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Business Laws

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1.0 INTRODUCTION

In every country, the business world is a very important part of the economy. A big part of building a country is doing business, which creates jobs and chances and brings in money for the economy. Because there are so many business tasks, there needs to be a way to control how they are done, and the law makes this possible. It is becoming more and more clear that strong and effective economies need a system of laws that are fairly applied to everyone. Lawyers are now an important part of any business. For businesses, investors, and scientists to be most motivated, there needs to be a certain set of laws. Business law has grown in importance because it protects the trust and confidence that are necessary for people who don't know each other to do business with each other. It also includes a look at how to follow the law when doing any kind of business. We will talk about what "Business" means and what the goals of "Business Law" are in this Unit

This unit will help you understand how important business law is in today's business world and go into more detail about the different types of business law.

What the book calls "Business law" and "Business Laws" are the same thing. When it comes to the rules and laws that govern running a business, "business law" is a broad term. The business environment in any country is controlled by its business laws, which are needed to do business and keep things running smoothly.

It is very important for students in the business management stream to understand the basics of business law in order to fully grasp the ideas and learn more about the field. This unit will explain what

- For a contract to be valid, both parties must intend for it to have legal consequences.
- Contracts are generally not formed in social or domestic contexts where parties do not intend for legal enforcement
- Contracts may be classified according to their legal effects as (i) valid contract (ii) void contract (iii) voidable contract (iv) unenforceable contract (V) illegal contract
- The objective theory of contract states that an agreement between two parties exists if a reasonable person could judge the acts and behaviors of the parties enough to objectively construe agreement.
- It provides a structured framework that sets out the conditions and obligations between the parties.
- Effective contract management ensures that both parties are aware of their rights and obligations, creates clarity and reduces the potential for disputes.

1.2 MEANING OF BUSINESS

A company or group that does industry, mercantile, or commercial work is called a business. A business can be set up to make money

"Business" is a broad term that covers many different tasks, such as making things, advertising them, selling them in bulk, selling them individually, transporting them, storing them, financing them, insuring them, giving advice, and more."[8] L.R. Dickson said that "business" is any activity that is done mainly with the goal of making money for the people whose interests the activity is being carried out for.

"Businesses are different sizes, which can be shown by things like the number of employees, the number of sales, etc." All businesses, though, have one goal in mind: to make money.

Besides making money, businesses serve many important purposes, such as being an important part of society, providing goods and services, making jobs, improving people's lives, helping the country's economy grow, and so on.

Business law, which is also called commercial or mercantile law, is the area of law that governs the interactions between businesses, companies, and people who are involved in trade. This part of the law sets the rules for the legal rights, duties, and obligations of people and businesses that do business.

Business law has become very important in this day and age because businesses and corporations play such a big role in the economy and because there are so many job openings that they help the employment sector grow and bring in money. Business law is the set of rules that people must follow when they are doing business with others. That is, people who buy and sell things on the market follow the rules that spell out the limits of what is acceptable business behavior.

Sir William Anson defines a contract as “a legally binding agreement made between two (or) mare persons by which rights are acquired by one (or) more to acts (or) forbearances on the part of other (or) others. If we observe the above definitions, we find that a contract consists of two elements. 1) An agreement and 2) Its enforceability by law.

1.4 BUSINESS ENVIRONMENT

The business world is made up of all the things that affect how business is done. These kinds of things can be put into two groups: internal and external. Things that a business can control are called "internal factors."

On the other hand, external forces are things that no business can change or take control of. Both internal and external forces are changeable, which means they change over time. Laws, rules, and policies that affect how business is done are also examples of external factors. The characteristics of the business world in which businesses work are shown very clearly in Figure 1.2.

1.5 SIGNIFICANCE OF BUSINESS LAW

Business law is the part of the law that encourages the organized handling of business matters, makes it easier to regulate commercial activities in line with established legal practices, and helps people settle disagreements without violence. This is the part of the law system that is most important for making the country rich. It also lists the rules and behaviors that must be followed so that business relationships can work well between the government, businesses, and the public, as well as between businesses. Business law also helps create the conditions for fair and responsible business interactions between companies and for protecting workers' rights. To be good at business law, you also need to know a lot about a lot of different types of law. Because of changes in the business world, business law has become more important. Because the business world is always changing, it's important to have good laws

1.6 CLASSIFICATION OF CONTRACT

classifies contracts into several types based on their nature and characteristics. Here are some common classifications:

1. **Valid Contract**: A valid contract is one that satisfies all the essential elements required for its formation, such as offer, acceptance, consideration, intention to create legal relations, competency of parties, free consent, and legality of object and consideration.
2. **Void Contract**: A void contract is one that lacks one or more of the essential elements required for its formation. Such contracts are not enforceable by law from the beginning.
3. **Voidable Contract**: A voidable contract is valid until one party chooses to enforce its right to rescind or cancel the contract due to some defect such as coercion, undue influence, fraud, misrepresentation, or mistake.
4. **Unilateral Contract**: In a unilateral contract, one party makes a promise or undertakes an obligation in exchange for the performance of a specific act by the other party. The contract is formed when the act is performed.
5. **Bilateral Contract**: In a bilateral contract, both parties exchange promises, and each promise is considered as consideration for the other. It creates mutual obligations between the parties.

6. **Express Contract**: An express contract is one in which the terms are explicitly agreed upon by the parties, either orally or in writing.
7. **Implied Contract**: An implied contract is one in which the terms are not explicitly stated by the parties but are inferred from their conduct, actions, or circumstances.
8. **Executed Contract**: An executed contract is one in which both parties have fulfilled their obligations under the contract
9. **Executory Contract**: An executory contract is one in which one or both parties have yet to fulfil their obligations.
10. **Unenforceable Contract**: An unenforceable contract is one that is valid but cannot be enforced due to some legal technicality such as the absence of a written agreement required by law

These classifications help in understanding the nature, validity and enforceability of contracts under the Contract Act, 1872.

1.7 ESSENTIAL ELEMENTS OF A VALID CONTRACT

The following are the essential elements of a valid contract

i) Offer and Acceptance: In order to create a valid contract, there must be a “lawful offer” by one party and “lawful acceptance” of the same by the other party

ii) Intension to create legal relationship: There must be an intension 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) in business agreement the usual presumption is that the parties intend to create legal relationship unless otherwise agreed upon.

Case law:

Balfour vs Balfour

Mr. Balfour was employed in Ceylon. Mrs. Balfour owing to ill health had to stay in England and couldn't accompany him to Ceylon. Mr. Balfour promised to send 30£ per month while he was abroad. But Mr. Balfour fails to pay that amount. So, Mrs. Balfour filed a suit against her husband for recovering the said amount. The court held that it was a mere domestic agreement and that the promise made by the husband in this case was not intended to be a legal obligation.

Other leading cases on this point are week's vs Tybald and Rose and Frank company vs Compton brothers.

iii) Lawful consideration: An agreement must be supported by lawful consideration. Consideration means something in return. The consideration must be lawful.

E.g.: 'A' promises to obtain employment in public service for 'B' and 'B' promises to pay Rs 50,000/- to 'A'. The agreement is not enforceable as the consideration for it is unlawful.

iv) Capacity of Parties:

The Parties who enter into an agreement should be legally competent to do so. A Person is said to be legally competent to contract if has attained the age of majority, is of sound mind and is not disqualified from contracting by any law. An agreement made by party's incompetent to contract, then no valid contract comes into existence because those agreements are not enforceable by law.

E.g.: Agreements made with minors (or) unsound mind persons are not valid contracts.

v) Free Consent: The consent of the parties to the agreement must be free and genuine.

A Consent is said to be free when it is not caused by co-recoin, undue influence, fraud, misrepresentation (or) mistake. If the consent of the parties is not free, then no valid contract comes into existence.

E.g. 'A' who owns two cars, one Maruthi and the other Indica, offers to sell 'B' one car, 'A' intending it to be the Maruthi, 'B' accepts the offer thinking that it was the Indica, there is no free consent and hence no contract

vi) Lawful Object: The object of an agreement must be lawful. It must not be illegal (or) immoral (or) opposed to public policy and must not be forbidden by law.

E.g.: Any agreement entered between parties for doing a crime (or) committing an offence is unenforceable because there is no lawful object

vii) Certainty of Meaning: The terms and conditions of an agreement must be precised and certain. They must not be indefinite (or) uncertain. If they are so the agreement is not enforceable.

E.g.: 'A' agrees to sell 'B' 100 tons of oil. There is nothing whatever to show what kind of oil was intended. So, the agreement is not enforceable.

viii) Possibility Of Performance:

The agreement must be capable of being performed. A promise to do an impossible thing cannot be enforced.

E.g.: Mr. ‘A’ agrees with ‘B’ to discover treasure by magic. Such agreement is not enforceable.

ix) Not Declared to be void (or) illegal: The agreement though satisfying all the above conditions for a valid contract must not have been expressly declared void by any law in force in the country.

E.g.: Agreement in restraint of marriage, agreement in restraint of trade etc.

x) Legal Formalities:

An oral agreement is a perfectly valid contract except in those cases where writing, registration etc. is required by some provisions. In India writing is required in cases of sale, mortgage, lease, memorandum of association, articles of association of a company etc. in some cases a contract has to be attested, registered and stamped. Thus, where there is a statutory requirement that a contract should be made in writing and registered, they require by legal formalities should be fulfilled with. All the elements mentioned above must be present in order to make a valid contract If any one of them is absent, the agreement does not become a contract So, all agreements are not contracts but all contracts are agreements.

1.8 SUMMARY

It is very important for students in the business management stream to understand the basics of business law in order to fully grasp the ideas and learn more about the field. This Unit is all about explaining what "business" means, what "business law" covers, and how important it is in today's economy. It also talks about the different types of laws that have shaped business law over time.

A company or group that does industry, mercantile, or commercial work is called a business. A business can be set up to make money or it can be set up to help a social or charitable cause without making money. A business can also be the actions of a person or a group of people who sell things and provide services with the goal of making money.

Business law is the part of the law that encourages the organized handling of business matters, makes it easier to regulate commercial activities in line with established legal practices, and helps people settle disagreements without violence. This is the part of the law system that is most important for making the country rich. It also lists the rules and behaviors that must be followed so that business relationships can work well between the government, businesses, and the public, as well as between businesses. Business law also helps create the conditions for fair and responsible business interactions between companies and for protecting workers' rights. To be good at business law, you also need to know a lot about a lot of different types of law.

Business law comes from a lot of different places. Rules, laws, court cases, customs, treaties, and government policies are some of the major sources.

1.9 KEY WORDS

Here are the key points regarding the definition and classification of contracts, as well as the essential elements of a valid contract

Definition and Classification of Contract:

- **Contract:** A contract is a legally binding agreement between two or more parties that creates mutual rights and obligations.

- **Classification:**
  - Contracts can be classified based on various factors such as their formation, enforceability, mode of creation, and performance status.
  - Common classifications include valid, void, voidable, unilateral, bilateral, express, implied, executed, and executory contracts.

Essential Elements of a Valid Contract:

1. **Offer and Acceptance:**
   - Offer: An expression of willingness to enter into a contract on specific terms.
   - Acceptance: Unconditional agreement to the terms of the offer.
2. **Intention to Create Legal Relations:**
   - Parties must intend their agreement to be legally binding.
3. **Consideration:**
   - Something of value exchanged between parties as part of the contract
   - Consideration must be lawful and may consist of a promise, act, forbearance, or any other benefit
4. **Free Consent:**
   - Consent must be given voluntarily and without any coercion, undue influence, fraud, misrepresentation, or mistake.
5. **Capacity of Parties:**
   - Parties must be legally capable of entering into a contract
   - Capacity may be affected by factors such as age, mental capacity and legal competency

6. **Lawful Object and Consideration:**
   - The object and consideration of the contract must be lawful and not against public policy or prohibited by law.
7. **Certainty and Possibility of Performance:**
   - Terms of the contract must be sufficiently definite and capable of being performed.
   - Performance must be legally and physically possible.
8. **Legal Formalities (if any):**
   - Some contracts may require compliance with certain legal formalities, such as writing, registration, or witnessing.

1.10 ANSWERS TO CHECK YOUR PROGRESS

1. What do you understand by the term "Business"? Elaborate.

2. What is the significance of business law in governing the functioning of the business enterprises and companies in the society?

3. Explain out the different sources of business law and their significance in the growth of business law.

4. Briefly explain the meaning of the term "corporate restructuring".

5. What is a contract, and how does the Contract Act, 1872, define it?

6. Provide a detailed classification of contracts according to the Contract Act, 1872. Explain each type with examples.

7. What are the essential elements of a valid contract according to the Contract Act, 1872? Discuss each element in detail.

8. Explain the concept of offer and acceptance in contract law. How do they contribute to the formation of a valid contract?

9. Discuss the significance of consideration in a contract. Why is it considered an essential element?

10. What is meant by the intention to create legal relations in a contract? How does it affect the enforceability of a contract?

11. Define free consent in the context of contract law. Discuss the different types of vitiating factors that can affect the consent of the parties.

12. Explain the legality of object and consideration in a contract. Why is it important for the object and consideration to be lawful?

13. Differentiate between void, voidable, and valid contracts. Provide examples of each.

14. Discuss the difference between an express contract and an implied contract. Provide examples to illustrate each type.

UNIT 2 QUASI CONTRACT ï VARIOUS FORMS,

Structure

2.0 INTRODUCTION

Quasi Contract laws have been derived from the Latin statement "Nemo debet locupletari ex aliena jactura" which proclaims that no human being should gain an unjust benefit from another's loss. It was one of the main principles of Roman law.

The word 'Quasi' means having some resemblance to but not all. Similarly, Quasi Contract means laws that are like regular contract law but not quite so. A regular contract should have some essential components to be considered valid. It includes offers, acceptance, consideration, two or more parties who are legally and mentally capable etc.

Whereas Quasi-contract definition is based more on the principles of natural law such as moral conscience, justice, honesty, duty towards another human being etc.

The main difference between Contract and Quasi Contract is that in the case of the latter, there is no exchange of offer, acceptance, or consideration between two or more parties. However, it is still legally enforceable.

For example, if a package belonging to A is delivered to M, then M is legally obligated to return it to A. If M uses up the contents of the packaging for himself, then A has the right to sue him. In that case, the court can order M to reimburse A under Quasi-Contract Law.

2.1 OBJECTIVE:

- The primary purpose of quasi contracts in Section 71,

2.4 PRINCIPLES OF QUASI-CONTRACT

The principles of quasi-contracts revolve around fairness, restitution, prevention of unjust enrichment, and promoting equity in contractual relationships. These principles guide the imposition and enforcement of quasi-contractual obligations in situations without a contract between the parties.

Here are the key principles of quasi-contracts:

1. Fairness and Equity

Quasi-contracts are founded on the principle of fairness and equity. They aim to prevent one party from unjustly benefiting at the expense of another. When one party receives a benefit or advantage from another, it would be unfair for them to retain that benefit without compensating the other party. Quasi-contracts ensure that parties are treated fairly and that no party is unjustly enriched.

2. Restitution

The principle of restitution is central to quasi-contracts. It entails (involves/requires) restoring the aggrieved party to their original position before the benefit was conferred. The party who received the benefit must make restitution or provide compensation to the party who conferred the benefit This principle seeks to restore the balance and rectify any unjust

2.6 ADVANTAGES AND DISADVANTAGES OF QUASI CONTRACTS

Advantages of using a quasi-contract include the fact that these legal instruments are typically based on the unjust enrichment principle. This prevents one party from gaining an undue advantage over another. Thus, it is a safeguard for innocent victims of wrongful acts and a legal alternative to compensation for damages, ensuring that the one who provides services or goods gets compensated for the same. In order to comply with quasi contracts, all parties involved are obliged to follow them, as they are created by court order.

There are also some drawbacks or limitations. Those who received benefits negligently, unnecessarily, and by misconduct will not be held liable. Although a person can be liable under a quasi contract, he cannot be charged more than the amount he has received under the contract. Thus, there is no provision available for the recovery of more amount than that which has been received by the plaintiff – if the plaintiff obtains only part of the services/goods that he

2.8 SUMMARY

quasi-contracts encompass a variety of forms and situations where legal obligations resembling those of a contract are imposed by courts to prevent unjust enrichment These quasi-contractual obligations arise in circumstances where no formal agreement exists between the parties, but one party has received a benefit at the expense of another.

The various forms of quasi-contracts include implied-in-law contracts, necessaries supplied to incapacitated persons, payment by mistake, officious intermeddling, and statutory quasi-contracts. Each form addresses different scenarios where the principles of fairness and equity dictate that one party should not unjustly benefit at the expense of another.

Quantum meruit and restitution are central concepts in quasi-contract law, emphasizing the principle that a person should receive reasonable compensation for goods or services provided, and that unjust enrichment should be remedied by restoring the status quo. Overall, quasi-contracts serve an important role in filling gaps in the law and promoting fairness and equity in contractual relationships, ensuring that parties are not unjustly enriched at the expense of others, even in the absence of a formal agreement

2.9 KEY WORDS

1. **Definition of Quasi-Contract:**
   - A quasi-contract is a legal fiction used by courts to impose obligations resembling those created by contracts, even when no actual contract exists between the parties.

2. **Implied-in-Law Contracts:**
    - Also known as contracts implied by law.
    - Arise to prevent unjust enrichment when one party receives a benefit at the expense of another.
    - Obligations are imposed by the court irrespective of the parties' intentions.
3. **Quantum Meruit:**
    - Latin term meaning "as much as deserved."
    - Refers to the principle that a person should receive reasonable compensation for services or goods provided to another.
    - Used in quasi-contracts to determine the amount owed for the benefit received.
4. **Restitution:**
    - The act of restoring or returning something to its rightful owner.
    - In quasi-contracts, restitution is the primary remedy sought to prevent unjust enrichment
    - Focuses on restoring the status quo by requiring the party unjustly enriched to give back what they received.
5. **Necessaries Supplied to Incapacitated Persons:**
    - A form of quasi-contract arising when one party supplies necessaries (essential goods or services) to an incapacitated person.
    - The supplier can recover the reasonable value of the necessaries provided, even without a formal contract
6. **Payment by Mistake:**
    - Occurs when a person pays money under a mistaken belief of fact or law.

- If the payment results in unjust enrichment, the payer may seek restitution through quasi-contractual remedies.

7. **Officious Intermeddling:**
   - Refers to situations where someone voluntarily provides goods or services to another without their request or consent.
   - If the recipient accepts and benefits from the goods or services, quasi-contractual obligations may arise to prevent unjust enrichment.
8. **Statutory Quasi-Contracts:**
   - Some jurisdictions have statutory provisions that create quasi-contractual obligations in specific circumstances, such as the payment of wages, benefits, or expenses.

2.10 ANSWERS TO CHECK YOUR PROGRESS

1. What is a quasi-contract, and how does it differ from a typical contract?
2. Discuss the concept of implied-in-law contracts within the framework of quasi-contracts. How do they arise, and what are their key characteristics?
3. Explain the principle of unjust enrichment and its role in quasi-contracts. How does it relate to situations where one party benefits at the expense of another without a formal agreement?
4. Provide examples of situations where quasi-contracts may arise in everyday life. How do these examples illustrate the need for quasi-contractual remedies?

5. What are the different forms or types of quasi-contracts recognized under the law? Provide a detailed explanation of each form with examples.

6. Discuss the concept of quantum meruit and its significance in quasi-contractual relationships. How is quantum meruit used to determine the appropriate remedy in cases of unjust enrichment?

7. How do courts determine the existence of a quasi-contractual relationship? What factors do they consider when assessing whether unjust enrichment has occurred?

8. Explain the doctrine of restitution and its connection to quasi-contracts. What is the primary purpose of restitution, and how does it differ from compensation or damages?

9. Discuss the limitations or constraints on the application of quasi-contractual remedies. Are there any circumstances where quasi-contracts may not be enforced by the courts?

10. In what ways do quasi-contracts serve to promote fairness and equity in contractual relationships? How do they fill gaps in the law where express contracts are absent or unenforceable?

UNIT 3 CONTINGENT CONTRACT,

Structure

3.0 INTRODUCTION

An absolute contract is one where the promisor performs the contract without any condition. Contingent contracts, on the other hand, are the ones where the promisor performs his obligation only when certain conditions are met

If you look at the contracts of insurance, indemnity or guarantee, they have one thing in common – they create an obligation on the promisor if an event which is collateral to the contract does or does not happen. For example, in a life insurance contract, the insurer pays a certain amount if the insured dies under certain conditions. The insurer is not called into action until the event of the death of the insured happens. This is a contingent contract

Under Section 31 of the Indian Contract Act, 1872, contingent contracts are defined as follows: "If two or more parties enter into a contract to do or not do something, if an event which is collateral to the contract does or does not happen, then it is a contingent contract." Example: Peter is a private insurer and enters into a contract with John for fire insurance of John's house. According to the terms, Peter agrees to pay John an amount of Rs 5 lakh if his house is burnt against an annual premium of Rs 5,000. This is a contingent contract

Here, the burning of the house is neither a performance promised as a part of the contract nor a consideration. Peter's liability arises only when the collateral event occurs.

3.1 OBJECTIVE:

- A contingent contract involves terms that are enforceable by law only when specific, future events occur.
- If the event doesn't happen, the contract may not be enforceable. Unlike standard contracts.
- which are automatically enforceable once signed, a contingent contract becomes valid only if certain conditions are met
- A contingency contract is an agreement between a student and teacher which states behavioral or academic goals for the student and reinforcers or rewards that the student will receive contingent upon achievement of these goals.
- The objective of the Contract Act is to ensure that the rights and obligations arising out of a contract are honored.
- Legal remedies are made available to those who are affected. According to Indian Contract Act, 1872 Section 1, this Act may be called the Indian Contract Act, 1872.

3.2 CONTINGENT CONTRACT MEANING

In a contingent contract, the performance of the promisor is dependent on the fulfillment of certain conditions. These contracts create an obligation on the promisor only if the conditions collateral to the contract are met

3.3 ESSENTIALS OF CONTINGENT CONTRACTS

1] Depends on happening or non-happening of a certain event

The contract is contingent on the happening or the non-happening of a certain event. These said events can be precedent or subsequent, this will not matter. Say for example Peter promises to pay John Rs 5,000 if the Rajdhani Express reaches Delhi on time. This is a contingent event.

2] The event is collateral to the contract

It is important that the event is not a part of the contract. It cannot be the performance promised or a consideration for a promise. Peter enters into a contract with John and promises to deliver 5 television sets to him. John promises to pay him Rs 75,000 upon delivery. This is NOT a contingent contract since John's obligation depends on the event which is a part of the contract (delivery of TV

Peter promises to pay John Rs 50,000 if he can marry Julia, the prettiest girl in the neighborhood. This is a contingent contract Unfortunately, Julia dies in a car accident Since the happening of the event is no longer possible, the contract is void.

impossible. (A divorce is still possible, though the happening of the event is considered impossible.)

Rule 4 ï Contracts Contingent on an Event happening within a Specific Time

There can be a contingent contract wherein a party promises to do or not do something if a future uncertain event happens within a fixed time. Such a contract is void if the event does not happen and the time.

the fixed time. Also, if the ship sinks or is burnt, the contract is enforced by law since the return is not possible.

Rule 6 – Contracts Contingent on an Impossible Event

If a contingent contract is based on the happening or non-happening of an impossible event, then such a contract is void. This is regardless of the fact if the parties to the contract are aware of the impossibility or not. This rule is specified in Section 36 of the Indian Contract Act, 1872.

Peter promises to pay John Rs 50,000 if the sun rises in the west the next morning. This contract is void since the happening of the event is impossible.

3.5 ESSENTIALS OF VALID CONTRACT

Some of the most important parts of a legitimate contract are consideration, the ability to contract, free agreement, and the legality of the object and consideration. Here's more information on these:

1) Take a look:

One of the most important things for a contract to be legal is consideration.18 Consideration is also needed for simple contracts to be enforceable, and this is summed up in the Latin phrase ex-nudo pacto non oritur actio, which means "out of nude pact no cause of action arises." It's easy to understand in the idea of "quite and likewise."

"According to the law, a valuable consideration can be either a right, interest, profit, or benefit that goes to one party or some forbearance, harm, loss, or responsibility that the other party has to bear."

iii) A promise to pay a debt that has passed its due date does not need to be brought up again.

iv) If a gift between a giver and a donee is recorded and signed by two witnesses, it can't be taken away for lack of value. Even though care is needed, it doesn't have to be enough. It doesn't matter if the thought is adequate or sufficient Some people say that pepper corn is enough to buy an elephant

The thought is to move from whom is the question that needs to be answered in order for the contract to be valid. It has to move away from the promisee. English law says that someone who is not a party to a deal cannot sue. That is, the promise.

Besides the ones listed above, Indian law allows two more exceptions:

c) A person whose name was registered as a benamidar can enforce even though he is not a party to the contract

d) In family plans like paying for a woman's wedding or moving costs, the people who benefit from the agreement can fight even if they are not parties to it

Consideration and Termination of the Contract

When a contract is broken, the concept of respect does not apply. The agreements that both parties make to each other are what form consideration. After that, if both sides agree not to pursue the contract, that too is considered consideration.

there in India. In English law, though, it's not true. Up until 1947, England's law used the concept of consideration not only when a contract was made but also when it was broken. It was stated that a debtor "could accept anything in satisfaction."

of his debt except a smaller amount of money 26. A canary or pepper corn can be accepted as full payment for a debt, but part payment for a debt cannot be accepted as full payment for a debt

Here are the times when Pinnel's case is different from the norm:27

“a”) Under the plan of composition, if the debtor agrees to pay some of the debt, the debt is forgiven without using the English law principle of consideration.

b) If a third party pays a part of the amount that is less than what is owed by the debtor, the debtor is released without using the English law concept of consideration.

In Pinnel's case, the rule was thrown out by the concept of estoppel or quasi -estoppel.28

It is possible for both parties to agree on a settlement, which is called "an accord and satisfaction" in Indian law.29 English law lets someone give up a horse in exchange for payment of a debt, but it won't accept the delivery in the future to pay off the debt It's also not okay to pay off part of your debt joy and happiness.

2) The Power to Sign:

In the legal world, there are some people who can't fully or partially keep a promise or make someone else keep a promise to them. In business relationships, the law of the place will apply (lex loci contractus), but in case in the law of land lex situs, which means the law of the place where the land is located.

There are two reasons a party might not be able to sign a contract because of their status or because they are mentally flawed. The first would happen because it is politically expedient, while the second is required to protect the crippled person's best interests.

There are two main types of inability for a party

status -based one that comes up because of the following reasons:

a) Their political or civil status, such as if they are the leader of a foreign state, an ambassador or envoy, an enemy of the country, a prisoner, or bankrupt

b) The person signing the contract's job title, such as "barrister."

c) Getting Registered

d) getting married

The other one is caused by the person's mental illness (soundness of mind) if any of the following happen:

a) Children
b) Crazy people
c) Dunces
d) People who are drunk

The Infant Relief Act defines a "infant" as a person younger than 21 years old.

English laws say that anyone younger than 18 is a child under the Family Reforms Act of 1969, and Indian laws say the same thing.

He is not a major. The Common Law of England was changed by the baby Relief Act of 1874. This law lets a baby sign a contract for the things below:

a) To meet needs
b) Service plans that are good for anyone
c) Contracts that give him rights and duties that will keep happening, like a stake in property that he has to keep unless he backs out either while he is still a child or within an acceptable amount of time after he turns 18.
d) A single act or a deal to pay for things other than necessities was null and void unless he confirmed them within a reasonable amount of time after becoming an adult

Under English law, the Minor's Contract Act of 1987 is the rule that governs relationships between children.

The Indian Contract Act of 1872 says that the person signing the contract must be a major.30 A person becomes a major when they turn 18.31 The section of the Contact Act does not say whether a contract made by a child is invalid or can be thrown out.

Using English law as an example, these kinds of contracts are null and void until a majority of the parties agrees to them. In the case of Mohori Bibi v. Dharmadas Ghose32, the Privy Council called out this wrong view and said that a contract made by a child is null and void from the start. It will not be possible to stop or approve it.

Indian law protects the person who gives necessities to a minor, just like English law does.33 Whether a guardian contract is legally binding on the minor depends on whether the guardian has the power to make a contract. There won't be any estoppel against a child because both sides know about the .

The truth. Indian courts have more power than English courts to make repayment. Indian law made it clear that any gain, even money earned, could be used to pay someone back. But it has to be shown that the child or his estate got something good out of it.

