

# **PERIYAR UNIVERSITY**

**NAAC 'A++' Grade with CGPA 3.61 (Cycle - 3)**

**State University - NIRF Rank 56 - State Public University Rank 25**

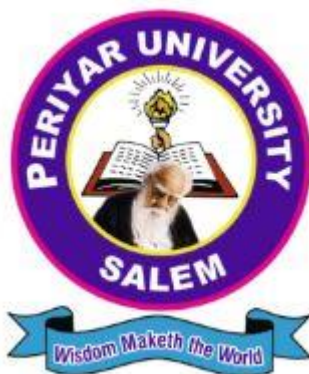
**Salem-636011, Tamilnadu, India.**

**CENTRE FOR DISTANCE AND ONLINE EDUCATION**

**(CDOE)**

**MASTER OF BUSINESS ADMINISTRATION**

**SEMESTER – I**



**CORE – VI: LEGAL SYSTEMS IN BUSINESS**

**(Candidates admitted from 2024 onwards)**

**PERIYAR UNIVERSITY**

**CENTRE FOR DISTANCE AND ONLINE EDUCATION**

**(CDOE)**

**M.B.A 2024 admission onwards**

**ELECTIVE-**

**Legal Systems in Business**

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# SYLLABUS

## LEGAL SYSTEM IN BUSINESS

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

**Unit II:** Definition of a Sale and a Contract of Sale – Difference between (1) Sale and an Agreement to Sell (2) Sale and a Contract Form (3) Sale and Bailment (4) Sale and Mortgage of Goods (5) Sale and Time Purchase Conditions and Warranties – Passing of Property of Goods – Rights of an Unpaid Seller. Negotiable Instruments in General: Cheques, Bills of Exchange and Promissory Notes – Definition and Characteristics

**Unit III:** Evolution – Definition of Partnership – Difference between Partnership and Joint Family Business – Kinds of Partnerships – Registration – Rights and Liabilities of Partners – Dissolution. Evolution of Company Form of Organisation – Companies Separate Legal Entity – Comparison of Company with Partnership and Joint Hindu Family Business – Kinds of Companies – Comparison of Private and Public Companies – Formation of Companies – General Idea About Memorandum and Articles of Association, Prospectus, Statement in lieu of Prospectus – Management of Companies – General Idea of Management of Companies – Officers, Meetings – Resolutions – Account and Audit – Winding up of Companies – General Idea of the Different Modes of Winding Up.

**Unit IV:** Factories Act, Minimum Wages Act, Industrial Disputes Act, Employees Compensation Act, Payment of Bonus Act 1965. Payment of Gratuity Act 1972. ESI Act, Employees Provident Fund and Miscellaneous Provisions Act 1952, Maternity Benefits Act, Child labour Abolition & Regulation Act, 1986- Inter-state Migrant

Workmen (Regulation of Employment & Conditions of services) Act 1979- Bonded Labour system (Abolition) Act 1976- Sexual Harassment of women at Workplace (Prevention, Prohibition & Redressal) Act 2013- Contract Labour (Regulation and Abolition) Act- Four Labour Codes and Rules-RTI Act 2005.

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

### Self-Learning Material Development – STAGE 1

#### LEGAL SYSTEMS IN BUSINESS

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

#### Unit Module Structuring

- An overview of Contract in Business Law
- Elements of a Valid Contract,
- Performance of Contracts
- Discharge of Contracts

### STAGE – 2 – Modules Sections and Sub-sections structuring

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## UNIT 1 - The Law of Contracts

### Contents of the Unit 1

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

### Unit Objectives

The objective of this unit is to develop a thorough understanding of the Law of Contracts, including its fundamental principles and key elements. Students will explore how contracts are formed, enforced, and interpreted within the legal framework. By the end of the unit, learners will be equipped to analyze and apply contract law in various legal and business scenarios.

## 1.1 OVERVIEW OF CONTRACT IN BUSINESS

### Introduction to Law

We are very happy to present this Self-Learning Material on Legal Aspects of Business.

It is our great pleasure and privilege to give you a wonderful experience in the journey of learning the various concepts and contexts in Business Law.

### The Indian Contract Act, 1872

- It is applicable to all states of India.



- It does not affect any usage or custom of trade.
- It is the most important part of commercial law because every commercial transaction
- starts from an agreement between two or more persons.
- The main objective of law of contract is to bring definiteness in commercial and other transactions.
- This act came into force on September 1, 1872.
- The Act is not exhaustive: The act does not profess to be a complete and exhaustive code.
- It creates Jus in Personam NOT Jus in Rem.

#### DID YOU KNOW

##### What is meant by Jus in Personam?

A Jus in Personam: It means a right against or in respect of a specific person. It is available only against particular persons.

##### What is meant by Jus in Rem?

A jus in rem: means a right against or in respect of a thing. It is available against the world at large.

#### Contract:

“A contract is an agreement creating and defining obligations between the parties”.

“Every agreement and promise enforceable at law is a contract.”

A contract is a legally binding agreement between two or more parties that outlines specific rights, duties, and obligations that the parties are obligated to fulfil. It is a formal and enforceable agreement that creates a legal relationship between the parties involved. Contracts can cover a wide range of transactions and relationships, including business agreements, employment contracts, lease agreements, and more.

Agreement + Enforceable by Law = Contract

## Mercantile Law

Law being a wider subject touches all walks of our life. There are various branches of law concerning specific aspects e.g., civil, criminal, administrative, constitutional, business, labour laws, etc. The legal framework within which different business firms have to operate are largely governed by General Laws applicable to all forms of organisations-irrespective of their size and ownership. These laws fall into the category of mercantile laws. The terms business laws, commercial law and mercantile law are synonymous.

### The following laws are included in business or mercantile law:

- Contract Act
- Sale of Goods Act
- Partnership Act
- Companies Act
- Negotiable Instruments Act
- Banking Companies Act
- Insurance Companies Act
- Carriers and Carriage of Goods act
- Commercial Securities Act
- Patents and Copyright act
- Insolvency Act
- Arbitration Act

### 1.1.2 Key elements of a contract typically include:

- **Offer:** One party (the offeror) makes a proposal to another party (the offeree), indicating their willingness to enter into an agreement.
- **Acceptance:** The offeree agrees to the terms of the offer, demonstrating their willingness to be bound by the terms and conditions presented.
- **Consideration:** Both parties provide something of value, which could be money, goods, services, or promises, in exchange for the promises made within the contract.

- **Legal Purpose:** The contract must have a lawful and legitimate purpose. It cannot involve illegal activities or go against public policy.
- **Mutual Assent:** There must be a meeting of the minds, meaning both parties must fully understand and agree to the terms of the contract.
- **Competence:** The parties entering the contract must have the legal capacity and competence to do so. For example, minors and individuals lacking mental capacity may not be able to form binding contracts.
- **Terms and Conditions:** The contract should clearly outline the specific terms and conditions of the agreement, including rights, responsibilities, and deadlines.
- **Performance and Delivery:** The contract often specifies how and when the parties will fulfill their obligations and deliver on the promises made in the agreement.
- **Default and Remedies:** Contracts typically include provisions for addressing breaches of contract and outline the remedies available if one party fails to meet their obligations.
- **Confidentiality and Non-Disclosure:** In some contracts, there may be clauses that address the protection of confidential information and non-disclosure of sensitive data.
- **Dispute Resolution:** Contracts often establish mechanisms for resolving disputes that may arise during the agreement, such as arbitration, mediation, or litigation.
- **Governing Law and Jurisdiction:** The contract may specify which state or country's laws will govern the contract and which courts have jurisdiction over disputes.

## 1. Offer and Acceptance:

### Offer

**Definition:** An offer is a proposal made by one party (the offeror) to another party (the offeree), indicating their willingness to enter a contract under specific terms and conditions.

**The Indian Contract Act, 1872, provides the legal framework for Offer in Indian Contract Act are:**

**Section 2(a) - Definition of Offer:**

This section defines an offer as a proposal made by one person (the "promisor") to another person (the "promisee") with the intention to create a legally binding agreement. An offer can be specific and definite in its terms.

**Section 3 - Communication of Proposals:**

Section 3 of the Indian Contract Act states that a proposal (offer) can be made in various ways, including verbally, in writing, or through actions, if it is communicated to the person to whom it is made.

**Section 4 - Communication when Complete:**

This section specifies that an offer is communicated when it is put in a course of transmission to the person to whom it is made, to be out of the power of the offeror to retrieve it.

**Acceptance**

Acceptance of an offer is of primary importance for a valid agreement. When the offeree or the person to whom the offer is made, gives his acceptance, the offer is said to be accepted. An offer becomes a promise or an agreement only after its acceptance. According to **Section 2 (b)** of the Indian Contract Act, "when the person to whom the offer is made signifies his assent thereto, the offer is said to be accepted. An accepted proposal is called a promise or an agreement". Acceptance occurs when the offeree agrees to the terms of the offer, demonstrating their willingness to be bound by the terms and conditions presented by the offeror.

**The Indian Contract Act, of 1872, provides the legal framework for Acceptance the Indian Contract Act:**

**Section 2(b) - Definition of Acceptance:**

Section 2(b) defines acceptance as the expression of assent by the person to whom the proposal is made (the "offeree") to the terms of the offer. The acceptance must be absolute and unconditional.

**Section 7 - Acceptance Must Be Absolute:**

This section reinforces the requirement that acceptance must be unconditional and absolute. Any conditional or qualified acceptance constitutes a counteroffer and is not considered acceptance.

**Section 8 - Acceptance by Conduct:**

Section 8 acknowledges that acceptance can also be by conduct. In some cases, actions taken by the offeree may signify their acceptance of the offer.

**Section 9 - Acceptance Must Be Communicated:**

This section stipulates that acceptance must be communicated to the offeror. An offeror is not bound by acceptance unless it is communicated to them.

**Section 10 - Revocation of Acceptance:**

Section 10 allows the offeror to revoke their acceptance if they have not yet communicated it to the offeror. Once the acceptance is communicated, it becomes binding.

