Compensation. It is called nominal damages. Generally this type of damages will be fixed in case of anticipatory breach.

Vindictive Damages:

It is otherwise known as penalty damages. Here Contract will be breached by one of the parties and the other party comes across heavy suffering which cannot pressured in the form of money. Then Court decides heavy amount as Compensation. This type of damages will be decided on the following occasions.

Breach of marriage agreements and Wrongful dishonor of Cheque by banker.

- A case on this point is David Son Vs Barclays Bank. In this case Mr. A is a book seller and he is customer of Barclays Bank. On one day he issued a cheque amounting to 2 pounds, to one of his Creditors. But the Banker dishonors the cheque negligently though there is sufficient credit to his account. As a result A`s business as well as personal reputation gets destructed. There after A files a Suit and gets penalty damages amounting to 250 pounds, from his banker

.

Liquidated Damages:

It is otherwise known as predetermined damages. The terms of Contract determine the amount of Compensation.

- A case on this point is Dunlop Pnumatic Tyre Company Vs New Garage and motor Company. In this case there is a Contract of agency between DNT Company and NGM Company where DNT Company is Principle and NGM Company is its agent. Per the terms of their Contract if NGM Company sells goods below the listed Price, NGM Company has to pay five pound per unit thus sold. Two units are sold below Specified Price. Court arranges for 10 pounds as determined by Contract.

UNIT-II: The Sale of Goods Act, 1930: Meaning and Essentials of contract of sale—Sale and Agreement to sell—Conditions and Warranties—Transfer ofproperty--Performance of a contract of sale—Unpaid seller.

Contract of Sale of goods

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. There can be a contract of sale between one part-owner and another.

In other words, under a contract of sale, a seller (or vendor) in the capacity of the owner, or part-owner of the goods, transfers or agrees to transfer the ownership in goods to the buyer (or purchaser) for an agreed upon value in money (or money equivalent), called the price, paid or the promise to pay same.

A contract of sale may be absolute or conditional depending upon the desire of contracting parties.

Essentials elements of a Contract of Sale

The following six features are essential elements of any contract of sale of goods.

- Goods
- Price
- Two parties
- Transfer of ownership
- All Essentials of a Valid Contract of Sale
- Includes both a ‘sale‘ and ‘an agreement to sell‘

1. **Two Parties:** A contract of sale of goods is bilateral in nature wherein property in the goods has to pass from one party to another. One cannot buy one’s own goods.

For example, A is the owner of a grocery shop. If he supplies the goods (from the stock meant for sale) to his family, it does not amount to a sale and there is no contract of sale. This is so because the seller and buyer must be two different parties, as one person cannot be both a seller as well as a buyer. However, there shall be a contract of sale between part owners.

Suppose A and B jointly own a television set, A may transfer his ownership in the television set to B, thereby making B the sole owner of the goods. Inthe same way, a partner may buy goods from the firm in which he is a partner, and vice-versa.

However, there is an exception against the general rule that no person can buy his own goods. Where a pawnee sells the goods pledged with him/her on non-payment of his/her money, the pawnor may buy them in execution of a decree.

2. **Goods:** The subject matter of a contract of sale must be goods. Every kind of movable property except actionable claims and money is regarded as ‘goods’. Contracts relating to services are not considered as contract of sale. Immovable property is governed by a separate statute, ‘Transfer of Property Act’.

3. **Transfer of ownership:** Transfer of property in goods is also integral to a contract of sale. The term ‘property in goods’ means the ownership of the goods. In every contract of sale, there should be an agreement between the buyer and the seller for transfer of ownership. Here property means the general property in goods, and not merely a special property.

Thus, it is the general property, which is transferred under a contract of sale as distinguished from special property, which is transferred in case of pledge of goods, i.e., possession of

goods is transferred to the pledgee or pawnee while the ownership rights remain with the pledger. Thus, in a contract of sale there must be an absolute transfer of the ownership. It must be noted that the physical delivery of goods is not essential for transferring the ownership.

4. **Price:** The buyer must pay some price for goods. The term 'price' is 'the money consideration for a sale of goods'. Accordingly, consideration in a contract of sale has necessarily to be in money. Where goods are offered as consideration for goods, it will not amount to sale, but it will be called barter or exchange, which was prevalent in ancient times. Similarly, if a person offers the goods to somebody else without consideration, it amounts to a gift or charity and not sale. In explicit terms, goods must be sold for a definite amount of money, called the price. However, the consideration can be partly in money and partly in valued up goods. Furthermore, payment is not necessary at the time of making the contract of sale.

5. **All essentials of a Valid contract:** A contract of sale is a special type of contract, therefore, to be valid, it must have all the essential elements of a valid contract, viz., free consent, consideration, competency of contracting parties, lawful object, legal formalities to be completed, etc. A contract of sale will be invalid if important elements are missing. For instance, if agreed to sell his car to B because B forced him to do so by means of undue influence, this contract of sale is not valid since there is no free consent on the part of the transferor.

6. **Includes both a 'Sale' and 'An Agreement to Sell':** The 'contract of sale' is a generic term and includes both sale and an agreement to sell. The sale is an executed or absolute contract whereas 'an agreement to sell' is an executory contract and implies a conditional sale.

A contract of sale can be made merely by an offer, to buy or sell goods for a price, followed by acceptance of such an offer. Interestingly, neither the payment of price nor the delivery of goods is essential at the time of making the contract of sale unless otherwise agreed.Subject to the provisions of the law for time being in force, a contract of sale may be made either orally or in writing, or partly orally and partly in writing, or may even be implied from the conduct of the parties.