34. Mutuality of mind: Both sides to the contract must agree on everything that is included in it. This is also known as "mutuality of mind." Because they didn't agree on anything, the contract isn't valid. "A" had two homes, those being "X." and 'Y'. 'A' makes a deal with 'B' to sell 'X' house, and 'B' made a deal with 'A' of 'Y' house. Because of this, the contract is null and void because there is no agreement on what the contract is about.

(3) Free Will:

People who sign a contract say they agree to it freely 36 if they didn't do it because of force, unfair influence, fraud, misrepresentation, or mistake. These are described below:

i) Force: 37 "doing or threatening to do any activity that is illegal the Indian Penal Code, or unlawfully holding or threatening to hold someone else's property to their detriment in order to get them to sign an agreement This is what the English word "duress" means.

legally described as causing or threatening to cause physical harm or jail time in order to get the other person to agree to the deal. In Indian law "coercion" means a lot more than "duress" does in English law. The main difference between coercion and du ress is that duress means crime and coercion means force.

The Indian Penal Code says that it is illegal, while the latter only says that attacks against people and jail time are illegal. Both Indian and English laws said that a contract could not be enforced if there was any kind of pressure or blackmail.

ii) Unfair Influence:

38 This was also known as "constructive fraud." It covers all of contracts where one party can force the other party to do what they want because of their relationship at the time the contract was made. It's likely that this effect exists in the following relationships:

a. Child and parent b. Ward and guardian
c. The trustee and the heir d. Teacher and student of the spiritual
e. The lawyer and the client f. A doctor and his patient

The above relationship between the parties renders the contract null and void by assuming that one party had unfair control over the other. The previous party has to show that he wasn't in a position of power and that his power wasn't used to get the other party to agree to what he wanted.

iii) Cheating:

39. If a party to a deal does any of the things below, it is fraud: making a deal with the other person:

a) The idea that something is true when it's not, given by someone who doesn't believe it to be true

b) the deliberate hiding of a fact by someone who knows or believes it to be true

c) a promise made without planning to keep it;

d) any other action likely to trick

e) any act or failure to act that the law specifically says is dishonest

It's not fraud just because one side is quiet. But when someone has a job to talk, keeping quiet is the same as fraud.

400. Misrepresentation: One party can agree to sign a contract even though the other party lied to them. These lies or misrepresentations could be either an inducing cause of contract or a cause of contract itself. These claims could be classified as either innocent misrepresentation or intentional or actionable misrepresentation, both of which are the same thing and are fraud.

The following are all parts of a misrepresentation:

a) Not telling someone about a fact

b) This kind of secrecy must be about a fact, not an opinion

c) This statement must not be true

d) It must be important enough to get the other person to sign a contract If one party tells another party something that they know isn't true, without believing it to be true, or without caring whether it's true or false, that statement is fake. 41. If one party's consent is gained without their free consent, the contract can be broken by the party whose consent was not free because of fraud, pressure, or misrepresentation. The party that was unhappy with the voidable contract could continue the contract or back out of the deal42, and be paid losses. In addition, a contract that was made under unfair circumstances can be thrown out or set aside at the choice of the party whose consent was gained by forcing the other party to agree to it43.

v) Mistake:44 When two or more people sign a contract, they might be mistaken. This mistake could be about a rule or a fact Mistake of fact can happen when it comes to the topic of the contract, like when it comes to the presence,

quality or amount, etc.; the type of contract; the person who signs it A mistake in the law could be about foreign law, everyday law, our country's law, or the private rights of the people who signed the contract These mistakes can also be put into two other groups: mutual and solo.

If both sides are wrong about a fact, the agreement ad idem is not valid, and the contract is not valid. When both sides of an agreement are wrong about an important fact that is part of the agreement, the agreement is null and void.45 This is called mutual mistake.

A single mistake means that only one side to a contract is wrong. In this case, the contract is usually not valid. A contract is not only null and void because one of the parties was wrong about a fact46 A contract is not also null and void because one of the parties was wrong about any law in force in India. But a mistake about a law not in force in India has the same effect as a mistake of fact47

4) The legality of the object and consideration:

Besides the things listed above, the validity of the consideration and object[48] is also necessary for a contract to be effective. The illegal deals can be put into the following groups:

1) against the law —when the deal goes against the law

2) Immoral: when it goes against public values, like when a husband and wife agree to live together illegally or when they split up.

3) Against public policy: this type of agreement is not allowed because it goes against the state's best interests. Examples include agreements that lead to abuse of the legal system, agreements that stop trade, agreements that stop marriage, agreements that stop parenting rights, and so on.

If one of the things that an agreement is for or in exchange for is illegal, then the agreement is not valid. If the illegal part is not separated from the agreement, the whole deal will not be valid. The rule that can be used to tell the difference between.

This part of the law is called the "blue pencil rule." In such cases the legal part which separated by drawing blue pencil line from the unlawful part can be enforceable.[49]. If there is no payment, the contract is not valid, but there are some exceptions;[50]

a. Any deal that stops a person from getting married, except for minors, is null and void.[51]

b) A deal that stops someone from doing business isn't valid, but sometimes it is when goodwill is sold or when the Partnership Act of 1932 applies.[52]

c) Except for arbitration agreements, any deal that stops a lawsuit from happening is null and void.[53]

d) When it's not clear what a deal means or whenever it could be clear,54

e) A bet-based agreement is not valid.55

The performance of the contract depends on an event happening or not happening in the future. This type of contract is called a dependent contract56 If Since the event can't happen, the deal is null and void.57

g) A contingent contract can be enforced before it becomes impossible to do so.

A's promise to pay B a certain amount of money if B gets married C. C gets married to D. It is not possible for B and C to get married in this life.

time of A makes the deal null and void.59

h) The promise to do or not do something within a certain time frame is no longer valid.

right after the time ran out60

i) Any deal that depends on things that can't happen is null and void.61

3.5 PERFORMANCE OF THE CONTRACTS

According to the contract, both parties either keep their agreements or offer to keep them until they are released or not required to by

I. DISCHARGE BY PERFORMANCE

Discharge by performance takes place when the parties to the contract fulfil their obligations arising under the contract within the time and in the manner prescribed.

return the car is given to B at the time of the formation of the contract

The various cases of discharge of a contract by mutual agreement are dealt within (Secs -62):

a) Novation takes place when a new contract is substituted for an existing one between the same parties, or a contract between two parties is rescinded in consideration of a new contract between third party

b) **Example: -** A owes money to B under a contract It is agreed between A,

B and C that B shall henceforth accept C as his debtor,

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

III. DISCHARGE BY IMPOSIBILITY OF PERFORMANCE

If an agreement contains an undertaking to perform an impossibility. It is void. According to Sec-56, impossibility of performance may fall into either of the following categories.

1. Impossibility existing at the time of agreement, the first paragraphs of Section 56 lay down that “an agreement to do an act impossible in itself if void.

takes some power under some ordinance or special Act, as for example, the Defence of India Act, so that the performance of the contract becomes impossible, the contract is discharged.

Example: - D enters into a contract with P on 1st March for the supply of certain imported goods in the month of September of the same year. In June by act of Parliament, the import of such goods is banned. The contract is discharged.

5. Outbreak of war: - A contract entered into with an alien enemy during is unlawful and therefore impossible of performance.

Example: - A contracts to take in cargo for B at a foreign port. A's Government afterwards declares war against the country in which, the port is situated. The contract becomes void when war is declared.

Impossibility of performance is not an excuse: - Impossibility of performance is, as a rule, not an excuse for non-performance." In the following cases, a contract is not discharged on ground of supervening impossibility

a. Difficulty of performance:

A contract is not discharged by the mere fact that it has become more difficult of performance due to some uncontemplated events or delays.

Examples: - A sold a certain quantity of Finland timber to B to be supplied between July and September. Before any timber was supplied, war broke out in the month of August and transport was disorganized so that a could not bring any timber form Finland. Held, the difficulty in getting the timber form Finland did not discharge A from performance.

b. Commercial impossibility: -

A contract is not discharged merely because expectation of higher profits is not realized, or the necessary raw material is available at higher profits is not realized, or the necessary raw material is available at a higher price because of the outbreak of war, or there is a sudden depreciation of currency.

Example: - A promised to send certain goods from Bombay to Antwerp in September, before the foods were sent, war broke out and there was a sharp increase in shipping rates, held, the contract was not discharged.

c. Impossibility due to failure of a third person: -

Where a contract could not be performed because of the default by a third person on whose work the promisor relied, it is not discharged.

Example: - A, a wholesaler, entered into a contract with B for the sale of a certain type of cloth to be produced by C, a manufacturer of that cloth. C did not manufacture that cloth. Held, A was liable to B for damages. d. Strikes, lock out and civil disturbances. Events such as these do not discharge a contract unless the parties have specifically agreed in this regard at the time of formation of the contract

Example: - A agreed to supply to B certain goods to be procured from Algeria. The goods could not be produced due to riots and civil disturbances in the country held, there was no excuse for non -performance of the contract

e. Failure of one of the objects. When a contract is entered into for several objects, the failure of one of them does not discharge the contract

Example: - H & B agreed to let out a boat to H FRO viewing a naval review on the occasion of the coronation of Edward VII, and to sail round the fleet Owing to the king's illness the naval review was abandoned but the fleet was assembled. The boat, therefore, could be used to sail round the fleet Held the contract was not discharged.

IV. DISCHARGE BY LAPSE OFTIME

The Limitation Act, 1963 lays down that a contract should be performed within a specified period, called period of limitation, if it not performed, and if no action is taken by the promise within the period of limitation, he is deprived of his remedy at law. In other words, we may say that the contract is terminated.

V. DISCHARGE BY OPERATION OF LAW

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

- By death
- By merge
- By insolvency
- By unauthorized alteration of the terms of a written agreement
- By right and liabilities becoming vested in the same person.

VI. DISCHARGE BY BREACH OF CONTRACT

Breach of contract means a breaking of the obligation which a contract imposes; it occurs when a party to the contract without lawful excuse does not fulfil his contractual obligation or by his own act makes it impossible that he should perform his obligation under it. It confers a right of action for damages on the injured party. Breach of contract may be: -

1. Actual breach of contract, or

2. Anticipatory or constructive breach of contract

4.3 REMEDIES FOR BREACH OF CONTRACT

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

1. RESCISSION

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

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

2. DAMAGES

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

a) Damage arising naturally- ordinary damages: - When a contract has been broken, the injured party can be recovering from the other party such damages as naturally arose in the usual course of things from the breach.

Example: - A contracts to sell and deliver 50 quintals of Farm wheat to B at Rs. 475 per quintal, the price to be paid at the time of delivery. The price of wheat rise to Rs 500 per quintal and a refuse to sell the wheat B claim damages at the rate Rs. 23 per quintal.

b) Damages in contemplation damages;

Damage other than those arising from the breach of contract may be recovered if such damages may reasonable be supposed to have been in the contemplation of both the parties as the breach of the contract Such damages, known as special damages, cannot be claimed as a matter of right

Example: - P brought from L some copra cake. He sold it to B who sold it to **various** dealers, and they in turn sold it to farmers, who used it for feeding cattle. The copra cake was poisonous and the cattle fed on it died. Claimed against L the damages and costs he had to pay to B. Cake were to be used for feeding cattle P could claim compensation.

c) Vindictive or exemplary damages: - Damages for the beach of a contract are given by way of compensation for loss suffered, and not by way of punishment for wrong inflicted. Hence, vindictive or exemplary damages have no place in the law of contract because they are punitive (involving punishment) by nature. But in case of breach of promise to marry and dishonour of a cheque bank wrongfully when he possesses sufficient funds to the credit of the customer, the court may award exemplary damages.

d) Nominal damages: - Where the injured party has not in fact suffered any loss by reason of the breach of a contract, the damage recoverable by him are nominal, i.e., very small, for example rupee. These damages merely acknowledge that the plaintiff has case and won.

Example: - A firm consisting of four partners employed B for a period of two years. After six months two partners retired, the business being carried on by the other two. B declined to be employed damages as he had suffered no loss.

e) Damages for loss of reputation: Damages for loss of reputation in case of breach or contract are generally not recoverable. An exception to this rule exists in the case of

Specific Performance: In cases where monetary compensation is inadequate, the court may order the breaching party to fulfil its obligations under the contract

Rescission: Rescission involves cancelling the contract and returning the parties to their pre-contractual positions.

Reformation: If the contract contains mistakes or is unclear, the court may rewrite or modify the contract to reflect the parties' true intentions.

Restitution: This remedy aims to restore any benefit that the breaching party has received as a result of the contract

The choice of remedy depends on various factors, including the nature of the breach, the type of contract, and the specific circumstances of the case. It is essential for parties to understand their rights and obligations under the contract to effectively enforce or defend against claims of breach. Additionally, seeking legal advice can help parties navigate the complexities of contract law and pursue the most appropriate remedy in the event of a breach.

4.5 KEY WORDS

Discharge of Contract:

Performance: A contract is discharged when both parties fulfil their obligations according to the terms of the contract

Agreement: Parties may agree to discharge a contract, either by mutual consent or through a novation.

Frustration: If unforeseen events make it impossible to fulfil the contract's purpose, it may be discharged due to frustration.

Breach: When one party fails to fulfil its obligations under the contract, it can lead to a discharge through breach.

Operation of Law: Discharge can also occur through operation of law, such as bankruptcy or illegality

4.6 ANSWERS TO CHECK YOUR PROGRESS

1. What are the different ways in which a contract can be discharged?
2. Explain the concept of discharge by performance with examples.

3. What is discharge by agreement? Provide instances where parties might mutually agree to discharge a contract

4. Discuss discharge by frustration and provide examples of situations where frustration might occur.

5. How does breach of contract occur, and what are the types of breaches?

6. Explain the concept of material breach and how it differs from minor breach.

7. What remedies are available to the innocent party in the event of a breach of contract?

8. Discuss the difference between common law remedies and equitable remedies for breach of contract

9.

5.1 OBJECTIVE:

After studying this lesson, you should be able to understand:

- The meaning of contract of sale
- Describe the meaning of agreement to sale
- Differentiate between conditions and warranties
- The transfer of ownership in goods
- Performance of contract of sale
- Enumerate the rules regarding the transfer of ownership
- Describe the rights of an unpaid seller

5.2 CONTRACT OF SALE

5.2.1 Meaning and Definition

According to Section 4 (1), "A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a certain price". According to Blackstone, when one person transfers the ownership of goods to another the consideration of a price, a sale is have to be made. A 'contract of sale' is a wide term and it includes a sale (or absolute sale) and an agreement to sell (or conditional sale) [Sec. 4 (2)]. According to Section 4 (3), when the right of ownership of goods is transferred from the seller to the buyer under a contract, the transaction is called a sale; but when the transfer of ownership is to be made at some future date, or is to be made on the fulfillment of some condition, the contract is called an 'agreement to sell'. When the condition in such agreement has been fulfilled, or the transfer of ownership of goods has occurred, the agreement to sell becomes a sale. The property (ownership) in goods shall not be transferred from the seller to the buyer until and unless some condition is fulfilled for the completion of the contract of sale. A contract of sale may be express i.e., made in writing or by words, or may be implied from the conduct of the parties.

5.3 SUBJECT MATTER OF CONTRACT OF SALE

Section 6 states that commodities must always be the subject matter of the contract The goods may be goods that are presently in existence or may be in the future. A contract for the selling of goods can also be concluded as an ordinary contract for the goods, the procurement of which is dependent on a contingency by the seller which may or may not occur.

A contract for the sale of a bag to be made by a factory, for example, is a legal contract If, without the consent of the purchaser, a particular product is lost or impaired at the time the contract of sale is entered into, the contract shall be deemed void ab initio. The Section is based on the rule that if both parties to a contract are in error with respect to a matter of fact which is relevant for the contract, the contract shall be null and void, as referred to in Section 7 of the Act

Section 8 of that act, however, deals with the goods which have died before the sale but after the agreement to sell, so this section again highlights the goods which, without any fault of the seller or the buyer, damage or perish. This just happens to be an example of a contract to sell.

5.4 ESSENTIALS OF A CONTRACT OF SALE

To constitute a valid contract of sale, the following essentials must be present

1. Valid Contract: A contract of sale is just like any other contract made under Indian Contract Act, 1872. Therefore, to constitute a valid contract of sale it should satisfy all the essentials of a valid, contract namely a valid offer, a valid acceptance, free consent of the parties, a valid and lawful consideration, parties must be competent to contract and lawful object etc.

2. Two parties: To constitute a contract of sale, there must be a transfer or agreement to transfer the property in goods by the seller to the buyer. It means that there must be two persons, one the seller and the other the buyer. 'Buyer' means a person who buys or agrees to buy goods [Sec. 2 (1)]. 'Seller' means a person who sells or agrees to sell goods [Sec.2 (13)]. The seller and the buyer must be two different persons, for a man cannot purchase his own goods. The parties must be competent to contract

3. Agreement for the transfer of ownership: To constitute a valid contract of sale, there should be immediate transfer or an agreement to transfer the general property in goods sold or agreed to be sold. It is essential to transfer the general property in the goods from the seller to the buyer with or without physical possession of the goods.

4. Goods: The subject -matter of the contract of sale must be goods, the property which is to be transferred from the seller to the buyer. According to section 2(7), goods means every kind of movable property other than actionable claims and money and includes stock

Consequences of the breach: On breach of an agreement to sell by the seller, the buyer has only a personal remedy against the seller. But if after a sale, the seller breaks the contract the buyer may sue for delivery of the goods or for damages. In an agreement to sell, if the buyer fails to accept the goods the seller may sue for damages only and not for the price. In a sale, if the buyer does not pay the price, the seller may sue him for the price even though the goods are still in his possession.

5. Insolvency of the buyer: In a sale, if the buyer is adjudged an insolvent, the seller in the absence of a lien over the goods is bound to deliver the goods to the Official Receiver or Assignee. The seller will, however, be entitled to a rateables dividend for the price of the goods. In an agreement to sell, when the buyer becomes insolvent before he pays for the goods, the seller may not part with the goods until he is paid for.

6. Insolvency of the seller: In a sale, if the seller becomes insolvent before the delivery of goods, the buyer is entitled to recover the goods from the Official Receiver or Assignee as he (buyer) is the legal owner of the goods. In an agreement to sell, if the buyer has already paid the price and the seller becomes insolvent, the buyer can claim only a rateables dividend and not the goods because property in them is not yet passed to him.

7. General and particular property: An agreement to sell creates a right in persona (right against a particular individual) while a sale creates a right in rem right against the whole world). In case of an agreement to sell the buyer and seller get remedy against each other in case of breach of an agreement Whereas in case of sale, the buyer gets an absolute right of ownership and this right of the buyer is recognized by the whole world.

8. Right of re-sell: In a sale, the seller cannot resell the goods, even if he is in possession of the goods after sale (except in certain case, as for example, a sale by a seller in possession after sale under Sec. 30, or a sale by an unpaid seller under Sec. 54). If he does so, the subsequent buyer does not acquire title to the goods. In an agreement to sell, the seller may sell the goods since ownership is with the seller.

9. Right of Usage: In a sale, the buyer has the right to use the goods he buy, i.e., he becomes the sole owner of goods and can use them in any manner. But an agreement to sell being only a contract between the buyer and seller, it does not give the buyer the right to use the goods till the ownership of good is transferred to the buyer.

5.4.2 Formation of a Contract Section 5 lays down the formalities of the contract of sale as under:

a) A contract of sale is made by an offer to buy or sell goods for a price. The contract may provide for the immediate delivery of goods or immediate payment of the price or both, or for the delivery or payment by installments, or that the delivery or payment or both shall be postponed.

b) A contract of sale may be made in writing or by word of mouth, or partly in writing and partly by word of mouth, or may be implied from the conduct of the parties.

5.5 IMPLIED CONDITION AS TO SALE BY SAMPLE AS WELL AS A DESCRIPTION

Referring to Section 15 of the Sale of Goods Act, 1930, both the sample and the description of the goods delivered must be compatible with both the sample and the description. There was a selling of international, refined rape -oil in ***Nichb v Gedis*** [5]. The supplied oil was the same as the sample, but a mixture of other oil was also available. In this case, it was held that the vendor was liable to refund the money charged.

Warranty is the additional stipulation and a written guarantee that is collateral to the main purpose of the contract The effect of a breach of a warranty is that the aggrieved party cannot repudiate the whole contract however, can claim for the damages. Unlike in the case of breach of condition, in the breach of warranty the buyer cannot treat the goods as repudiated.

5.6 SUMMARY

In order to become a legal contract, an agreement for the selling of products must be subject to certain stages and procedures. The parties must verify the fairness of the agreement and then finalise it prior to entering into a contract or completing a contract There is no formal framework for the drafting of the sales contract, which can be established in accordance with the particular needs of the parties.

However, the key framework for the basic conditions of the contract for the selling of goods is provided for in some clauses of this Article. The substance of a contract for the selling of goods really has no legal structure, but the addition of such clauses really enhances the contract

5.7 KEY WORDS

- A contract of sale of goods is a legally binding agreement between a seller and a buyer for the transfer of ownership of goods in exchange for a price.

- It establishes the terms and conditions governing the sale transaction, including the rights and obligations of both parties.

Essentials:

1. **Offer and Acceptance**: There must be a definite offer by one party and an unconditional acceptance by the other party to form a valid contract
2. **Consideration:** The contract must involve a price paid or promised by the buyer in exchange for the goods sold by the seller.
3. **Capacity and Consent**: Both parties must have the legal capacity to enter into the contract, and their consent must be freely given without any coercion, fraud, or mistake.
4. **Lawful Object:** The object of the contract (the goods being sold) must be legal, and the contract must not involve any illegal activities.
5. **Intention to Create Legal Relations**: Both parties must intend to create a legally binding agreement, which is presumed in commercial transactions.

5.8 ANSWERS TO CHECK YOUR PROGRESS

1. **What is a contract of sale of goods?**
   - A contract of sale of goods is a legal agreement between a seller and a buyer for the transfer of ownership of goods in exchange for a price. It outlines the terms and conditions under which the sale takes place.
2. **What are the essentials of a contract of sale of goods?**
   - The essentials of a contract of sale of goods include:
   - Offer and acceptance

- Consideration (price)
- Capacity and consent of parties
- Lawful object
- Intention to create legal relations

3. **What is the difference between an offer and an invitation to treat in the context of a sale of goods?**
   - An offer is a definite proposal made by one party to another, indicating a willingness to enter into a contract under specific terms. An invitation to treat, on the other hand, is an invitation for others to make an offer. For example, displaying goods for sale in a store window is generally considered an invitation to treat, not an offer.
4. **What are the different types of contracts of sale of goods?**
   - Contracts of sale of goods can be classified into various types based on factors such as the parties involved (e.g., B2B, B2C), the nature of the goods (e.g., tangible goods, digital goods), and the method of sale (e.g., cash sale, instalment sale).
5. **What are the implied warranties in a contract of sale of goods**?
   - Implied warranties are automatic guarantees that the law assumes to be part of every sales transaction, even if they are not explicitly stated in the contract Common implied warranties include the warranty of merchantability (goods are fit for their ordinary purpose) and the warranty of fitness for a particular purpose (goods are suitable for a specific use).
6. **What is the significance of the doctrine of caveat emptor in contracts of sale of goods?**
   - Caveat emptor means "let the buyer beware." It places the responsibility on the buyer to examine the

goods before purchase and to bear the risk of any defects or deficiencies that are discoverable through reasonable inspection. However, this doctrine has been modified by consumer protection laws in many jurisdictions.

7. **What happens if there is a breach of contract in a sale of goods transaction?**
   - If there is a breach of contract, the non-breaching party may be entitled to remedies such as damages, specific performance (forcing the breaching party to fulfill their contractual obligations), or cancellation of the contract

8. **What are some common clauses included in contracts of sale of goods?**
   - Common clauses include provisions related to price, payment terms, delivery, warranties, inspection, acceptance, risk of loss, governing law, jurisdiction, dispute resolution, and confidentiality

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UNIT 6: PROVISIONS RELATING TO CONDITIONS AND WARRANTIES, PROVISIONS RELATING TO TRANSFER OF PROPERTY

Structure

6.0 INTRODUCTION

The contract for the sale of things is a unique type of contract that is used a lot in business. The Sale of Goods Act 1930, which used to

the product. Section 11 to 17 of the Sale of Goods Act enlightens the provisions relating to Conditions and Warranties.

Section 12 of the Act draws a demarcation between a condition and a warranty. The determination of condition or warranty depends upon the interpretation of the stipulation. The interpretation should be based on its function rather than the form of the word used.

6.3 CONDITION

Under the Sale of Goods Act of 1930, a condition is an important part of the contract and must be met in order for the contract to be carried out. Because the terms were broken, the person who was hurt can consider the contract to be broken. This means that if the seller doesn't meet a condition, the buyer can back out of the deal or refuse to accept the goods. If the buyer has already paid, he can get his money back and also get sued for breach of contract. Sohan, for example, wants to buy a horse from Ravi that can go 50 km/h. Ravi shows you a horse and tells you that it is a good match for you. We buy the horse for Sohan. After some time, he learns that the horse can only run 30 km/h. This is a failure of contract because the buyer's need has not been met. The conditions can also be broken down into the following groups:

Kinds of conditions

Expressed Condition

The dictionary meaning of the term is defined as a statement in a legal agreement that says something must be done or exist in the contract. The conditions which are imperative to the functioning of the contract and are inserted into the contract at the will of both the parties are said to be expressed conditions.

Implied Condition

There are several implied conditions which are assumed by the parties in different kinds of contracts of sale. Say for example the assumption during sale by description or sale by sample. Implied conditions are described in Section 14 to 17 of the Sale of Goods Act, 1930. Unless otherwise agreed, these implied conditions are assumed by the parties as if it is incorporated in the contract itself.

Let's study these conditions briefly:

Implied condition as to title

In every contract of sale, the basic yet essential implied conditions on the part of the seller are that -

1. Firstly, he has the title to sell the goods.
2. Secondly, in case of an agreement to sell, he will have the right to sell the goods at the time of performing the contract

Consequently, if the seller has no title to sell the given goods, the buyer may refuse or reject those goods. He is also entitled to recover the full price paid by him.

In Rowland v. Divall (1923) C the party bought a second-hand motor car from the former and paid for the same. After six months, he was deprived of it as the seller had no title to sell the car. It was held that the aggrieved party is entitled to recover the money.

Implied condition as to the description

Moving to Section 15 of the Act, In the contract of sale, there is an implied condition that the goods should be in conformity with the description. The buyer has the option to either accept or reject the goods which do not conform with the description of the good. Say for example: Where Ram buys a new car which he thinks to be new from "B" and the car is not new. Ram' can reject the car.

was delivered it was found that they were not made from the same sole. The buyer was entitled to the refund of the price and damages.

Implied condition as to Sale by sample as well as a description

Referring to Section 15 of the Sale of Goods Act, 1930, in a sale by sample as well as description, the goods supplied must be in accordance with both the sample as well as the description. In *e* ________________ *L C* there was a sale of foreign refined rape-oil. The delivered oil was the same as the sample but it was having a mixture of other oil too. It was held in this case that the seller was liable to refund the amount paid.

6.4 WARRANTY

Warranty is the additional stipulation and a written guarantee that is collateral to the main purpose of the contract. The effect of a breach of a warranty is that the aggrieved party cannot repudiate the whole contract however, can claim for the damages. Unlike in the case of breach of condition, in the breach of warranty the buyer cannot treat the goods as repudiated.

6.5 KINDS OF WARRANTY

There are several kinds of warranties that can be present in contracts or transactions, each serving a different purpose and providing varying levels of assurance to the parties involved. Here are some common types of warranties:

6.5.1 Express Warranties:

Express warranties are specific promises or guarantees made by the seller to the buyer regarding the quality, condition, performance, or characteristics of the goods being sold. These warranties can be communicated through various means, including verbal statements, written descriptions, advertisements, or promotional materials. Here are some key points about express warranties:

1. **Form**: Express warranties can be either written or verbal. While written warranties are preferred for clarity and evidence, verbal assurances can also constitute express warranties if they are specific and definite.
2. **Examples**:
   - A written statement on the packaging of a product indicating that it will last for a certain number of years.
   - Verbal assurances by a salesperson that a vehicle has low mileage and has never been involved in an accident
   - Advertising materials claiming that a household appliance is energy-efficient and will reduce electricity bills.
3. **Scope**: Express warranties can cover various aspects of the goods, including their quality, performance, durability, specifications, or suitability for a particular purpose.
4. **Enforceability**: Express warranties are enforceable under the terms of the contract. If the goods do not meet the standards promised in the warranty, the buyer may have legal remedies available, such as seeking repairs, replacements, or compensation for damages.
5. **Integration**: In some jurisdictions, the presence of an express warranty may preclude the implication of certain implied warranties, especially if the express warranty covers the same aspects as the implied warranties.
6. **Modification or Waiver**: Sellers can modify or waive express warranties, but any such modifications or waivers must be clear, conspicuous, and mutually agreed upon by both parties. Additionally, consumer protection laws may impose restrictions on the modification or waiver of warranties.
7. **Legal Requirements**: In many jurisdictions, consumer protection laws regulate express warranties, requiring sellers to provide

accurate and truthful information about the goods and prohibiting deceptive or misleading warranty claims.