**Section 11 - Revocation of Acceptance by Post:**

This section deals with acceptance by post. Acceptance by post is considered complete when the letter of acceptance is posted, not when it is received.

**Section 30 - Performance of Contracts:**

This section states that when the promisor (offeror) has accepted the performance of the promise in any way other than what is prescribed by the offer, the performance is considered accepted.

**Agreement**

“Every promise and every set of promises forming the consideration for each other is an agreement”. In this context, the word ‘promise’ is defined by **Section 2(b)** as follows:

“A proposal, when accepted becomes a promise”.

In a contract, there are at least two parties. The person making the proposal is called ‘promisor’ and the person accepting the proposal is called the ‘promisee’(**Section 2[c]**). Thus, an agreement is an accepted proposal. Thus an agreement has two following elements:

- Offer
- Acceptance

**Offer + Acceptance = Agreement**

## Let's Sum Up

Dear Learners, in this first section, we have seen the meaning and definitions of various Acts in detail. As we have seen, the basic rights of the people

**Every agreement and promise enforceable at law is contract**

**An offer is a proposal made by one party (the offeror) to another party (the offeree)**

**Acceptance occurs when the offeree agrees to the terms of the offer**

## Check Your Progress 1

1. Which term refers to the initial proposal in a contract?
  - A) Acceptance
  - B) Consideration
  - C) Offer
  - D) Capacity
2. What is the term for the agreement to the terms of an offer?
  - A) Contract
  - B) Rejection
  - C) Acceptance
  - D) Counteroffer
3. What must both parties have to create a valid contract?
  - A) Offer
  - B) Acceptance
  - C) Consideration
  - D) Intent
4. Which element involves the parties agreeing to exchange something of value?
  - A) Offer
  - B) Acceptance
  - C) Consideration

- D) Legality
5. What is needed for a contract to be enforceable in terms of the parties involved?
    - A) Mutual assent
    - B) Competence
    - C) Written form
    - D) Public notice
  6. Which term defines the legal ability to enter into a contract?
    - A) Capacity
    - B) Legality
    - C) Consideration
    - D) Acceptance
  7. What is a contract called if it is created with all essential elements present?
    - A) Void
    - B) Voidable
    - C) Valid
    - D) Unenforceable
  8. Which element of a contract ensures the terms are lawful and not against public policy?
    - A) Consideration
    - B) Legality
    - C) Capacity
    - D) Offer
  9. In contract law, what does "mutual assent" refer to?
    - A) Offer
    - B) Acceptance
    - C) Both parties agreeing
    - D) Consideration
  10. What is a response to an offer that proposes new terms called?
    - A) Acceptance
    - B) Counteroffer
    - C) Rejection
    - D) Proposal

### 1.2.1 Free consent

The consent of the parties must be genuine. The term 'consent' means parties to a contract must agree upon the same thing in the same sense. i.e. there should be consensus- ad-idem. Consent is said to be not free when it is vitiated by

coercion, undue influence, fraud, misrepresentation, or mistake. In such cases, the contract becomes voidable at the option of the party whose consent is not free.

**Example:** Peter threatened to shoot Charles if he (Charles) does not lend him Rs. 2,000 and Charles agreed to it. Here the agreement is entered into under coercion and hence voidable at the option of Charles.)

### **Undue Influence: Sec. 16**

(1) A contract is said to be induced by 'undue influence' where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other. - Sec. 16(1)

(2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another--

(a) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or

(b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress. - Sec. 16(2).

### **Fraud: Sec. 17**

Fraud means and includes any of the following acts committed by a party to a contract with intent to deceive the other party thereto or to induce him to enter into a contract:

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

### **Essential elements of Fraud**

- The representation or assertion must be false.



- The representation or assertion must be of a fact.
- There must be an intention to deceive the other party.
- Fraudulent act must be committed with knowledge of its falsity.
- Fraudulent act must be done by a party to the contract or his authorized agent.
- Fraudulent act must have deceived the other party.

## 1.2.2 Competence to Contract

The parties to a contract must have the capacity (legal ability) to, make valid contract. In every case there must be assent the parties. The assent presupposes a free, fair, and serious exercise of the reasoning faculty. If, therefore either of the parties to an agreement is deprived of the use of his understanding or if he be deemed by law not to have attained it; there can be no such agreement which shall bind him. **Section 11** of the Indian Contract Act specifies that every person is competent to contract provided,

- a) He is of the age of majority according to the law to which he is subject,
- b) He is of sound mind and
- c) He not disqualified from contracting by any law to which he is subject.

### Example

An alien enemy, foreign Sovereigns and accredited representatives of a foreign state; insolvents and convicts are, not competent to contract.

## 1.2.3 Lawful Consideration

**A**n agreement to be enforceable by law must be supported by consideration. 'Consideration' means an advantage or benefit moving from one party to the other. For a valid contract, the consideration need not necessarily be in terms of a price — the consideration can even be in the past, present or future – but the consideration

needs to be real and lawful. (Sec.2 (d), 23 and 25). As per **Section 2 (d)**, “when at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstains from doing an act, such act or abstinence or promise is called a consideration for the promise”.

**Example**

Peter agrees to, sell his books to Charles for Rs. 100, Charles promises to pay Rs. 100 in consideration for Peter’s promise to sell his books and Peter’s, promise to sell the books is the consideration for Charles’ promise to pay Rs. 100

### 1.2.4 Legality of object

The act of a contract and consideration should be lawful an object. Lawful if it is not prohibited by law. An agreement is lawful when it is not.

- a) Illegal
- b) Immoral
- c) Oppose to public policy

The legality of object is based on the principle that courts will not enforce contracts that are against the public interest. This principle is important because it helps to ensure that contracts are used for legitimate purposes and do not harm society.

There are a number of factors that courts consider when determining whether the object of a contract is lawful. These factors include:

- Whether the object is prohibited by law. For example, a contract to sell illegal drugs would be void because it is prohibited by law.
- Whether the object is fraudulent. For example, a contract to sell counterfeit goods would be void because it is fraudulent.
- Whether the object defeats the purpose of the law. For example, a contract between a creditor and debtor to avoid the Limitation Act would be void because it defeats the purpose of the law.

- Whether the object involves injury or harm to another person or property. For example, a contract to hire someone to commit assault would be void because it involves injury to another person.
- Whether the object is immoral or against public policy. For example, a contract to sell a human being would be void because it is immoral and against public policy.

If a court finds that the object of a contract is unlawful, the contract will be void and unenforceable. This means that neither party to the contract can enforce the contract or sue for damages if the other party breaches the contract.

Here are some examples of unlawful objects in business law:

- Contracts to sell illegal drugs, weapons, or other contraband.
- Contracts to commit fraud, bribery, or other crimes.
- Contracts that are against the public interest, such as contracts to restrain trade or monopolize a market.
- Contracts that involve injury or harm to another person or property.
- Contracts that are immoral or against public policy, such as contracts to sell a human being or to engage in prostitution.

Businesses should be careful to avoid entering into contracts with unlawful objects. If a business does enter into an unlawful contract, the contract will be void and unenforceable, and the business may also face legal consequences.

### **Let's Sum Up**

Dear Learners, in this first section, we have seen the meaning and definitions of various Acts in detail. As we have seen, the basic rights of the people.

Consent is said to be free when it is not caused by coercion, Undue influence, Misrepresentation, fraud.

The consideration or object of the agreement is unlawful if it "is fraudulent".

The object of a contract should not be contrary to any law, public policy, or morality.

### 1.2.5 Void Contract

It is a contract which has no legal effect. It is unenforceable by law. It is not enforceable at the option of either party. The void contract is not void ab initio. It is valid at the time of making it, but it becomes invalid in future. This void contract cannot be enforced by law.

#### Example

Peter agrees to sell 100 bottles of wine to Charles for Rs.1000 within 15 days. But before delivery, the govt. may prohibit the purchase and sells of wine, if it happens the contract becomes void.

### 1.2.6 Voidable Contract

An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others is a voidable contract [Sec. 2(i)]. This happens when the essential element of free consent in a contract is missing. When the consent of a party to a contract is not free, i.e., it is caused by coercion, undue influence, misrepresentation or fraud, the contract is voidable at his

option (Secs. 19 and 19-A). Thus, a voidable contract is valid and enforceable until it is repudiated by the party entitled to avoid it.

**Example**

Peter promises to sell his car to Charles for Rs.1, 00,000. But his consent has obtained by use of force. Now the contract is voidable at the option of Peter. He may cancel it or accept it.

## 1.2.7 Unenforceable Contract

An unenforceable contract is one which cannot be enforced in a court of Law because of some technical defect such as absence of writing or where the remedy has been barred by lapse of time. The contract may be carried out by the parties concerned; but in the event of breach or repudiation of such a contract, the aggrieved party will not be entitled to the legal remedies. Such contracts will not be enforced by the courts until and unless the defect is rectified.

## 1.2.8 Illegal Contract

They are void ab initio. An illegal contract is not only void between the immediate parties but also invalidates collateral transactions. As per **Section 23**, an agreement is unlawful and illegal, the consideration or object of which

- is forbidden by law;
- defeats the provisions of any law;
- is fraudulent;
- involves or implies injury to the person or property of another; and
- the Court regards it as immoral or opposed to public policy.

**Example**

There is a contract between Peter and Charles according to which Charles has to murder James for a consideration of Rs. 10000/- from Peter. It is illegal contract.

**Let's Sum Up**

Dear Learners, in this first section, we have seen the meaning and definitions of various Acts in detail. As we have seen, the basic rights of the people.