Differences between Sale and Agreement to Sell

The following are the major differences between a Sale and Agreement to Sell

Sale	Agreement to Sell
1. The ownership rights are transferred to the buyer immediately.	Here, the ownership rights are transferred to the buyer only in future.
2. If the goods are destroyed, the loss will fall on the buyer even if the goods are in the possession of the seller.	If the goods are destroyed, the loss will fall on the seller even if the goods are in the possession of the buyer.
3. If the buyer fails to pay the price, the seller can sue him for the price.	In a similar case, the seller can only sue the buyer for damages.
4. The seller cannot re-sell the goods (if he is keeping possession). If he does so, the second buyer does not get a good title.	In case of re-sale by the seller, the second buyer gets a good title provided he buys in good faith. The first buyer can only sue the seller for damages.
5. It creates 'jus in rem' (right against the world) i.e., right to a enjoy the goods against the whole world.	It creates 'jus in personam' (right against a person) i.e., right to the buyer to sue the seller for damages.
6. If the buyer becomes insolvent before paying the price, the seller can get only a rateable dividend from the buyer's estate towards the price.	If the buyer becomes insolvent before paying the price, the seller is not bound to part with the goods.
7. If the seller becomes insolvent, the buyer can recover the goods from the Official Receiver.	If the buyer has already paid the price and the seller has become insolvent, the former can claim only a rateable dividend from the latter's estate and not the goods.

Definition of Condition

Certain terms, obligations, and provisions are imposed by the buyer and seller while entering into a contract of sale, which needs to be satisfied, which are commonly known as Conditions. The conditions are indispensable to the objective of the contract. There are two types of conditions, in a contract of sale which are:

- **Expressed Condition**: The conditions which are clearly defined and agreed upon by the parties while entering into the contract.
- **Implied Condition**: The conditions which are not expressly provided, but as per law, some conditions are supposed to be present at the time making the contract. However, these conditions can be waived off through express agreement. Some examples of implied conditions are:
  - The condition relating to the title of goods.

- Condition concerning the quality and fitness of the goods.
- Condition as to wholesomeness.
- Sale by sample
- Sale by description.

Definition of Warranty

A warranty is a guarantee given by the seller to the buyer about the quality, fitness and performance of the product. It is an assurance provided by the manufacturer to the customer that the said facts about the goods are true and at its best. Many times, if the warranty was given, proves false, and the product does not function as described by the seller then remedies as a return or exchange are also available to the buyer i.e. as stated in the contract.

A warranty can be for the lifetime or a limited period. It may be either expressed, i.e., which is specifically defined or implied, which is not explicitly provided but arises according to the nature of sale like:

- Warranty related to undisturbed possession of the buyer.
- The warranty that the goods are free of any charge.
- Disclosure of harmful nature of goods.
- Warranty as to quality and fitness
-

The Transfer of Property Act 1882 is an Indian legislation which regulates the transfer of property in India. It contains specific provisions regarding what constitutes transfer and the conditions attached to it. It came into force on 1 July 1882.

According to the Act, 'transfer of property' means an act by which a person conveys property to one or more persons, or himself and one or more other persons. The act of transfer may be done in the present or for the future. The person may include an individual, company or association or body of individuals, and any kind of property may be transferred, including the transfer of immovable property.

Interpretation of "property".

Property is broadly classified into the following categories:

1. Immovable Property (excluding standing timber, growing crops, and grass)
2. Movable Property

The Interpretation of the Act, says "Immovable property does not includes standing timber, growing crops or grass". Section 3(26), The General Clauses Act, 1897, defines, " immovable property" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth. Also, The Registration Act,1908, 2(6) "immovable property" includes land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land, and things attached to the earth or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops nor grass.

A transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property, unless a different intention is expressed or implied.

According to Section 43 of the Transfer of Property Act 1882, in case a person either fraudulently or erroneously represents that he is authorised to transfer certain immovable property and does some acts to transfer such property for consideration, then such a transfer

will continue to operate in future. It will operate on any interest which the transferor may acquire in such property .

This will be at the option of the transferee and can be done during the time during which the contract of transfer exists. As per this rule, the rights of bona fide transferee, who has no notice of the earlier transfer or of the option, are protected. This rule embodies a rule of estoppe i.e. a person who makes a representation cannot later on go against it.

Every person, who is competent to contract, is competent to transfer property, which can be transferred in whole or in part. He should be entitled to the transferable property, or authorised to dispose off transferable property which is not his own. The right may be either absolute or conditional, and the property may be movable or immovable, present or future. Such a transfer can be made orally, unless a transfer in writing is specifically required under any law.

According to Section 6 of the Transfer of Property Act, property of any kind may be transferred. The person insisting non-transferability must prove the existence of some law or custom which restricts the right of transfer. Unless there is some legal restriction preventing the transfer, the owner of the property may transfer it. However, in some cases there may be transfer of property by unauthorised person who subsequently acquires interest in such property.

In case the property is transferred subject to the condition which absolutely restrains the transferee from parting with or disposing of his interest in the property, the condition is void. The only exception is in the case of a lease where the condition is for the benefit of the lessor or those claiming under him. Generally, only the person having interest in the property is authorised to transfer his interest in the property and can pass on the proper title to any other person .

The rights of the transferees will not be adversely affected, provided: they acted in good faith; the property was acquired for consideration ; and the transferees had acted without notice of the defect in title of the transferor.