Express warranties provide buyers with specific assurances about the quality and performance of the goods they are purchasing, enhancing consumer confidence and facilitating informed purchasing decisions.

6.5.2 Implied Warranties:

Implied warranties are automatic assurances imposed by law on sellers in certain sale transactions, even if these warranties are not explicitly stated in the contract. They provide buyers with additional protections beyond what is expressly promised. Here are some key points about implied warranties:

1. **Types:**
   - **Implied Warranty of Merchantability:** This warranty assures that the goods are reasonably fit for the ordinary purpose for which they are used. It implies that the goods are of average quality and free from defects that would render them unfit for ordinary use.
   - **Implied Warranty of Fitness for a Particular Purpose:** This warranty arises when the seller knows or has reason to know of a particular purpose for which the goods are required and the buyer relies on the seller's skill or judgment to select suitable goods. It implies that the goods are suitable for the specific purpose intended by the buyer.
2. **Automatic Inclusion:** Implied warranties are automatically included in contracts of sale of goods, regardless of whether they are expressly mentioned in the contract. They arise by operation of law to protect buyers' reasonable expectations.

3. **Applicability:**
   - **Merchantability:** The implied warranty of merchantability applies to all sales of goods made by merchants who regularly deal in the type of goods being sold. It does not apply to sales by private individuals or occasional sellers.
   - **Fitness for a Particular Purpose:** The implied warranty of fitness for a particular purpose applies when the seller has reason to know the buyer's intended use for the goods , and the buyer relies on the seller's expertise or advice in selecting the goods.
4. **Scope:** Implied warranties cover various aspects of the goods, including their quality, performance, durability, and fitness for use. They provide buyers with a basic level of protection against defects or deficiencies in the goods.
5. **Enforceability:** Implied warranties are enforceable under the law, and if breached, the buyer may have legal remedies available, such as seeking repairs, replacements, or compensation for damages.
6. **Disclaimer:** In some jurisdictions, sellers may attempt to disclaim or waive implied warranties through specific contractual provisions. However, such disclaimers must be clear, conspicuous, and mutually agreed upon by both parties.

Implied warranties play a crucial role in ensuring that buyers receive goods that meet minimum standards of quality and fitness for use, contributing to consumer confidence and fair trade practices.

6.6 DIFFERENCE BETWEEN CONDITION AND WARRANTY

Basis For Comparison	Condition	Warranty
Meaning	It is a stipulation which forms the very basis of the contract	It is additional stipulation complementary to the main purpose of the contract
Provision	Section 12(2) of the Sale of Goods Act, 1930 defines Condition.	Section 12(3) of the Sale of Goods Act, 1930 defines Condition.
Purpose	Condition is basic for the formulation of the contract	It is a written guarantee for assuring the party
Result of Breach of Contract	The whole contract may be treated as repudiated.	Only damages can be claimed in case of a breach.
Remedies available to the aggrieved party	Repudiation, as well as damages, can be claimed.	Only damages can be claimed.

6.7 TRANSFER OF PROPERTY IN GOODS

There are 3 stages in the performance of a contract of sale of goods by a seller viz,

1. Transfer of property in the goods

2. Transfer of possession of the goods i.e. delivery

3. The passing of the risk

The property in the goods is said, to be transferred from the seller to the buyer when the latter acquires the proprietary rights over the goods and the obligation s linked thereto. 'Property in Goods' which mean the ownership of goods, is different from ' possession of goods' which means the physical custody or control of the goods.

The transfer of property in the goods from the seller to the buyer is the essence of a contract of sale. Therefore, the moment when the property in goods passes from the seller to the buyer is significant for following reasons:

a. Ownership -- The moment the property in goods passes, the seller ceases to be their owner and the buyer acquires the ownership. The buyer can exercise the proprietary rights over the goods. For example, the buyer may sue the seller for non-delivery of the goods or when the seller has resold the goods, etc.

b. Risk follows ownership -- The general rule is that the risk follows the ownership, irrespective of whether the delivery has been made or not If the goods are damaged or destroyed, the loss shall be borne by the person who was the owner of the goods at the time of damage or destruction. Thus the risk of loss prima facie is in the person in whom the property is.

c. Action Against Third parties -- When the goods are in any way damaged or destroyed by the action of third parties, it is only the owner of the goods who can take action against them.

d. Suit for Price - The seller can sue the buyer for the price, unless otherwise agreed, only after the goods have become the property of the buyer.

e. Insolvency of the seller or the buyer - In the event of insolvency of either the seller or the buyer, the question whether the goods can be taken over by the Official Receiver or Assignee, will depend on whether the property in goods is with the party who has become insolvent

Essentials for Transfer of Property -- The two essentials requirements for transfer of property in the goods are:

1. Goods must be ascertained: Where there is a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer unless and until the goods are ascertained

2. Intention to PASS Property in Goods must be there: In a sale of specific or ascertained goods, the property in them is transferred to the buyer at the time when the parties intend it to pass. For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

Unless a different intention appears, the rules contained in sections 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer are:

I. Specific Goods (Sec 20 to 22)

a) Specific goods in a deliverable state - Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment of the price or the time of delivery of the goods, or both, is postponed.

b) Specific goods to be put into a deliverable state - Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such thing is done and the buyer has notice thereof.

c) Specific goods in a deliverable state, when the seller has to do anything thereto in order to ascertain price - Where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing is done and the buyer has notice thereof.

II. Unascertained Goods (Sec 23)

Where there is a contract for the sale of unascertained or future goods by description and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be express or implied, and may be given either before or after the appropriation is made.

Delivery to carrier - Where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract

III. Goods sent on approval or ño

When goods are delivered to the buyer on approval or “on sale or return” or other similar terms, the property therein passes to the buyer —(a) when he signifies his approval or acceptance to the seller or does any other act adopting the transaction;(b) if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time.

RESERVATION OF RIGHT OF DISPOSAL. ð

Where there is a contract for the sale of specific goods or where goods are subsequently appropriated to the contract, the seller may by the terms of the contract or appropriation, reserve the right of disposal of the goods until certain conditions are fulfilled. In such case, notwithstanding the delivery of the goods to a buyer or to a carrier or other Bailee for the purpose of transmission to the buyer, the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled as follows:

1. Where goods are shipped or delivered to a railway administration for carriage by railway and by the bill of lading or railway receipt, as the case may be, the goods are deliverable to the order of the seller or his agent, the seller is prima facie deemed to reserve the right of disposal.

2. Where the seller of goods draws on the buyer for the price and transmits to the buyer the bill of exchange together with the bill of lading or, as the case may be, the railway receipt, to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading or the railway receipt if he does not honour

the bill of exchange; and, if he wrongfully retains the bill of lading or the railway receipt, the property in the goods does not pass to him.

PERFORMANCE OF CONTRACT

Performance of a contract of sale means as regards the seller delivery of the goods to the buyer, and as regards the buyer, acceptance of the delivery of the goods and payment for them, in accordance with the terms of the contract of sale.

DELIVERY OF GOODS

Delivery means voluntary transfer of possession of goods from one person to another.

Delivery of goods sold may be made by doing anything which the parties agree shall be treated as delivery or which has effect of putting the goods in the possession of the buyer or his agent

Delivery of goods may be actual, symbolic or constructive.

1. Actual delivery, where the goods are handed over by the seller to the buyer or his duly authorized agent
2. Symbolic delivery where goods are ponderous or bulky and incapable of actual delivery ex handing over the key of the house to the buyer
3. Constructive delivery or delivery by attornment, where a third person who is in possession of the goods of the seller at the time of sale acknowledges to the buyer that he holds the goods on his behalf.

Rules as to delivery of goods: -

1. Mode of delivery: Delivery should have the effect of putting the goods in the possession of the buyer or his duly authorized agent

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

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

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

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

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

7. Goods in possession of a third party: When at the time of sale, the goods are with a third party there is no delivery by the seller to th

Regarding the transfer of property, it involves legal formalities and considerations to ensure the valid transfer of title and possession. The doctrine of caveat emptor underscores the buyer's responsibility to inspect the property thoroughly before purchase. Additionally, awareness of encumbrances, tax implications, and potential disputes is essential in property transactions.

In essence, a comprehensive understanding of these provisions empowers individuals and entities to engage in contracts and conditions or warranties, but such clauses are subject to statutory and common law limitations.

Transfer of Property:

1. **Modes of Transfer:** Property can be transferred through various means, including sale, gift, exchange, lease, or bequest.
2. **Legal Formalities:** Depending on the jurisdiction and the type of property, there may be specific legal formalities required for the valid transfer of property, such as writing, registration, or delivery.
3. **Title and Ownership:** Transfer of property involves the transfer of both title (legal ownership) and possession (physical control) from the transferor to the transferee.
4. **Doctrine of Caveat Emptor:** In property transactions, the principle of caveat emptor (buyer beware) applies, placing the burden on the buyer to inspect the property and ascertain its condition before purchase.
5. **Encumbrances and Liens:** Before transferring property, it is essential to ensure that there are no encumbrances or liens affecting the property's title, as these can affect the validity of the transfer.
6. **Legal Consequences:** The transfer of property can have various legal consequences, including tax implications, liability for maintenance and repairs, and potential disputes over boundaries or easements.

6.10 ANSWERS TO CHECK YOUR PROGRESS

1. What are the key differences between conditions and warranties in a contract?

2. How do conditions and warranties affect the performance and obligations of parties in a contract?
3. Can you provide examples of conditions and warranties commonly found in contracts?
4. What legal remedies are available to a party in case of breach of a condition versus breach of a warranty?
5. How do provisions relating to conditions and warranties vary across different jurisdictions or legal systems?
6. In the context of sale of goods, what statutory protections exist for consumers regarding conditions and warranties?
7. What factors determine whether a term in a contract is considered a condition or a warranty?
8. How do exclusion clauses impact the enforceability of conditions and warranties in contracts?
9. What are the implications of a breach of condition or warranty on the transfer of property?
10. Can you explain the doctrine of caveat emptor and its relevance to conditions and warranties in contracts involving property transfer?

UNIT 7 OWNERSHIP, PROVISIONS RELATING TO PERFORMANCE OF CONTRACT OF SALE- RIGHTS AND DUTIES OF UNPAID SELLER AND BUYER

Structure

7.0 INTRODUCTION

In the realm of commerce, the exchange of goods through contracts of sale forms the cornerstone of countless transactions worldwide. Central to this exchange are the intricate dynamics of ownership, alongside the provisions governing the performance of such contracts. Within this framework, the roles and responsibilities of both the unpaid seller and the buyer take centre stage, delineating a landscape of rights and duties crucial for a fair and equitable transaction.

At the heart of any sale lies the transfer of ownership, a pivotal moment wherein the reins of control and liability pass from seller to buyer. Yet, this transfer is not merely a matter of possession; it entails a web of legalities and obligations that shape the relationship between the parties involved. Concurrently, the performance of a contract of sale hinges upon adherence to specified terms, encompassing actions such as delivery, acceptance, and fulfilment of payment obligations.

Within this intricate tapestry of commerce, the unpaid seller emerges as a figure of significance, navigating the delicate balance between asserting rights and facilitating transactions. Meanwhile, the buyer, vested with expectations of quality and conformity, stands poised to exercise their entitlements under the contract.

This introduction sets the stage for a deeper exploration into the realms of ownership, performance provisions, and the intricate interplay of rights and duties inherent to both the unpaid seller and the buyer in the context of a contract of sale. Through a nuanced understanding of these concepts, stakeholders can navigate the complexities of commercial transactions with clarity and confidence.

7.1 OBJECTIVE:

- He can make the goods delivered in instalments when so agreed by the buyer.
- He can have the possession of the goods until the buyer hasn't paid for the goods.
- He can stop the delivery of goods and resume possession of the goods unless and until the payment is done for the goods.
- It is the first and foremost right of an unpaid seller against the buyer.
- It is used whenever the seller has delivered all his goods to the buyer, and the buyer refuses to pay the amount, then he

can make use of his right and file a case against the buyer by suing for the price.

7.2 OWNERSHIP,

Under the Sales of Goods Act, 1930, ownership of goods is a crucial aspect of any sale transaction. Here's a breakdown of ownership as governed by this act

1. **Transfer of Ownership:** Section 18 of the Sales of Goods Act, 1930, deals with the transfer of ownership. It states that unless otherwise agreed, the property in the goods sold passes to the buyer at the time the parties intend it to pass. The intention of the parties is determined by the terms of the contract, the conduct of the parties, and the circumstances of the case.
2. **Specific Rules for Transfer of Ownership:**
   - **Sale of Specific Goods:** If the contract is for the sale of specific or ascertained goods, the property passes to the buyer when the parties intend it to pass. This is typically at the time of the contract, unless the parties agree otherwise.
   - **Sale of Goods by Description:** If the contract is for the sale of unascertained goods by description, the property passes to the buyer when the goods are unconditionally appropriated to the contract by the seller, with the buyer's assent, express or implied.
3. **Reservation of Title:** The seller may reserve the right of ownership of the goods until certain conditions are fulfilled, such as full payment of the purchase price. This is commonly known as a "retention of title" clause and is recognized under the Sales of Goods Act, 1930.

4. **Risk and Ownership:** The transfer of ownership may not necessarily coincide with the transfer of risk. The default rule is that risk follows ownership, but parties may agree otherwise. The rules regarding risk are often specified in the contract or governed by the applicable law.
5. **Effects of Transfer of Ownership:** Once ownership of the goods passes to the buyer, they acquire the right to possess, use, and dispose of the goods as they see fit. They also become responsible for any liabilities associated with the goods, such as the risk of loss or damage.
6. **Insolvency and Ownership:** In cases where the seller becomes insolvent before the transfer of ownership to the buyer, the buyer's ownership rights may be at risk. However, the Sales of Goods Act, 1930, contains provisions to protect the buyer's ownership rights in such situations.

Overall, the Sales of Goods Act, 1930, provides a framework for determining the transfer of ownership in sale transactions, ensuring clarity and legal certainty for both buyers and sellers.

7.3 PROVISIONS RELATING TO PERFORMANCE OF CONTRACT OF SALE

The provisions relating to the performance of a contract of sale outline the rights, obligations, and responsibilities of both the buyer and the seller in fulfilling their respective parts of the agreement. Here are some key provisions typically found in contracts of sale:

1. **Delivery of Goods:** The seller is generally obligated to deliver the goods to the buyer according to the terms specified in the contract. This includes ensuring that the goods are delivered to the agreed-upon location, in the agreed-upon quantity, and within the specified time frame.

2. **Transfer of Title:** The seller must transfer legal ownership (title) of the goods to the buyer upon delivery, unless otherwise specified in the contract. The buyer obtains the right to possess, use, and dispose of the goods once title has been transferred.
3. **Conformity of Goods:** The goods delivered by the seller must conform to the specifications, quality standards, and descriptions outlined in the contract. They should be free from defects and fit for the purpose for which they were intended.
4. **Payment of Price:** The buyer is obligated to pay the agreed-upon price for the goods in accordance with the terms specified in the contract. This may involve payment in full at the time of delivery or according to an agreed-upon payment schedule.
5. **Inspection and Acceptance:** Upon delivery, the buyer typically has the right to inspect the goods to ensure they conform to the contract specifications. If the goods are found to be satisfactory, the buyer accepts them. If not, the buyer may reject the goods or request remedial action.
6. **Risk of Loss or Damage:** The contract should specify when the risk of loss or damage to the goods transfers from the seller to the buyer. This is usually tied to the moment of delivery but it can vary based on the agreed-upon Incoterm (International Commercial Terms).
7. **Warranties and Guarantees:** The contract may include provisions regarding any warranties or guarantees provided by the seller regarding the quality, performance, or condition of the goods. These warranties may be express (explicitly stated) or implied by law.
8. **Remedies for Breach:** The contract should outline the remedies available to either party in the event of a breach of

contract. This may include remedies such as termination of the contract, damages, specific performance, or other equitable remedies.

9. **Force Majeure:** In some contracts, provisions related to force majeure events (unforeseeable circumstances beyond the parties' control) may be included to address situations where performance becomes impossible or impracticable due to external factors.

10. **Governing Law and Dispute Resolution:** The contract may specify the governing law that applies to the interpretation and enforcement of its terms, as well as the mechanism for resolving any disputes that may arise between the parties, such as arbitration or litigation.

7.4 RIGHTS OF THE BUYER: -

1. Right to have delivery as per contract – the first right of the buyer is to have delivery of the goods as per contract

2. Right to reject the goods – If the seller sends to the buyer a larger or smaller quantity of goods than he ordered, the buyer may (i) reject the whole, (ii) accept the whole or (iii) accept the quantity ordered and reject the rest

3. Right to repudiate – Unless otherwise agreed, the buyer of the goods has a right not to accept delivery thereof by instalments.

4. Right to notice of insurance - Unless otherwise agreed, where goods are sent by the seller to the buyer by a sea route, the buyer has a right to be informed by the seller so that he may get the goods insured.

5. Right to examine – The buyer has a right to examine the goods which he has not previously examined before he accepts them.

6. Rights against the seller for breach of contract: -

a. Suit for damages - Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery

b. Suit for price – If the buyer has paid the price and the goods are not delivered, he can recover the amount paid.

c. Suit for specific performance – The buyer may sue the seller for specific performance of the contract to sell. The court may if it thinks fit, order for the specific performance of the contract

d. Suit for breach of warranty – Where there is a breach of warranty by the seller, or where the buyer elects or is compelled to treat any breach of condition on the part of the seller as a breach of warranty the buyer is not by reason only of such breach of warranty entitled to reject the goods. But he may (i) set up against the seller the breach of warranty in diminution or extinction of the price or (ii) sue the seller for damages for breach of warranty

e. Suit for contract before due date – When the seller repudiates the contract before the date of delivery, the buyer may either treat the contract as subsisting and wait till the date of delivery, or he may treat the contract as rescinded and sue for damages for the breach. This rule is known as "rule of anticipatory breach of contract" .

f. Suit for interest – Where there is a breach of contract on the part of the seller and as a result the price has to be refunded to the buyer; the buyer has a right to claim interest on the amount of the price refunded to him from the date on which the payment was made. The court may award the interest at such rate as it thinks fit

DUTIES OF BUYER: -

1. Duty to accept the goods and pay for them in exchange for possession – It is the duty of the buyer to accept the goods and pay for them, in accordance with the terms of the contract of sale.

2. Duty to apply for delivery – Apart from any express contract, it is the duty of the buyer to apply for delivery.

3. Duty to demand delivery at a reasonable hour – It is the duty of the buyer to demand delivery at a reasonable hour.

4. Duty not to accept instalment delivery and pay for it – Unless otherwise agreed, the seller is not entitled to deliver the goods by instalments and if he does so, the buyer is not bound to accept the goods. If he accepts, then pay for it

5. Duty to take risk of deterioration in the course of transit ï Where the seller of the goods agrees to deliver them at his own risk at a place other than where they are sold, the buyer shall take any risk of deterioration in the goods necessarily incident to the course of transit

6. Duty to intimate the seller where he rejects the goods – Unless otherwise agreed, it is the duty of the buyer to inform the seller in case he refuses to accept the goods.

7. Duty to take delivery – It is the duty of the buyer to take delivery of the goods within a reasonable time after the tender of the delivery.

He becomes liable to the seller for any loss caused by his neglect or refusal to take delivery

8. Duty to pay price – Where property in the goods has passed to buyer, it is his duty to pay the price according to the terms of the contact

9. Duty to pay damage for non-acceptance – Where the buyer wrongfully neglects or refuses to accept and pay for the goods, he will have to compensate the seller, in a suit by him, for damages for non-acceptance.

7.5 UNPAID SELLER AND BUYER

A seller of goods is deemed to be an unpaid seller when: -

1. When the whole of the price has not been paid or tendered
2. When a bill of exchange or other negotiable instrument has been received as a conditional payment and the condition on which it was received has not been fulfilled by reason of the dishonored of the instrument or otherwise.

AS AGAINST THE GOODS

A lien is a right to retain possession of goods until payment of the price. It is available to the unpaid seller of the goods who is in possession of them where:

a. The goods have been sold without any stipulation as to credit

b. The goods have been sold on credit, but the term of the credit has expired

c. The buyer becomes insolvent

Rules regarding Lien:

• The seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee for the buyer.

• Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien on the remainder, unless such part delivery has been made under such circumstances as to show agreement to waive the lien.

• The seller may exercise his right of lien even though he has obtained a decree for the price of the goods.

2. Right of stoppage in transit

The seller may resume possession of the goods, as long as they are in the course of transit and may retain them until payment or tender of the price.

The right to of stoppage in transit either by taking actual possession of the goods, or by giving notice of his claim to the carrier or other bailee in whose possession the goods are.

3. Right of resale

The unpaid seller can re-sell the goods

i. Where the goods are of a perishable nature

ii. Where he has exercised his right of lien or stoppage in transit and given notice to the buyer of his intention to re-sell the goods

iii. Where the seller expressly reserves a right of resale in case the buyer makes default

4. Right of withholding delivery

When the property in goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies a right of withholding delivery similar to and co-extensive with his rights of lien and stoppage in transit where the property has passed to the buyer.

AS AGAINST THE BUYER PERSONALLY: -

1. Suit for price: -

Where under a contract of sale the property in the good has passed to the buyer and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may suit him for price of the goods.

2. Damage for non-acceptance: - where the buyer wrongfully neglects or refuses to pay for the goods, the seller may sue him for damages for non-acceptance.

3. Suit for interest: - The seller can recover interest on price from the date on which the payment become due, if there is a special agreement to the effect

4. Repudiation of contact before due date: - when the buyer in a contract of sale repudiates the contract before the date of delivery, the seller may either treat the contract as subsisting and wait till the date of delivery or he may treat the contract as rescinded and sue for damages for the brea ch.

7.6 DUTIES OF AN UNPAID SELLER

There are certain duties which the seller is supposed to adhere to, some of which has been discussed below for better understanding of the topic.

Mitigating Damages

The unpaid seller is expected to be mitigating damages. This means that the unpaid seller is to take all the possible measures to lower the extent of damages caused. Mitigating actually means lowering the extent of the potential damage to be caused. If the seller is of good intent he will always try to decrease the losses from his end.

Learn about Doctrine of caveat emptor.

Delivering Goods in Good Condition

The unpaid seller even if he is unhappy with the delay in the payments, but if in future the buyer shows up with the payment of the product, he is to deliver the said product in the condition which he is expected to. He must retain the goods under his custody with utmost care of the product

Notice of Intended Resale to be Provided

If there is a case where the seller is to be selling the goods for retaining the losses incurred by him then he is to send a notice to the buyer in writing, mentioning the exact date, and place where the sale is to be conducted.

Proceeds of Resale should be Accounted

The seller is to keep exact records of the resale of the products, so that in case if he is questioned in future, he has proper justification of it

Delivering Goods to the Buyer

If the buyer pays for the goods after the seller has withheld delivery or stopped delivery in transit, he is then supposed to reinitiate the delivery of the goods to the buyer. He cannot continue to withhold delivery or stop delivery in transit if the buyer has rightly paid for the goods.

- The seller has the right to retain possession of the goods until payment is made, as well as to sue the buyer for the price.
- If the buyer becomes insolvent, the seller has rights to stop the goods in transit, repossess the goods, and resell them.

3. **Delivery and Acceptance:**
    -

(5) The maker must be certain: The note self must show clearly who is the person agreeing to undertake the liability to pay the amount. In case a person signs in an assumed name, he is liable as a maker because a maker is taken as certain if from his description sufficient indication follows about his identity. In case two or more persons promise to pay, they may bind themselves jointly or jointly and severally, but their liability cannot be in the alternative.

(6) The payee must be certain: The instrument must point out with certainty the person to whom the promise has been made. The payee may be ascertained by name or by designation. A note payable to the maker himself is not pronote unless it is indorsed by him. In case, there is a mistake in the name of the payee or his designation; the note is valid, if the payee can be ascertained by evidence. Even where the name of a dead person is entered as payee in ignorance of his death, his legal representative can enforce payment.

(7) The promise should be to pay money and money only: Money means legal tender money and not old and rare coins.

A promise to deliver paddy either in the alternative or in addition to money does not constitute a promissory note.

(8) The amount should be certain: One of the important characteristics of a promissory note is certainty —not only regarding the person to whom or by whom payment is to be made but also regarding the amount.

However, paragraph 3 of Section 5 provides that the sum does not become indefinite merely because

(a) there is a promise to pay amount with interest at a specified rate.

(b) the amount is to be paid at an indicated rate of exchange.

(c) the amount is payable by instalments with a condition that the whole balance shall fall due for payment on a default being committed in the payment of any one installment.

(9) Other formalities: The other formalities regarding number, place, date, consideration **etc.** though usually found given in the promissory notes but are not essential in law. The date of instrument is not material unless the amount is made payable at a certain time after date. Even in such a case, omission of date does not invalidate the instrument and the date of execution can be independently ascertained and proved.

On demand (or six months after date) I promise to pay Peter or order the sum of rupees one thousand with interest at 8 per cent per annum until payment

8.5.2 Bill of exchange

Section 5 of the Act defines, "A bill of exchange is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of a certain person or to the bearer of the instrument". A bill of exchange, therefore, is a written acknowledgement of the debt, written by the creditor and accepted by the debtor. There are usually three parties to a bill of exchange drawer, acceptor or drawee and payee. Drawer himself may be the payee.

Essential conditions of a bill of exchange

(1) It must be in writing.

(2) It must be signed by the drawer.

(3) The drawer, drawee and payee must be certain.

(4) The sum payable must also be certain.

(5) It should be properly stamped.

(6) It must contain an express order to pay money and money alone.

For example, In the following cases, there is no order to pay but only a request to pay. Therefore, none can be considered as a bill of exchange:

(a) “I shall be highly obliged if you make it convenient to pay Rs. 1000 to Suresh”.

(b) “Mr. Ramesh, please let the bearer have one thousand rupees, and place it to my account and oblige” However, there is an order to pay, though it is politely made, in the following examples:

(a) “Please pay Rs. 500 to the order of ‘A’.

(b) ‘Mr. A will oblige Mr. C, by paying to the order of’ P”.

(7) The order must be unconditional.

Distinction Between Bill of Exchange and Promissory Note

1. Number of parties: In a promissory note there are only two parties – the maker (debtor) and the payee (creditor). In a bill of exchange, there are three parties; drawer, drawee and payee; although any two out of the three may be filled by one and the same person,

2. Payment to the maker: A promissory note cannot be made payable the maker himself, while in a bill of exchange to the drawer and payee or drawee and payee may be same person.

3. Unconditional promise: A promissory note contains an unconditional promise by the maker to pay to the payee or his order, whereas in a bill of exchange, there is an unconditional order to the drawee to pay according to the direction of the drawer.

4. Prior acceptance: A note is presented for payment without any prior acceptance by the maker. A bill of exchange is payable after sight must be accepted by the drawee or someone else on his behalf, before it can be presented for payment

5. Primary or absolute liability: The liability of the maker of a promissory note is primary and absolute, but the liability of the drawer of a bill of exchange is secondary and conditional.

6. Relation: The maker of the promissory note stands in immediate relation with the payee, while the maker or drawer of an accepted bill stands in immediate relations with the acceptor and not the payee.

7. Protest for dishonor: Foreign bill of exchange must be protested for dishonor when such protest is required to be made by the law of the country where they are drawn, but no such protest is needed in the case of a promissory note.

8. Notice of dishonor: When a bill is dishonored, due notice of dishonor is to be given by the holder to the drawer and the intermediate in dorsers, but no such notice need be given in the case of a note.

Classification of Bills can be classified as:

(1) Inland and foreign bills.

(2) Time and demand bills.

(3) Trade and accommodation bills.

(1) Inland and Foreign Bills

Inland bill: A bill is, named as an inland bill if:

(a) it is drawn in India on a person residing in India, whether payable in or outside India, or

(b) it is drawn in India on a person residing outside India but payable in India.

The following are the Inland bills

(i) A bill is drawn by a merchant in Delhi on a merchant in Madras. It is payable in Bombay. The bill is an inland bill.

(ii) A bill is drawn by a Delhi merchant on a person in London, but is made payable in India. This is an inland bill.