A voidable contract is initially considered legal and enforceable but can be rejected by one party

A void contract is a contract that isn't legally enforceable, starting from the time it was created

An unenforceable contract or transaction is one that is valid but one the court will not enforce.

one that the court will not enforce because the purpose of the agreement is to achieve an illegal end

### Check Your Progress 2

1. Which term refers to an agreement made without coercion, fraud, or misrepresentation?
  - A) Free
  - B) Unfair
  - C) Invalid
  - D) Illegal
2. What is required for a party to be considered legally competent to enter a contract?
  - A) Capacity
  - B) Willingness
  - C) Consent
  - D) Consideration
3. Which term defines something of value exchanged in a contract?
  - A) Capacity
  - B) Consent
  - C) Consideration

- D) Legality
4. What must the object of a contract be to be enforceable?
- A) Legal
  - B) Fair
  - C) Adequate
  - D) Specific
5. Which type of contract is considered invalid from the outset due to missing elements?
- A) Void
  - B) Voidable
  - C) Unenforceable
  - D) Valid
6. What kind of contract remains valid unless one party chooses to void it?
- A) Void
  - B) Voidable
  - C) Unenforceable
  - D) Illegal
7. Which term describes a contract that cannot be enforced by law?
- A) Void
  - B) Voidable
  - C) Unenforceable
  - D) Illegal
8. What type of contract involves illegal activities and is therefore void?
- A) Void
  - B) Voidable
  - C) Unenforceable
  - D) Illegal
9. Which concept ensures both parties voluntarily agree to the contract terms?
- A) Consent
  - B) Capacity
  - C) Consideration
  - D) Legality
10. What type of consideration is necessary for a contract to be valid?
- A) Lawful

- B) Adequate
  - C) Fair
  - D) Sufficient
11. Which term refers to a contract that is void due to its illegal subject matter?
- A) Voidable
  - B) Unenforceable
  - C) Illegal
  - D) Valid
12. Which type of contract lacks legal enforceability due to some defect but is not necessarily void?
- A) Voidable
  - B) Void
  - C) Unenforceable
  - D) Illegal
13. What is the term for a contract that is legally invalid from the beginning?
- A) Void
  - B) Voidable
  - C) Enforceable
  - D) Executed
14. Which concept ensures that all parties to a contract are legally capable of entering into it?
- A) Competency
  - B) Consent
  - C) Consideration
  - D) Legality
15. What is the term for a contract with a lawful purpose but lacking other elements of validity?
- A) Void
  - B) Voidable
  - C) Unenforceable
  - D) Illegal
16. Which type of contract can be declared invalid by one party but is initially valid?



- A) Void
  - B) Voidable
  - C) Illegal
  - D) Unenforceable
17. Which term refers to agreements that cannot be enforced by law due to being against public policy?
- A) Void
  - B) Voidable
  - C) Unenforceable
  - D) Legal
18. What kind of contract is considered invalid and without legal effect due to its illegal nature?
- A) Voidable
  - B) Void
  - C) Unenforceable
  - D) Illegal
19. Which term is used for contracts involving illegal actions and thus considered void?
- A) Voidable
  - B) Void
  - C) Unenforceable
  - D) Illegal
20. What type of contract is deemed unenforceable due to its subject matter being against the law?
- A) Voidable
  - B) Void
  - C) Unenforceable
  - D) Illegal

### 1.3.1 Performance of Contract

In general, an agreement between two parties that creates legal obligation and is enforceable by law is a contract. For entering into a contract, there

are certain essentials

- Agreement between two parties
- The intent of Legal Obligation
- Lawful consideration
- The condition should be certain with a legal object
- Free Consent
- Competency of parties

The performance of a contract can be either express or implied. Express performance is when the parties explicitly state in the contract what they will do. For example, a contract for the sale of goods may expressly state that the seller will deliver the goods to the buyer by a certain date. Implied performance is when the parties have not explicitly stated what they will do, but their obligations can be inferred from the nature of the contract and the circumstances in which it was made. For example, in a contract for the sale of goods, the seller has an implied obligation to deliver goods that are merchantable and fit for their intended purpose.

The performance of a contract must be substantial in order to be enforceable. This means that the party performing the contract must do so in a way that meets the reasonable expectations of the other party. If the performance is not substantial, the other party may have the right to terminate the contract and/or seek damages.

There are a number of factors that can affect the performance of a contract, including:

- The terms of the contract.
- The capabilities of the parties.
- The circumstances in which the contract is performed.
- The law governing the contract.

**Example**

Peter promises to deliver goods to Charles on a certain day on payment of Rs

1,000. Peter expires before the contracted date. Peter's representatives are bound to deliver the goods to Charles, and Charles is bound to pay Rs 1,000 to Peter's representatives.

### 1.3.2 Privity of Contract

As per the dictionary meaning privity of contract means: Legal doctrine that a contract confers rights and imposes liabilities only on its contracting parties. They and not any third-party, can sue each other (or be sued) under the terms of the contracts. Privity is the legal term for a close, mutual, or successive relationship to the same right of property or the power to enforce a promise or warranty. As per the legal definition of privity of contract: The doctrine of privity in contract law provides that a contract cannot confer rights or impose obligations arising under it on any person or agent except the parties to it. The doctrine of privity of contract means that only those involved in striking a bargain would have standing to enforce it. In general, this is still the case, only parties to a contract may sue for the breach of a contract, although in recent years the rule of privity has eroded somewhat, and third-party beneficiaries have been allowed to recover damages for breaches of contracts they were not party to. There are two times where third-party beneficiaries are allowed to fall under the contract. The duty owed test looks to see if the third party was agreeing to pay a debt for the original party. The intent to benefit test looks to see if circumstances indicate that the promisee intends to give the beneficiary the benefit of the promised performance. Any defense allowed to parties of the original contract extend to third-party beneficiaries.

Under Indian Contract Act of 1872 exceptions to the doctrine of privity of contract are contracts executed-

- for natural love and affection
- marriage partition and family disputes
- time barred debt
- trust, and
- agency.

There are a number of general law principles that enable a third party, to overcome the doctrine of privity under English common law are-

**(a) Agency**

The rule here is that if one of the contracting parties contracts as an agent, then either the agent or the principal, but not both, can sue to enforce the contract.

**Example**

If Charles is James's agent then either Charles or James can enforce the contract against Peter. In these cases it is immaterial as to whether Peter knew that Charles was James's agent.

**(b) Trusts**

The law of trusts can enable a third party beneficiary to initiate action that will enforce the promisor's obligation. Using the above example, if B had contracted with A in the capacity of trustee for James, James as beneficiary under the trust has enforceable rights. These rights arise because the law of trusts gives a beneficiary certain rights against a trustee.

**In the context of privity**, if James is a beneficiary under a trust, James can bring an action against Charles, the trustee, that has the effect of compelling Charles to sue Peter for breach of contract. In formal procedural terms James sues in an action in which Charles and A are joined as defendants. The use of trust law here does not give rise, in the strict sense, to an exception to the doctrine of privity. In conceptual terms, the action against Peter is pursued by Charles, albeit at James's insistence. When the trust exception is pursued and Charles sues for damages, the measure of damages that is recovered reflect the loss to James, the beneficiary of the trust. The damages that are recovered are held by Charles on trust for James.

**(c) Estoppels**

A third party may be able to seek relief against a promisor on the basis of promissory estoppels principles. To succeed the third party would need to establish the elements of promissory estoppels. The view that it was likely that estoppels could be established on the facts of the case, but it was not necessary for them to determine the issue on the basis that they had decided the case on other grounds.

#### (d) Unjust Enrichment

The essence of the principle is that it requires a defendant 'to make fair and just restitution derived at the expense of a plaintiff'. The principle could possibly be the basis for a third party to seek relief. However, it was Gaudron J, especially at 176, in Trident who based her decision in favour of Mc Niece Bros on the basis of the principle of unjust enrichment. The action based upon unjust enrichment is not based upon the contract but independent of it. However, usually, it will correspond in content and duration with the promisor's.

### 1.3.3 Assignment of Contracts

Assignment of a contract is the transfer of the rights and obligations of one party to a contract to another party. The party who transfers their rights and obligations is called the **assignor**, and the party who receives the rights and obligations is called the **assignee**. Not all contracts can be assigned. Some contracts, such as contracts for personal services or contracts that are based on a personal relationship between the parties, cannot be assigned. Additionally, some contracts may contain a provision that prohibits assignment.

To assign a contract, the assignor and assignee must both agree to the assignment. The assignment must also be in writing and signed by both parties. Once the assignment is complete, the assignee has all of the rights and obligations of the assignor under the contract.

### 1.3.4 By Whom Contract must be Performed

Generally, the contract must be performed by the party who made the promise. This is known as the Privity of contract doctrine. However, there are some exceptions to this doctrine. One exception is when the contract is assigned. When a contract is assigned, the assignee takes on all of the rights and obligations of the assignor under the contract. This means that the assignee is now the party who must perform the contract.

Another exception to the privity of contract doctrine is when the contract is performed by an agent. An agent is someone who is authorized to act on behalf of another person. When an agent performs a contract, the contract is considered to have been performed by the principal (the person who authorized the agent to act on their behalf). Finally, the privity of contract doctrine does not apply to third-party beneficiaries. A third-party beneficiary is someone who is not a party to a contract but who benefits from the contract. For example, if a father contracts with a construction company to build a house for his son, the son is a third-party beneficiary of the contract. If the construction company breaches the contract, the son may have a right to sue the construction company, even though he was not a party to the contract.

### 1.3.5 Time and Place of Performance

The assignment of a contract does not affect the time and place of performance of the contract. The assignee must perform the contract at the same time and place as the assignor would have been required to perform the contract.

For example, if a contract calls for the delivery of goods on a certain date and time, the assignee must deliver the goods on that date and time, even if the assignment took place before that date.

Similarly, if a contract requires a party to perform services at a certain location, the assignee must perform the services at that location, even if the assignment took place before the services were to be performed. However, there are a few exceptions to this rule. For example, if the contract allows the parties to agree on a different time and place of performance, the assignee and the other party to the contract may be able to agree on a new time and place of performance.

Additionally, if the contract is for the sale of goods, and the goods are to be shipped, the assignee may be able to ship the goods from a different location than the assignor would have shipped them from. This is because the assignee is the new owner of the goods, and they have the right to decide how the goods are shipped. Overall, the assignment of a contract does not affect the time and place of

performance of the contract. The assignee must perform the contract at the same time and place as the assignor would have been required to perform the contract. However, there are a few exceptions to this rule.