It should be noted that these conditions must be satisfied :

There must be a representation by the transferor that he has authority to transfer the immovable property. The representation should be either fraudulent or erroneous. The transferee must act on the representation in good faith. The transfer should be done for a consideration. The transferor should subsequently acquire some interest in the property he had agreed to transfer.

Performance of a contract of sale

Introduction

The term 'performance of the contract of sale' may be defined as the performance of the respective duties of the seller and the buyer as per the terms of the contract. Thus, the performance of the contract of sale comprises two parts, namely:

- Seller's duty to deliver the goods.
- Buyer's duty to accept the goods and pay the price.

It is important to note that the delivery of the goods and the payment of their price are concurrent conditions, i.e., both these conditions should be performed at the same time. This

provision is included in Section 32 of the Sale of Goods Act, which provides that the seller should be ready and willing to deliver the goods to the buyer, in exchange for the actual possession of the goods. However, the parties may also agree otherwise, i.e., they may enter into an agreement as to when the goods

What are the Rights of Unpaid Seller

The seller who has not received price of goods sold or the seller who has got his negotiable instrument dishonored will become Unpaid Seller. Sale of goods act, 1930 Section 45 to 55 read about the rights of Unpaid Seller. Those rights can be classified into two groups. They are as follows.

Rights against Goods
Rights against Buyer

The Rights of Unpaid Seller against Goods

When goods are in existence and title has not gone to buyer, Unpaid Seller can exercise the rights against goods. These rights are categorized into three types. They are as follows.

1. Right of lien
2. Right of stoppage in transit
3. Right to Re-Sell

Right of lien

Right to retain goods by unpaid seller till amount is recovered is called right of lien. If unpaid seller want seller wants to exercise right of lien, he has to fulfill the following conditions.

- He must be unpaid seller
- There should be no credit terms in the Contract of Sale.
- After completion of credit period, right of lien can be exercised.
- The unpaid seller should have obtained those goods lawfully.
- Amount must be due on those goods only against which right of lien is decided.

Right of stoppage in transit

Unpaid Seller has right to stop the goods in the transit itself. To exercise this right the following conditions are to be fulfilled.

- He must be unpaid seller.
- Buyer must be insolvent.
- There should be no credit terms in the Contract of Sale. After expiry of Credit period, this right can be exercised.

Amount must be due on those goods only against which this right is desired.

Right to re-sale

The unpaid seller can re-sell the goods for non-payment of price by buyer. He can exercise this right when the goods are of perishable nature while doing so it is beneficiary to the seller to give a notice to buyer with regard to resale. If such notice is given seller can claim loss. If any on resale from the buyer. On the other hand if there is profit on resale the former buyer

cannot claim that profit. If notice is not given the seller has to face adverse consequence. If there is any loss on re-sale, that loss cannot be recovered from buyer. But in case of profit, seller has responsibility to pay that amount of profit to buyer.

What are the Rights of Unpaid Seller against Buyer

At times it becomes inevitable choice to exercise rights on buyer for non-payment of price. The unpaid seller can file suits against the buyer as explained below.

Right to sue for price
It is fundamental right of buyer to file a suit for recovery of unpaid price. In the case of sale. Suit will be made for price balance, but not for compensation.

Right to sue to interest
If the buyer makes unreasonable delay for making payment, the seller has right to claim interest also.

Right to sue for compensation
When an agreement to sell is breached, the seller can see only for compensation for the breach of Contract. Under such circumstances he cannot sue for price.

Right to Sue for anticipatory contract
When an agreement to sell is breached by buyer before date of performance. It is called anticipatory breach.

UNIT-III: The Indian Partnership Act, 1932: Meaning and Essentials of partnership-- Registration of partnership—Kinds of partners Rights and Liabilities of Partners—Relations partners to third parties—Dissolution.

A partnership is an arrangement in which two or more individuals share the profits and liabilities of a business venture. Various arrangements are possible: all partners might share liabilities and profits equally, or some partners may have limited liability. Not every partner is necessarily involved in the management and day-to-day operations of the venture. In some jurisdictions, partnerships enjoy favorable tax treatment relativeto corporations.

The essential characteristics of partnership are as follows:

1. Two or more persons:

There must be at least two persons to form a partnership. A person cannot enter into partnership with himself. The maximum number of persons in a partnership should not exceed 10 in case of banking business and 20 in other types of business.

If the number of partners exceeds the prescribed maximum, it would become an illegal association of persons. A firm cannot become a partner of another firm though its partners can join any other firm as partners.

2. Agreement:

Partnership is the outcome of an agreement between persons. The relation of partnership arises from the formation of a contract and not from status or birth.

If a proprietor gives a share in profits to his employee it will not be called a partnership unless there is an agreement of partnership between the two. The agreement may be oral or in writing but it must satisfy all the essentials of a valid contract.

3. Lawful business:

A partnership can be formed only for the purpose of carrying on a business. An association of persons who jointly own a house without carrying on a business is not partnership. Moreover, the business carried on by the partners must be lawful. Illegal acts such as theft, dacoity, smuggling, etc., cannot be called partnership.

4. Sharing of profits:

The agreement between the partners must be to share the profits of business. There can be no partnership without the intention of mutual gain. The profits must be distributed among the partners in an agreed ratio.

Similarly, losses should be shared among the partners. However, sharing of profits is not a conclusive proof of partnership. For example, a manager may be given a share in profits of the firm.

5. Mutual agency:

Partnership business can be carried on by all the partners or by any of them acting on behalf of the others. In other words, every partner is an implied agent of the other partners and of the firm. Each partner is liable for acts performed by other partners on behalf of the firm.