(iii) A bill is drawn by a merchant in Delhi on a merchant in Madras. It is accepted for payment in Japan. The bill is an inland bill.

Foreign Bill: A bill which is not an inland bill is a foreign bill. The following are the foreign bills:

1. A bill drawn outside India and made payable in India.
2. A bill drawn outside India on any person residing outside India.
3. A bill drawn in India on a person residing outside India and made payable outside India.
4. A bill drawn outside India on a person residing in India.
5. A bill drawn outside India and made payable outside India.

Bills in sets (Secs. 132 and 133): The foreign bills are generally drawn in sets of three, and each sets is termed as a 'via'. As soon as any one of the set is paid, the others becomes inoperative. These bills are drawn in different parts. They are drawn in order to avoid their loss or miscarriage during transit. Each part is dispatched separately. To avoid delay, all the parts are sent on the same day by different mode of conveyance.

Rules: Sections 132 and 133 provide for the following rules:

(i) A bill of exchange may be drawn in parts, each part being numbered and containing a provision that it shall continue payable only so long as the others remain unpaid. All parts make one bill and the entire bill is extinguished, i.e. when payment is made on one part- the other parts will become inoperative (Section 132).

(ii) The drawer should sign and deliver all the parts but the acceptance is to be conveyed only on one of the parts. In case a person accepts or endorses different parts of the bill in favour of different persons, he and the subsequent endorsers of each part are liable on such part as if it were a separate bill (Sec. 132).

(iii) As between holders in due course of the different parts of the same bill, he who first acquired title to any one part is entitled to the

Example: A, is need of money for three months. He induces his friend B to accept a bill of exchange drawn on him for Rs. 1,000 for three months. The bill is drawn and accepted. The bill is an

8.6 PARTIES TO NEGOTIABLE INSTRUMENTS

8.6.1 Parties to Bill of Exchange

1. Drawer: The maker of a bill of exchange is called the 'drawer'.

2. Drawee: The person directed to pay the money by the drawer is called the 'drawee',

3. Acceptor: After a drawee of a bill has signed his assent upon the bill, or if there are more parts than one, upon one of such pares and delivered the same, or given notice of such signing to the holder or to some person on his behalf, he is called the ' acceptor'.

4. Payee: The person named in the instrument, to whom or to **whose order the money is** directed to be paid by the instrument is called the 'payee'. He is the real beneficiary

under the instrument Where he signs his name and makes the instrument payable to some other person, that other person does not become the payee.

5. Indorser: When the holder transfers or indorses the instrument to anyone else, the holder becomes the 'indorser'.

6. Indorsee: The person to whom the bill is indorsed is called an 'indorsee'.

7. Holder: A person who is legally entitled to the possession of the negotiable instrument in his own name and to receive the amount thereof, is called a 'holder'. He is either the

Legal protection: Parties involved are protected by laws governing negotiable instruments, providing a framework for transactions.

Presumed value: The instrument is presumed to represent the value it signifies.

Promissory Notes: A written promise to pay a certain sum of money to a specific party at a designated time.

Bills of Exchange: An unconditional written order from one party (drawer) to another (drawee) to pay a certain sum to a third party (payee).

Cheques: A written order by an account holder directing their bank to pay a specific amount to the person named on the cheque.

Drawer: The person who creates and signs the negotiable instrument, ordering the payment

- Drawee: The person or entity directed to pay the specified amount on the instrument
- Payee: The person to whom the payment is directed to be made.
- Endorser: The person who signs the back of the instrument to transfer ownership rights to another party

Holder: Any person in possession of a negotiable instrument who is entitled to receive payment

A holder who acquires the instrument for value, in good faith, without notice of any defects or problems with the instrument, and before it is overdue.

Understanding negotiable instruments and their characteristics is essential for businesses and individuals engaged in financial transactions. It ensures smooth and secure exchange of value while providing legal protection to all parties involved.

8.9 KEY WORDS

1. **Meaning of Negotiable Instruments:**
   - Negotiable instruments are written documents that facilitate the transfer of money from one person (the payer or drawer) to another (the payee or payee's endorsee).
   - They are transferable by delivery or endorsement and delivery, making them a convenient and widely used form of payment in commercial transactions.
2. **Characteristics of Negotiable Instruments:**
   - **Negotiability:** Instruments must be transferable by delivery or endorsement, allowing the transferee to acquire rights equivalent to those of the transferor.
   - **Unconditional Promise or Order:** The instrument

8.10 ANSWERS TO CHECK YOUR PROGRESS

1. Define a negotiable instrument and explain its significance in commercial transactions. What are the key characteristics that distinguish negotiable instruments from other forms of payment?
2. Discuss the types of negotiable instruments recognized under law. How do promissory notes, bills of exchange, and checks differ in terms of their nature and usage?
3. What are the essential elements of a negotiable instrument? Explain the requirements for an instrument to be considered negotiable.
4. Who are the parties involved in a negotiable instrument transaction? Describe the roles and responsibilities of the drawer, drawee, payee, and endorser.
5. Define a holder of a negotiable instrument. What rights and privileges does a holder possess, and how are they established under the law?
6. What is a holder in due course, and what distinguishes them from an ordinary holder? Discuss the benefits and protections afforded to holders in due course.
7. Explain the concept of negotiation in the context of negotiable instruments. How does the process of negotiation occur, and what legal implications does it entail for the parties involved?
8. Discuss the importance of endorsement in negotiable instruments. What are the different types of endorsements, and how do they impact the negotiability and transferability of the instrument?
9. Can a holder in due course be held liable for the underlying obligations of a negotiable instrument? Explain the principle

of shelter and its significance in protecting the rights of bona fide holders.

10. What are the consequences of dishonor of a negotiable instrument, and what recourse is available to the holder in such circumstances? Describe the process of seeking redress for dishonored instruments.

UNIT 9 NEGOTIATION AND TYPES OF ENDORSEMENTS, DISHONOR OF NEGOTIABLE INSTRUMENTS AND OVERDUE INSTRUMENT,

Structure

9.0 INTRODUCTION

The Negotiable Instruments Act was enacted, in India, in 1881. Prior to its enactment, the provision of the English Negotiable Instrument Act was applicable in India, and the present Act is also based on the English Act with certain modifications. It extends to the whole of India except the State of Jammu and Kashmir. The Act operates subject to the provisions of Sections 31 and 32 of the Reserve Bank of India Act, 1934. Section 31 of the Reserve Bank of India Act provides that no person in India other than the Bank or as expressly authorized by this Act, the Central Government shall draw, accept, make or issue any bill of exchange, hundi, promissory note or engagement for the payment of money payable to bearer on demand. This Section further provides that no one except the RBI or the Central Government can make or issue a promissory note expressed to be payable or demand or after a certain time. Section 32 of the Reserve Bank of India Act makes issue of such bills or notes punishable with fine which may extend to the amount of the instrument. The effect of the consequences of these provisions are:

1. A promissory note cannot be made payable to the bearer, no matter whether it is payable on demand or after a certain time.

2. A bill of exchange cannot be made payable to the bearer on demand though it can be made payable to the bearer after a certain time.

3. But a cheque {though a bill of exchange} payable to bearer or demand can be drawn on a person's account with a banker.

9.1 OBJECTIVE:

After reading this lesson, you should be able to-

- Understand meaning, essential characteristics and types of negotiable instruments;
- Describe the meaning and marketing of cheques, crossing of cheques and cancellation of crossing of a cheque;
- Explain capacity and liability parties to a negotiable instrument, and
- Understand various provisions of negotiable instrument Act, 1881 regarding negotiation, assignment, endorsement, acceptance, etc. of negotiable instruments.

9.2 NEGOTIATION AND TYPES OF ENDORSEMENTS

The word 'endorsement' in its literal sense means, writing on the back of an instrument But under the Negotiable Instruments Act it means, the writing of one's name on the back of the instrument or any paper attached to it with the intention of transferring the rights therein.

Thus, endorsement is signing a negotiable instrument for the purpose of negotiation. The person who effects an endorsement is called an 'endorser', and the person to whom negotiable instrument is transferred by endorsement is called the 'endorsee'.

Essentials of a valid endorsement

The following are the essentials of a valid endorsement:

1. It must be on the instrument. The endorsement may be on the back or face of the instrument and if no space is left on the instrument, it may be made on a separate paper attached to it called all on age. It should usually be in ink.

2. It must be made by the maker or holder of the instrument. A stranger cannot endorse it.

3. It must be signed by the endorser. Full name is not essential. Initials may suffice. Thumb -impression should be attested. Signature may be made on any part of the instrument. A rubber stamp is not accepted but the designation of the holder can be done by a rubber stamp.

4. It may be made either by the endorser merely signing his name on the instrument (it is a blank endorsement) or by any words showing an intention to endorse or transfer the instrument to a specified person (it is an endorsement in full). No specific form of words is prescribed for an endorsement. But intention to transfer must be present.

5. When in a bill or note payable to order the endorsee's name is wrongly spelt, he should when he endorses it, sign the name as spelt in the instrument and write the correct spelling within brackets after his endorsement.

6. It must be completed by delivery of the instrument. The delivery must be made by the endorser himself or by somebody on his behalf with the intention of passing property therein. Thus, where a person endorses an instrument to another and keeps it in his papers where it is found after his death and then delivered to the endorsee, the later gets no right on the instrument

6. It must be an endorsement of the entire bill. A partial endorsement i.e. which purports to transfer to the endorse a part only of the amount payable does not operate as a valid endorsement

If delivery is conditional, endorsement is not complete until the condition is fulfilled.

Who may endorse?

The payee of an instrument is the rightful person to make the first endorsement Thereafter the instrument may be endorsed by any person who has become the holder of the instrument The maker or the drawer cannot endorse the instrument but if any of them has become the holder thereof he may endorse the instrument (Sec. 51). The maker or drawer cannot endorse or negotiate an instrument unless he is in lawful possession of instrument or is the holder there of.

A payee or indorsee cannot endorse or negotiate unless he is the holder there of.

9.3 TYPES OF ENDORSEMENT

An endorsement may be:

(1) Blank or general.

(2) Speical or full.

(3) Partial.

(4) Restrictive.

(5) Conditional.

(a) Blank or general endorsement (Sections 16 and 54).

It is an endorsement when the endorser merely signs on the instrument without mentioning the name of the person in whose favour the endorsement is made. Endorsement in blank specifies no endorsee. It simply consists of the signature of the endorser on the endorsement. A negotiable instrument even though payable to order becomes a bearer instrument if endorsed in blank. Then it is transferable by mere delivery.

An endorsement in blank may be followed by an endorsement in full.

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

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

(b) Special or full endorsement (Section 16)

When the endorsement contains not only the signature of the endorser but also the name of the person in whose favour the endorsement is made, then it is an endorsement in full. Thus, when endorsement is made by writing the words “Pay to A or A’s order,” followed by the signature of the endorser, it is an endorsement in full. In such an endorsement, it is only the endorsee who can transfer the instrument.

Conversion of endorsement in blank into endorsement in full:

When a person receives a negotiable instrument in blank, he may without signing his own name, convert the blank endorsement into an endorsement in full by writing above the endorser’s signature a direction to pay to or to the order of himself or some other person.

In such a case the person is not liable as the endorser on the bill. In other words, the person transferring such an instrument does not incur all the liabilities of an endorser. (Section 49).

Example: A is the holder of a bill endorsed by B in blank. A writes over B's signature the words "Pay to C or order." A is not liable as endorser but the writing operates as an endorsement in full from B to C. Where a bill is endorsed in blank, or is payable to bearer and is afterwards endorsed by another in full, the bill remains transferable by delivery with regard to all parties prior to such endorser in full. But such endorser in full cannot be sued by anyone except the person in whose favour the endorsement in full is made. (Section 55).

Example: C the payee of a bill endorses it in blank and delivers it to D, who specially endorses it to E or order. E without endorsement transfers the bill to F. F as the bearer is entitled to receive payment or to sue the drawer, the acceptor, or C who endorsed the bill in blank but he cannot sue D or E.

(c) Partial endorsement (Section 56)

A partial endorsement is one which purports to transfer to the

indorsement thereon, the bill is not dishonoured until it has been dishonoured by such drawee.

9.5 OVERDUE INSTRUMENT,

1. **Review the Details**: Gather all relevant information about the instrument in question. This includes the type of instrument (e.g., bill, loan, rental agreement), the amount owed, the due date, and any terms and conditions associated with it
2. **Assess the Situation**: Determine why the instrument is overdue. Did you forget to make the payment? Are there financial difficulties preventing you from paying on time? Understanding the reason behind the overdue status can help you develop a plan to resolve it
3. **Contact the Creditor**: Reach out to the creditor or the entity to whom the instrument is owed. Explain the situation honestly and transparently. In many cases, creditors are willing to work with individuals to find a solution, such as setting up a payment plan or negotiating a revised payment schedule.
4. **Negotiate**: If you're facing financial difficulties, try to negotiate with the creditor for more favorable terms. This could involve extending the payment deadline, reducing the total amount owed through settlement negotiations, or exploring alternative payment arrangements.
5. **Make Payment**: Once you've reached an agreement with the creditor, fulfill your end of the bargain by making the payment as agreed upon. If possible, try to make the payment as soon as possible to avoid accruing additional fees or penalties.
6. **Follow Up**: After making the payment or adhering to the agreed-upon arrangement, follow up with the creditor to ensure that the overdue status has been resolved and that there are no lingering issues.
7. **Prevent Future Overdue Instruments**: Take steps to prevent similar situations from occurring in the future. This might include setting up reminders for payment due dates, creating a budget to manage finances more effectively, or seeking financial counseling if needed.

By taking proactive steps to address and resolve overdue instruments, you can mitigate the potential negative consequences and regain control of your financial situation.

9.6 SUMMARY

A negotiable instrument is a piece of paper which entitles a person to a sum of money and which is transferable from one person to another by mere delivery or by endorsement and delivery. The characteristics of a negotiable instrument are easy negotiability, transferee gets good title, transferee gets a right to sue in his own name and certain presumptions which apply to all negotiable instruments. There are two types fo negotiable instruments (a) Recognised by statute: Promissory notes, Bill of exchange and cheques and (b) Recognised by usage: Hundis, Bill of lading, Share warrant, Dividend warrant, Railway receipts, Delivery orders etc.

The parties to bill of exchange are drawer, drawee, acceptor, payee, indorser, indorsee, holder, drawee in case of need and acceptor for honour. The parties to a promissory note are maker, payee, holder, indorser and indorsee while parties to cheque are drawer, drawee, payee, holder, indorser and indorsee. Negotiation of an instrument is a process by which the ownership of the instrument is transferred by one person to another. There are two methods of negotiation: by mere delivery and by endorsement. In its literal sense, the term 'indorsement' means writing on an instrument but in its technical means payment of the instrument after the expiry of the duration of the instrument, in good faith and without any negligence, to the possessor thereof and without the existence of any circumstances that may lead one to believe that the person receiving the payment is not entitled to it

Assignment: Assignment of any object means the transfer of its title to another person through a written and registered deed under the Transfer of Property Act

9.8 ANSWERS TO CHECK YOUR PROGRESS

Negotiation:

1. What is negotiation in the context of negotiable instruments?
   - Negotiation refers to the transfer of a negotiable instrument from one party to another in a manner that confers ownership rights. It involves the delivery of the instrument by the current holder to another party along with any necessary endorsements.
2. What are the types of endorsements?
   - There are several types of endorsements, including:
     - Blank Endorsement: The endorser signs their name only, making the instrument payable to the bearer. This allows for easy transfer to subsequent holders.
     - Special (or Full) Endorsement: The endorser specifies the person to whom the instrument is payable, effectively making it payable to that specific individual or entity.
     - Restrictive Endorsement: The endorser limits the use of the instrument, such as by specifying "For Deposit Only" or "For

Collection Only" restricting further negotiation.

- Conditional Endorsement The endorser imposes conditions on the payment of the instrument, such as requiring a specific event to occur before payment is made.

Dishonor of Negotiable Instruments:

1. What constitutes the dishonor of a negotiable instrument?
   - Dishonor occurs when the drawee (or maker) of the instrument fails to make payment or accept the instrument as required. This could be due to insufficient funds, a stop-payment order, a dispute over the instrument's validity, or any other reason specified by law.
2. What are the consequences of dishonor?
   - Consequences of dishonor may include legal action against the drawer (or maker) for non-payment, liability for damages or penalties, loss of credibility for the parties involved, and potential criminal consequences for deliberate dishonor.

Overdue Instrument:

1. What is an overdue instrument?
   - An overdue instrument is a negotiable instrument that has not been paid or accepted by the drawee (or maker) within the specified time frame. This could be past the maturity date for promissory notes or bills of exchange, or beyond the date specified for payment on demand instruments like checks.
2. What are the implications of an overdue instrument?
   - An overdue instrument may result in legal consequences, including the loss of certain rights and privileges associated with negotiable instruments.

For example, the holder may lose the ability to enforce payment against certain parties or may face challenges in recovering the amount due.

UNIT 10 BANKER AND CUSTOMER-CROSSING OF CHEQUES, OBLIGATIONS OF A BANKER & A CUSTOMER, BOUNCING OF CHEQUES, LIABILITIES OF PARTIES

Structure

10.0 INTRODUCTION

A cross cheque is a negotiable instrument that specifies a general instruction for a check that has not yet been deposited into a bank account. The general direction of a cheque is referred to in this manner. The instruction provided above defines the amount claimed in the Cheque would be deposited immediately into the account of the Cheque bearer under Section 123 of the Negotiable Instruments Act, 1881. It will not be provided to the bearer in cash over the bank counter right away. We'll try to cross-check in depth below.

A cheque could be an instrument. It will either be open or crossed.
An open cheque is that of the bearer cheque. It's collectible over the counter on a presentation by the receiver to the paying banker.

Whereas a crossed cheque isn't collectible over the counter however shall be collected solely through a banker, the quantity collectible for the crossed cheque is transferred to the checking account of the receiver. Varieties of cheque crossing are General Crossing, Special Crossing, and Restrictive Crossing. Allow us to study cheque crossing in additional detail. A crossed cheque could be a cheque that has been marked specifying an instruction on the method it's to be saved.

A standard instruction is for the cheque to be deposited into an account with a bank and to not be like a shot paid by the holder over the bank counter. The format and verbiage vary between countries, however, usually 2 parallel lines could also be placed either vertically across the cheque or on the highest corner of the cheque. By victimization of crossed cheques, cheque writers will effectively shield the instrument from being taken or paid by unauthorized persons. A crossed cheque could be a cheque that is collectible solely through an assembling banker and indirectly at the counter of the bank. 2 parallel crosswise lines, with or with none word, are usually drawn on the highest left-hand corner of the cheque.

10.1 OBJECTIVE:

- General Crossing: Simply consists of two parallel lines without any additional instructions.
- Special Crossing: Two parallel lines with the name of a particular bank written between them, instructing the bank to pay only through that bank.
- Duty of Care: Banks must exercise reasonable care and skill in carrying out their customers' instructions and managing their accounts.

- Duty to Honor Cheques: Banks are obligated to honor valid cheques drawn on customers' accounts, provided there are sufficient funds available.
- Providing Accurate Information: Customers must provide accurate and complete information to the bank while opening accounts or conducting transactions.
- Maintaining Sufficient Funds: Customers must ensure that they maintain sufficient funds in their accounts to cover the cheques they issue.
- Compliance with Terms and Conditions: Customers are bound by the terms and conditions set forth by the bank regarding the operation of their Definition: Bouncing of a cheque occurs when a cheque presented for payment is returned unpaid by the drawee bank due to insufficient funds, account closed, or other reasons.
- Legal Action: The payee or holder of the bounced cheque may take legal action against the drawer for non-payment
- Penalty Charges: Banks may levy penalty charges on the drawer for issuing a bounced cheque.
- Damage to Reputation: Bouncing of cheques can damage the reputation of the drawer and may affect their creditworthiness.
- Maintaining Sufficient Balance: Drawers should ensure that they have sufficient funds in their accounts to cover the cheques they issue.
- Regular Account Monitoring: Customers should regularly monitor their account balances and transactions to avoid issuing cheques against insufficient funds.

- Civil Liability: The drawer of a bounced cheque may be held civilly liable for the amount of the cheque along with any additional damages or costs incurred by the payee.
- Criminal Liability: In some jurisdictions, issuing a bounced cheque intentionally or with knowledge of insufficient funds may constitute a criminal offense, subject to penalties such as fines or imprisonment
- Recovery of Funds: The payee has the right to demand payment of the amount stated on the bounced cheque from the drawer and take legal action to recover the funds.
- Compensation: The payee may also be entitled to compensation for any damages or losses suffered as a result of the bounced cheque.
- Duty of Care: Banks may be held liable for negligence if they fail to exercise reasonable care in processing cheques or fail to notify customers promptly of bounced cheques.
- Limited Liability: However, banks are generally not liable for the drawer's insolvency or inability to pay, unless they have acted negligently or breached their duties.

10.2 BANKER AND CUSTOMER-

The relationship between a banker and a customer is fundamental to the functioning of the banking industry. Here's a breakdown of their roles and the dynamics of their relationship:

Banker:

1. **Service Provider:** The banker is the institution (bank) that provides various financial services to individuals, businesses, and other organizations.
2. **Custodian of Funds:** Banks hold and safeguard the deposits made by customers, providing a secure environment for their money.
3. **Lender:** Banks offer loans and credit facilities to customers, helping them finance purchases, investments, or business activities.
4. **Financial Advisor**: Bankers often offer financial advice and guidance to customers, helping them make informed decisions about managing their finances, investments, and borrowing.
5. **Facilitator of Transactions:** Banks facilitate various financial transactions, including deposits, withdrawals, transfers, and payments, both domestically and internationally.

Customer:

1. **Depositor:** Customers deposit their money with the bank for safekeeping and potentially earn interest on their deposits.
2. **Borrower:** Customers may borrow money from the bank for personal, business, or investment purposes, subject to certain terms and conditions.
3. **Service Recipient:** Customers utilize banking services such as checking accounts, **savings accounts**, credit cards, loans, and investment products.

responsiveness, and compliance are key factors that contribute to a successful and mutually beneficial relationship.

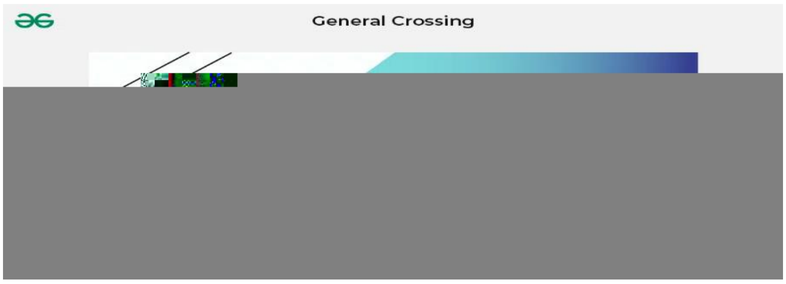
10.3 CROSSING OF CHEQUES

The crossing of the cheque is an instruction to the paying banker to pay the amount to a specific person. The crossing of the cheque secures the payment by the banker.

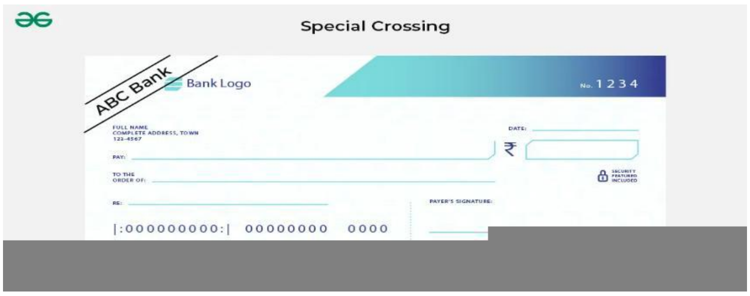
- It conjointly traces the person, therefore, receiving the quantity of cheque. The addition of the words 'Not negotiable' or 'Account receiver only' is critical to restrain the negotiability of the cheque.

Types of Cheque Crossing

- General Crossing – cheque bears across its face an addition of 2 parallel crosswise lines.



- Special Crossing – It bears the crossing across its face in which the banker's name is included



- **Restrictive Crossing –** It directs the assembling banker that he has to credit the number of cheques solely to the account of the receiver.

This type of crossing assures that the funds are only moved to a bank account and not supplied in the form of cash.

Restrictive Cheque Crossing

- This type of crossing restricts the negotiability of the cheque.

amount can still be claimed by the depositor from the bank. Generally the period of limitation starts running from the date of such a demand.

Termination of relationship between them or closing of an account- The relationship between the banker and customer can be terminated and there are two conditions attached to it

The conditions are; Voluntarily by the parties at customer will

By the operation of law

When the termination of relationship is made by the customer-

When the customer is not satisfied by the service of the bank.

If the customer will not able to get the required or essential facilities by the bank.

If the bank has no reputation or no economic stability then the customer will automatically lose his confidence in the bank.

If the customer does not agree with the required terms and conditions of the bank which is essential for it

When the termination of relationship is made by the banker-

Death of the customer

Insanity of the customer

Insolvency of the customer

Winding up of the firm

Closing of partnership firm

Customer of an enemy country

Death of the customer- When the banker receives the news about the death of the customer then he should immediately stop the transaction related to the customer's account and would notify that information in the ledger and others.

Insanity of the customer- also in the case of insanity of the customer, as soon as the bank receives the information about the customer's condition, the banker would immediately stop the transaction related to the customer's account and will close the account. Insolvency of the customer - it is also same as in the case of death and insanity of the customer. Winding up of the company - When a company is wound up, in that case the banker should act according to the instruction of the court.

Closing of Partnership firm- In case the partnership firm is closed by the consent of partners or due to death of a partner then the bank should stop the transaction related to account of the firm.

Customer of an enemy country- if the customer belongs to the enemy country during the period of war, then the bank is justified in closing his account. There are also three conditions are presented for which the bank will close the account of the customers. The conditions are; If the customer is engaged in fraudulent activities and turns to be a cheater. If the customer abuses or harasses or abuse any staff of the bank and behave in a very indecent manner. If the customer spreads bad reputation about the bank.

10.5 BOUNCING OF CHEQUES

Bouncing of cheques, also known as a bounced cheque or a returned cheque, occurs when a cheque is presented for payment to a bank but is not honored because of insufficient funds in the issuer's account. This can happen for various reasons, such as insufficient funds, a closed account, or if the account holder has placed a stop payment order on the cheque.

When a cheque bounces, it typically incurs fees for both the issuer and the recipient, and it can also have legal consequences depending on the jurisdiction. In many places, bouncing a cheque is considered a criminal offense and can result in fines or even imprisonment.

To avoid bouncing of cheques, it's important for individuals and businesses to maintain sufficient funds in their accounts and to keep track of outstanding cheques to ensure they are covered when presented for payment. It's also a good practice for recipients of cheques to verify the availability of funds before depositing or cashing them.

What is a Bounced Cheque?

A bounced cheque, also known as a returned or dishonored cheque, is a cheque that the bank refuses to honor because there are insufficient funds in the issuer's account to cover the amount specified on the cheque.

10.5.1 Reasons for a Cheque to Bounce:

1. **Insufficient Funds:** This is the most common reason for a cheque to bounce. When the issuer doesn't have enough money in their account to cover the amount written on the cheque.
2. **Closed Account:** If the issuer's bank account has been closed or frozen by the bank, any cheques written on that account will bounce.
3. **Post-Dated Cheques:** Cheques dated for a future date may be returned if presented earlier than the date specified.
4. **Mismatched Signatures or Information:** Any discrepancy between the information on the cheque and the issuer's account details can lead to the cheque being bounced.
5. **Stop Payment Order:** The issuer might have requested a stop payment on the cheque, which instructs the bank not to honor it.

10.5.2 Consequences of Bounced Cheques:

1. **Fees and Charges:** Both the issuer and the recipient of the bounced cheque may incur fees from their respective banks. These fees can vary depending on the bank and the account type.
2. **Legal Consequences:** Bouncing a cheque can have legal ramifications, including civil and criminal penalties, depending on the laws of the jurisdiction. In many places, it is considered a criminal offense.
3. **Damage to Credibility:** Bouncing cheques can damage the credibility and reputation of the issuer, especially if it becomes a recurring issue.

10.5.3 Handling a Bounced Cheque:

1. **Notification:** The bank notifies the recipient (payee) that the cheque has bounced, usually providing a reason for the bounce.
2. **Contact the Issuer:** The payee should contact the issuer to inform them of the bounced cheque and request payment Sometimes, the bounce may have occurred due to a genuine mistake or oversight
3. **Recovery:** The payee may attempt to recover the amount owed through negotiation, legal action, or by resubmitting the cheque if the issuer assures funds are available.
4. **Legal Recourse:** In cases where the issuer fails to rectify the situation, the payee may pursue legal recourse through civil courts to recover the amount owed, along with any additional damages or costs incurred.