### 1.3.6 The Performance of reciprocal promises

The performance of reciprocal promises in an assignment contract is governed by the same rules that apply to the performance of reciprocal promises in any other type of contract. Under the doctrine of privity of contract, only the parties to a contract can enforce the contract. However, an exception to this doctrine is made for assigned contracts. When a contract is assigned, the assignee takes on all of the rights and obligations of the assignor under the contract. This means that the assignee is now the party who must perform the promises that the assignor made under the contract, and the other party to the contract is now the party who must perform the promises that they made to the assignor.

#### Example

If Peter contracts with Charles to sell a car, and Peter then assigns the contract to James, James is now the party who must sell the car to Charles. Charles is now the party who must pay James for the car.

However, it is important to note that the assignment of a contract does not affect the time and place of performance of the contract. The assignee must perform the contract at the same time and place as the assignor would have been required to perform the contract. Additionally, the assignee is only bound to perform the contract if the other party to the contract is ready and willing to perform their reciprocal promise. This is known as the doctrine of mutuality of obligation.

**For example,** In the example above, C is only bound to sell the car to B if B is ready and willing to pay C for the car. If B is not ready and willing to pay C for the car, C is not obligated to sell the car to B.

### 1.3.7 Contracts that need not be performed

There are a few types of contracts that need not be performed in an assignment of contract. These include:

- **Personal service contracts:** Contracts for personal services cannot be assigned because the other party to the contract has contracted for the services of a specific person. For example, a contract to hire a singer to perform at a wedding cannot be assigned to another singer.
- **Contracts based on personal trust or confidence:** Contracts that are based on personal trust or confidence between the parties cannot be assigned. For example, a contract to hire a lawyer to represent you in a divorce cannot be assigned to another lawyer.
- **Contracts that are prohibited from being assigned:** Some contracts may contain a provision that prohibits assignment. This type of provision is generally enforceable.

In addition to the above, there are a few other circumstances in which a contract may not need to be performed in an assignment. For example, if the contract has already been performed, or if the contract has been terminated, then there is no need for the assignee to perform the contract. If the assignor and assignee agree to rescind the assignment, then the assignee is no longer obligated to perform the contract.

#### Let's Sum Up

Dear Learners, in this section, we have seen the meaning and various definitions of performance of contract and assignment of contract in detail. As we have seen, Some definitions and Legal sections, this is all about the understanding of basic laws in business.



The performance of a contract is the carrying out of promises made by the parties.

A common law doctrine which provides that you cannot either enforce the benefit of or be liable for any obligation under a contract to which you are not a party.

There is no obligation on the promisor to perform his promise unless the promisee is willing to perform his reciprocal promise.

### Check Your Progress 3

1. What term describes the relationship between parties involved in a contract?
  - A) Assignment
  - B) Privity
  - C) Performance
  - D) Obligation
2. Which term refers to transferring contractual rights or duties to another party?
  - A) Privity
  - B) Assignment
  - C) Performance
  - D) Novation
3. Who is generally required to perform the obligations of a contract?

A) Assignee

B) Obligor

C) Third Party

D) Assigner

4. What is the term for completing contractual duties within a specified time frame?

A) Novation

B) Performance

C) Assignment

D) Breach

5. What defines the place where a contract should be performed if not specified?

A) Home

B) Office

C) Contractual

D) Location

6. What kind of promise requires performance by both parties to be completed?

A) Unilateral

B) Mutual

C) Reciprocal

D) Independent

7. Which term describes the action of carrying out the terms of a contract?

A) Assignment

B) Performance

C) Breach

D) Novation

8. Which concept involves the parties having mutual duties to be fulfilled simultaneously?

A) Time

B) Place

C) Reciprocal

D) Assignment

9. What describes a contract that may not be performed due to impossibility or other reasons?

A) Voidable

B) Non-existent

C) Discharged

D) Incomplete

10. Which principle ensures that contracts cannot be enforced against parties who are not involved?

A) Novation

B) Performance

C) Privity

D) Assignment

11. Who must perform a contract unless specifically transferred?

A) Third Party

B) Assignee

C) Original Party

D) Novatee

12. What term refers to the exchange of duties where each party is obligated to fulfill their promises?

A) Performance

B) Assignment

C) Novation

D) Breach

13. When can a contract be considered for performance if no specific time is given?

A) Immediately

B) Unspecified

C) Arbitrary

D) Scheduled

14. Which term indicates the legal ability to transfer rights or obligations in a contract?

A) Novation

B) Performance

C) Assignment

D) Privity

15. What should be specified in a contract regarding when and where obligations must be met?

A) Assignment

B) Privity

C) Time and Place

D) Performance

16. Which type of contract needs to be performed only when the other party is ready and able to perform?

- A) Conditional
- B) Unilateral
- C) Bilateral
- D) Executed

17. What term is used for the process of enforcing the contract terms through actual execution?

- A) Performance
- B) Assignment
- C) Novation
- D) Breach

18. What describes a contract obligation that no longer needs to be fulfilled due to certain conditions being met?

- A) Void
- B) Discharged
- C) Breach
- D) Executed

19. Which concept involves an agreement where one party performs their duties after the other party's performance?

- A) Unilateral
- B) Reciprocal
- C) Condition Precedent
- D) Bilateral

20. What term refers to the situation where performance of a contract is not required due to impossibility or illegality?

- A) Void
- B) Discharged
- C) Breach
- D) Assignment

### 1.4.1 Discharge of contract

A contract is discharged when rights and obligations created by it come to an end, i.e., contracting parties no longer have any responsibility or liability to each other. Discharge of contract is the termination of a contractual obligation on court orders (via an order of discharge) or mutual agreement (see Accord and Satisfaction), or caused by breach of contract, frustration of contract, or performance of contract.

- It means “termination” of a contractual relationship between the parties.
- By discharge of contract, the rights and obligations of the parties come to an end.

#### Modes of Discharge of Contract

- a) Discharge by Performance
  - Actual
  - Attempted
- b) Discharge by Lapse of Time
- c) Discharge by Breach of Contract
  - Actual
  - Anticipatory
- d) Discharge by Agreement or Consent
  - Novation.
  - Rescission
  - Alteration
  - Remission
  - Waiver
  - Merger
- e) Discharge by Operation of Law

- Death
  - Merger
  - Insolvency
  - Unauthorized alteration
- f) Discharge by Impossibility of performance
- Initial impossibility
  - Subsequent impossibility

### 1.4.2 By Performance

It takes place when the parties to the contract fulfill their obligations arising under the contract within the time and in the manner prescribed. Discharge by performance may be actual performance or attempted performance

### 1.4.3 By Agreement

Contract Act provides if the parties to a contract agree to substitute a new contract for it, or to refund remit or alter it, the original contract need not be performed.

- i) Novation:** It means substitution of a new contract for the original one. An older contract get discharged through new contract, when a
- new contract is formed with same parties
  - same contract is formed with different party/parties

**ii) Rescission**

When a contract is discharged before the date of performance by agreement between the parties to the effect that it shall no longer bind them.

**iii. Alteration**

It means changes in the terms of contract. If the parties mutually are to change certain terms of the contract, it has the effect of terminating the original contract. There is, however, no change in the parties.

**iv) Waiver**

It means relinquishment or abandonment of a right. Where a party waives his rights under the contract, the other party is released of his obligations. In other words, waiver is to give up the rights under the contract.

**v) Remission**

Where a party to contract agrees to:

- accept a lesser amount for full discharge of contract or
- extends the time of performance.

**vi) Merger**

A contract is said to have been discharged by way of merger where an inferior right possessed by a person coincides with a superior right of the same person.

### 1.4.4 By Impossibility

The impossibility may exist from the very start. In that case, it would be impossibility ab initio. Alternatively, it may supervene.

**Initial Impossibility (Pre-contractual)**

It means impossibility at the time of formation of the contracts.

- either known to the parties (Void ab initio)
- or unknown to the parties (Void due to mutual mistake)

**Subsequent or Supervening Impossibility (Post contractual)**

Sometimes a contract is capable of being performed when it was formed, but some subsequent event renders the performance impossible. In such a case also the contracts become void.

**1. Destruction of subject-matter**

Where the subject matter of a contract is destroyed for no fault of the promisor, the contract becomes void by impossibility of performance.

**2. Non-existence/non-occurrence of particular state of things**

When certain things necessary for performance cease to exist, the contract becomes void.

**Example** - Peter and Daisy contract to marry each other. Before the time fixed for the marriage, Peter goes mad. The contract becomes void.



### 1.4.5 By Lapse of Time

A contract should be performed within a specified period as prescribed by the Limitation Act, 1963.

**Example**, if a creditor does not file a suit against the buyer for recovery of the price within three years, the debt becomes time-barred and hence irrecoverable

### 1.4.6 By Operation of Law

A contract may be discharged by operation of law which includes by death of the promisor, insolvency etc.

Discharge by operation of law may take place in five ways:

#### **i) Insolvency**

The insolvency law provides for discharge of contracts under certain circumstances so where an order of discharge is passed by an insolvency court the insolvent stands discharged of all debts incurred previous to his adjudication.

#### **ii) Death**

Death of the promisor results in termination of the contract in cases involving personal skill or ability.

#### **iii) Merger**

When between the same parties, a new contract is entered into, and a security of a higher degree or a higher kind is taken, the previous contract merges in the higher security. Thus a right of action on an ordinary debt would be merged in the right of suing on a mortgage for the same debt.

#### **iv) By right and liability going into the hands of the same party**

Contract creates right to one party and liability to other when right and liability reach the same person, the result is discharge of contract.

#### **v) Unauthorized material alteration**

Where any of the parties alters any of the terms of the contract without seeking the consent of the other party to it, the contract terminates.

**Example**

Peter took land on lease from Charles. Subsequently, Peter purchases that very land. Now, Peter becomes the owner of the land, and the ownership rights being superior to the rights of a lessee, the earlier contract of lease stands terminated.

### 1.4.7 By Breach of Contracts

If one of the parties to a contract breaks the promise the party injured thereby, has not only a right of action for damages but he is also discharged from performing his part of the contract.