The above mentioned features are the real tests of partnership. In addition, partnership has the following characteristics:

6. Utmost good faith:

The relations between partners are based upon mutual trust and confidence. Every partner is expected to act in the best interests of other partners and of the firm as a whole.

He must observe utmost good faith in all the dealings with his co-partners. He must render true accounts and make no secret profits from the business.

7. Unlimited liability:

Every partner is jointly and severally liable to an unlimited extent for the debts of the partnership firm. In case the assets of the firm are insufficient to pay the debts in full, the personal property of each partner can be attached to pay the creditors of the firm.

8. Restriction on transfer of interest:

No partner can transfer his share in the partnership without the prior consent of all other partners.

The registration of partnership is not compulsory under Indian Partnership Act. In England registration is, however, compulsory. In India there are certain privileges which are allowed to those firmswhich are registered. Unregistered firms are prejudiced in certain matters in comparison to registered firms.

Though directly the registration of firms is not compulsory but indirectly it is so. To avail of certain advantages under law the firm must be registered with the Registrar of Firms of the State. Registration of a firm does not provide

separate legal entity to the concern as in the case of Joint Stock Company.

Partnership does not need registration for coming into existence because it is created by an agreement among two or more persons. The registration of a firm merely certifies its existence and non-registration does not invalidate the transactions of the firm.

Procedure for Registration:

(i) Filing an Application:

The first thing to be done is to file an application with the Registrar of Firms on a prescribed form. A small amount of registration fees is also deposited along-with the application.

The application should contain the following information:

(a) The name of the firm.

(b) The principal place of business of the firm.

(c) The names and addresses of partners and the dates on which they joined the firm.

(d) If the firm is started for a particular period then that period should be mentioned.

(e) If the firm is started to achieve a specific object then it should also be given.

(ii) Certificate:

The particulars submitted to the Registrar are examined. It is also seen whether all legal formalities required have been observed or not. If everything is in order, then the Registrar shall record an entry in the register of firms. The firm is considered registered thereon.

Alteration of Particulars:

Whenever a change or alteration is made in any of the following particulars then it should be communicated to the Registrar of firms and a suitable change is made in the register. The change to be made is sent in a prescribed form and with the prescribed fees

Following changes or alterations are to be sent to the Registrar:

(i) Any change in the name of the firm.
(ii) Any change in the principal place of business. The change in name or principal place of business almost requires a new registration. These changes should be sent in a prescribed form and should be signed by all the partners.
(ii) When constitution of the firm is changed i.e., an old partner may retire or a new partner may be added
iv) Any change in the name of a partner or his address.
(v) When a minor partner attains the age of majority and he elects to become or not to become a partner.
(vi) When the firm is dissolved

Kinds of partners

1. Active or managing partner:
A person who takes active interest in the conduct and management of the business of the firm is known as active or managing partner. He carries on business on behalf of the other partners. If he wants to retire, he has to give a public notice of his retirement; otherwise he will continue to be liable for the acts of the firm.
2. Sleeping or dormant partner:
A sleeping partner is a partner who 'sleeps', that is, he does not take active part in the management of the business. Such a partner only contributes to the share capital of the firm, is bound by the activities of other partners, and shares the profits and losses of the business. A sleeping partner, unlike an active partner, is not required to give a public notice of his retirement. As such, he will not be liable to third parties for the acts done after his retirement

3. Nominal or ostensible partner:
A nominal partner is one who does not have any real interest in the business but lends his name to the firm, without any capital contributions, and doesn't share the profits of the business. He also does not usually have a voice in the management of the business of the firm, but he is liable to outsiders as an actual partner.

4. Partner by estoppel or holding out:
If a person, by his words or conduct, holds out to another that he is a partner, he will be stopped from denying that he is not a partner. The person who thus becomes liable to third parties to pay the debts of the firm is known as a holding out partner.
There are two essential conditions for the principle of holding out : (a) the person to be held out must have made the representation, by words written or spoken or by conduct, that he was a partner ; and (6) the other party must prove that he had knowledge of the representation and acted on it, for instance, gave the credit

5.Partner in profits only:
When a partner agrees with the others that he would only share the profits of the firm and would not be liable for its losses, he is in own as partner in profits only.

6. Minor as a partner:

A partnership is created by an agreement. And if a partner is incapable of entering into a contract, he cannot become a partner. Thus, at the time of creation of a firm a minor (i.e., a person who has not attained the age of 18 years) cannot be one of the parties to the contract. But under section 30 of the Indian Partnership Act, 1932, a minor 'can be admitted to the benefits of partnership', with the consent of all partners. A minor partner is entitled to his share of profits and to have access to the accounts of the firm for purposes of inspection and copy.

Liabilities of a Partner to Third Parties:

The following are the liabilities of a partner to third parties:

i. Liability of a partner for acts of the firm:

Every partner is jointly and severally liable for all acts of the firm done while he is a partner. Because of this liability, the creditor of the firm can sue all the partners jointly or individually.

ii. Liability of the firm for wrongful act of a partner:

If any loss or injury is caused to any third party or any penalty is imposed because of wrongful act or omission of a partner, the firm is liable to the same extent as the partner. However, the partner must act in the ordinary course of business of the firm or with authority of his partners.

iii. Liability of the firm for misutilisation by partners:

Where a partner acting within his apparent authority receives money or property from a third party and misutilises it or a firm receives money or property from a third party in the course of its business and any of the partners misutilises such money or property, then the firm is liable to make good the loss.

iv. Liability of an incoming partner:

An incoming partner is liable for the debts and acts of the firm from the date of his admission into the firm. However, the incoming partner may agree to be liable for debts prior to his admission. Such agreeing will not empower the prior creditor to sue the incoming partner. He will be liable only to the other co-partners.