Prevention:

1. **Maintain Sufficient Funds:** Issuers should ensure they have enough funds in their account to cover any cheques they write.

2. **Monitor Accounts:** Regularly monitoring bank accounts for balances and transactions can help prevent inadvertent cheque bounces.
3. **Communicate:** If an issuer anticipates financial difficulties that may affect their ability to honor cheques, they should communicate with payees and make alternative arrangements if necessary.
4. **Use Electronic Payment Methods:** Electronic payment methods such as online transfers or direct debits can be more reliable and eliminate the risk of bounced cheques.

Bouncing of cheques can be a stressful and inconvenient experience for both the issuer and the recipient. Therefore, it's important for individuals and businesses to exercise diligence in managing their finances and transactions to avoid such situations.

10.6 LIABILITIES OF PARTIES

In the context of bouncing cheques, there are specific liabilities associated with each party involved: the issuer (drawer) of the cheque and the recipient (payee) of the cheque.

Liabilities of the Issuer (Drawer):

1. **Financial Liability:** The primary liability of the issuer is to ensure that there are sufficient funds in their bank account to cover the amount written on the cheque. If the cheque bounces due to insufficient funds, the issuer is responsible for making the payment to the recipient, along with any associated fees or charges.
2. **Legal Liability:** In many jurisdictions, bouncing a cheque is considered a criminal offense. The issuer may face legal consequences such as fines or imprisonment, especially if the bounce is deemed intentional or part of a fraudulent scheme.

3. **Civil Liability:** The issuer may also face civil liability if the recipient suffers financial losses or damages as a result of the bounced cheque. The recipient has the right to pursue legal action to recover the amount owed, along with any additional damages incurred.
4. **Credibility Damage:** Bouncing cheques can damage the issuer's credibility and reputation, particularly if it becomes a recurring issue. It may affect their ability to conduct future financial transactions and could harm relationships with banks and creditors.

Liabilities of the Recipient (Payee):

1. **Financial Loss:** The primary liability of the recipient is the financial loss incurred as a result of the bounced cheque. This includes any fees or charges imposed by their bank for processing the bounced cheque, as well as any damages resulting from the delay or non-payment of funds.
2. **Legal Recourse:** The recipient has the right to pursue legal recourse against the issuer to recover the amount owed, along with any additional damages or costs incurred. This may involve initiating civil litigation to enforce payment or seeking redress through alternative dispute resolution mechanisms.
3. **Duty of Care:** While the primary responsibility for ensuring the validity of a cheque lies with the issuer, recipients also have a duty of care to verify the authenticity and validity of the cheque before accepting it for payment. Failure to exercise reasonable diligence in this regard may impact the recipient's ability to recover losses in certain jurisdictions.
4. **Mitigation:** Recipients are expected to take reasonable steps to mitigate their losses in the event of a bounced cheque. This may include promptly notifying the issuer of the bounced cheque, attempting to negotiate payment or

alternative arrangements, and documenting any communications or efforts to recover the funds.

Understanding these liabilities is crucial for both parties involved in a cheque transaction. It underscores the importance of responsible financial management and diligence in verifying the validity of cheques to avoid disputes and minimize potential losses.

10.7 SUMMARY

The relationship between a banker and a customer is governed by a set of obligations and responsibilities that ensure mutual trust and reliability. The crossing of cheques serves as a security measure to safeguard the interests of both parties, providing added protection against fraudulent activities and unauthorized alterations.

The obligations of a banker towards its customers encompass a duty of confidentiality, the obligation to honor valid instructions, and the responsibility to provide accurate and timely information regarding banking services. On the other hand, customers are obligated to maintain their accounts responsibly, exercise care in issuing cheques, and promptly notify the bank of any discrepancies or issues.

Despite these safeguards, instances of bouncing cheques may occur due to various reasons such as insufficient funds, closed accounts, or stop payment orders. In such cases, both the issuer (drawer) and the recipient (payee) of the bounced cheque bear liabilities. The issuer is responsible for ensuring adequate funds and faces financial, legal, and potential credibility consequences for bounced cheques. Meanwhile, the recipient may incur financial losses and has the right to pursue legal recourse to recover the amount owed.

In essence, understanding the crossing of cheques, the obligations of both bankers and customers, the implications of bouncing cheques, and the associated liabilities is crucial for maintaining the integrity and reliability of banking transactions. By adhering to these principles and fulfilling their respective duties, both parties contribute to a secure and trustworthy banking environment

10.8 KEY WORDS

1. **Banker and Customer:**
    - Banker
    - Customer
    - Banking relationship
    - Account holder
    - Deposit
    - Withdrawal
    - Account maintenance
2.

2. **Obligations of a Banker & a customer:**

- What are the primary obligations of a banker towards its customers?
- Discuss the duty of confidentiality between a banker and a customer.
- What responsibilities does a customer have towards their banker regarding maintaining their account?

3. **Bouncing of Cheques:**

- What are the common reasons for a cheque to bounce?
- Explain the legal consequences of bouncing a cheque in your jurisdiction.
- How can an individual or business prevent cheques from bouncing?

4. **Liabilities of Parties:**

- What are the liabilities of the issuer (drawer) of a bounced cheque?
- Discuss the potential financial losses and legal recourse available to the recipient (payee) of a bounced cheque.
- How do the liabilities of parties change if there is evidence of fraud or negligence in the cheque transaction?

BLOCK IV: PARTNERSHIP ACT, 1932

UNIT 11 DEFINITION, FORMATION, TYPES AND REGISTRATION OF PARTNERSHIP,

Structure

11.0 INTRODUCTION

The growth of business and the number of business deals led to the replacement of sole proprietorships with joint businesses. Partnerships are a type of business group in which two or more people work together to run a business. When two or more people form a partnership, they pool their resources, like money and things, to help each other and share the risk of running the business.

At the end of the 1800s, it was thought to be very important to govern the partnership business form in order to stop the bad things (there were many bad things that happened over time) from spreading and ruining business organization and trade.

When it was first made, the Indian Contract Act of 1872 covered all areas of trade and commerce. Sections 239 –266 of Chapter IX of the Act managed partnership businesses. But these rules were not all that was required. A lot of things went unseen and uncontrolled. This meant that government had to be more detailed, so the government passed more laws. The Indian Partnership Act, 1932 takes the place of Chapter IX, sections 239 to 266. It comes from the English Partnership Act of 1890.

Partnership is just a group of people who agree to work together, and it doesn't have any legal weight to it. So, the idea behind partnerships is that a firm is not a thing or a legal person; it is just a group of people working together, and the firm name is just a name for the people who have decided to work together on a business. Since a partnership starts with a contract, that contract is controlled by both the Partnership Act and the general law of contracts when the Partnership Act doesn't say anything specific. So, the Indian Contract Act's rules about making an offer and accepting it, getting paid, giving free consent, making sure the object is valid, and other things also apply to a partnership contract.

11.1 OBJECTIVE:

On completion of studying this Unit, you will be able to:

- Define partnership and explain its essential features

- Describe

Government. A partnership firm cannot use the word “Limited” as a part of its name.

11.2.2 Essentials of a Partnership

Section 4 of the Act gives a description of a partnership. Looking at this definition, the following things must be present for a partnership to exist

1) There must be at least two people.
Two or more people must have agreed to do business together for the connection to exist

3) The deal must be to split the business's income.
4) They all have to do the job, or one of them has to do it for everyone.
5) Each partner is responsible for everything that another partner does for the business. We will now quickly talk about the following things:
2) A group of two or more people working together to achieve a shared goal: Two or more people must agree to work together in order for this to be a partnership. People must be able to legally sign a contract All of them can be natural or artificial, or some can be natural and some artificial. There must be at least two people for it to be a partnership, or else it's not a partnership. If this number drops to one because of something like death or bankruptcy, the relationship ends. While the Act doesn't say how many partners are allowed, section 464 of the Companies Act, 2013 does. This means that any group or partnership company can only have up to 50 partners. The Companies Act of 2013 sets the following limits on the number of partners that a business can have:
a) Rule 10 of the Companies (Miscellaneous) Rules, 2014, from the Central Government, says that a business can have no more than 50

partners.

b) The Companies Act 2013's Section 464

1) says, "provided that the number of persons that may be prescribed under this subsection shall not exceed one hundred." So, the rules say that the top can be different, but it can never be higher than 100.

2) Agreement: Section 5 says that a partnership relationship starts with a contract, notwithstanding. This means that a Hindu entire family running a family business or a Burmese Buddhist husband and wife running a business are not partners in those businesses. The deal sets the rules for how the partners will work together. They can agree to something in writing or in person. But it's better for both parties to have a signed understanding so that if there is a disagreement, it's easier to see what their role and relationship is.

3) Business: The deal should be for a legal business to be done. Part 2(b) of the Act says that "business" covers trade, occupation, and job. When you look up "partnership," the word "business" means "carrying on business," which means doing the same things over and over again. That doesn't mean it has to be a long process, though. Even a single venture of a project can be considered if two or more people keep working at it to make money

4) Splitting the Profit: For there to be a partnership, both people must have decided to run a business (not a charity) and split the earnings between them. If you share gains, you also share loses, unless you agree to something different Sharing profits, on the other hand, is an important part of a relationship, but sharing loses is not Partners can agree to split the profits in any way they want, up to and including exact amounts.

However, if one partner gets all the profits, there is no partnership.

5) Mutual Agency: In a partnership, the business can be run by all of the partners or by one of them working for all of them. There are two important things that this sentence means. For starters, each partner has the right to be involved in running the business. Second, that each person has the power to make decisions for themselves. Each partner in the business is both the owner and the agent for all the other partners. When it comes to the business of the company, he is bound by what he does and another partner is bound by what he does.

Six, Partners Are Liable: Each partner is responsible to the third party for everything the firm did while he was a partner. A partner is fully responsible for everything the business does. This means that the partner's personal assets can be used to settle the business's bills.

11.2.3 Types of Partners

i) Partners because they have a partnership agreement, and

ii) Partners because they have agreed to hold out [section 28].

The Act does not say what kind of partners can be used. This is written in the business agreement. In real life, the different types of partners are, based on how much they are responsible,

1) Actual, Active, or Ostensible Partner: This type of partner takes an active role in running and managing the business and shares in its gains or loses. For all business-related tasks, he works as an agent for the other partners. If he decides to quit, he needs to let everyone know so that he is not responsible for what other partners do after he retires.

2) "Sleeping" or "dormant" partners: These partners put money into the business and share the gains, but they don't help run or handle the business. But they have to pay the third parties.

for everything the company does. That kind of partner can leave the company without telling anyone about it. Soon after he retires, he is no longer responsible for what the company does. This kind of partner doesn't have to do anything, but he can look at the firm's books and get a copy of them. Nominal partner: This type of partner doesn't put money into the business or help run it; he or she just gives their name to it. Third parties can sue these partners, though, for everything the company does. Outsiders see them as partners in the company, but they are not. This is different from a sleeping partner. When they are leaving the company, they have to let the people know.

4) Partners in profits only: A partner in a partnership company who only has to share in the profits and not the loses is called a partner in profits only. So, if someone has enough money but doesn't want to take risks, the other partners may let them join the business. No matter what this job is, he is still responsible to third parties for everything the company does, just like the other partners.

5) Sub-partner: A third party is called a sub-partner when a partner chooses to share the wealth of the business with them. A sub-partner is not the firm's partner. He works with another partner. If a sub-partner doesn't pay their share of the firm's bills, they don't have any rights or responsibilities toward the firm. He can't run a business with a partner, look at their books, or claim a share of the profits. He also can't bind the company or other partners with what he does. The only right he has is to a share of the property's income when the business ends.

This is called "estoppel" or "holding out." If someone's actions or words make another person think that they are a partner in a business when they are not, and that other person acts on that information, then that person cannot later deny being responsible for the actions of the business. In this way it is possible for a legally binding partnership to form where there was no official partnership deal before. This kind of person is called a partner by estoppel, and they are responsible to everyone else. The same thing happens when a company says someone is a partner when they are not, and that person either lets himself be portrayed as a partner or doesn't deny that he is a partner. In this case, the person is called a partner by hanging out. When a partner retires but doesn't tell the public, they are still responsible as a partner because they held out.

11.2.4 Position of Minor as a Partner

Minor Agrees to the Advantages of Partnership:

Due to the fact that partnership is a legal arrangement The people who sign a contract must be able to legally do so under their own law. A child is not old enough to sign a contract He can't become a partner because of this, but he could enjoy the perks of partnership if all the partners agree.

Teenagers' Rights:

A deal between him and the business says that he can have a share of the land and the income. Any of the company's books can be looked at and copied by him, but not any other books. [Part 30 (2)] Minors can fight the partners to get their money back or an account of their share of the firm's property or income when they no longer work for the firm. Using the rules in Section 48 as much as possible, an appraisal will be used to figure out how much his share is worth. Minors are responsible for their debts up to the amount they own in the business. It's not his fault that the company did what it did, and neither is his private land. He can't be thought of as bankrupt if the firm's assets can't be used to pay its bills.

Position when becoming an adult: A child can choose to become a partner or end his relationship with the firm within six months of becoming an adult or when he learns that he has been granted the benefits of partnership, whichever comes first

In the next six months, he has to let everyone know if he plans to become a partner in the company or if he has decided not to. In the event that he fails to give such warning, he will become a partner in the company after six months. [Part 30 (5)]

If that person becomes a partner, a) he still has the rights and responsibilities he had as a minor until he becomes a partner; b) he is personally responsible to third parties for everything the firm did after he became a partner; and c) his share of the firm's property and profits will be the same as it was when he was a minor. As long as the person gives public notice that they don't want to become a partner, they will still have the rights and obligations of a minor until the date of the notice. They will also not be responsible for any actions taken by the firm after the date of the notice, and they can sue the partners for their share of the property and profits.

11.2.5 Types of Partnerships

A relationship can be for a specific journey, for a set amount of time, or at any time. Based on how long it lasts, a relationship can be broken down into two groups:

i) Free-form partnership (Section 7)

ii) Specified Partnership (Part 8)

i) Free-form partnership: Section 7 of the Act says that a partnership is at will if: i) no set length of time has been agreed upon for the partnership; and ii) there is no other way to determine if the partnership exists.

Because there is no set date for ending a partnership, if one person dies or retires, the partnership will still remain. Section 43(1) says that any partner can end the partnership by sending written notice to all the other partners that he wants to end the business. The company is no longer in business as of the date written in the notice as the date of dissolution, or as of the date the notice was sent, if no such date is given.

ii) Particular relationship: This type of relationship is made for a specific project or journey or for a set amount of time. This kind of partnership ends automatically when the project is over or the time limit runs out. If partners agree to end the partnership before the end of the agreed -upon term, they can. If the partnership continues after the term is over or the venture is finished, it is considered a partnership at will.

11.2.6 Partnership distinguished from other Forms of Organisations

i) **Co-ownership and Partnership**: It is co -ownership, not partnership, when two or more people own property together, use the property for business, and split the profits. The main thing that makes them different is:

1) A partnership always starts with a contract, whether it's written down or not. On the other hand, co-ownership can come from an agreement, the law, position, or any other reason. For example, co-heirs of a property.

2) A partner works for the other partners, but a co-owner doesn't work for the other co-owners.

3) In a partnership, both the winners and losers are split. In contrast, co-ownership doesn't always do that.

4) A partner can't give away his rights and interests to someone else without asking all the other partners first. But a co-owner can do that even if the other owners don't agree.

5) Each partner can only ask for a share of the money made from the properties. A co-owner can ask for the property to be split up,

6) A partner has a claim on the business's property, but a co-owner does not.

Hindu Joint Family Firm and Partnership: A Hindu joint family firm is not the same as a partnership in the ways below:

1) A Hindu joint family (HUF) business comes from standing, which means being born into the family. A partnership comes from a contract.

2) The Indian Partnership Act governs partnerships, while Hindu Law governs Hindu Undivided Families.

3) A child can't be a partner, but he can enjoy the perks of being a partner. In HUF, on the other hand, a child is automatically a member from the day he is born, but he is not personally responsible.

4) When a partner dies, the relationship ends, but when a co-parcener dies, it doesn't

5) In a partnership, each partner can pretty much take money from and bind the other partners. But in a HUF company, only the Karta (manager) or head of the family can do that

6) In a partnership, each partner is personally responsible for the firm's bills. But in a HUF business, only the Karta is personally responsible.

7) A partner can ask for the firm's books, but a co-parcener can't The only thing he can do is ask for the assets of the family business to be split up.

8) A partnership company needs to be established before it can sue people from outside the firm. For HUF, on the other hand, you don't need to register.

9) Each partner has a set share that can only be changed by agreement However, if someone in the family dies or is born, that person's share can grow or shrink.

10. There is a clear limit on the number of partners, but in a Hindu joint family company, there is no such limit

11.3 FORMATION AND REGISTRATION OF PARTNERSHIP

11.3.1 Formation of Partnership

An agreement is needed to form a partnership. This agreement can be written down, spoken out loud, or suggested by the way the parties act in business situations. The Indian Partnership Act of 1932 says that in order for two or more people to work together as a partnership, they must agree to do so.

A good contract has to come from people who are legally able to sign it, and their agreement shouldn't be lawfully against the law, morally wrong, or against public policy. There are, however, two exceptions:

i) A child can join the benefits of a current partnership company as

d) A suit or claim of set-off, the value of which does not exceed one hundred rupees,

e) A proceeding in execution or other proceeding incidental to or arising from a suit or claim for not exceeding one hundred rupees in value.

f) A suit by a firm which has no place of business in the territories to

which

proper accounting records.

11.6 ANSWERS TO CHECK YOUR PROGRESS

1. What is a partnership, and how does it differ from other forms of business organizations?
2. Can you explain the concept of a Partnership Deed and its significance in a partnership?

Formation:

3. What are the essential elements required for the formation of a partnership?

4. Why is it recommended to have a written Partnership Deed rather than relying on a verbal agreement?

Types:

5. Describe the main differences between a general partnership and a limited partnership.

6. How does a Limited Liability Partnership (LLP) differ from other types of partnerships in terms of liability?

Registration:

7. In what circumstances is it necessary for a partnership to register with the government?

8. What are the potential benefits for a partnership that chooses to register with the government?

9. Can you outline the typical steps involved in the registration process for a partnership?

UNIT 12 KINDS, RIGHTS AND LIABILITIES OF PARTNERS, MINORôS STATUS I PARTNERSHIP FIRM,

Structure

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the law of partnerships builds on the law of agencies. A partner works for both the owner and the agent So, HC is responsible for what the other partners do and the other partners are responsible for

12.2 MUTUAL RELATIONS OF PARTNERS

People usually think that since a partnership is based on an agreement, the terms of that agreement will be the only ones that decide each partner's rights and duties. However, this is not the case. The partnership deal may not clearly spell out all of the partners' rights and responsibilities. If that happens, the Act's rules will no longer be valid. Because the LLC Act(Sections 9 and 10) sets out rights and tasks that can't be changed by agreement They have to be taken in order to get the health benefits of the pills. Thus, the joint rights and duties of partners are only the responsibility of the partner who signed the contract Act of Partnership Partnership the Partnership Act has most of the rules about what partners can and can't do. These rules can be found in Sections 9 –13 and Sections 16 – 25. As we already said, all of the Act's rules can be changed by an agreement between the partners, except for sections 9 and 10, which spell out the partners' absolute responsibilities. Now, let's talk about the important parts of the Act that say what partners can and can't do.

12.2.1 Rights of Partners

Unless otherwise agreed by the partners, every partner has following rights :

i) Right to take part in the conduct of business : Each partner can participate in the conduct and management of the business of the firm.

ii) Right to be consulted : Each partner has the right to express his opinion and be heard in all matters affecting the business of the firm. All decisions will, however, be made by majority with the exception of certain matters like change in the nature of business and reconstitution of the firm.

iii) Right to have access to books : Each partner has the right to inspect and copy any of the books of the firm. But, a minor admitted to the benefits of the firm can inspect and copy only the books of account. He cannot claim access to other books of the firm.

iv) Right to share profits equally : Each partner will share the profits of the business
of the firm equally.

v) Right to claim interest on capital : Normally, no interest is allowed on the capital contributed by the partners. But, if the partnership agreement provides for the payment of interest on capital, it shall be payable only out of the profits.
In other words, if there are losses, the interest on capital will not be allowed.

vi) Right to interest on advances: If partner has advanced some amount as loan to the firm, he will be entitled to interest at a rate agreed upon, and where no rate is decided, at six per cent per annum. Interest on loan will be payable even if there are losses.

vii) Right to be indemnified: A partner has to be indemnified by the firm in respect of all expenses and liabilities incurred by him in the ordinary and proper conduct of business. He will also bk entitled to claim reimbursement for all payments made by him in an emergency for protecting the firm from loss provided he acted in a

iv) To keep track of and give the company any private gains made by the partner from any business the firm does or from the use of property or business ties that the company has.

vii) To give the company a record of all the money a partner makes by carrying out in a private business, the partner usually doesn't have to follow any rules.

on any business besides the firm's apd. But if both partners agreed, that no partner can work for someone else while working for the company, he shouldn't cafry on any other business, whether it competes with or doesn't compete with the firm without getting permission from the other partners.

8. To work for the company and do things that the company needs to be done.

ix) To act within the limits of real or perceived power. If a partner goes beyond what he's allowed to do and the other partners don't like it, he will be the other partners for the loss they suffered because of what he did.

x) He could not give away his rights and interests in the firin to strangers without the permission of all the other partners.

xi) To be guilty of all the actions of the business both together with the ot her partners and on their own. firm done while he's a partner. This means that the company's debtors can get what they're owed from any partner.

12.3 PROPERTY OF THE FIRM

You know that unless there is a written agreement to the opposite, all partners own the firm's property together. The property should only be owned and used by the partners for the firm. Because of this, it is important to find out what the firm's property is. By agreement, the partners usually decide what belongs to the business and what belongs to one or more of them individually. But if there isn't an agreement like that and you want to know if a certain piece of property belongs to the company or not, you will have to find out where it came from, how it was bought, and how it has been used.
Part 14 says that if there isn't a deal saying otherwise, the firm's property includes:

i) all the properties, rights, and interests that were originally part of the firm's stock; ii) all the property that the firm bought or got in some other way
iii) the asset bought with company money, and iv) the company's good name in the business world.

This means that anything that is added to or taken away with the firm's common stock during the partnership period, whether directly or through business, becomes the firm's property unless it can be shown that the partners had a different purpose. However, if a partner's property is used for business purposes, it does not automatically become the firm's property. It can only belong to the company if all of the partners agree that they want it to. For instance, if a piece of land is bought in the name of one partner but paid for by the firm (or with money from the firm's profits), it is considered to belong to the firm unless there is a clear purpose to the opposite.
A similar example is when two people rent a coal mine to work together. The lease will be considered the property of the company.

12.4 RELATION OF PARTNERS WIT11 THIRD PARTIES

You learned in U'nit12 that equal agency is an important part of a relationship. Each pariner is both the client and the agent This is the partners' stance, and it controls how they deal with third parties. It is clear from Section 18 that When looking at things from the outside, a partner is someone who works for the company to do its job. All the other partners are bound by what he does for the business as long as it is done in the normal run of business and in the name of the business. Th at means all pa rtners are responsible to outsiders for .

12.4.1 Implied Authority of a Partner

In the context of a partnership firm, the authority of/a partner means his authority to bind the firm by his acts. This authority may be express or implied. The authority conferred on a partner by mutual agreement is called an express authority But, where there is no agreement or where the partnership agreement is silent, the act of a partner which is done to carry on, in the usual way business of the kind carried on by the firm, binds the firm (Section 19). This capacity of a partner to bind the firm by his acts is called the 'implied authority of a partner'. In order that his act may fall within the scope of his implied authority the following conditions must be fulfilled.

1 The act done by the partners must relate to the normal business of the firm. If it is of a nature which is not common in the type of business carried on by the firm, it will not bind the firm even if it has been done in the name of the firm. For example, an exporter of readymade garments places an order for a huge quantity of liquor in the name of the firm. As this act does not relate to the normal business of the firm, it will not fall within the scope of implied authority The firm, therefore, will not be bound by it

2 The act must have been done in the usual way of carrying on the firm's business. In other words, the act should be such as is usual in the type of business carried on by the firm. For example, X and Y are partners in a retail business. Goods were sold on credit to Z. Lafer on, X received the amount from him (Z) on behalf of the firm. Y does not know of his receipt and X utilises his amount for his personal use. Receiving money from debtors is an act done in the usual course of business.

Hence, the firm cannot claim the amount from Z on the plea that X had no authority to receive the amount It is difficult to clearly lay down as to what is usual and what is unusual in a business. It will depend on the nature of business and the usage of t rgde. For example, buying and selling of goods, drawing and accepting bills of exchanges, taking loan, etc, are considered normal activities in case of a trading concern. But, in case of an auctioneering firm or a firm of solicitors, taking loan is not considered to be a usual activity

3 The act must be done in the firm's name or should, in some manner, imply an intention to bind the firm. For example, A and B are partners in a stationery business. A goes to a wholesaler and buys on credit certain quantity of pencils in the firm's name. He uses these pencils for the family. Since his act is of the kind usually done in the stationery business and is done in the firm's name, it will bind the firm.

Act within the implied authority of a partner : The implied authority of a partner shall normaily include :purchasing, on behalf of the firm, goods in which the firm deals or which are used in the firm's business;

ii) selling the goods of the firm

iii) receiving payment of the debts due to the firm and giving receipt therefor

iv) settling accounts with third parties dealing with the firm

v) employing servants necessary for carrying on the firm's business;

vi) borrowing money in the credit of the firm;

vii) pledging goods of the firm as security for the purpose of getting loans;

viii) drawing, accepting and endorsing negotiable instruments on behalf of the firm;

ix) employing solicitor to defend action against the firm and

Acts outside the implied authority of a partner : Sections 19(2) has restricted the scopk of implied authority of a partner. According to this section, in the absence of any usage or custom of trade to the. Contrary the implied authority of a partner does not enabie him to:

i) submit to arbitration a dispute relating to the business of the firm;

ii) open a bank account on behalf of the firm in partner's own name;

iii) compronlise or relinquish any claim or portion of the claim by the firm;

iv) withdraw suit or proceedings filed on behalf of the firm;

v) admit any liability in a suit or proceedings against the firm;

vi) acquire immovable property on behalf of the firm; I

vii) transfer immovable property belonging to the firm, and

viii) enter into partnership on behalf of the firm.

However, the partners, by mutual agreement, can restrict or extend the implied authority of a partner.

Partner% authority in an emergency: According to Section 21, in an emergency a partner will have an authority to do all such acts to protect the firm from loss as a prudent man would undertake under similar circumstances in his own case. These acts do not form part of the implied authority of the partner but, nevertheless, they would bind the firm. For example, the partners of a trading firm by an express contract decided that no partner would have the authority to sell goods of the firm above the value of Rs. 10,000 without consulting all other partners. Owing to a sudden slump in market, the prices, crashed. One partner, in order to save the firm from loss, sold all the stock worth Rs. 1,00,000 without consulting any other partner. The firm is bound by such act of the partner.

12.4.20 Implied Authority and Third Parties

Other people can sue any partner for anything he or she does while acting within the bounds of his or her open or implied power. We can talk about their responsibility to third parties for these kinds of actions under the following headings.

1. Partner's implied authority can be expanded or limited: As we already said, the partners in a business can agree to either expand or limit the implied authority of any partner. The third party on the other hand, is not bound by any limits on a partner's assumed power unless it knows about those limits. In other words, any secret limits on the assumed power of any partner have no effect on the third party. One example is a business company that only let partners buy things on credit up to Rs. 1,000. A third party who didn't know about the limit gave a partner of the firm goods worth Rs. 1,500 on credit The company has to pay the third party the full amount

Effects of an admission by a partner: Because a partner works for the firm, any statement or admission made by a partner about the firm's business is enough evidence against the firm, as long as the statement or admission is made in the normal course of business.

3. What happens when you give notice to an acting partner? You

already know that giving notice to an agent about things related to agency is the same as giving notice to the owner. For parmership, the same rule holds true. This means that any news about the firm's business that is given to a partner who normally gets it as part of the firm's business is considered to be a notice to the firm. If a scam is done by the partners and a third party against the firm, this rule would not apply.

4. Partners are responsible for something the firm does: Every partner is responsible to third parties for everything the firm does while he or she is a partner. This means that a third party can sue each partner separately or with other partners for everything the firm does.