#### Example

Peter contracts to marry Daisy. Before the agreed date of marriage, he marries Liya. Daisy is entitled to sue A for breach of promise.

### 1.4.8 Remedies for a breach of contract

In case of breach of contract, the injured party may go for the following remedies available under the Act:

- 1) Rescind the contract and refuse further performance of the contract.
- 2) Sue for damages
- 3) Sue for specific performance
- 4) Sue for an injunction to restrain the breach of a negative term
- 5) Sue for quantum meruit

#### 1. Rescind the Contract and Refuses Further Performance of Contract

Under Sec. 65, when a party treats a contract as rescinded, it makes itself liable to restore any benefits it received under the contract to the party from whom such benefits were received.

##### The court may grant rescission—

- Where the contract is voidable by the plaintiff; or
- Where the contract is unlawful for causes not apparent on its face and the defendant is more to blame than the plaintiff.

**The court may refuse to grant rescission—**

- Where the plaintiff has expressly or implied ratified the contract; or
- Where owing to the change of circumstances, the parties cannot be restored to their original positions; or
- Where third parties, during the subsistence of contract, acquired rights in good faith and value; or
- Where only a part of the contract is sought to be rescinded and such part is not severable from the rest of the contract.

**2. Sue for damages: Sec. 73**

The party injured by the breach of contract can claim damages. Damage is the monetary compensation allowed by the court to the injured party for the loss or injury suffered by him as a result of breach by the other party.

**Types of damages****Unliquidated damages****a) General or ordinary damages**

These damages are those which naturally arise in the usual course of things from such a breach.

**b) Special damages**

Damages occur under some special or peculiar circumstances. The communication of the special circumstances is a prerequisite to the claim for special damages.

**c) Exemplary, or punitive, vindictive damages**

- These damages are awarded to punish the defendant and are not, granted for breach of contract.
- These damages are awarded in case of breach of marriage promise and wrongful
- Dishonor of cheque by the bank.

**d) Nominal damages**

Where there has been an infringement of contractual rights, but no actual loss has been suffered, then nominal damages are awarded.

#### **e) Damages for loss of reputation**

- These damages are not recoverable.
- An exception is a banker who wrongfully dishonors the customer's cheque.
- In this case, the smaller the amount of the cheque dishonored, the larger the amount of damages awarded to a businessman
- Nominal damages can be recovered by non-businessman

#### **f) Damages for inconvenience and discomfort**

These damages can be recovered for physical inconvenience and discomfort. The general rule is that the measure of these damages is not affected by the motive and the manner of breach of contract.

#### **g) Liquidated damages**

Where the contracting parties agree in advance the amount payable in the event of breach, the monetary compensation payable is called liquidated damages. The essence of liquidated damages is a genuine covenanted pre-estimate of the damages. If a contract includes a provision that, on a breach of contract, damages of a certain amount or calculable at a certain rate will be payable to the aggrieved party, the court will normally accept the relevant figure as a measure of damages. In case, the court finds the stipulated damages as unreasonable, then court may decide the reasonable damages itself to be paid as penalty for breach of contract.

### **3. Sue for specific performance**

Where damages are not an adequate remedy, the court may direct the party in breach to carry out his promise according to the terms of the contract. This is called specific performance of the contract.

#### **Cases where specific performance is not granted:**

- Where monetary compensation is an adequate relief.
- Where the court cannot supervise the execution of the contract.

- Where a contract is for personal service.
- Where one party is minor.

#### **Cases where specific performance is granted:**

- Where actual damage cannot be determined.
- If monetary compensation will not be adequate.
- Where the act to be done is in the performance of trust.
- Where, in general, it would be just and equitable to do.

#### **4. Sue for an injunction to restrain the breach of a negative term**

- The power to grant an injunction is discretionary.
- It may be granted temporarily or for an indefinite period.
- It may be prohibitory or mandatory.
- 

#### **5. Suit upon Quantum Meruit**

The phrase 'quantum meruit' literally means "as much as is earned" or "according to the quantity of work done". When a person has begun the work and before he could complete it, the other party terminates the contract or does something which make it impossible for the other party to complete the contract, he can claim for the work done under the contract. He may also recover the value of the work done where the further performance of the contract becomes impossible.

#### **Example**

Peter, a film star, agreed to act exclusively for a particular producer, for one year. During the year she contracted to act for some other producer. Held, she could be restrained by an injunction.

#### **Let's Sum Up**

Dear Learners, in this final section, we have seen the meaning and various definitions of Contract and discharge of contract in detail. As we have seen, Some definitions and Legal sections, this is all about the understanding of basic laws in business.

The discharge of the contract is also referred to as the termination of the contract.

A breach of contract is a violation of any of the agreed-upon terms and conditions of a binding contract.

There are several remedies for breach of contract, such as award of damages, specific performance, rescission, and restitution. I

### Check Your Progress 4

1. What is the term for ending a contract through fulfillment of its terms?
  - A) Performance
  - B) Breach
  - C) Impossibility
  - D) Lapse
2. Which method of discharge involves mutual consent of all parties?
  - A) Performance
  - B) Agreement
  - C) Breach
  - D) Impossibility
3. What type of discharge occurs when a contract cannot be fulfilled due to unforeseen events?
  - A) Performance
  - B) Agreement
  - C) Impossibility
  - D) Breach
4. When does a contract typically end due to the passage of time?

- A) Agreement
  - B) Impossibility
  - C) Lapse
  - D) Performance
5. Which term describes the discharge of a contract due to legal reasons beyond the parties' control?
- A) Breach
  - B) Lapse
  - C) Operation
  - D) Performance
6. What is the term for ending a contract because one party fails to meet their obligations?
- A) Breach
  - B) Performance
  - C) Impossibility
  - D) Agreement
7. What are the legal responses or actions available to a party affected by a breach of contract?
- A) Remedies
  - B) Lapse
  - C) Impossibility
  - D) Performance
8. Which term refers to the fulfillment of contract terms by all parties involved?
- A) Agreement
  - B) Performance
  - C) Breach
  - D) Impossibility
9. What occurs when a contract is terminated due to the failure of one party to perform?
- A) Lapse
  - B) Performance
  - C) Breach
  - D) Impossibility

10. Which method of discharge involves an agreed-upon modification or cancellation of the contract?
- A) Agreement
  - B) Breach
  - C) Performance
  - D) Operation
11. What is it called when a contract ends because it cannot be performed due to external factors?
- A) Lapse
  - B) Impossibility
  - C) Breach
  - D) Agreement
12. When does a contract automatically terminate due to legal provisions?
- A) Agreement
  - B) Operation
  - C) Lapse
  - D) Performance
13. What term describes the ending of a contract due to the failure to act within a specified time period?
- A) Lapse
  - B) Impossibility
  - C) Breach
  - D) Performance
14. Which method of discharge occurs when a contract is not performed due to a party's failure to comply?
- A) Agreement
  - B) Breach
  - C) Lapse
  - D) Impossibility
15. What term is used for the legal actions available to the non-breaching party in a contract?
- A) Remedies
  - B) Performance
  - C) Lapse



- D) Operation
16. When a contract is ended by mutual consent of the parties involved, it is discharged by what method?
- A) Performance
  - B) Agreement
  - C) Breach
  - D) Impossibility
17. What term refers to the contract ending due to the passage of a stipulated time period without performance?
- A) Breach
  - B) Lapse
  - C) Impossibility
  - D) Performance
18. Which discharge method involves the contract becoming void due to legal changes or regulations?
- A) Agreement
  - B) Operation
  - C) Performance
  - D) Breach
19. What term describes the situation where a contract cannot be performed due to an external unforeseen event?
- A) Breach
  - B) Impossibility
  - C) Lapse
  - D) Agreement
20. What term refers to the remedies or solutions available to address a contract breach?
- A) Lapse
  - B) Remedies
  - C) Performance
  - D) Operation

## 1.5 Unit Summary

A contract is an agreement, enforceable by law, made between at least two parties to do a particular act or abstain from doing a particular act. A contract essentially has two elements: Agreement and Enforceability. All agreements are contracts if they are made by free consent of the parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void. Contracts can be classified on the basis of validity, formation and performance. When two or more persons agree upon the same thing in the same sense, they are said to consent and have consensus ad idem. The consent is said to be free when it is not caused by Coercion, Undue Influence, Fraud, Misrepresentation, and Mistake.

Coercion is

- (i) the committing or threatening to commit any act forbidden by the Indian Penal Code or
- (ii) the unlawful detaining or threatening to detain any property to the prejudice of any person whatever with the intention of causing any person to enter into an agreement.

When consent to an agreement is caused by coercion the agreement is voidable at the option of the party whose consent was so obtained. Thus, the aggrieved party can have the contract set aside if he so desires otherwise the contract is a valid one. A contract is said to be induced by undue influence where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other. The burden of proving that the contract is not induced by undue influence lies on the party who is in a position to dominate the will of the other. Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech. Misrepresentation is a false statement that the person making it honestly believes to be true or that he is unaware is false. A fraud or misrepresentation which

did not cause the consent to a contract of the party on whom such fraud was practiced, or to whom such misrepresentation was made, does not render a contract voidable. A mistake is defined as an erroneous belief about something. It may be a mistake of fact or a mistake of law. A contract is discharged when rights and obligations created by it come to an end.

A contract may be discharged by

- Performance
- Mutual consent
- Subsequent impossibility
- Operation of law
- Breach

If the parties to a contract agree to substitute a new contract for it, or to rescind it or alter it, the original contract is discharged. A contract may terminate by mutual consent in any of the six ways viz. novation, rescission, alteration and remission, waiver and merger. Breach of contract amounts to a broken promise to do or not to do an act in legal terms. It may be single, occurring at a single point of time or continuing breaches. In case of breach of contract, the injured party may go for the following remedies available under the Act:

- 1) Rescind the contract and refuse further performance of the contract.
- 2) Sue for damages
- 3) Sue for specific performance
- 4) Sue for an injunction to restrain the breach of a negative term
- 5) Sue for quantum meruit.