Liability of a retiring partner:

A retiring partner is liable for the acts of the firm done before his retirement. But a retiring partner may not be liable for the debts incurred before his retirement if an agreement is reached between the third parties and the remaining partners of the firm discharging the retiring partner from all liabilities. After retirement the retiring partner shall be liable unless a public notice of his retirement is given. No such notice is required in case of retirement of a sleeping or dormant partner.

UNIT-IV: The Consumer Protection Act, 1986: Meaning of Consumer, Service, Goods, Deficiency, Defect, Unfair Trade Practices—Rights of Consumers—Machinery for redressal of Grievances—Remedies available to injured consumers

CONSUMER:

This statue is regarded as the Magna Carta in the field of consumer protection for checking the unfair trade practices and 'defect in goods' and 'deficiencies in services' as far as India is concerned. It led to the establishment of a widespread network of consumer forums and appellate courts all over India. It has significantly impacted how businesses approach consumer complaints and empowered consumers to a great extent.

RIGHTS OF CONSUMER

The objectives of the Central Council is to promote and protect the rights of the consumers such as:-

1. the right to be protected against the marketing of goods and services which are hazardous to life and property.
2. the right to be informed about the quality, quantity, potency, purity, standard and price of goods or services, as the case may be so as to protect the consumer against unfair trade practices;
3. the right to be assured, wherever possible, access to a variety of goods and services at competitive prices ;
4. the right to be heard and to be assured that consumer's interest will receive due consideration at appropriate forums;
5. the right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers; and
6. right to consumer education

The rIntangible products such as accounting, banking, cleaning, consultancy, education, insurance, expertise, medical treatment, or transportation. Sometimes services are difficult to identify because they are closely associated with a good; such as the combination of a diagnosis with the administration of a medicine. No transfer of possession or ownership takes place when services are sold, and they (1) cannot be stored or transported, (2) are instantly perishable, and (3) come into existence at the time they are bought and consumed. See also service

Goods:
In economics, **goods** are materials that satisfy human wants and provide utility, for example, to a consumer making a purchase of a satisfying product. A common distinction is made between goods that are tangible property, and services, which are non-Physical. A good may be a consumable item that is useful to people but scarce in relation to its demand, so that human effort is required to obtain it. In contrast, free goods, such as air, are naturally in abundant supply and need no conscious effort to obtain them. Personal goods are things such as televisions, living room furniture, wallets, cellular telephones, almost anything owned or used on a daily basis that is not food related. Commercial goods are construed as any tangible product that is manufactured and then made available for supply to be used in an industry of

commerce. Commercial goods could be tractors, commercial vehicles, mobile structures, airplanes and even roofing materials. Commercial and personal goods as categories are very broad and cover almost everything a person sees from the time they awake in their home, on their commute to work and arrival in the work place.

Deficiency:

Commodities may be used as a synonym for economic goods but often refer to marketable raw materials and primary products.

Although in economic theory all goods are considered tangible, in reality certain classes of goods, such as information, only take intangible forms. For example, among other goods an apple is a tangible object, while news belongs to an intangible class of goods and can be perceived only by means of an instrument such as print or television.

A **deficiency** is generally a lack of something. It may also refer to:

Angular deficiency, in geometry, the difference between a sum of angles and the corresponding sum in a Euclidean plane

- Deficiency (medicine), including various types of malnutrition, as well as genetic diseases caused by deficiencies of endogenously produced proteins.

- A deficiency including various types of malnutrition, as well as genetic diseases caused by deficiencies of endogenously produced proteins.
- A deficiency in construction, an item, or condition that is considered sub-standard, or below minimum expectations
- Genetic deletion, in genetics, is also called a deficiency

Defact:

1.General: Frailty or shortcoming that prevents an item from being complete, desirable, effective, safe, or of merit, or makes it to malfunction or fail in its purpose.
2. Law: Lack of legal sufficiency due to incorrect or incomplete following of a required or statutory procedure. See also perfect.
3. Manufacturing: Non-conformance of a product with the specified requirements, or non-ful fillment of user expectations (including the safety aspects). Defects are generally classified into four classes: (1) Class-1: very serious, directly causes severe injury or catastrophic loss; (2) Class-2: serious, directly causes significant injury or economic loss; (3) Class-3: major, related to significant problems with respect to intended normal or reasonable use; and (4) Class-4: minor, related to minor problems with intended normal or reasonable use

Unfair trade practices:

An unfair trade practice consists of using various deceptive, fraudulent or unethical methods to obtain business. Unfair trade practices include misrepresentation, false advertising, tied selling and other acts that are declared unlawful by statute. It can also be referred to as deceptive trade practices.

Machineryforredressalofgrievances:
Consumers play a key role in maintaining the economy of India. Each and every person

constitutes a consumer because each one of us is engaged in some form of exchange of goods or services through money as a medium. Gradually, there arise many kinds of disputes among the consumers as well as consumers and the sellers. In this context, it has to be stated that there lies a need for a statute which regulates the friction between the consumers and the sellers. For this purpose, Consumer Protection Act was enacted in the year 1986 to look after the various rights and duties of the consumers during the time of purchasing a product and even after that. The Act plays an important role in the fields where there arises an incidence of exchange of goods or services between two persons where money acts as a medium. The Act also provides certain guidelines as to what measures must be complied with during the time of such exchange, what are the various rights available to both the buyer and seller etc. It also provides certain provisions regarding the need and formulation of various 'Consumer Redressal Centres' both at the central as well as states level.