5. Liability for wrongdoing by a partner: If a partner does from a third party in the course of its business and any of its partners misuses the money while it is in the firm's care. For instance, X, Y, and Z run a business together. K, who owed the company money, pays back 2 lakh rupees, but 2 doesn't tell Y and Z about it and spends the money on other things. Because K paid X, he would no longer have to pay his bills.

12.5 POSITION OF INCOMING AND OUTGOING PARTNERS

When there is any chargc in the composition of the partnership, it is called 'reconstruction of the partnership firm'. The reconstitution takes place when

1. A new partner is admitted
2. A partncr retires
3. A partner is expelled
4. A

majority. In this case, A doesn't need the permission of B and C to let his son (who is now an adult) become a partner.
A new partner is not responsible for any bills the company had before he became a partner. While he was a partner, he was only responsible for things the firm did after he joined. This rule is mostly true, but there are two exceptions.

a) They can agree that he will share the responsibility for the firm's past actions. That being said, creditors can't go after the new partner for old debts unless (i) the new firm has taken on the old firm's liabilities and (ii) the creditors have accepted the new firm as their customer and released the old firm from its duty.

b) A child who is allowed to use the firm's services and then, when he turns 18, chooses to become a partner is personally responsible to third parties for everything the firm did while he was a minor.

12.5.2 Retirement of a Partner

Any partner can leave the company in one of three ways: i) with the agreement of all the other partners; ii) in line with a clear agreement between the partners; or iii) if the partnership is at will, by writing to all the other partners and telling them he wants to leave.

Liabilities are: A partner who is leaving is still responsible for everything the company did before he retired or anything that was still open when he retired. He may, however, be released from his responsibility to the third parties if everyone agrees. A deal like this should be made between the third party, the retired partner, all the members of the new firm, and the retiring partner.

This kind of understanding can be said out loud or not.
The retiring partner is still responsible to third parties for any actions

taken by other partners after he retired, even if those actions would have been the firm's responsibility before he retired. This is until the public is told that the retiring partner has been released. The former partner will not be responsible to anyone who does business with the firm and doesn't know that he was not a partner. For the most part, this would still be true if a sleeping partner retired. Any partner can tell the public that a partner is retiring; the retiring partner need not be present

The right to: A partner who is leaving has these two rights.
1. He can run a business that competes with the firm's and can push that business. But unless they agreed otherwise, he can't (i) use the firm's name; (ii) act like he's running the business of the firm; or (iii) try to get old customers to buy from him. However, if both partners agree, some more limits can be put on the leaving partner. For instance, he might not be able to run the competing business in a certain area for a certain amount of time. This is not going to be seen as a trade barrier.

2. If there isn't a final account settlement between the party leaving and the If there are still partners and they keep doing business with the firm's property the retired partner can get (i) that share of the profits they made.

claim his share in the profits of the firm. If, however, the partner transfers his share in the firm on its dissolution or on ceasing to be a partner, the transferee will be entitled to claim the share of the transferring partner in the assets of the firm and for the purpose of ascertaining that share he can ask for on accounts from the date of dissolution. As a matter of fact, no partner can transfer his interest in the firm with the intention hf making him a partner in the firm without the consent of all the other partners. You should note that whenever some change takes place in the constitution of the firm, the mutual rights and liabilities of the old partner in the reconstituted firm continue to remaln the same as they were before the reconstitution took place. For example, A, B, C and D are partners who sharc profits in the ratio of 4:3:2:1. They admit a new partner E who is entitled to one-third share in the profits of the firm. In this situation, unless the partners decide otherwise. A, B, C and D shall continue to share the remaining two-third of the firm's profits in the ratio of 4:3:2:1, the new profit sharing ratio being 5:4:3;2: **1**

12.6 SUMMARY

Partners in a business usually agree on what their rights and responsibilities are to each other. However, if the agreement doesn't spell out certain rights or duties, the Act will make up for them. There are also rights and tasks of partners that are set out in the Act and cannot be changed by an agreement

Unless otherwise agreed, the Act says that a partner has the following rights: (i) to be involved in business; (ii) to be consulted; (iii) to see the books; (iv) to share profits equally (v) to claim otherwise decided, the following parties' rights and responsibilities toward each other (I'm using the old law) will continue for 10 years.

12.7 KEY WORDS

Arbitration: Determination of a matter in dispute by the judgement of one or more persons called arbitrators.

a Common Stock: Property held in common ownership.

Implied Authority: The authority of a partner as conferred by law to bind the firm by his acts done on behalf of the firm in the firm's name.

Incoming Partner: New partner admitted to a partnership firm.

Insolvent Partner: A partner whose assets (including his interest in the firm) at them present fair valuation is insufficient to pay his debts.

Mandatory: Absolute provisions of law that are compulsory and cannot be changed by agreement.

Order of Adjudication: A judicial order declaring a person insolvent.

Outgoing Partner: A partner who leaves the partnership firm by way of retirement, death, expulsion, insolvency, etc.

Partnership Property: Property originally brought to the common stock of the firm or acquired later by or for the firm.

12.8 ANSWERS TO CHECK YOUR PROGRESS

1. What are the different kinds of partners that can exist in a partnership firm? Explain each kind briefly.
2. Discuss the rights of partners in a partnership firm. How do these rights differ from those of other stakeholders?

3. What are the liabilities of partners in a partnership firm? How are these liabilities determined and what are the consequences of breaching them?
4. Explain the status of minors in a partnership firm. What are their rights and limitations in such a business setup?
5. How can a minor become a partner in a partnership firm? What are the legal implications and safeguards involved in such a scenario?

UNIT 13 DISSOLUTION OF PARTNERSHIP FIRM.

Structure

13.0 INTRODUCTION

You now know how to start a partnership company and the parts of the Indian Partnership Act that deal with partners' relationships with each other and their responsibility to third parties. In this unit, you will learn about the rules that apply when a business goes out of business. These rules cover the different ways that the business can end, the rights and duties of each partner during the end, and the way that partners' accounts are settled.

13.1 OBJECTIVES

After studying this unit, you should be able to:

- distinguish between dissolution of partnership and dissolution of firm describe the modes of dissolution of firm
- explain the rights and liabilities of partners consequent to dissolution of firm
- explain how accounts are settled among partners on dissolution

13.2 DISSOLUTION OF PARTNERSHIP FIRM

The Indian Partnership Act makes a distinction between dissolution of partnership and dissolution of firm,

13.2.1 Dissolution of Partnership

A partnership that ends just means that the partners' relationship has changed. Such changes happen when a business is reorganized, like when a new partner joins.

When someone new joins or when an existing partner quits, dies, goes bankrupt, or is kicked out

For some partnerships, ending the partnership may also mean ending the company. A

After the partners' relationships change, the business may decide to stay as a rebuilt the firm. But when a business is closed, it always includes the breaking up a relationship.

For Example A, B, C, and D are in business together as a partnership. A, is found to be bankrupt by the court The group of A, B, C, and D works together.

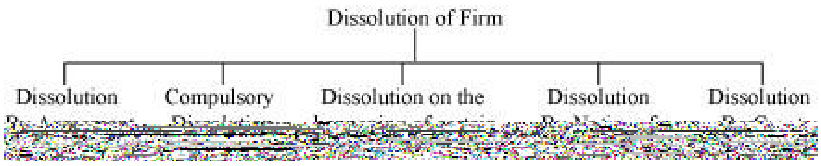
to an end: a new partnership between B, C, and D comes into being. This brand-new an agreement between B. The new name for C and D is "reconstituted firm." So, on a statement of A 21s has gone bankrupt, the partnership finds disbanded, but the company is still going. with the B, C, and D were picked.

1.3.2.2 Dissolution of Firm

In Section 391, "dissolution of a firm" means the end of the relationship between all the partners in a firm. It happens when there is no longer any connection between any of the partners. When this happens, the company stops doing business, sells its assets, pays off its debts, and divides the extra money among its partners based on how much of the company's property they own. In this way the relationship comes to an end.

13. 3 MODES OF DISSOLUTION OF FIRM

The dissolution of firm may take place either without the order of the court or by an order of the court The 4 circumstances under which such dissolutions take place are shown in Figure 1



13.3.1 Dissolution without the Order of Court

Dissolution of firm without the order of the court take place in the following ways:

I. **Dissolution by mutual agreement:** You know that a company is formed by mutual agreement It can also be ended by mutual agreement between the partners that are already there.

It's essential for partners to understand their potential liabilities upon dissolution and to take appropriate steps to mitigate risk. Consulting with legal counsel experienced in partnership law can help partners navigate the dissolution process and minimize personal liability.

13.5 SUMMARY

Dissolution of partnership, not dissolution of firm, is the term for when the relationship between partners changes, like when a partner retires or a new partner joins. breakdown of firm includes the breakdown of partnership between all partners. If the court doesn't step in, this could happen anyway. A partner can ask the court to dissolve the partnership if (i) he or she is crazy, (ii) they are permanently unable to work, (iii) they are dishonest, (iv) they keep breaking the agreement, (v) they sell all of their shares to a third party, or (vi) the business keeps losing money. Some situations where a partnership can end without a court order are (i) when both partners agree, (ii) when certain events happen, (iii) when one partner gives notice when the partnership is at will, or (iv) when all (or almost all) of the partners go bankrupt or the business becomes illegal.

The partners have the right to (i) an equal share of the firm's property, (ii) their premium back if the partnership ends too soon, (iii) to stop others from using the firm's name and property, and (iv) certain rights if the partnership is dissolved for fraud, among other reasons. The partners are still responsible to third parties for anything they do after the business is dissolved if notice is not given to the public. Anyway you look at it, a partner can still bind the firm, and both partners have rights and responsibilities toward each other that may be needed to wind up the business and finish deals that were started but not finished when the business was dissolved.

Some sections of the Act, like 48, 49, and 55, go into great depth about how to settle bills between partners. If there isn't a contract saying otherwise, all losses, including lack of capital, must be paid for first with profits, then with capital, and finally, if needed, by contributions from all partners based on how much of the profits they shared. It is the firm's assets, including the money partners put in to make up for the lack of capital, that will be used to (i) pay off the firm's debts, (ii) pay back each partner for loans they gave the firm, (iii) pay back each partner for the amount they contributed to the capital, and (iv) pay each partner his share of the profits. If, on the other hand, a partner goes bankrupt and can't pay what's owed to them, the healthy partners will share the difference based on the amount of money they had when the partnership ended (Garner v. Murray rule).

The partner is responsible for everything. So, his personal funds can also be used to settle the firm's bills. But a partner's private assets will first be used to pay off his own debts. If there is any money left over, it will be used to pay off the firm's debts if needed. In the event that a business goes out of business, goodwill is usually counted as an asset, unless the contract says otherwise. It can be sold either by itself or with other assets from the business.

13.6 KEY WORDS

Dissolution: Breaking up of any constituted body of persons.

Dissolution of Partnership: A change in relation of partners caused by events like admission of a new partner, etc.

Dissolution of a Firm: Dissolution of partnership between all the partners of a firm.

13.7 ANSWERS TO CHECK YOUR PROGRESS

1. What are the common reasons for the dissolution of a partnership firm?
2. What legal steps are involved in the dissolution process of a partnership firm?

3. How does the dissolution of a partnership firm affect the rights and liabilities of the partners?

4. What are the procedures for settling the assets and liabilities of a partnership firm during dissolution?

5. What role do partnership agreements play in governing the dissolution process?

6. How are profits and losses distributed among partners during dissolution?

7. What are the tax implications for partners and the partnership firm upon dissolution?

8. What do you understand by dissolution of firm'! How can a firm be dissolved? 2 Under what circumstances the court can order dissolution of the firm on a suit by a partner?

9. Describe the rights and liabilities of partners on dissolution of a firm.

10. What are the rules regarding settlement of accounts of a firm after dissolution?

    Explain fully

11. Where goodwill has been sold after dissolution of the firm, what are the rights of a partner in relation to the business of the firm?

12. If a firm has been dissolved on account of insolvency of a partner and the assets of the firm are not sufficient to repay the capital of the partners, how would this deficiency be settled? Discuss.

13. Describe the rights of a partner when the firm has been dissolved on the grounds of' fraud or misrepresentation of a partner

BLOCK V: THE COMPANIES ACT, 1956 & 2013

UNIT 14 COMPANY- DEFINITION, MEANING, FEATURES AND TYPES,

Structure

14.0 INTRODUCTION

When a company is formed, certain rules and regulations are laid down along with the objectives of the company's operations and its purpose. These laws regulate the internal affairs of a company. There are two important sets of documents that define these objectives and govern the functioning of the company and its directors or internal affairs. These documents are Articles of Association (AOA) and Memorandum of Association (MOA). Here, we will discuss in detail the Articles of association. Articles of Association contain the by-laws that regulate the operations and functioning of the company like the appointment of directors and handling of financial records to name a few. Let's imagine the company as a machine. The articles of association then can be considered the user's manual for this machine. It defines the operations that the machine is supposed to perform and how to do that on a day-to-day basis .

14.1OBJECTIVE:

- The Act also aims at improving corporate governance in India.
- To make it easier for Indian companies to start and operate their businesses;
- To promote corporate governance in India;
- To improve economic development in the country by promoting entrepreneurship.

14 .2 DEFINITION,

As per Section 2 (5) of the Companies Act, 2013, Articles of Association have been defined as "The Articles of Association (AOA) of a company originally framed or altered or applied in pursuance of any previous company law or this Act

14.3 MEANING,

With a phenomenal change in the domestic and international economic landscape, the Government of India decided to replace the Companies Act, 1956 with a new legislation. The Companies Act, 2013, endeavours to make the corporate regulations in India more contemporary. In this article, we will focus on the meaning and features of a Company.

Meaning of a Company

There are many definitions of a Company by various legal experts. However, Section 2(20) of the Companies Act, 2013, defines the term 'Company' as follows: "Company means a company incorporated under this Act or under any previous company law."

Hence, in order to understand the meaning of a Company, it is important to look at the distinctive features that explain the realm of a Company.

14.4 FEATURES OF A COMPANY

A Company is a Separate Legal Entity

One of the most distinctive features of a Company, as compared to other organizations, is that it acquires a unique character of being a separate legal entity. Hence, when you register a company, you give it a legal personality with similar rights and powers as a human being. The existence of a company is distinct and separate from that of its members. It can own property, bank accounts, raise loans, incur liabilities and enter into contracts. According to Law, it is altogether different from the subscribers to the Memorandum of Association.

Also, it has a distinct personality which is different from those who compose it. Member can also contract with the Company and acquire a right against it or incur a liability to it. However, for any debts, the creditors can sue the Company but the members cannot.

A Company can own, enjoy, and dispose of a property in its own

- In this Act, the duties of a Director have been defined. It has also defined the duties of 'Key Managerial Personnel' and 'Promoter'.
- For public companies, there should be a rotation of audit firms and auditors. The Act also prevents auditors from performing non-audit services to the company. In case of non-compliance, there is substantial criminal and civil liability for an auditor.
- The whole process of rehabilitation and liquidation of the companies in the case of the financial crisis has been made time-bound.
- The Act makes it mandatory for companies to form CSR committees, and formulate CSR policies. For certain companies, mandatory disclosures have been made in regard to CSR.
- Listed companies ought to have one director to represent small shareholders as well.
- There is provision for the search and seizure of documents, during the investigation, without an order from a magistrate.
- Norms have been made stringent for accepting deposits from the public.
-

14.5 TYPES OF COMPANY

Joint stock company can be of various types. The following are the important types of **compa**

The provisions of the Companies Act shall apply to these companies also except in so far as provisions of the Act are inconsistent with those of such Special Acts [Sec 616 (d)] These companies are generally formed to meet social needs and not for the purpose of earning profits.

C. Registered or incorporated companies.

These are formed under the Companies Act, 1956 or under the Companies Act passed earlier to this. Such companies come into existence only when they are registered under the Act and a certificate of incorporation has been issued by the Registrar of Companies. This is the most popular mode of incorporating a company. Registered companies may further be divided into three categories of the following.

i) **Companies limited by Shares :** These types of companies have a share capital and the liability of each member or the company is limited by the Memorandum to the extent of face value of share subscribed by him. In other words, during the existence of the company or in the event of winding up, a member can be called upon to pay the amount remaining unpaid on the shares subscribed by him. Such a company is called company limited by shares. A company limited by shares may be a public company or a private company. These are the most popular types of companies.

ii) Companies Limited by Guarantee : These types of companies may or may not have a share capital. Each member promises to pay a fixed sum of money specified in the Memorandum in the event of liquidation of the company for payment of the debts and liabilities of the company [Sec 13(3)] This amount promised by him is called

'Guarantee'. The Articles of Association of the company state the number of member with which the company is to be registered [Sec

27 (2)]. Such a company is called a company limited by guarantee. Such companies depend for their existence on entrance and subscription fees. They may or may not have a share capital. The liability of the member is limited to the extent of the guarantee and the face value of the shares subscribed by them, if the company has a share capital. If it has a share capital, it may be a public company or a private company.

The amount of guarantee of each member is in the nature of reserve capital. This amount cannot be called upon except in the event of winding up of a company. Non trading or non -profit companies formed to promote culture, art, science, religion, commerce, charity sports etc. are generally formed as companies limited by guarantee.

iii) Unlimited Companies : Section 12 gives choice to the promoters to form a company with or without limited liability. A company not having any limit on the liability of its members is called an 'unlimited company' [Sec 12(c)]. An unlimited company may or may not have a share capital. If it has a share capital it may be a public company or a private company. If the company has a share capital, the article shall state the amount of share capital with which the company is to be registered [Sec 27 (1)]

The articles of an unlimited company shall state the number of member with which the company is to be registered.

treated as a single member. The minimum number of members to form a private company is two.

iii) A private company cannot invite the public to subscribe for its capital or shares of debentures. It has to make its own private arrangement

B. Public company

According to Section 3 (1) (iv) of Indian Companies Act. 1956 "A public company which is not a Private Company",

If we explain the definition of Indian Companies Act 1956 in regard to the public company, we note the following :

i) The articles do not restrict the transfer of shares of the company

ii) It imposes no restriction no restriction on the maximum number of the members on the company

iii) It invites the general public to purchase the shares and debentures of the companies

(Differences between a Public Company and a Private company)

1. **Minimum number :** The minimum number of persons required to form a public company is 7. It is 2 in case of a private company.

2. **Maximum number :** There is no restriction on maximum number of members in a public company whereas the maximum number cannot exceed 50 in a private company.

3**. Number of directors.** A public company must have at least 3 directors whereas a private company must have at least 2 directors (Sec. 252)

4. Restriction on appointment of directors. In the case of a public company, the directors must file with the Register a consent to act as directors or sign an undertaking for their qualification shares. The directors or a private company need not do so (Sec 266)

5. Restriction on invitation to subscribe for shares. A public company invites the general public to subscribe for shares. A public company invites the general public to subscribe for the shares or the debentures of the company. A private company by its Articles prohibits invitation to public to subscribe for its shares.

6. Name of the Company : In a private company, the words "Private Limited" shall be added at the end of its name.

7. Public subscription : A private company cannot invite the public to purchase its shares or debentures. A public company may do so.

8. Issue of prospectus : Unlike a public company, a private company is not expected to issue a prospectus or file a statement in lieu of prospectus with the Registrar before allotting shares.

9. Transferability of Shares. In a public company, the shares are freely transferable (Sec. 82). In a private company the right to transfer shares is restricted by Articles.

10. Special Privileges. A private company enjoys some special privileges. A public company enjoys no such privileges.

11. Quorum. If the Articles of a company do not provide for a larger quorum, 5 members personally present in the case of a public company are quorum for a meeting of the company. It is 2 in the case of a private company (Sec. 174)

12. Managerial remuneration. Total managerial remuneration in a public company cannot exceed 11 per cent of the net profits (Sec. 198). No such restriction applies to a private company.

13. Commencement of business. A private company may commence its business immediately after obtaining a certificate of incorporation. A public company cannot commence its business until it is granted a "Certificate of Commencement of business".

Special privileges of a Private Company. Unlike a private a public company is subject to a number of regulations and restrictions as per the requirements of Companies Act, 1956. It is done to safeguard the interests of investors/shareholders of the public company. These privileges can be studied as follows:

a) Special privileges of all companies. The following privileges are available to every private company, including a private company which is subsidiary of a public company or deemed to be a public company.

1. A private company may be formed with only two persons as member. [Sec.12(1)]

2. It may commence allotment of shares even before the minimum subscription is subscribed for or paid (Sec. 69).

3. It is not required to either issue a prospectus to the public of file statement in lieu of a prospectus. (Sec 70 (3)]

4. Restrictions imposed on public companies regarding further issue of capital do not apply on private companies. [Sec 81 (3)]

5. Provisions of Sections 114 and 115 relating to share warrants shall not apply to it (Sec. 14)

6. It need not keep an index of members. (Sec. 115)

7. It can commence its business after obtaining a certificate of incorporation. A certificate of commencement of business is not required. [Sec. 149 (7)]

8. It need not hold statutory meeting or file a statutory report [Sec. 165 (10)]

9. Unless the articles provide for a larger number, only two persons personally present shall form the quorum in case of a private company, while at least five member personally present form the quorum in case of a public company (Sec. 174).

10. A director is not required to file consent to act as such with the Registrar. Similarly the provisions of the Act regarding undertaking to take up qualification shares and pay for them are not applicable to directors of a private companies [Sec. 266 (5) (b)]

11. Provisions in Section 284 regarding removal of directors by the company in general meeting shall not apply to a life director appointed by a private company on or before

1st April 1952 [Sec. 284 (1)]

12. In case of a private company, poll can be demanded by one member if not more than seven members are present, and by two member if not more than seven member are present In case of a public company, poll can be demanded by persons having not less than one-tenth of the total voting power in respect of the resolution or holding shares on which an aggregate sum of not less than fifty thousand rupees has been paid-up (Sec. 179).

13. It need not have more than two directors, while a public company must have at least three directors (Sec. 252)

b) Privileges available to an independent private company (i.e. one which is not a subsidiary of a public company) An independent private company is one which is not a subsidiary of a public company. The following special privileges and exemptions are available to an independent private company.

1. It may give financial assistance for purchase of or subscription for shares in the company itself.

2. It need not, like a public company, offer rights shares to the equity shareholders of the company.

3. The provisions of Sec. 85 to 90 as to kinds of share capital, new issues of share capital, voting, issue of shares with disproportionate rights, and termination of disproportionately excessive rights, do not apply to an independent private company.

4. A transfer or transferee of shares in an independent private company has no right of appeal to the Central Government against refusal by the company to register a transfer of its shares.

5. Sections 171 to 186 relating to general meeting are not applicable to an independent private company if it makes its own provisions by the Articles. Some provisions of these Sections are, however made expressly applicable.

6. Many provisions relating to directors of a public company are not applicable to an independent private company, e.g.

a) it need not have more than 2 directors.

b) The provisions relating to the appointment, retirement, reappointment, etc. of directors who are to retire by rotation and the procedure relating, there to are not applicable to it

c) The provisions requiring the giving of 14 days' notice by new candidates seeking election as directors, as also provisions requiring the Central Government's sanction for increasing the number of directors by amending the Articles or otherwise beyond the maximum fixed in the Articles, are not applicable to it

d) The provisions relating to the manner of filing up casual vacancies among directors and the duration of the period of office of directors and the requirements that the appointment of directors should be voted on individually and that the consent of each candidate for directorship should be filed with the Registrar, do not apply to it

8. The provisions prohibiting the subscribing for, or purchasing of,

period of three months from the last day of the relevant period when

2. Subsidiary Company

company (say Company H), the former (Company S) becomes the subsidiary of the controlling company (company H).

b) Foreign Companies : It means any company incorporated outside India which has an established place of business in India [Sec. 591 (I)]. A company has an established place of business in India if it has a specified place at which it carries on business such as an office, store house or other premises with some visible indication premises. Section 592 to 602 of Companies Act, 1956 contain provisions applicable to foreign companies functioning in India

14.6 SUMMARY

The Companies Act of 2013 is a milestone in the revamp of the Companies Act of 1956. A landmark inclusion in the Act is Section 135 which makes way for Corporate Social Responsibility a clause binding companies registering net profit of more than INR five crores to invest 2% of their net profits in activities, Programmes and projects targeting larger social good. Several related sections of the Act support the interpretation and execution of provisions under Section 135. The refurbished Act of 2013 includes seven schedules of which Schedule VII outlines activities that can be undertaken by companies under CSR compliance. These activities are interpreted as subjects mandated to bring in larger social good. With the purpose of simplifying the interpretation of the Act with respect to CSR, the Ministry of Corporate Affairs released a set of nine rules which were affected from April 1, 2014 and have proved to be helpful for companies in adhering to the provisions laid out for CSR and its practice.

14.7 KEY WORDS

The list mentioned below provides you with keywords used in the Companies Act 2013, which aspirants must know

- **Appellate Tribunal** – Questions can be asked about the National Company Law Appellate Tribunal
- **Associate Company** – Questions can be asked on the definition of an associate company
- **Called-Up Capital** – Questions can be asked about the difference between called-up capital, authorized capital and nominal capital
- **Company Liquidator** – The definition of company liquidator is important
- Questions can be asked on the difference between debentures, deposits and derivative

14.8 ANSWERS TO CHECK YOUR PROGRESS

1. Define 'Company'. What are its essential characteristics?

2. Explain the special privileges of a private company as compared to a public company.

3. Bring out the difference between partnership and company form of organization.

4. Write notes on:

a) Chartered Companies

b) Government Companies

5. Classify company form of organization on the basis of liability of members

15.1 OBJECTIVE:

After studying this Unit, you should be able to:

- Understand The Meaning and Purpose of Memorandum of Association;
- Describe The Different Forms of Memorandum of Association Relevant To
- Different Kinds of Companies;
- List The Different Clauses of The Memorandum of Association;
- Explain The Doctrine of Ultra Vires; And
- Describe The Procedure for Alteration of Various Clauses of Memorandum of Association
- Explain The Meaning and Purpose of Articles of Association;
- Describe The Contents of Articles of Association;
- Explain The Procedure for Alteration of Articles of Association;
- Know The Limitations on The Power of The Company to Alter Articles of Associations;
- Explain The Relationship of And Distinction Between Articles of Association and Memorandum;
- Explain The Legal Effects of The Memorandum and Articles; And
- Understand the doctrines of constructive notice and indoor management

15.2 MEMORANDUM OF ASSOCIATION

Memorandum of Association is the most important document of a company. It states the objects for which the company is formed. It contains the rights, privileges and powers of the company. Hence it is called a charter of the company. It is treated as the constitution of the company. It determines the relationship between the company and the outsiders. The whole business of the company is built up according to Memorandum of Association. A company cannot undertake any business or activity not stated in the Memorandum. It can exercise only those powers which are clearly stated in the Memorandum.

15.2 DEFINITION OF MEMORANDUM OF ASSOCIATION

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Thus, a Memorandum of Association is a document which sets out the constitution of the company. It clearly displays the company's relationship with outside world. It also defines the scope of its activities. MoA enables the shareholders, creditors and people who has dealing with the company in one form or another to know the range of activities.

15.3 CONTENTS OF MEMORANDUM OF ASSOCIATION

According to the Companies Act, the Memorandum of Association of a company must contain the following clauses:

(i) Name Clause of Memorandum of Association

The name of the company should be stated in this clause. A company is free to select any name it likes. But the name should not be identical or similar to that of a company already registered. It should not also use words like King, Queen, Emperor, Government Bodies and names of World Bodies like U.N.O., W.H.O., World Bank etc. If it is a Public Limited Company, the name of the company should end with the word 'Limited' and if it is a Private Limited Company, the name should end with the words 'Private Limited'.

(ii) Situation Clause of Memorandum of Association

In this clause, the name of the State where the Company's registered office is located should be mentioned. Registered office means a place where the common seal, statutory books etc., of the company are kept. The company should intimate the location of registered office to the registrar within thirty days from the date of incorporation or commencement of business.

(iii) The registered office of a company can be shifted from one place to another within the town with a simple intimation to the Registrar. But in some situation, the company may want to shift its registered office to another town within the state. Under such circumstance, a special resolution should be passed. Whereas, to shift the registered office to other state, Memorandum should be altered accordingly.

(iv) Objects Clause of Memorandum of Association

This clause specifies the objects for which the company is formed. It is difficult to alter the objects clause later on. Hence, it is necessary that the promoters should draft this clause carefully. This clause mentions all possible types of business in which a company may engage in future.

The objects clause must contain the important objectives of the company and the other objectives not included above.

(v) Liability Clause of Memorandum of Association

This clause states the liability of the members of the company. The liability may be limited by shares or by guarantee. This clause may be omitted in case of unlimited liability.