## 1.6 GLOSSARY

<b>Contract</b>	A contract is an agreement creating and defining obligations between the parties.
<b>Agreement</b>	An agreement is the sum total of the offer and acceptance.
<b>Valid Contract</b>	A valid contract is one, which satisfies all the requirements prescribed by the law for the validity of a contract.

<b>Void Contract</b>	It is one which was legal and enforceable and which it was entered into but has subsequently become void because of certain reasons.
<b>Voidable Contract</b>	A voidable contract is a contract that can be avoided or set aside at the option of one of the parties to the contract.

## 1.7 Self-Assessment

### Short answer questions

1. What is a contract in Indian Contract Law, 1872?
2. What are the essential elements of a valid contract?
3. Explain free consent with examples
4. Difference between a valid contract a void contract
5. What is a breach of contract?

### Essay type questions

1. Explain the Indian Contract Act 1872 in detail with a suitable illustration
2. Explain the discharge of the contract in detail and illustrate it's remedies

## 1.8 Case Study

### Discharge of contract

Peter agrees to sell his cycle to John for an amount of ₹10,000 to be paid by John on the delivery of the cycle. As soon as it is delivered, John pays the promised amount.

#### Point of Discussion

Has the contract discharged?

[Hint: Yes, the contract is discharged through actual performance.]

### Fraud

A company issued a prospectus giving false information about the unbounded wealth of the company. A share broker who bought shares on the faith of that information wanted to avoid the contract.

#### Point of Discussion

Can a share broker avoid the contract?

[Hint: He could do so as the false representation in the prospectus amounted to fraud.]

#### Free consent

##### **Bala Debi v. S. Majumdar, A.I.R (1956)**

An illiterate woman executed a deed of gift in favour of her nephew to manage her lands. The evidence showed that the woman never intended to execute such a deed of gift, nor was the deed ever read or explained to her.

##### **Point of Discussion**

Is the deed operative in the eyes of law?

[Hint: It was held, the deed was void and inoperative due to absence of consent.]

#### Voidable contract

Peter threatens to shoot Charles, if he does not sell his new Audi Car to Peter for ₹2,00,000, Charles agrees.

##### **Point of Discussion**

Is this a valid contract?

[Hint: No, the contract is voidable at the option of Bittu Lal as his consent is taken through coercion.]

## 1.8 Task

Peter agrees to pay Charles ₹1,00,000, if Charles kills James. Charles killed James and claims ₹1,00,000. Peter denied paying ₹1,00,000 to Charles.

##### **Point of Discussion**

Can Charles recover ₹1,00,000 from Peter through a law suit? Justify.

### ANSWER KEY

#### Check Your Progress 1

1. C) Offer
2. C) Acceptance

3. C) Consideration
4. C) Consideration
5. A) Mutual assent
6. Capacity
7. Valid
8. Legality
9. Both parties agreeing
10. A) Counteroffer

### Check Your Progress 2

1. A) Free
2. A) Capacity
3. C) Consideration
4. A) Legal
5. A) Void
6. B) Voidable
7. C) Unenforceable
8. D) Illegal
9. A) Consent
10. D) Sufficient
11. C) Illegal
12. C) Unenforceable
13. A) Void
14. A) Competency
15. C) Unenforceable
16. B) Voidable
17. C) Unenforceable
18. B) Void
19. D) Illegal
20. C) Unenforceable

### Check Your Progress 3

1. B) Privity
2. B) Assignment
3. B) Obligor

4. B) Performance
5. C) Contractual
6. C) Reciprocal
7. B) Performance
8. C) Reciprocal
9. C) Discharged
10. C) Privity
11. C) Original Party
12. Performance
13. Immediately
14. Assignment
15. Time and Place
16. Conditional
17. Performance
18. Discharged
19. Condition Precedent
20. Discharged

#### **Check Your Progress 4**

1. A) Performance
2. B) Agreement
3. C) Impossibility
4. C) Lapse
5. C) Operation
6. A) Breach
7. A) Remedies
8. B) Performance
9. C) Breach
10. A) Agreement
11. B) Impossibility
12. B) Operation
13. A) Lapse
14. B) Breach
15. A) Remedies
16. B) Agreement

17. B) Lapse
18. B) Operation
19. B) Impossibility
20. B) Remedies

## 1.9 Suggested Readings

1. Kenneth W. Clarkson, Roger LeRoy Miller, and Frank B. Cross (2023) "Business Law: Text and Cases".
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3. Richard A. Mann and Barry S. Roberts(2022) "Business Law and the Regulation of Business".
4. Andrew Johnston and Liza Lovdahl Gormsen (2021) "Corporate Law and Governance".
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6. Moshe Y. Milevsky (2006) "Legal Aspects of International Business: A Canadian Perspective"
7. Frederick J. Swaim Jr (2011). "Business Law Basics".
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## 1.10 Reference

1. K.R. Balchandari, (2020) Business Law for Management, Himalaya Publication House, New Delhi.
2. S.S. Gulshan & G.K. Kapoor, (2022) Business Law, New Age International Publishers, New Delhi.
3. S.C. Kuchhal, (2022) Mercantile Law, Vikas Publishing House, New Delhi.
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6. N.D. Kapoor, (2020) Business Law: Including Companies (Amendment) Act, 2019, Sultan Chand & Sons.
7. L.M. Porwal & Sanjeev Kumar ,( 2015). Legal And Regulatory Framework, Virinda Publications Ltd.
8. P.P.S. Gogna, (2018). A TEXTBOOK OF MERCANTILE LAW (Commercial Law), S.CHAND & Company Ltd.

### Self-Learning Material Development – STAGE 1

#### LEGAL SYSTEMS IN BUSINESS

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

#### Unit Module Structuring

- ✓ Sale and contract of sale
- ✓ Sale and an Agreement to Sell
- ✓ Sale and a Contract Form
- ✓ Sale and Bailment
- ✓ Passing of Property of Goods
- ✓ Rights of an Unpaid Seller.

## UNIT – 2 Sale of Goods Act,1930

#### Contents of the Unit

**Definition of a Sale and a Contract of Sale – Difference between (1) Sale and an Agreement to Sell (2) Sale and a Contract Form (3) Sale and Bailment (4) Sale and Mortgage of Goods (5) Sale and Time Purchase Conditions and Warranties – Passing of Property of Goods – Rights of an Unpaid Seller. Negotiable Instruments in General: Cheques, Bills of Exchange and Promissory Notes – Definition and Characteristics.**

### STAGE-2 Modules sections and Sub-sections structure

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## Unit objectives

This unit aims to explain the principles and regulations governing the Sale of Goods and the Negotiable Instruments Act. Students will gain insights into the legal framework for transactions involving goods and the handling of negotiable instruments such as checks and promissory notes. The objective is to equip learners with the knowledge to effectively manage and interpret these critical areas of commercial law.

## 2.1 DEFINITION OF SALE OF GOODS ACT,1930

### Sale

In business law, a "sale" refers to the transfer of ownership of goods from one party (the seller) to another (the buyer) for a specified price. This transaction is formalized through a contract, where the seller agrees to transfer the ownership of the goods, and the buyer agrees to pay the agreed-upon price. The essential elements of a sale include the existence of goods, the intention to transfer ownership, and the exchange of a price. This type of contract is fundamental to commercial transactions and is governed by the Sale of Goods Act, 1930, which outlines the rights and obligations of the parties involved.

### Goods in a Sale

For a transaction to be classified as a sale, the subject matter must be goods. Goods are defined as tangible, movable items that are the subject of a sale contract. The term "goods" encompasses a wide range of items, including raw materials, finished products, and commodities. However, it does not include services, immovable property, or intangible assets like patents or copyrights. The identification of specific goods is crucial in a sale, as it determines when and how ownership is transferred from the seller to the buyer.

### **Transfer of Ownership**

The transfer of ownership, or the transfer of property, is the core of a sale. In a sale, the seller transfers full ownership of the goods to the buyer, who then gains all rights to use, sell, or dispose of the goods as they see fit. This transfer is immediate and absolute, meaning that the buyer becomes the legal owner of the goods once the sale is completed. The timing of this transfer is significant because it determines when the risk associated with the goods passes from the seller to the buyer. Once ownership is transferred, the buyer bears the risk of loss or damage to the goods.

### **Consideration in a Sale**

The consideration in a sale refers to the price that the buyer agrees to pay in exchange for the goods. This price is typically expressed in money, distinguishing a sale from other types of transactions, such as barter, where goods are exchanged for other goods. The agreement on price is a critical component of the contract of sale, as it reflects the mutual consent of both parties. The price may be paid in full at the time of the sale, or there may be an agreement for payment to be made at a future date.

### **Definition of a Contract of Sale**

A "contract of sale" is a broader legal concept that encompasses both actual sales and agreements to sell. A contract of sale is an agreement in which the seller agrees to transfer the ownership of goods to the buyer for a price. This contract can either be an immediate sale, where the ownership of goods is transferred instantly, or an agreement to sell, where the transfer of ownership is set to occur at a future date or upon the fulfillment of certain conditions. The distinction between a sale and an agreement to sell is crucial in understanding the rights and obligations of the parties involved.

### **Agreement to Sell**

An agreement to sell is a subset of a contract of sale, where the transfer of ownership is not immediate. Instead, the seller agrees to transfer the ownership of goods to the buyer at a future date or once certain conditions are met. Until these

conditions are satisfied, the ownership of the goods remains with the seller, and the buyer has only a contractual right to receive the goods. This arrangement is common in transactions involving goods that are not yet available or where the parties agree on payment and delivery terms that require time to fulfill.

### **Legal Implications of a Contract of Sale**

The legal implications of a contract of sale are significant, as they define the rights and obligations of both the seller and the buyer. Once a contract of sale is formed, both parties are legally bound to fulfill their respective duties. The seller is obligated to deliver the goods as specified in the contract, and the buyer is required to pay the agreed-upon price. If either party fails to meet their obligations, the other party has the right to seek legal remedies, such as damages, specific performance, or rescission of the contract. The contract of sale also determines when the risk of loss passes from the seller to the buyer, which is a key factor in disputes over damaged or lost goods.