The Act lays down certain provisions regarding the definition of consumer, various consumer protection councils, and provisions in connection with various consumer redressal agencies in India as well as other miscellaneous provisions. Among this, provisions relating to consumer redressal agencies demand a lot of attention in the present Indian scenario. Many people are still not aware that there are such agencies working in favor of consumers in every district. Due to this reason, many of them are not getting proper solutions for their problems as consumers. A District zforum established by the State Government in each district of the State by its notification.

- A State Commission established by the State Government in each state by its notification and
- A National Commission established by Central Government by notification

District Forum

Each District Forum shall consist of a person who is or has been qualified as a District judge, as the President. There must be two other persons who are not less than thirty-five years of age and also possesses a degree from a recognized university. The persons must have adequate knowledge in the field of economics, commerce, industry, public affairs, and administration. The district forum must have the jurisdiction to entertain such complaints where the value of goods or services and the compensation, does not exceed Rs. twenty lakhs. The need for district forums for consumer redressal is that majority of the people who face any consumer rights violation are unable to file a complaint in a state or national forum because such f have to look at matters concerning various other district forums which result in a large number of pending cases. District forums are also enabled with a faster way of dispensing consumer redressal as the amount of claim is pretty less than that of State/National redressal forums which enables normal people to seek a solution for their problems.

State Commission

Each State Commission shall consist of a person who is or has been a judge of High Court as its president. The Commission also consists of not less than two members, who are above thirty-five years of age and also possesses a degree from a recognized university. The persons must have adequate knowledge in the field of economics, commerce, industry, public affairs, and administration. The Act also states that not less than fifty percent of the members shall be from amongst the persons having a judicial background. The State Commission has a jurisdiction to entertain cases where the value of goods or services or the compensation claimed, if any, exceeds the number of Rs. twenty lakhs but does not exceed Rs. one crore. It also entertains appeals against any District Forum within the state and also looks after any pending disputes or cases decided by any of the District forums in which the forums have exercised a jurisdiction not vested in them by the law, or has been exercised illegally or with any material irregularity.

National Commission

The National Commission shall consist of a person, who is or has been a judge of the Supreme Court, to be appointed by the Central Government, shall be the President, provided that no appointment shall be made except after the consultation with the Chief Justice of India. The commission shall consist of not less than four members of its executive committee who shall not be less than thirty-five years of age and must be graduates from a recognized university. They must also be specialized in the areas of commerce, economics, and administration. The jurisdiction of the commission shall extend to any case where the compensation amount might exceed Rs. one crore and the Commission shall also entertain appeals against State Commissions. The Commission also has the power to check any pending disputes or cases decided by any of the State Commissions where the State Commission has exercised a jurisdiction not vested in it by law or it has been exercised illegally or with any material irregularity.

Power of redressal forums

There are various powers for all of the redressal forums with regards to its jurisdiction. Some of them include:

1. Examining, enforcing as well as summoning the witness on oath;
2. Discovering and producing any material evidence;
3. Receiving evidence on affidavit;
4. Requesting for report or test analysis from the concerned authorities and laboratories;
5. Issuing commission for examining the witness;
6. Enforcing any other powers prescribed by the Central or State Government.

9 Essential Remedies Available to Consumers under Indian Consumer Protections Act

Under this Act, the remedies available to consumers are as follows:

(a) Removal of Defects:
If after proper testing the product proves to be defective, then the 'remove its defects' order can be passed by the authority concerned.

(b) Replacement of Goods:

Orders can be passed to replace the defective product by a new non-defective product of the same type.

(c) Refund of Price:
Orders can be passed to refund the price paid by the complainant for the product

(d) Award of Compensation:
If because of the negligence of the seller a consumer suffers physical or any other loss, then compensation for that loss can be demanded for.

(e) Removal of Deficiency in Service:
If there is any deficiency in delivery of service, then orders can be passed to remove that deficiency. For instance, if an insurance company makes unnecessary delay in giving final touch to the claim, then under this Act orders can be passed to immediately finalise the claim.

(f) Discontinuance of Unfair/Restrictive Trade Practice:
If a complaint is filed against unfair/restrictive trade practice, then under the Act that practice can be banned with immediate effect. For instance, if a gas company makes it compulsory for a consumer to buy gas stove with the gas connection, then this type of restrictive trade practice can be checked with immediate effect.

(g) Stopping the Sale of Hazardous Goods:
Products which can prove hazardous for life, their sale can be stopped.

(h) Withdrawal of Hazardous Goods from the Market:
On seeing the serious adverse effects of hazardous goods on the consumers, such goods can be withdrawn from the market. The objective of doing so that such products should not be offered for sale.

(i) Payment of Adequate Cost:
In the end, there is a provision in this Act that the trader should pay adequate cost to the victim concerne

UNIT-V: The Companies Act, 2013: Nature and Registration—Kinds of Companies—Memorandum of Association—Article of Association—Kinds of Shares—Powers and duties of Directors—winding up.

A **company**, is a legal entity made up of an association of people, be they natural, legal, or a mixture of both, for carrying on a commercial or industrial enterprise. Company members share a common purpose and unite in order to focus their various talents and organize their collectively available skills or resources to achieve specific, declared goals. Companies take various forms such as:

Rights of Directors

Rights can be categorized into individual and collective rights.Individual rights are such as right to inspect books of accounts {Section 209(4)},Right to receive notices of board meetings (Section 285),right to participate in proceedings and cast vote in favour or against resolutions(Section 300),right to receive circular resolutions proposed to be passed.(Section 289),right to inspect minutes of board meetings.