(vi) Capital Clause of Memorandum of Association

This clause mentions the maximum amount of capital that can be raised by the company. The division of capital into shares is also mentioned in this clause. The company cannot secure more capital than mentioned in this clause. If some special rights and privileges are conferred on any type of shareholders mention may also be made in this clause.

(vii) Subscription Clause of Memorandum of Association

It contains the names and addresses of the first subscribers. The subscribers to the Memorandum must take atleast one share. The minimum number of members is two in case of a private company and seven in case of a public company.

Thus the Memorandum of Association of the company is the most important document. It is the foundation of the company.

15.4 PROCESS OF ALTERATION IN MEMORANDUM OF ASSOCIATION (SECTION 13 OF COMPANIES ACT, 2013)

(i) Short summary:

Memorandum of association defines the relation of the company with the rights of the members of the company interest and also establishes the relationship of the company with the members.

This section corresponds to sections 17 and 21 of the Companies Act, 1956 and section 11(4) of the Indian Companies Act, 1913 and section 18(1) of the English Companies Act, 1948. It has been made effective from 1-4-2014 vide **Notification No. SO 902(E), dated 26-3-2014.**

(ii) Introduction:

Any Company which intended to make any change to the Memorandum of Association (MOA) of its company will have to comply with the provisions of Section - 13 of **Companies Act, 2013** and any other applicable provisions of the Act and applicable rules.

Company can alter its Memorandum by way of alteration in following clause of Memorandum of Association:

Name Clause	Registered Office Clause
Object Clause	Liability Clause

Note: * Every alteration made in the memorandum of a company shall be noted in every copy of the memorandum or articles, as the case may be.

A company may alter any contents of its memorandum by a special resolution and complying with the procedure specified in this section. However section 61 will be complied with for alteration of the capital clause of the memorandum.

"**Alteration** ". The expression 'alter' means to modify, change or vary to make or become different, to change in character, appearance, etc; to change in some respect

(ii) Steps for Alteration in Memorandum of Association:

STEP – I: Convey Board Meeting of Directors: (As per section 173 and SS-1)

- Issue Notice of Board Meeting to all the directors of company at least 7 days before the date of Board Meeting.
- Attach Agenda
- Notes to Agenda
- Draft Resolution

STEP – II: Held Board Meeting: (As per section 173 and SS-1)

- At the Board meeting, the given resolutions in respect of alteration in MOA must be passed.
- Get Approval to Alteration in Memorandum of Association and recommending the proposal for members' consideration by way of special resolution.
- Fixing the date, time, and venue of the general meeting and authorizing a director or any other person to send the notice for the same to the members.

STEP- III: Issue Notice of General Meeting: (Section 101)

Notice of EGM shall be given at least 21 days before the actual date of EGM. EGM can be called on Shorter Notice with the consent of atleast majority in number and ninety five percent of such part of the paid up share capital of the company giving a right to vote at such a meeting:

- All the Directors.
- Members
- Auditors of Company

The notice shall specify the place, date, day and

actual

In case, registered office has to be shifted from one State to another State, a special resolution has to be passed and approval from the Company Law Board has to be obtained by the company. The altered memorandum should be filed with the Registrar of the State from which the company is shifting and also to the Registrar of the State to which the company is shifted.

(iv) Alteration of Objects Clause in Memorandum of Association

A company can alter its objects clause by passing a special resolution. Alteration of objects clause can be done for the following reasons:

1. For the purpose of carrying on its business more economically and efficiently.
2. For the purpose of obtaining the main business of the company by new and improved means
3. For the purpose of enlarging or changing

They are like the joint agreement in a business. The rules for how the company should be run were explained in them. They specifically cover things like making calls, losing shares, the skills of directors, and the process for transferring and sending shares and debentures.

15.6 REGISTRATION OF ARTICLES

Articles of Association are one of the documents that must be filed in order for a company to be registered. The Companies Act of 2013 says that the articles of a company must be in the forms shown in Tables F, G, H, I, and J in Schedule 1, depending on the type of business. You may notice that Table F has sample pieces for a business whose shares are limited. They are in Table G, H, I, and J. They show sample articles for a company limited by promise that doesn't have a share capital, an unlimited company that does have a share capital, and an unlimited company that doesn't have a share capital.

A business can choose to follow all or some of the rules in the model pieces that apply to it

For companies registered under the Companies Act, 2013, the rules in the model articles that apply to those companies will be the rules of those companies as long as they are not contradicted or changed by the registered articles of those companies. These rules will apply in the same way and to the same extent as if they were in the properly registered articles of those companies. For businesses that were formed under an earlier law, the current articles may stay in place unless the company chooses to change them based on the model articles in the relevant table, as shown above.

The Articles of Association are signed.

Company (Incorporation) Rules, 2013, Rule 13 says that the The following is how the Memorandum and Articles of Association of the company should be signed.

- Memorandum and articles of association of the company must be signed by each subscriber to the memorandum. Each subscriber must also include their name, address, description, and job title, if any. This must be done in front of at least one witness, who must attest the signature and also sign and include their name, address, description, and job title, if any.
- When the subscriber signs, the witness must say "I witness that subscriber signed in my presence (date and place to be given)."

  I also checked their ID to make sure they were who they said they were and was happy with the information they filled out.
- If a person who signs the paper can't read or write, he must put his thumbprint or mark on it, which must be described as such by the person writing for him. This person will then put the subscriber's name next to or against the mark and sign it to prove it is real. He will also write next to the subscriber's name the number of shares that person bought. The person in this role must also read the statement and articles of association to the member, explain what they say and sign them to show that they agree with what is written.
- When a body corporate signs the memorandum, both the memorandum and the articles of association must be signed by a director, officer, or employee of the body corporate who has been given permission to do so by the body corporate's

board of directors.

If the user is a Limited Liability Partnership, it must be signed by a partner of the Limited Liability Partnership who has been given permission to do so by a decision that all the partners of the Limited Liability Partnership have agreed to.

The rules say that the statement and articles of association must be signed in a certain way when the person signing them is a foreigner who doesn't live in India.

15.7 CONTENTS OF ARTICLES

As you now know, the Articles of Association of a company spell out the rules for how the company is run from the inside. Section 5 of the Companies Act, 2013 says that the articles must also include any other information that the law says they must have. However, the company can add any other information to its pieces that it thinks is important for running it

Setting up for entrenchment The Companies Act of 2013 has rules about entrenchment from Articles for the first time. Part 3 of Section 5 says that the articles can include measures for entrenchment. This means that the Articles could say that certain parts of the Articles can't be changed just by passing a special motion; a more complex set of steps must be taken.

These entrenchment rules can only be put in place when a company is formed or when all the members of a private company agree to a change to the articles of association or when a special vote is passed by the members of a public company.

If the articles have provisions for entrenchment, whether they were added when the company was formed or later changed, the company must notify the Registrar of those provisions in the way and form that may be required.

In most cases, a company's Articles of Association include rules and laws about the following things:

i) The leaving out of the example pieces as shown in the different tables, in whole or in part

(ii) Share capital: the number of shares, their value, and how they are split into stock shares and preference shares, if there are any.

iii) The rights of each type of member and how those rights can be changed.

(iv) The steps that need to be taken to give out shares, make calls, and forfeit shares.

v) Adding to, changing, or removing share capital.

vi) The rules that must be followed when transferring shares and how they should be done.

(vii) The company's lien on the shares given to members for the amount still owed on those shares and the process for that

viii) Who the company's owners and officers are, how much they get paid, what powers and tasks they have, etc.

ix) The structure and make -up of the Audit Committee, the Remuneration Committee, and the CRS Committee.

x) Information on how to change shares into stock and stock into shares.

xi) Notice of meetings, voters' rights, number, polls, substitute votes, etc.

xii) Accounts being audited, money being moved to savings, dividends being declared, etc.

xiii) The company's borrowing power and how it should use that power.

117. The power to change articles by passing a special motion is so important that a company can't get rid of it in any way – Walker vs. London Tramway Company [1879].
Following Section 14(2) says that whenever the articles are changed, they must be filed with the Registrar within fifteen days along with a printed copy of the changed articles and a copy of the order from the Tribunal authorizing the change, if necessary. The Registrar must then register the changes.

Any change made to the articles filed under subsection (2) is valid as if it were written in the articles from the start, as long as it doesn't break any law.

15.8.1 Limitation on Power to Alter Articles

You have noted that Section 14 of the Companies Act, 2013 allows companies to alter the articles of association of a company by passing special resolution and where alteration is to have the effect of converting a public company into a private company, the company shall have to obtain the approval of the Tribunal also besides passing special resolution. However, this right of the company to alter Articles is subject to certain limitation. These limitations include:

1) Not to be inconsistent with Memorandum: The alteration must not exceed the powers given by the memorandum or be in conflict with any provisions of the memorandum. In the event of conflict between the memorandum and the articles, it is the memorandum that will prevail.
2) Not to be inconsistent with Companies Act or any other law: The alteration must not be inconsistent with any provisions of the Companies

Act or any other statute – for example, no public company can finance purchase of its own shares (Section 67) and if the articles of such a company are altered so as to have such a power then such power will be void.

Similarly where a resolution was passed expelling a member and authorizing the director to register the transfer of his shares without an instrument of transfer, the resolution was held to be invalid as being against the provisions of the Act [Madhav Ramachandra Kamath vs. Canara Banking Corporation [1941]]

3) Not be inconsistent with any alteration made by the Tribunal: Where under Section 242, the Tribunal makes an order with respect to any alteration in the memorandum or articles of a company, then the company shall not have the power to make any alteration which is inconsistent with its orders except with approval of the Tribunal [Sec. 242 (5)].

4) The altered articles must not include anything which is illegal or opposed to public policy or unlawful.

5) The alteration must be bonafide for the benefit of the company as a whole: It should not constitute a fraud on or oppress the minority. The alteration will not, however, be bad merely because it inflicts hardship on an individual shareholder. In Allen vs. Gold Reefs of West Africa Limited [1900], a company had a lien on all shares 'not fully paid-up' for calls due to the company. There was only one shareholder 'A', who owned fully paidup shares. He also held partly paid shares in the company'. 'A' died. The company altered its articles by striking the words "fully paid up" and thus giving itself a lien on all shares – whether fully paid up or not. The legal representative of 'A' challenged the alteration on the ground that the alteration had retrospective effect. Held that, the alteration was good, as it was done bona fide for the benefit of the company as a whole, even though the alteration had a retrospective effect.

Again, in **Side Bottom vs. Kershaw Leese & Co. [1920],** a company was empowered by an alteration in the articles, to expropriate shares held by any member who was in business in competition with the company. At the time of alteration, there was only one member doing business in competition with the company. He challenged the alteration. Held, the alteration was valid being bona fide for the benefit of the company.

6) An alteration of articles of effect a conversion of a public company into a private company cannot be made without the approval of the Tribunal (Section 14).

7) A company cannot justify breach of contract with third parties or avoid a contractual liability by altering articles: In British Murac Syndicate Ltd. vs. **Alperton Rubber Co. [1915],** an agreement provided that so long as the plaintiff syndicate should hold 5,000 shares in the defendant company it should have the right of nominating two directors on the Board of the defendant company. A provision to the same effect was contained in 'Article 88' of the defendant company's articles. The plaintiff syndicate nominated two directors whom the defendant company refused to accept. An attempt was then made to cancel Article 88, but an injunction was granted to restrain it. The learned judge observed that the contract involved, as one of its terms that Article 88 was not to be altered. However, where the damage is capable of being measured in terms of money, the company may alter its articles, subject to payment of damages for breach.

8) Retrospective operation of Articles: The amended regulation in the articles of association cannot operate retrospectively, but only from the date of amendment [Pyare Lal Sharma vs. Managing Director, J & K Industries Ltd. (1989)].

15.8.2 Effect of Altered Articles

15.9 RELATIONSHIP BETWEEN MEMORANDUM AND ARTICLES

The memorandum and articles of association are two key documents that are required for the formation and operation of a company, particularly in jurisdictions following common law principles like the UK and its former colonies.

1. **Memorandum of Association:** This document outlines the fundamental conditions upon which the company is allowed to operate. It sets forth the company's objectives and scope of activities. It also defines the relationship of the company with the outside world, establishing its existence as a legal entity. Historically, it was considered as the company's "charter" and contained clauses specifying its name, location, objectives, and limited liability status. However, its significance has diminished over time, especially in jurisdictions like the UK, where its contents are usually limited to stating the company's name, location, and limited liability clause.
2. **Articles of Association:** These are rules governing the internal management and operation of the company. They detail how the company will be run, including procedures for meetings, appointment and removal of directors, distribution of dividends, etc. Essentially, they regulate the relationships between the company and its shareholders, as well as the relationships among the shareholders themselves. The articles are typically more comprehensive and detailed than the memorandum, as they deal with the day-to-day operations and internal governance of the company.

In summary, while the memorandum outlines the company's external relations and fundamental objectives, the articles focus on the internal governance and management structure. Together, they

- **Articles of Association:** Amendments to the articles are generally easier and more flexible. They often require a special resolution passed by the shareholders, although specific procedures may vary depending on the jurisdiction and the company's constitution.

4. **Legal Status:**
   - **Memorandum of Association:** Defines the company's capacity and powers to act. It establishes the company's legal existence and limits the actions it can take.
   - **Articles of Association:** Govern the internal workings and management structure of the company. They regulate the relationships between the company and its shareholders, as well as the relationships among the shareholders themselves.

In essence, while the memorandum outlines the company's external relations and fundamental objectives, the articles focus on the internal governance and management structure. Together, they form the constitutional framework within which the company operates.

15.11 BINDING EFFECT OF MEMORANDUM AND ARTICLES

The binding effect of the memorandum and articles of association lies in their legal status as foundational documents that establish the framework for a company's operation and governance. Here's how their binding effect typically works:

1. **Binding on the Company:** Both the memorandum and articles of association are binding on the company itself. They form a contract between the company and its members (shareholders) and between the company and its d QqNT-ves of association

Here's how constructive notice works in relation to the memorandum and articles of association:

1. **Public Record**: The memorandum and articles of association are public documents that are filed with the relevant government authority such as the Companies Registry in many jurisdictions. These documents are available for public inspection, typically online or upon request.
2. **Presumption of Knowledge:** Anyone dealing with a company, such as creditors, customers, suppliers, or potential investors, is presumed to have knowledge of the contents of the company's memorandum and articles. This means that they are deemed to know the company's legal capacity, powers, and any limitations or restrictions on its activities as set out in these documents.
3. **Legal Effects:** Constructive notice of the memorandum and articles of association has important legal consequences. For example:
   - Third parties dealing with the company are bound by the company's actions within the scope of its constitutional documents, even if they were unaware of specific provisions.
   - The company cannot rely on the ignorance of third parties to escape liability for actions that fall within its constitutional powers.
   - Creditors and other parties can take steps to protect their interests by reviewing the company's constitutional documents before entering into transactions with the company.
4. **Protection for Third Parties**: Constructive notice helps to ensure transparency and protect the interests of third parties dealing with the company. It allows them to make informed

6. **Effect on Third Parties:**
   - Third parties dealing with the company are generally bound by the company's actions within the scope of its memorandum and articles of association.
   - Alterations may affect third parties' rights and obligations, so transparency and communication are important.
7. **Case Studies or Examples:**
   - Examples of significant alterations include changes to a company's name, objectives, or share structure.
   - Court cases may provide insights into legal principles governing alterations and their implications for companies and stakeholders.

Constructive Notice: Knowledge of the contents of documents on the part of those who are dealing with the company is presumed by law.

Inter se: Amongst themselves.

Public Document: Any document which is in possession of an officer of the government, and is open to inspection is known as a public document

15.16 ANSWERS TO CHECK YOUR PROGRESS

1. **Incorporation Process:**
   - What are the key steps involved in the process of incorporating a company?
   - Which documents are required to be submitted for the incorporation of a company?

2. **Memorandum of Association:**
   - What is the purpose of the memorandum of association in the context of company incorporation?
   - What are the typical contents of a memorandum of association?
   - How does the memorandum of association establish the legal existence and scope of activities of a company?
3. **Articles of Association:**
   - What role do the articles of association play in the governance of a company?
   - What are some common provisions found in articles of association?
   - How do the articles of association regulate the internal management and operations of a company?
4. **Alteration of Memorandum and Articles:**
   - Under what circumstances can the memorandum and articles of association be altered?
   - What procedures are typically required to alter the memorandum and articles of association?
   - What are the implications of altering the memorandum and articles of association on the company and its stakeholders?
5. **Legal Requirements and Formalities:**
   - What legal requirements must be met when altering the memorandum and articles of association?
   - Are there any formalities or approvals necessary from regulatory authorities or shareholders for such alterations?

6. Effect on Third Parties:

x

You learned about being a part of a company in Unit 12. There are a lot of people from all over the country who work for a public company, of course. Because of this, they choose some people to run the business. People like this are called directors, and their main job is to set the company's policies and oversee and manage all of its operations. This unit will teach you about the formal role of directors, what makes them qualified or not qualified, how they are chosen, their powers, tasks, and responsibilities, as well as the committees of the Board of Directors.

16.1 OBJECTIVE:

After studying this Unit, you should be able to:

- Describe the purpose and importance of company meetings
- List the different types of company meetings
- List the things that must be present at a company meeting
- Describe the different types of resolutions and why they are passed
- Describe the ways and steps for voting in meetings.
- Describe the laws that apply to meeting minutes.
- Explain what a director is;
- Explain what their legal role is;
- List the qualifications and disqualifications of a director;
- Explain how directors are chosen;
- Talk about the situations when a director's position becomes open.

16.2 MEANING OF PROSPECTUS

The prospectus is a legal document, which outlines the company's financial securities for sale to the investors.

According to the companies act 2013, there are four types of the prospectus, abridged prospectus, deemed prospectus, red herring prospectus, and shelf prospectus.

16.3 DEFINITION OF PROSPECTUS

The prospectus is a legal document for market participants and investors to peruse, detailing the features, prospects, and promise of a financial product

It is mandated by the law to be supplied to prospective customers.

16.4 TYPES OF PROSPECTUSES

According to Companies Act 2013, there are four types of prospectus.

Deemed Prospectus – Deemed prospectus has mentioned under Companies Act, 2013 Section 25 (1). When a company allots or agrees to allot any securities of the company the document is considered as a deemed prospectus via which the offer is made to investors. Any document which offers **the sale of securities to the public is deemed to be a prospectus by implication of law.**

Red Herring Prospectus – Red herring prospectus does not contain all information about the prices of securities offered and the number of securities to be issued. According to the act, the firm should issue this prospectus to the registrar at least three before the opening of the offer and subscription list

Shelf prospectus – Shelf prospectus is stated under section 31 of the Companies Act, 2013. Shelf prospectus is issued when a company or any public financial institution offers one or more securities to the public. A company shall provide a validity period of the prospectus, which should not be more than one year. The validity period starts with the commencement of the first offer. There is no need for a prospectus on further offers. The organization must provide an information memorandum when filing the shelf prospectus.

Abridged Prospectus – Abridged prospectus is a memorandum, containing all salient features of the prospectus as specified by SEBI. This type of prospectus includes all the information in brief, which gives a summary to the investor to make further decisions. A company cannot issue an application form for the purchase of securities unless an abridged prospectus accompanies such a form.

16.5 CONTENTS OF A PROSPECTUS

As per the requirement of Section 26 of the Companies Act, 2013, contents of a prospectus shall comprise of:

i) Information to be given in a Prospectus

ii) Reports to be set out in Prospectus

iii) Declaration

iv) other matters

16.5.1 Information to be given in a Prospectus

Section 26 of the Companies Act, 2013 along with Rule 3 of the Companies (Prospectus and Allotment of Securities) Rule, 2014 require a prospectus to state the following information namely

i) names and addresses of the registered office of the company, company secretary, Chief Financial Officer, auditors, legal advisers, trustees, if any, the names, addresses and contact details of the corporate office of the issuer company, compliance officer of the issuer company, merchant bankers and co – managers to the issue, registrar to the issue, bankers to the issue, stock brokers to the issue, underwriters, credit rating agency for the issue, arrangers, if any, of the instrument, names and addresses of such other persons as may be specified by the Securities and Exchange Board in its regulations;

ii) dates of the opening and closing of the issue, and a declaration which shall be made by the Board or the Committee authorised by the Board in the prospectus that the allotment letters shall be issued or application money shall be refunded within fifteen days from the closure of the issue or such lesser time as may be specified by Securities and Exchange Board or else the application money shall be refunded to the applicants forthwith, failing which interest shall be due to be paid to the applicants at the rate of fifteen per cent annum for the delayed period;

iii) a statement by the Board of Directors about the separate bank account where all monies received out of the issue are to be transferred;

iv) disclosure of details of all monies including utilised and unutilised monies out of the previous issue in the prescribe manner;

v) details about underwriting of the issue including the names, addresses, telephone numbers, fax numbers and e-mail addresses of the underwriters and the amount underwritten by them;

vi) consent of the directors, auditors, bankers to the issue, trustees, solicitors or advocates, merchant bankers to the issue, registrar to the issue, lenders and experts;

vii) the authority for the issue and the details of the resolution passed therefor;

viii) procedure and time schedule for allotment and issue of securities;

ix) the capital structure of the company shall be presented in the following manner, namely:

i) a) the authorised, issued, subscribed and paid up capital (number of securities, description and aggregate nominal value);

b) the size of the present issue;

c) the paid up capital A) after the issue;

B) after conversion of convertible instruments (if applicable);

d) the share premium account (before and after the issue).

ii) the details of the existing share capital of the issuer company in a tabular form, indicating therein with regard to each allotment, the date of allotment, the number of shares allotted, the face value of the shares allotted, the price and the form of consideration.

x) The prospectus to be issued shall contain the following particulars, namely -

a) main objects and present business of the company and its location;

b) the objects of the issue;

c) the purpose for which there is a requirement of funds;

d) the funding plan (means of finance);

e) the summary of the project appraisal report (if any);

f) the schedule of implementation of the project;

g) the interim use of funds, if any

ix) particulars relating to:

a) management perception of risk factors specific to the project;

b) gestation period of the project;

c) extent of progress made in the project;

d) deadlines for completion of the project; and

e) any litigation or legal action pending or taken by a Government Department or a statutory body during the last five years immediately preceding the year of the issue of prospectus against the promoter of the company

xi) minimum subscription, amount payable by way of premium, issue of shares otherwise than on cash;

xiii) details of directors including their appointments and remuneration, and such particulars of the nature and extent of their interests in the company as may be prescribed; and

xiv) disclosures in such manner as may be prescribed about sources of promoter's contribution.

16.5.2 Reports to be set out in Prospectus

The prospectus shall set out the following reports for the purposes of the financial information, namely

i) reports by the auditors of the company with respect to its profits and losses and assets and liabilities, amounts or rates of dividends, if any paid by the issuer company in respect of each class of shares for each of the five financial years immediately preceding the year of issue of the prospectus and such other matters as may be prescribed;

ii) reports made in the prescribed manner by the auditors upon the profits and losses for each of the five financial years immediately preceding the financial year of the issue of prospectus including such reports of its subsidiaries and in such manner as may be prescribed.

However, in case of a company with respect to which a period of five years has not elapsed from the date of incorporation, the prospectus shall set out in such manner as may be prescribed, the reports relating to profits and losses for each of the financial year immediately preceding the financial year of the issue of prospectus including such reports of its subsidiaries;

iii) reports made in the prescribed manner by the auditors upon the profits and losses of the business of the company for each of the five

power to issue a certificate in pursuance of any law. The reports from and expert will be included in a prospectus if .

i) such an expert is a person who is not and has not been engaged or interested in the formation or promotion or management of the company,
ii) he gives his written consent to the issue of the prospectus and had not withdrawn the consent until the prospectus is delivered to the Registrar for registration,
iii) a statement that he has given and not withdrawn his consent thereto is included in the prospectus.

Exemptions

The aforesaid requirements of Section 26, that is, with respect to the contents do not apply to:

a) Rights Issue, i.e., the issue to existing members or debenture -holders of a company, of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant has a right to renounce the shares in favour of any other person or not.

b) Shares/Debentures Uniform in all respects: The provisions of Section 26 do not apply to the issue of a prospectus or form of application relating to share debentures which are, or are to be, in all respects uniform with shares or debentures previously issued and for the time being dealt in or quoted on a recognized stock exchange.

Variation in terms of contract or objects in prospectus (Section 27)

If, at any time, the company wants to vary the terms of a contract referred to in the prospectus or objects for which for which the prospectus was issued, it shall not be allowed to do so except by way of special resolution. The notice of the special resolution must clearly indicate the justification for such variation and the same should be published in the newspapers (one in English and one in vernacular language) in the city where the registered office of the company is situated.

Again, it may be noted that a company cannot use any amount raised by it through prospectus for buying, trading or otherwise dealing in equity shares of any other listed company.

Exit Option

The Companies Act, 2013 has for the first time given an exit option to shareholders who do not agree to the proposal to vary the terms of contracts or objects referred to in the prospectus. The exit option shall be given by promoters or controlling shareholders at such exit price and in such manner and conditions as may be specified by the Securities and Exchange Board by making regulations in this behalf.

Offer of sale of shares by certain members of company (Section 28)

You may note that, the Companies Act, 2013, for the first time, has incorporated provisions with respect to offer of sale of shares by certain members of company to be effected by the company on their behalf.

It provides that where certain members of a company (whether individuals or body corporate) propose, in consultation with the Board of Directors to offer whole or part of their holding of shares to the public, they shall collectively authorize the company to take all actions in respect of offer of sale for and on their behalf. They shall reimburse the company all expenses incurred by it on this matter.

Section 28, in this regard provides that any document by which the offer of sale to the public is made shall, for all purposes, be deemed to be a prospectus issued by the company and all laws and rules made thereunder as to the contents of the prospectus and as to liability in respect of misstatements in and omission from prospectus or otherwise relating the prospectus shall apply as if this is a prospectus issued by the company.

16.6 MANAGEMENT OF COMPANY- DIRECTORS AND MEETINGS

16.6.1 Board of Directors

The Board of Directors is a governing body within a company responsible for overseeing its strategic direction, policies, and decision-senior management has the necessary skills, experience, and integrity to lead the company effectively.

6. **Shareholder Communication**: The Board communicates regularly with shareholders to keep them informed about the company's performance, strategy, and major developments. It also represents shareholders' interests and ensures that their concerns are addressed.
7. **Compliance and Ethics**: The Board ensures that the company operates ethically and in compliance with all relevant laws, regulations, and industry standards. It establishes a culture of integrity and accountability throughout the organization and oversees the implementation of compliance programs and internal controls.
8. **Risk Management**: The Board identifies and assesses the company's risks and implements strategies to mitigate them. It ensures that the company maintains appropriate risk management policies.

16.6.2 Types of Directors

Directors in a company can be classified into various types based on their roles, responsibilities, and relationship with the company. Here are the common types of directors:

1. **Executive Directors**:
   - These directors are actively involved in the day-to-day management and operations of the company.
   - Executive directors often hold specific titles such as CEO (Chief Executive Officer), CFO (Chief Financial Officer), COO (Chief Operating Officer), etc.
   -

6. **Chairperson**:
    - The chairperson of the board presides over board meetings, facilitates discussions, and ensures effective governance.
    - While the chairperson may be an executive or non-executive director, they often have additional responsibilities related to board leadership and oversight

16.6.3 Duties and Responsibilities: Directors

Directors have several duties and responsibilities that they must fulfill in their role to ensure the effective governance and management of the company. Here are the key duties and responsibilities of directors:

1. **Fiduciary Duty**:
    - Directors owe a fiduciary duty to the company and its shareholders. This duty requires directors to act honestly, in good faith, and in the best interests of the company.
    - They must exercise their powers and discretion for proper purposes and avoid conflicts of interest
2. **Diligence and Care**:
    - Directors are expected to exercise reasonable care, skill, and diligence in carrying out their duties.
    - They should stay informed about the company's affairs, regularly attend board meetings, and actively participate in discussions and decision-making.
3. **Strategic Decision-Making**:
    - Directors play a central role in formulating and approving the company's strategic objectives, business plans, and major policies.
    - They review and approve key strategic initiatives, including investments, acquisitions, divestitures, and capital allocation decisions.
4. **Risk Management**:
    - Directors are responsible for identifying, assessing, and managing the risks facing the company.

- They should establish effective risk management frameworks and processes to mitigate risks and safeguard the company's assets and reputation.