### **Importance in Business Transactions**

In business transactions, the contract of sale is a foundational element that facilitates the exchange of goods in the market. It provides a legal framework that ensures fairness and predictability in commercial dealings. By clearly defining the terms of the sale, the contract minimizes the potential for disputes and provides a basis for resolving any conflicts that do arise. Businesses rely on contracts of sale to manage their supply chains, control inventory, and secure payment for goods delivered. Understanding the legal principles governing sales and contracts of sale is essential for businesses to operate effectively and mitigate legal risks.

Under the Sale of Goods Act, 1930, a "sale" is defined as a contract where the seller transfers or agrees to transfer the ownership (property) of goods to the buyer for a price. This contract is characterized by the exchange of goods for money, which distinguishes a sale from other forms of transfer, such as gifts or barter. The act focuses on the rights, duties, and obligations of both the seller and the buyer in this transaction.

In a sale, the transfer of ownership is a key element. The seller must have the legal authority to transfer the ownership of the goods, and the buyer, upon payment, gains the legal title to the goods. This transfer of ownership differentiates a sale from an agreement to sell, where the transfer of ownership is to take place at a future date or upon the fulfillment of certain conditions.

The definition also implies that the goods being sold must be specific and identifiable at the time the contract is made. If the goods are not specific or are not in existence at the time of the contract, the agreement may be categorized as an agreement to sell rather than a sale. The contract of sale can be either absolute or conditional, depending on the terms agreed upon by the parties.

Another important aspect of a sale under the Sale of Goods Act is the concept of consideration. The buyer must provide something of value, typically money, in exchange for the goods. This element of price is what separates a sale from other forms of transactions, like bailment or a gift, where the transfer of goods might not involve any payment.

The Sale of Goods Act outlines the consequences and legal remedies available in case of a breach of the contract of sale. These provisions protect both the buyer and the seller, ensuring that they can seek compensation or specific performance if the terms of the sale are not met. The Act provides a legal framework for the fair and equitable resolution of disputes arising from sales transactions.

A sale is a type of contract in which the seller transfers the ownership of goods to the buyer for a monetary consideration. 'Goods' means every kind of movable property, other than actionable claims and money; and includes stocks and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale. Sale of goods is the most prevalent of all commercial contracts. Awareness of its key principles is inevitable to all those involved in any business function. The law relating to sale of goods or movable property in India is codified in the Sale of Goods Act, 1930. The Act covers topics such as the concept of sale of goods, conditions and warranties arising out of sale, delivery of goods and passing of property, rights of an unpaid

seller and other rights and obligations of the buyer and the seller. The Act came into force on 1st July, 1930. It extends to the whole of India.

The sale of Goods Act deals with contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price." 'Contract of sale' is a generic term which includes both a sale as well as an agreement to sell.

- ✓ There must be at least two parties, the seller and the buyer.
- ✓ The subject matter of the contract must necessarily be goods covering only movable property. It may be either existing goods, owned or possessed by the seller or future goods.
- ✓ A price in money (not in kind) should be paid or promised.
- ✓ A transfer of property in goods from seller to the buyer must take place. The contract of sale is made by an offer to buy or sell goods for a price by one party and the acceptance of such offer by other.
- ✓ A contract of sale must be absolute or conditional.
- ✓ All other essential elements of a valid contract must be present in the contract of sale.

### 2.1.2 Sale and Agreement to Sell

In the Sale of Goods, the property is transferred from seller to the buyer immediately. The term Sale is defined in the Section 4(3) of the Sale of Goods Act, 1930 as – "where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale." In an agreement to sell the ownership of the goods is not transferred immediately. It is intending to transfer at a future date upon the completion of certain conditions thereon. The term is defined in Section 4(3) of the Sale of Goods Act, 1930, which is as follows – "where under a contract of sale the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell."

Sale	Agreement to Sell
The property in the goods passes to the buyer and along with the risk.	Since property in the goods does not pass to the buyer, the risk also does not pass to him.
It is an executed contract. i.e. contract for which consideration has been paid.	It is an executory contract. i.e. contract for which consideration is to be paid at a future date.
The seller can sue the buyer for the price of the goods because of the passage of the property therein to the buyer.	The aggrieved party can sue for damages only and not for the price, unless the price was payable at a stated date.
A subsequent loss or destruction of the goods is the liability of the buyer.	Such loss or destruction is the liability of the seller.
Breach on part of seller gives buyer double remedy; a suit for damages against the seller and a proprietary remedy of recovering the goods from third parties who bought them.	The seller, being still the owner of the goods, may dispose of them as he likes, and the buyer's remedy would be to file a suit for damages only.

### 2.1.3 Sale and a Contract Form

The Sale of Goods Act, 1930 defines a **sale** as a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. A contract **of sale** can be in writing or oral. However, it is advisable to have a written contract in place to avoid any disputes later on.

A typical sale of goods contract will include the following information:

- ✓ The names and addresses of the buyer and seller



- ✓ A description of the goods being sold
- ✓ The price of the goods
- ✓ The terms of payment
- ✓ The date and place of delivery

In addition to the above, the contract may also include other provisions, such as:

- ✓ A warranty from the seller that the goods are of merchantable quality and fit for the purpose for which they are sold
- ✓ A provision for the return of the goods if they are not satisfactory
- ✓ A provision for the resolution of disputes

### **Contract Form in Sale of Goods Act**

There is no specific contract form required under the Sale of Goods Act. However, there are a number of sample contract forms available online and from legal publishers. When choosing a contract form, it is important to make sure that it is tailored to the specific needs of the transaction. It is also advisable to have the contract reviewed by an attorney before signing it.

Here are some tips for completing a sale of goods contract:

- ✓ Make sure that all of the information required by the Sale of Goods Act is included in the contract.
- ✓ Be as specific as possible when describing the goods being sold.
- ✓ Include clear and concise terms of payment and delivery.
- ✓ Make sure that the contract includes all of the other provisions that are important to you.
- ✓ Have the contract reviewed by an attorney before signing it.

## **2.1.4 Sale and Bailment**

## **Sale: Transfer of Ownership**

A sale is a legal transaction in which the ownership of goods is transferred from the seller to the buyer in exchange for a price. This exchange is formalized through a contract, known as a contract of sale, where the seller agrees to transfer the ownership of specific goods to the buyer for an agreed-upon price. The buyer, upon payment, gains full ownership of the goods, including the right to use, sell, or dispose of them as they see fit. The transfer of ownership is a critical aspect of a sale, distinguishing it from other forms of transactions, such as leases or loans.

### **Elements of a Sale**

For a transaction to be considered a sale, several key elements must be present. First, there must be goods, which are tangible, movable items that can be bought and sold. Second, there must be a transfer of ownership from the seller to the buyer. Third, the transaction must involve a price, which is typically expressed in money. Finally, both parties must mutually consent to the terms of the sale. The completion of these elements results in the buyer gaining full legal title to the goods, while the seller relinquishes all rights to them.

## **Bailment: Transfer of Possession**

Bailment, on the other hand, is a legal relationship where the possession of goods is transferred from one party (the bailor) to another (the bailee) without the transfer of ownership. The bailor retains ownership of the goods, while the bailee is given temporary custody and control. Bailment typically occurs in situations where goods are handed over for a specific purpose, such as storage, repair, or transportation. The bailee is obligated to return the goods to the bailor once the purpose of the bailment is fulfilled.

### **Elements of Bailment**

In a bailment, several elements must be present. First, there must be the delivery of goods from the bailor to the bailee. Second, the possession of the goods is transferred, but not the ownership. Third, the bailee must have the intent to take

possession and care for the goods, according to the terms of the bailment. Finally, the goods must be returned to the bailor or dealt with according to their instructions once the purpose of the bailment is completed. The key distinction in bailment is that the ownership of the goods remains with the bailor, unlike in a sale where ownership is transferred to the buyer.

### **Legal Implications of a Sale**

In a sale, the buyer assumes ownership of the goods and, with it, all associated risks and liabilities. If the goods are damaged, lost, or destroyed after the sale is completed, the buyer bears the loss, not the seller. The sale also imposes legal obligations on both parties: the seller must deliver the goods as agreed, and the buyer must pay the price. If either party fails to fulfill their obligations, the other party may seek legal remedies such as damages or specific performance. The sale also finalizes the transaction, with no ongoing relationship between the seller and buyer unless otherwise agreed.

### **Legal Implications of Bailment**

In a bailment, the bailee has a duty to take reasonable care of the goods and return them in the condition in which they were received. The degree of care required depends on the nature of the bailment and whether it is for the benefit of the bailor, the bailee, or both. If the bailee fails to return the goods or damages them through negligence, they may be held liable for the loss or damage. However, since ownership remains with the bailor, the bailor can reclaim the goods at any time. The bailment relationship creates ongoing responsibilities and a continuing legal relationship between the bailor and bailee.

### **Termination of Sale vs. Bailment**

A sale transaction is typically final once the exchange of goods and payment is completed. The seller relinquishes all rights and obligations related to the goods, and the buyer assumes full ownership and responsibility. In contrast, bailment is a temporary arrangement that terminates once the purpose of the bailment is fulfilled. The bailee is then obligated to return the goods to the bailor or dispose of them according to the bailor's instructions. The termination of bailment restores the bailor's full possession and control over the goods, while the bailee's responsibilities end.

### Importance in Commercial Transactions

Understanding the distinction between sale and bailment is crucial in commercial transactions. Sales are essential for transferring ownership and facilitating trade, while bailment is important for situations requiring temporary custody or care of goods. Both concepts play a vital role in business operations, with different legal frameworks governing each type of transaction. Businesses must carefully structure their agreements to ensure that the correct legal relationship is established, protecting their rights and minimizing risks associated with the transfer of goods.