Right to refuse to transfer shares: According to Section 111 of the Act, directors of private companies and deemed public companies are entitled to refuse registration of transfer of shares to a person whom they do not approve.

Right to elect a Chairman: Regulation 76(1) of Table-A provides that the directors are entitled to elect a chairman for the board meetings.

Right to appoint a Managing director: The Board has the right to appoint the managing director/ manager (as defined in the Act) of the company.

Right to recommend dividend: The Board is entitled to decide whether dividend is to be paid or not. Shareholders cannot compel the directors to pay dividend. However they can reduce the rate of recommended dividend. Payment of dividend is the prerogative of the board

Duties of Directors

Directors as individuals have a duty to attend board meetings and contribute to the deliberations of the board and ultimately to the decision making leading to formulation of policies. Directors are under obligation to disclose their interest whether directly or indirectly in contracts or arrangements with the company (Section299). They are also duty bound to disclose their directorships in other companies within 20 days of appointment or relinquishment of his office in other companies (Section 305).As per Section 308, directors are also required to disclose their shareholding in the company.

The following are some of those duties exercised collectively:-

Approval of annual accounts and authentication of annual accounts

Directors report to shareholders highlighting performance of the company, transfers to reserves, investment of surplus funds, borrowings.

Issuance of Notice and Holding of Board meetings and shareholders meetings

Passing of resolutions at board meetings or by circulation.

Directors are paid remuneration for their efforts in formulating policies and for devoting their valuable time for the company. Directors remuneration consists of sitting fees as per provisions in Articles of association, and Commission as a fixed percentage of net profits or as a fixed monthly sum as decided by the shareholders in the general meeting. As per the provisions in the new companies bill,2009 independent directors can not receive any remuneration other than sitting fees, expenses for attending board meetings and commission linked to **profit.**

Kinds of shares

Ordinary shares

These carry no special rights or restrictions. They rank after preference shares as regards dividends and return of capital but carry voting rights (usually one vote per share) not normally given to holders of preference shares (unless their preferential dividend is in arrears).

Some companies create more than one class of ordinary shares – e.g. "A Ordinary Shares", "B Ordinary shares" etc. This gives flexibility for different dividends to be paid to different shareholders or, for example, for pre-emption rights to apply to some shares but not others.

In some cases, different classes of ordinary share may be of different nominal values – for example, there may be £1 Ordinary shares and £0.01 Ordinary shares. If each share had the right to one vote (and assuming the shares were issued at their nominal value), then the £0.01 Ordinary shareholders would get 100 votes per £1 paid while the £1 Ordinary shareholders would get 1 vote for paying the same amount.

2.Deferred ordinary shares

A company can issue shares which will not pay a dividend until all other classes of shares have received a minimum dividend. Thereafter they will usualfully participating. On a winding up they will only receive something once every other entitlement has been met.

3.Non-voting ordinary shares

Voting rights on ordinary shares may be restricted in some way – e.g. they only carry voting rights if certain conditions are met. Alternatively, they may carry no voting rights at all. They may also preclude the shareholder even attending a General Meeting. In all other respects they will have the same rights as ordinary shares.

4.Redeemable shares

The terms of redeemable shares give the company the option to buy them back in the future; occasionally, the shareholder may (also) have the option to sell them back to the company, although that's much less common.

The option may arise at or after a specific date, between two dates or be effective at any time the shares are in issue. The redemption price is usually the same as the issue price, but can be set differently. A company can only redeem shares out of profits or the proceeds of a new share issue, which may restrict its ability to redeem shares even if the directors would like to exercise the option.

If a company chooses to have redeemable shares, it must also have non-redeemable shares in issue. At no point can all of its share capital be made up of redeemable shares.

5.Preference shares

These shares are called preference or preferred since they have a right to receive a fixed amount of dividend every year. This is received ahead of ordinary shareholders. The amount of the dividend is usually expressed as a percentage of the nominal value. So, a £1, 5% preference share will pay an annual dividend of 5p. The full entitlement will be paid every year unless the distributable reserves are insufficient to pay all or even some of it. On a winding up, the holders of preference shares are usually entitled to any arrears of dividends and their capital ahead of ordinary shareholders. Preference shares are usually non-voting (or only have a vote only when their dividend is in arrears).

6.Cumulative preference shares

If the dividend is missed or not paid in full then the shortfall will be made good when the company next has sufficient distributable reserves. It follows that ordinary shareholders will not receive any dividends until all the arrears on cumulative preference shares have been paid.

By default, preference shares are cumulative but many companies also issue non-cumulative preference shares.

7.Redeemable preference shares

Redeemable preference shares combine the features of preference shares and redeemable shares. The shareholder therefore benefits from the preferential right to dividends (which may be cumulative or non-cumulative) while the company retains the ability to redeem the shares on pre-agreed terms in the future.

Memorandam of association:

The **memorandum of association** of company, often simply called the **memorandum** (and then often capitalised as an abbreviation for the official name, which is a proper noun and usually includes other words) is one of the most important documents and must be drafted with care. It has to be filed with the Registrar of Companies during the process of incorporation of a Company. It contains the fundamental conditions upon which the company is allowed to operate.Its purpose is to enable shareholders, creditors, and those who deal with the company to know what is its permitted range of enterprise..

A Memorandum of Association (MOA) is a legal document prepared in the formation and registration process of a limited liability company to define its relationship with shareholders. The MOA is accessible to the public and describes the company's name, physical address of registered office, names of shareholders and the distribution of shares. The MOA and the Articles of Association serve as the constitution of the company. The MOA is not applied in the U.S. but is a legal requirement for limited liability companies in European countries including the United Kingdom, France and Netherlands, as well as some Commonwealth nations.