5. **Financial Oversight**:
   - Directors oversee the company's financial performance and ensure the accuracy and integrity of financial reporting.
   - They review financial statements, budgets, and forecasts, and monitor the effectiveness of internal controls and audit processes.
6. **Compliance and Legal Obligations**:
   - Directors must ensure the company complies with applicable laws, regulations, and corporate governance standards.
   - They should establish and maintain effective compliance programs, monitor legal and regulatory developments, and address any compliance issues promptly.
7. **Stakeholder Relations**:
   - Directors represent the interests of various stakeholders, including shareholders, employees, customers, suppliers, and the community.
   - They should foster constructive relationships with stakeholders, address their concerns, and promote transparency and accountability.
8. **Succession Planning and Board Composition**:
   - Directors are responsible for succession planning, including appointing and evaluating senior executives and planning for board renewal.
   - They should ensure the board has the necessary skills, diversity, and independence to effectively oversee the company's affairs.
9. **Ethical Leadership**:
   - Directors should uphold high ethical standards and promote a culture of integrity, honesty, and ethical behavior throughout the organization.

- They should lead by example and foster a corporate culture that values ethics and compliance.

Overall, directors have a significant role in guiding the strategic direction, ensuring compliance, managing risks, and protecting the interests of the company and its stakeholders. They must fulfill their duties and responsibilities with diligence, integrity and accountability

16.6.4 Appointment and Removal: Directors

The appointment and removal of directors involve specific processes outlined in the company's articles of association and relevant law. Here's an overview of how directors are appointed and removed:

1. **Appointment:**
   - **Nomination:** Individuals may be nominated as directors through various channels, such as by existing directors, shareholders, or through a nomination committee if one exists.
   - **Election:** Directors are typically elected by the shareholders at a general meeting. Shareholders vote on the proposed candidates, and those receiving the highest number of votes are appointed as directors.
   - Consent Once elected, individuals must formally consent to act as directors of the company. This consent is usually provided in writing and is recorded in the company's records.
2. **Removal:**
   - **Resignation:** A director may resign from their position by submitting a resignation letter to the company. The resignation takes effect from the date specified in the letter or, if no date is specified, from the date of receipt by the company.
   - **Term Expiry:** Some directors may have fixed terms of office specified in the company's articles of association. When their term expires, they may be re-elected or replaced according to the company's procedures.

- **Removal by Shareholders:** Shareholders have the power to remove directors before the expiration of their term through a special resolution passed at a general meeting. The director in question is usually given an opportunity to be heard before the resolution is voted on.
- **Removal by Board:** In certain circumstances outlined in the company's articles of association or relevant laws, the board of directors may have the authority to remove a director from office .

16.6 MEETINGS

Committee meetings are gatherings of smaller groups of directors or specialized committees formed by the board to address specific areas of the company's operations or governance. Here's an overview of committee meetings:

1. **Purpose:**
   - Committee meetings are held to focus on specific areas of the company's affairs, such as audit, compensation, governance, risk management, or strategic planning.
   - Committees allow for in-depth discussions and analysis of issues within their respective areas of expertise, leading to informed recommendations for the full board's consideration.
2. **Types of Committees:**
   - **Audit Committee:** Responsible for overseeing the company's financial reporting process, internal controls, and audit activities. It ensures compliance with accounting standards, legal requirements, and ethical practices.
   - **Compensation Committee:** Deals with matters related to executive compensation, employee benefits, and incentive programs. It establishes compensation policies, reviews performance metrics, and evaluates executive remuneration.

16.6 SUMMARY

Because the law makes a company into a fake person, it can only act through people. The people who do this are called leaders. The group of leaders is known as the "Board of Directors." Directors are the people who are in charge of running the total operations of the business.

Each type of company must have at least three directors. A private company must have at least two directors, and a "one person company" must have at least one.

There can't be more than fifteen members in a company.
A person can't be in charge of more than twenty businesses at the same time. A lower number can be set, though, by passing a special motion. Also, out of the twenty companies he is involved in, he can't have more than ten directorships in public companies. This includes private companies that are parent companies or subsidiaries of public companies.

Everyone who is put in charge of running the business must give the Registrar written permission to do so. The director's judicial situation is very interesting. They sometimes work for the company as agents, sometimes as managers, and sometimes as controlling partners. Also, the company treats them like leaders.

Anyone who knows how to sign contracts can become a director. However, people who are mentally ill, bankrupt, or who have been guilty of a crime and ordered to six months in prison cannot be directors. People who are not owners can choose directors at general meetings, by the Articles, by the Board, by third parties, or by the

Tribunal. The board members could be chosen based on the principle of equal representation.

The director's job will be open for a number of reasons, such as his calls. are past due for at least six months, he skips all three meetings of the Board of Directors, either with or without asking for permission to do so, he doesn't tell the Board about any contracts he might be interested in, etc.

It is also possible for owners to fire leaders of a company through the Tribunal.

Directors have a lot of power under the Act, but they must use it honestly and for the good of the company. It is only at meetings of the Board that they can use some of their powers. Other powers can only be used with the approval of the owners at the general meeting. The owners are responsible to the company if they are careless, break trust, act outside their authority or do something wrong on purpose. Other people can sue the directors in some situations, like when they act in their own name or when the brochure contains false information, among other things. The leaders are also criminally responsible for not following the Act's different rules.

Under the Companies Act 2013, the Board can set up different groups to help them do their jobs better. There is an audit committee, a nomination and pay committee, a committee for managing relationships with stakeholders, and a committee for corporate social responsibility. The Board is in charge of what the group does. The board of directors decides what each group does and how it is set up.

16.7 KEY WORDS

Meeting An assembly of two or more persons for transacting some lawful business.

Statutory Report: A report containing vital information about the information of the company. **Notice:** An intimation in writing about the date, place and time of the meeting. Quorum: Minimum number of members who must be present at a meeting to transact a - business. **Agenda:** Matters to be discussed at the meeting. Chairman: The person who presides over the meeting.

Director: One who performs the functions of a director. Trustee: One who holds some property in trust for the benefit of another person or persons.

Casual Vacancy: A vacancy caused by the death, insanity or insolvency of a director Alternate

Director: A director who is appointed in place of the original director.

Rotational Director: Directors who are liable to retire by rotation. Ultra -vires the **company:** Beyond the powers of the company. Misfeasance: Wilful misconduct or wilful negligence.

Criminal Liability: Punishment by way of fine or imprisonment or both. Audit **Committee:** The purpose of audit committee is to provide oversight of financial reporting and disclosures. CSR Committee: Its main purpose is formulating and recommending CSR policy and activities to be undertaken by company.

16.8 ANSWERS TO CHECK YOUR PROGRESS

Prospectus:

a. What are the key components of a prospectus according to the Companies Act 2013?

b. Explain the purpose and significance of a red herring prospectus in the context of public offerings.

c. How does a shelf prospectus differ from a regular prospectus? What are its advantages?

d. What regulatory requirements must be fulfilled when preparing a prospectus for a public issue of securities?

Management of Company - Directors:

a. What is the role of the board of directors in the governance of a company? How does it differ from executive management?

b. Describe the duties and responsibilities of directors in ensuring the company's success and compliance.

c. What factors should be considered when appointing new directors to the board?

d. Explain the process for removing a director from office and the circumstances under which it may occur.

Meetings:

a. What is the purpose of board meetings in a company? How often should they be held?

b. Discuss the importance of providing notice and an agenda for board meetings. What are the consequences of not doing so?

c. Define quorum in the context of board meetings. Why is it necessary for decision -making?

d. Compare and contrast committee meetings with board meetings. What specific roles do committees play in corporate governance **?**

UNIT 17 SHARE CAPITAL-ACCOUNT AND AUDIT,

Structure

share buybacks. These changes must comply with legal and regulatory requirements and may require approval from shareholders and relevant authorities.

17.3 ACCOoritUNTING

2. **Planning and Budgeting:**
   - Management accountants assist in the formulation of strategic plans and operational budgets by forecasting future revenues, expenses, and cash flows based on historical data, market trends, and management's objectives. Budgets serve as benchmarks for performance evaluation and resource allocation.
3. **Performance Measurement and Evaluation:**
   - Management accounting involves developing performance metrics, key performance indicators (KPIs), and balanced scorecards to assess the effectiveness and efficiency of various organizational activities, departments, and processes. Performance reports are prepared and analyzed to identify areas for improvement and to reward or incentivize desired behaviors.
4. **Cost Accounting:**
   - Cost accounting is a fundamental aspect of management accounting that involves identifying, classifying, allocating, and controlling costs associated with producing goods or services. Costing systems such as job costing, process costing, and activity-based costing (ABC) are used to determine product costs, analyze cost behavior, and support pricing decisions.
5. **Strategic Management:**
   - Management accountants contribute to strategic planning and management by conducting financial analysis, market analysis, competitor analysis, and risk assessment to evaluate strategic alternatives, identify opportunities, and mitigate risks. They

provide insights into the long-term financial implications of strategic decisions.

6. **Performance Improvement:**
   - Management accounting plays a key role in continuous improvement initiatives such as lean management, Six Sigma, and Total Quality Management (TQM) by providing cost-benefit analysis, variance analysis, and other tools to identify and eliminate waste, improve efficiency, and enhance quality.
7. **Internal Controls:**
   - Management accountants help design, implement, and monitor internal control systems to safeguard assets, ensure compliance with laws and regulations, and prevent fraud and errors. They assess the effectiveness of internal controls and recommend improvements as needed.

Overall, management accounting is essential for enhancing recognize revenue and expenses, how to measure the amounts to be recognized, and how to allocate costs over time.

5. **Disclosure Requirements:**
   - Accounting standards specify the information that must be disclosed in financial statements to provide users with a comprehensive understanding of the entity's financial position and performance. This includes disclosures about accounting policies, significant accounting estimates, related party transactions, contingencies, and other relevant information.
6. **Consistency and Comparability:**
   - Accounting standards promote consistency and comparability in financial reporting by establishing uniform principles and methodologies for preparing financial statements. This allows users to compare the financial performance and position of different entities over time and across industries.
7. **Adoption and Implementation:**
   - Companies are required to adopt and apply accounting standards relevant to their jurisdiction or reporting framework. Compliance with accounting standards may require changes in accounting policies, practices, and systems. Companies should ensure proper implementation and adherence to accounting standards to maintain regulatory compliance and enhance the reliability of financial reporting.

Accounting standards play a crucial role in ensuring the integrity reliability and transparency of financial information, thereby fostering investor confidence, facilitating capital allocation, and supporting economic growth and development

17.4 AUDIT:

17.4.1 External audit, also known as an independent audit or statutory audit, is an examination of a company's financial statements and accounting records by an external auditor or audit firm. The primary objective of an external audit is to provide an independent opinion on whether the financial statements present a true and fair view of the company's financial position, performance, and cash flows in accordance with applicable accounting standards and regulatory requirements.

Here are key aspects of external audit:

1. **Independence and Objectivity:**
    - External auditors are independent professionals who are not affiliated with the company being audited. They must maintain objectivity and impartiality in their audit procedures and judgments to provide assurance to stakeholders that the audit is conducted with integrity and without bias.
2. **Audit Engagement:**
    - The external audit engagement is typically initiated through a formal agreement between the company and the audit firm. The engagement letter outlines the scope of the audit, the responsibilities of the auditor and management, the audit timeline, and the fees for the audit services.
3. **Audit Procedures:**
    - ***External auditors perform a series of audit procedures to obtain sufficient and appropriate audit evidence to support their*** **opinion on the**

financial statements. These procedures may include:

- **Risk assessment:** Identifying and assessing risks of material misstatement in the financial statements due to fraud or error.
- **Tests of controls:** Evaluating the effectiveness of internal controls over financial reporting to determine the extent of substantive testing required.
- **Substantive procedures:** Testing the accuracy, completeness, and validity of account balances, transactions, and disclosures through inquiry, observation, inspection, and analytical procedures.
- Confirmation: Obtaining confirmation from third parties, such as banks and customers, to verify the existence and accuracy of account balances and transactions.

4. Audit Reporting:

- At the conclusion of the audit, the external auditor issues an audit report that communicates their opinion on the fairness of the financial statements.

  The audit report typically includes:

  - An introductory paragraph identifying the financial statements audited and management's responsibility for the financial statements.
  - A description of the audit scope and procedures performed.
  - The auditor's opinion on whether the financial statements present a true and fair

view in accordance with applicable accounting standards.

- If applicable, a separate opinion on the effectiveness of internal control over financial reporting.
- Any additional disclosures or explanatory paragraphs as deemed necessary by the auditor.

5. **Auditor's Responsibilities:**
    - External auditors are responsible for exercising professional skepticism, professional judgment, and due care throughout the audit process. They must comply with auditing standards, ethical requirements, and legal obligations while maintaining confidentiality and professional secrecy.
6. **Audit Oversight:**
    - External audit activities may be subject to oversight by regulatory bodies, professional associations, or audit oversight boards to ensure the quality, independence, and integrity of audit services. These oversight bodies may establish standards, conduct inspections, and impose sanctions for non - compliance.

external audit provides stakeholders with assurance regarding the reliability and credibility of a company's financial statements, enhances transparency and accountability, and promotes investor confidence in the capital markets.

17.4.2 Internal Audit

Internal audit is an independent, objective assurance and consulting activity designed to add value and improve an organization's operations. It helps an organization accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance processes. Unlike external audit, which is conducted by external auditors, internal audit is performed by employees within the organization or outsourced to a third-party internal audit firm.

Here are key aspects of internal audit:

1. **Objective and Scope:**
   - Internal audit's primary objective is to provide independent and objective assurance to the organization's management and board of directors that risk management, control, and governance processes are operating effectively. Internal auditors evaluate a wide range of activities and functions within the organization, including financial reporting, operations, compliance, and strategic initiatives.
2. **Independence and Objectivity:**
   - Internal auditors are expected to maintain independence and objectivity in performing their duties. They report to senior management or the board of directors and operate independently of the activities they audit. Internal audit's independence helps ensure unbiased assessments and recommendations for improvement
3. **Risk Assessment:**
   - Internal auditors identify and assess risks faced by the organization and evaluate the effectiveness of controls in place to mitigate those risks. They conduct risk assessments to prioritize audit activities and focus on areas of highest risk to the organization's objectives.

4. **Control Evaluation:**
   - Internal auditors evaluate the design and operating effectiveness of internal controls to ensure they are adequate to address the organization's risks. This includes assessing the reliability of financial reporting, safeguarding of assets, compliance with laws and regulations, and efficiency and effectiveness of operations.
5. **Audit Procedures:**
   - Internal auditors perform audit procedures, including inquiries, observations, inspections, and testing of transactions and controls, to gather evidence and assess the adequacy of controls and the reliability of information. They may also use data analytics and technology tools to enhance audit efficiency and effectiveness.
6. **Reporting and Communication:**
   - Internal auditors communicate their findings, recommendations, and observations to management and the board of directors through audit reports and presentations. These reports highlight areas of strength, weaknesses, and opportunities for improvement and may include actionable recommendations to address identified issues.
7. **Follow-Up and Monitoring:**
   - Internal audit monitors the implementation of audit recommendations and follows up with management to ensure that corrective actions are taken to address identified deficiencies. This ongoing monitoring helps drive accountability and continuous improvement within the organization.

8. **Quality Assurance:**

- Internal audit functions may establish quality assurance and improvement programs (QAIPs) to assess the effectiveness of their internal audit activities and ensure compliance with professional standards and best practices. QAIPs may include internal assessments, external assessments by independent reviewers, and ongoing monitoring of audit performance.

Overall, internal audit provides valuable insights and assurance to management and the board of directors regarding the organization's governance, risk management, and control processes. It helps enhance organizational performance, protect assets, and achieve strategic objectives by identifying and addressing areas for improvement and promoting a culture of accountability and compliance.

17.4.3. Audit Procedures

Audit procedures are the specific steps and techniques that auditors use to gather evidence and obtain assurance regarding the reliability and integrity of financial information. These procedures are designed to verify the accuracy, completeness, and validity of transactions, balances, and disclosures in the financial statements. Audit procedures can be broadly classified into two categories: substantive procedures and tests of controls.

1. **Substantive Procedures:**

- **Substantive procedures are audit tests performed to detect material** misstatements in the financial statements. They provide direct evidence about the accuracy, completeness, and validity of account balances, transactions, and disclosures. Substantive procedures can include:

- **Analytical Procedures:** Evaluating financial information through analysis of relationships and trends, comparing current-year balances with prior periods, industry benchmarks, or expectations.
- **Tests of Details:** Examining individual transactions, account balances, or disclosures to verify their accuracy, completeness, and validity. This may involve inspection, observation, confirmation with third parties, or reperformance of calculations.
- **Substantive Analytical Procedures:** Using analytical procedures as substantive evidence to obtain assurance about specific assertions related to account balances or transactions.

2. Tests of Controls:

- Tests of controls are audit procedures performed to assess the effectiveness of internal controls over financial reporting. They provide indirect evidence about the reliability of controls designed to prevent or detect material misstatements. Tests of controls can include:
  - **Inquiry and Observation: I**nterviewing personnel and observing control activities to understand the design and operation of internal controls.
  - **Inspection:** Reviewing documents, records, and policies to verify compliance with control procedures and identify any deficiencies.

- **Walkthroughs:** Tracing the flow of transactions through the accounting system to assess the design and operating effectiveness of key controls.
- **Reperformance:** Independently executing control procedures to confirm that they are operating as intended and effectively mitigating risks.

3. Risk Assessment Procedures:

- Before performing substantive procedures and tests of controls, auditors conduct risk assessment procedures to identify and assess the risks of material misstatement in the financial statements. Risk assessment procedures include:
  - Understanding the entity and its environment, including its industry, business operations, internal control environment, and regulatory environment
  - Performing analytical procedures to assess

audit serve as independent assurance mechanisms to verify the accuracy and reliability of financial information and assess the effectiveness of internal controls.

Together, these components contribute to the integrity, transparency, and accountability of financial reporting, which are essential for maintaining investor confidence, facilitating capital allocation, and supporting informed decision-making by stakeholders. By adhering to sound accounting practices, complying with regulatory requirements, and undergoing rigorous audit scrutiny, companies can enhance trust and credibility in the financial markets, thereby fostering sustainable growth and prosperity.

17.8 KEY WORDS

1. **Share Capital:**
    - Authorized Share Capital
    - Issued Share Capital
    - Par Value
    - Additional Paid-in Capital
    - Treasury Shares
2. **Accounting:**
    - Financial Statements
    - Generally Accepted Accounting Principles (GAAP)
    - International Financial Reporting Standards (IFRS)
    - Accrual Basis Accounting
    - Cash Basis Accounting
3. **Audit:**
    - External Audit
    - Internal Audit
    - Audit Procedures
    - Substantive Procedures

- Tests of Controls

17.9 ANSWERS TO CHECK YOUR PROGRESS

1. **Share Capital:**
    - What is share capital, and how does it differ from retained earnings?
    - Can you explain the concept of authorized share capital?
    - What factors determine the amount of share capital a company can issue?
    - How does a company raise share capital, and what are the implications for shareholders?
    - What are the key components of share capital, and how are they recorded in the company's financial statements?
2. **Accounting:**
    - What is the role of accounting standards in financial reporting?
    - Can you explain the difference between financial accounting and management accounting?
    - How does the accrual basis of accounting differ from the cash basis of accounting?
    - What are the main financial statements prepared by companies, and what information do they provide?
    - How do accounting principles such as the matching principle and the revenue recognition principle impact financial statement preparation?
3. **Audit:**
    - What is the purpose of an external audit, and who typically performs it?

- Can you explain the difference between internal audit and external audit?
- What are the main steps involved in conducting an audit?
- How do auditors assess the effectiveness of internal controls over financial reporting?
- What is the significance of the auditor's opinion in an audit report, and what are the possible types of opinions that can be issued?

UNIT 18 WINDING UP OF COMPANIES.

Structure

18.0 INTRODUCTION

Legally, a business is a person, even though it's not real, can't be seen, or can't be touched. It keeps going over and over again. It will always be there. The only way for a business to end is through its wound-up process. The Companies Act 2013 went into effect on August 29, 2013. It was changed in 2015, 2017, 2018, and 2019. The Insolvency and Bankruptcy Code 2016 made the most recent changes. These changes are mostly to the rules for breaking up a business. This code, which is part II and covers sections 304 to 323 of the Act 2013, gets rid of the option of voluntary closing up completely. Under the Companies Act, 2013, the judge is the only one who can shut down a business. You will learn what "winding up" means, how it's different from "dissolution," the different types of "winding up," the steps for "winding up," special payments, and how to get the company's name taken off.

18.1 OBJECTIVES

- Explain what "winding up" of a company means;
- Tell the difference between "winding up" and "dissolution" of a company;
- Describe the different ways that a company can be wound up;
- Explain the steps for winding up a company;
- Explain the difference between "preferential payments" and "contributory"; and
- Explain how to get rid of a company's name.

18.2 MEANING OF WINDING UP

"Winding up" or "liquidation" is the process of ending a business. Gower said, "The winding up of a company is the process by which its life is ended and its property is managed for the benefit of its members and creditors." A manager, also known as a receiver, is hired to take over the business, collect its assets, pay off its bills and liabilities, and then give the extra money to the members in line with their rights.

Even a business that has no debts can be shut down. When a business shuts down, it is officially "Dissolved" and no longer has any assets or debts. There will no longer be a formal person for the company. If a business can't pay its bills, it will be required to go into bankruptcy. The "Insolvency and bankruptcy code 2016" The code has to do with bankruptcy, insolvency, voluntary liquidation, or liquidation. So, either the Companies Act of 2013 or the Insolvency and Bankruptcy Code of 2016 will be used to shut down the company.

Difference between Winding up and Dissolution

Winding up a business and ending it are not the same thing. As soon as the winding up procedures start, the company is not immediately disbanded.

The first step is winding up, and the next is destruction. The name of the company is taken off the Registrar of Companies when it is dissolved. This means that the company no longer exists. The company's name is not taken off the record while it is being wound up. No matter when a company goes out of business, its formal identity stays the same and can be sued in court

Dissolution is the last step in the process of breaking up a business. A company can be disbanded without going out of business, though, like when it joins with another business. When a business is wound up, its assets are sold and the money from the sales is used to pay off its bills and other obligations. It is the first step in putting an end to a business. While closure is the next step, and after that, this company will no longer exist Someone called a "liquidator" is in charge of shutting up a business. If the business is dissolved, there are no such procedures. But creditors can't show their bills when the company is being wound up, but they can when it is being dissolved.

18.3 MODES OF WINDING UP

Being closed down by the Tribunal

If any of the following things happen, the Tribunal can order the winding up of the business:

As per the Act, the Tribunal can shut down a company a) If the company's special resolution says that the Tribunal should do so; b) If the company did something that hurt India's sovereignty and integrity its security its friendly relations with other countries, public order, decency or morality or c) If the Registrar or someone else authorized by the Central Government makes an application and the Tribunal thinks that the company's affairs have Section 271 says that if the Tribunal thinks that closing down the company is fair and just, it must be done.

18.3.1 Winding Up by Special Resolution

The Company may by a special resolution resolved that the company to be wound up by the Tribunal. The Tribunal has to examine whether the resolution is in the interest of the company or is not opposed to public interest If not, the winding up may not be ordered. The company can file a petition before the Tribunal for winding up even without passing a special resolution (Section 272).

A company whose name is not in the register of companies is not entitled to file a winding up petition.

18.3.2 Company Acting against the Sovereignty and Integrity of India, Security of the State, the Friendly Relations with Foreign States, Public Order, Decency and Morality

If the company acting against the interest of sovereignty and integrity of India, the security of state, the friendly relations with foreign states, public order, decency and morality the petition on this ground shall be made by Central or a State Government to the Tribunal. The words 'decency' and 'morality' have not been defined in the Act

18.3.3 Affairs being Conducted in a Fraudulent or Unlawful Manner

The Registrar or any other person authorised by the Central Government may make an application to the Tribunal for winding up on this ground. The Tribunal may order winding up on the following grounds.

i) The affairs of the company are being conducted in a fraudulent manner; or

ii) The Company was formed for fraudulent or unlawful purpose; or

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

It may be noted, besides above provision, Central Government may directly file a petition for winding up in case of inspector's, report on investigation.

18.3.4 Default in Filing Financial Statements or Annual Returns with to the Registrar

The company has to file two separate documents (a) financial statements and (b) annual return to the Registrar.

The default in not filing these documents should have been for immediately preceding five consecutive financial years, only then winding up may be ordered. If default is for two or three or four years, this provision cannot be invoked. Again, it may be noted that winding up may be ordered if the default relates to either non-filing of financial statements or annual returns. It is not necessary that the default has to be for both financial statements and annual return. The default has to be in respect of immediately preceding five consecutive financial years. It means that default in the earlier year is not a ground for winding up under the clause.

18.3.5 Inability to Pay its Debts

A company shall be deemed to be unable to pay its debts,

a) if a creditor by assignment or otherwise, to whom the company is indebted for an amount exceeding one lakh rupees then due, has served on the company by causing it to be delivered at its registered office, by registered post or otherwise, a demand requiring the company to pay the amount so due and the company has failed to pay the sum within twenty -one days after the receipt of such demand or to provide adequate security or restructure or compound the debt to the reasonable satisfaction of the creditor;

b) if any execution or other process issued on a decree or order of any court or tribunal in favour of a creditor of the company is returned unsatisfied in whole or in part; or

c) if it is proved to the satisfaction of the Tribunal that the company is unable to pay its debts, and in determining whether a company is unable to pay its debts, the Tribunal shall take into account the contingent and prospective liabilities of the company.

18.3.6 Just and Equitable

These words have not been defined in the Act The power under this clause, according to A. Ramaiya, should be used only "when there is a strong ground because companies as far as possible, should be left to self -governance and self -determination through the wishes of majority of shareholders". The Tribunal should not make an order on this ground for winding up, if there is any other remedy available. It is a remedy of last resort

The following grounds, based on leading cases, have been held as "Just and Equitable".

a) Loss of Substratum: It means sole purpose or main objects, for which company was formed, cannot be achieved e.g. it fails to obtain a patent for invention on the assumption that it will be granted or it fails to acquire the business which the company was formed to purchase or fails to build a building on ground that local authority did not grant permission. In re, Kailash and General Mills Co. Ltd (1955) 31 Comp. Cons. 46], the Court laid down the following test to determine as to whether the substratum of the company has disappeared:

a) Where the subject matter of the company has gone; or

b) The object for which it was incorporated has substantially failed; or

c) It is impossible to carry on the business of the company except at loss which means that there is no reasonable hope that the object of trading at a profit can be attained or

d) The existing or probable assets are insufficient to meet the existing liabilities.

b) Illegality of objects and fraud: If any company's objects are illegal or become illegal by change of law, it will be wound up by Tribunal. Similarly, if a company is promoted in order to perpetrate a serious fraud or deception on the person who are invited to subscribe for its shares, the Tribunal will wind it up.

c) Deadlock in management: If a private company has only two members directors and the two are not on speaking terms. Tribunal will make a winding up order, even though there is a provision in articles that one director shall have a casting vote at board meetings or that the disputes shall be settled by arbitration. If there is a loss of confidence in the Board of directors or refusal by one of the three directors to attend meeting to make a quorum.

d) Bubble Company: If the company is just on paper and never carried on its business.

e) Oppression: A winding up petition may lie where the majority shareholder have adopted an aggressive policy towards minority under Section 241.

Also, any member of a company may complain that the affairs of the company have been or are being conducted in a manner prejudicial to public interest or oppressive to him and other members. Under section 242 (1b) the Tribunal can order winding up on "just and equitable" ground.

f) Other: If the number of members fall below the statutory minimum, its winding up can be ordered on "just and equitable ground'. Similarly, if company is not following democratic principles of fairness or lacking in commercial morality or where directors making c harges against each other the Tribunal can order winding up of the company .

18.4 PROCEDURES FOR WINDING UP ORDER

To put it briefly, the following steps are taken to end:

1) Putting in the petition: It is given to the Tribunal by the company along with the statement of affairs. The company can file a complaint if it is made by someone else. Pro **Tempore Liquidator**: The Tribunal can make a winding -up order at any time after a case for winding up has been filed but before the order is made.

choose a temporary buyer. But before making that decision, the Tribunal has to let the company know so that it has time to make is involved in the case, unless it thinks there are good reasons not to give a warning (which will be written down). The temporary liquidator has the same rights as a liquidator, unless the Tribunal says otherwise.

(2) Company receiver: When a company is put out of business, the Tribunal chooses an official receiver or administrator. The 2016 Insolvency and Bankruptcy Code says that the receiver needs to be listed.

A receiver can be taken out or changed.

If a business is ordered to be wound up, the receiver must apply to set up a winding up committee within three months. This committee will help with the winding up process and keep an eye on it The person in charge of winding up the company will give the Tribunal a report every month along with the minutes of each meeting of the winding up committee.