Name Clause

The name clause requires you to state the legal and recognized name of the company. you are allowed to register a company name only if it does not bear any similarities with the name of an existing company. your company name must end with the word "limited" because the preparation of an moa is a legal requirement for limited liability companies only.

Registered Office Clause

the registered office clause requires you to show the physical location of the registered office of the company. you are required to keep all the company registers in this office in addition to using the office in handling all the outgoing and incoming communication correspondence. you must establish a registered office prior to commencing business activities.

Objective Clause

the objective clause requires you to summarize the main objectives for establishing the company with reference to the requirements for shareholding and use of financial resources. you also need to state ancillary objectives; that is, those objectives that are required to facilitate the achievement of the main objectives. the objectives should be free of any provisions or declarations that contravene laws or public good.

Liability Clause

the liability clause requires you to state the extent to which shareholders of the company are liable to the debt obligations of the company in the event of the company dissolving. you should show that shareholders are liable only their shareholding and/or to their commitment to contribute to the dissolution costs upon liquidation of a company limited by guarantee.

Capital Clause

the capital clause requires you to state the company's authorized share capital, the different categories of shares and the nominal value (the minimum value per share) of the shares. you are also required to list the company's assets under this clause.

Association Clause

the association clause confirms that shareholders bound by the moa are willingly associating and forming a company. you require seven members to sign an moa for a public company and not less than two people for a moa of a private company. you must conduct the signing in the presence of witness who must also append his signature..

ARTICLES OF ASSOCIATION (AOA)

in corporate governance, a company's **articles of association** (**AoA**, called articles of incorporation in some jurisdictions) is a document which, along with the memorandum of association (in cases where the memorandum exists) form the company's constitution, defines the responsibilities of the directors, the kind of business to be undertaken, and the means by which the shareholders exert control over the board of directors.
The article is binding not only to the existing members, but also to the future members who may join in the future. The hires of members, successors and legal representatives are also bound by whatever is contained in the Article. The Articles bind the company and its members as soon as they sign the document. It is a contract between the company and its members. Members have certain rights and duties towards the company and the company have certain obligations towards its members. At the same time the company also expects some duties and obligations which the member has to fulfil for the smooth functioning of the company.

The Objectives and the purpose of the Company are determined in advance by the shareholders and the Memorandum of Association (MOA), if separate, which denotes the name of the Company, its Head- Office, street address, and (founding) Directors and the main purposes of the Company – for public access. It cannot be changed except at an AGM or Extraordinary General Meeting (EGM) and statutory allowance. The MOA is filed with a Registrar of Companies who is an appointee of the Ministry of Corporate Affairs. For their assurance, the shareholders are permitted to elect an Auditor at each AGM. There can be Internal Auditors (employees) as well as an External Auditor.

Nature of companies

1. Voluntary Association:

A company is a voluntary association of two or more persons. A single person cannot constitute a company. At least two persons must join hands to form a private company. While a minimum of seven persons are required to form a public company. The maximum membership of a private company is restricted to fifty, whereas, no upper limit has been laid down for public companies.

2. Incorporation:

A company comes into existence the day it is incorporated/registered. In other words, a company cannot come into being unless it is incorporated and recognised by law. This feature distinguishes a company from partnership which is also a voluntary association of persons but in whose case registration is optional.

3. Artificial Person:

In the eyes of law there are two types of persons viz:

(a) Natural persons i.e. human beings and

(b) Artificial persons such as companies, firms, institutions etc.

Legally, a company has got a personality of its own. Like human beings it can buy, own or sell its property. It can sue others for the enforcement of its rights and likewise be sued by others.

4. Separate Entity:

The law recognizes the independent status of the company. A company has got an identity of its own which is quite different from its members. This implies that a company cannot be held liable for the actions of its members and vice versa. The distinct entity of a company from its members was upheld in the famous Salomon Vs. Salomon & Co case.

5. Perpetual Existence:

A company enjoys a continuous existence. Retirement, death, insolvency and insanity of its members do not affect the continuity of the company. The shares of the company may change millions of hands, but the life of the company remains unaffected. In an accident all the members of a company died but the company continued its operations.

6. Common Seal:

A company being an artificial person cannot sign for itself. A seal with the name of the company embossed on it acts as a substitute for the company's signatures. The company gives its assent to any contract or document by the common seal. A document which does not bear the common seal of the company is not binding on it.

7. Transferability of Shares:

The capital of the company is contributed by its members. It is divided into shares of predetermined value. The members of a public company are free to transfer their shares to anyone else without any restriction. The private companies, however, do impose some restrictions on the transfer of shares by their members.

8. Limited Liability:

The liability of the members of a company is invariably limited to the extent of the face value of shares held by them. This means that if the assets of a company fall short of its liabilities, the members cannot be asked to contribute anything more than the unpaid amount on the shares held by them. Unlike the partnership firms, the private property of the members cannot be utilized to satisfy the claims of company's creditors.

9. Diffused Ownership:

The ownership of a company is scattered over a large number of persons. According to the provisions of the Companies Act, a private company can have a maximum of fifty members. While, no upper limit is put on the maximum number of members in public companies.

10. Separation of Ownership from Management:

Though shareholders of a company are its owners, yet every shareholder, unlike a partner, does not have a right to take an active part in the day to day management of the company. A company is managed by the elected representatives of its members. The elected representatives are individually known as directors and collectively as 'Board of Directors'.