Bailment is the delivery of goods by one person to another for some purpose upon a condition that they shall, when the purpose is accomplished, be returned to the person delivering them where of the essence of sale is that the property in goods is transferred from the seller to the buyer for a price. The following are the main points of difference between the two:

Sale	Bailment
In a sale, the property in the goods is transferred from the seller to the buyer and the buyer can therefore deal with the goods in any way he likes.	In a bailment, there is only transfer of possession of goods from the bailor to the bailee for any of the reasons like safe custody, carriage, use etc. and the bailee can only deal with the goods according to the directions of the bailor.
Goods once sold normally cannot be returned unless there is a breach of some condition.	In bailment the bailee must return the goods to the bailor on the accomplishment of the purpose for which the bailment was made.
In a sale the consideration is the price in terms of money.	In a bailment the consideration is an undertaking to return the goods after the accomplishment of purpose.

### Let's Sum Up

Dear Learners, in this final section, we have seen the meaning and various definitions of Sales of Contract, agreement to sell and others in detail. As we have seen, Some definitions and Legal sections, this is all about the understanding of basic laws in business.



### Check Your Progress 1

1. What is transferred immediately in a sale?
  - A) Possession
  - B) Ownership
  - C) Lease
  - D) Rent
2. Which term describes a preliminary agreement to transfer ownership in the future?
  - A) Sale
  - B) Lease
  - C) Bailment
  - D) Agreement
3. Which document outlines the terms of a sale?
  - A) Receipt
  - B) Contract
  - C) Invoice
  - D) Bill
4. What does a sale involve that a bailment does not?

- A) Possession
  - B) Payment
  - C) Use
  - D) Temporary transfer
5. In which arrangement is ownership transferred immediately upon agreement?
- A) Bailment
  - B) Sale
  - C) Lease
  - D) Loan
6. Which term is used for the temporary transfer of goods without ownership?
- A) Sale
  - B) Lease
  - C) Bailment
  - D) Contract
7. What distinguishes an 'agreement to sell' from a 'sale'?
- A) Ownership
  - B) Payment
  - C) Contract
  - D) Delivery
8. What is required for a 'contract of sale' to be effective?
- A) Possession
  - B) Delivery
  - C) Ownership
  - D) Terms
9. Which term refers to the formal arrangement for the sale of goods?
- A) Agreement
  - B) Bailment
  - C) Contract
  - D) Invoice
10. What is NOT a feature of bailment?
- A) Transfer
  - B) Possession
  - C) Use
  - D) Ownership

## 2.2.1 Sale and Mortgage of Goods

### **Sale of Goods: Transfer of Ownership**

A sale of goods is a legal transaction where the ownership of goods is transferred from the seller to the buyer in exchange for a price. This process is governed by the Sale of Goods Act, of 1930, which outlines the rights and obligations of both parties involved. In a sale, once the transaction is completed, the buyer becomes the legal owner of the goods, gaining full rights over them. This includes the ability to use, sell, or otherwise dispose of the goods as they see fit. The seller, after receiving payment, relinquishes all ownership rights and responsibilities related to the goods.

### **Essential Elements of a Sale**

For a transaction to qualify as a sale, several key elements must be present. The goods being sold must be specific and identifiable, and there must be an agreement between the seller and buyer to transfer ownership. The transaction must also involve a price, typically expressed in monetary terms, although in some cases, it could involve other forms of consideration. Once these elements are satisfied, the sale is considered legally binding, and the ownership of the goods is transferred to the buyer, along with the risk associated with them.

### **Mortgage of Goods: Transfer of Interest**

A mortgage of goods is a legal arrangement where the owner of the goods (the mortgagor) transfers an interest in the goods to a lender (the mortgagee) as security for a loan. Unlike a sale, a mortgage does not involve the transfer of ownership. Instead, the mortgagor retains ownership while granting the mortgagee certain rights over the goods, such as the right to take possession or sell them if the mortgagor defaults on the loan. This transfer of interest serves as collateral to ensure the repayment of the loan, with the goods acting as security for the lender.

### **Key Elements of a Mortgage**

In a mortgage of goods, the primary elements include the presence of goods that can be used as collateral, an agreement between the mortgagor and mortgagee outlining the terms of the loan, and the creation of a security interest in the goods.

The mortgagor remains the owner of the goods, but the mortgagee holds a legal interest that allows them to take action if the loan is not repaid according to the agreed terms. This arrangement is often formalized through a mortgage deed, which details the rights and obligations of both parties, including the conditions under which the mortgagee can enforce their security interest.

### **Differences Between Sale and Mortgage of Goods**

The most significant difference between a sale and a mortgage of goods is the transfer of ownership versus the transfer of interest. In a sale, ownership is fully transferred from the seller to the buyer, who gains all rights and responsibilities associated with the goods. In contrast, a mortgage involves only the transfer of an interest or lien, with ownership remaining with the mortgagor. This difference has important legal implications, particularly in terms of the parties' rights and liabilities. In a sale, the buyer bears the risk associated with the goods after the transaction is complete, whereas in a mortgage, the mortgagor retains the goods but risks losing them if they default on the loan.

### **Legal Implications of a Sale**

In a sale, once the transaction is finalized, the buyer becomes the legal owner of the goods and assumes all associated risks, including the risk of loss or damage. The seller's obligations typically end with the delivery of the goods and receipt of payment. If either party fails to fulfill their contractual obligations, the other party may seek legal remedies, such as damages or rescission of the contract. The sale also signifies the conclusion of the transaction, with no ongoing relationship between the seller and buyer unless additional agreements, such as warranties or service contracts, are in place.

### **Legal Implications of a Mortgage of Goods**

In a mortgage of goods, the mortgagee gains a security interest in the goods, which serves as protection in case the mortgagor fails to repay the loan. If the mortgagor defaults, the mortgagee has the right to take possession of the goods and sell them to recover the debt. However, the mortgagor retains the right to redeem the goods by repaying the loan in full before the mortgagee exercises their rights to sell the goods. The ongoing nature of this relationship means that both parties have



continuing obligations until the loan is repaid or the mortgage is otherwise terminated.

### **Termination and Redemption**

In a sale, the transaction is typically concluded once the goods are delivered and payment is made. The seller has no further claim to the goods, and the buyer assumes full ownership. In contrast, a mortgage of goods remains in effect until the loan is repaid. The mortgagor has the right to redeem the goods by fulfilling the terms of the loan agreement, after which the mortgagee's interest in the goods is extinguished. If the mortgagor fails to redeem the goods, the mortgagee may proceed with selling the goods to recover the outstanding debt, effectively terminating the mortgage.

### **Importance in Commercial Transactions**

Both sales and mortgages of goods play crucial roles in commercial transactions. Sales facilitate the transfer of goods and capital in the marketplace, enabling businesses to exchange value and acquire necessary resources. Mortgages, on the other hand, provide a mechanism for securing loans, allowing businesses to access capital without immediately parting with ownership of their assets. Understanding the distinctions between these two types of transactions is essential for businesses and individuals alike, as it helps in structuring agreements that protect their interests and ensure compliance with legal requirements.

A mortgage differs from a contract of sale in the following respects:

- ✓ In a sale, there is a transfer of the whole interest of the seller in the goods, but in the case of a mortgage there is a transfer of a limited interest.
- ✓ In a sale the buyer becomes the absolute owner of the goods sold, but in a mortgage the ownership of the goods remains vested in the mortgagor.
- ✓ The consideration in the case of sale is the price while the consideration in a mortgage is the advance of the loan and the securing of the debt.

## 2.2.2 Sale and Time Purchase warranties

### Time purchase conditions and warranties

The Sale of Goods Act, 1930 contains a number of provisions relating to the sale of goods on time purchase. These provisions are designed to protect the interests of both the buyer and the seller.

### Time Purchase Conditions

A time purchase contract is a contract for the sale of goods on credit, where the buyer agrees to pay for the goods in installments over a period of time. The Sale of Goods Act contains a number of provisions relating to time purchase conditions, including:

- The buyer must be given a copy of the contract before they sign it.
- The contract must clearly state the terms of payment, including the total price of the goods, the amount of each installment, and the due date of each installment.
- The contract must also state the consequences of default on payment, such as the seller's right to repossess the goods.

The Sale of Goods Act also contains a number of provisions relating to warranties in the sale of goods contracts.

There are two main types of warranties in sale of goods contracts:

- **Implied warranties:** Implied warranties are terms that are automatically included in a sale of goods contract, even if they are not expressly stated in the contract. For example, there is an implied warranty that the goods are of merchantable quality and fit for the purpose for which they are sold.

- **Express warranties:** Express warranties are terms that are specifically stated in the sale of goods contract. For example, a seller may provide an express warranty that the goods will last for a certain period of time.

If the goods do not meet the requirements of an implied or express warranty, the buyer may have a number of remedies, such as the right to reject the goods, the right to demand a refund, or the right to have the goods repaired or replaced.

### 2.2.3 Passing of property of goods

The passing of property of goods in the Sale of Goods Act, 1930 is the transfer of ownership of the goods from the seller to the buyer. This is an important concept in commercial law, as it determines who bears the risk of loss or damage to the goods after the contract of sale is made. The Sale of Goods Act contains a number of rules for determining when the property of goods passes from the seller to the buyer. These rules are based on the following factors:

- ✓ **Ascertained or unascertained goods:** Ascertained goods are goods that are specifically identified in the contract of sale. Unascertained goods are goods that are not specifically identified in the contract of sale, but are instead described by type or quality.
- ✓ **Deliverable state:** Goods are said to be in a deliverable state when they are in a condition that would allow the buyer to take possession of them and deal with them as their own.

The passing of property in goods is a critical concept in contract law and commerce, often governed by the Sale of Goods Act or similar legislation depending on the jurisdiction. Here's an eight-paragraph overview of how property in goods passes from the seller to the buyer:

1. **Definition and Importance:** The term "passing of property" refers to the transfer of ownership rights from the seller to the buyer in a sales transaction. It is crucial because it determines who has the rights to the goods, including the risk of loss and the ability to sell or transfer them to another party.

2. **Sale of Goods Act:** Under many legal systems, the Sale of Goods Act or its equivalent outlines the rules for determining when property in goods passes. These rules ensure clarity in transactions and help resolve disputes related to ownership.
3. **Contractual Terms:** The contract between the buyer and seller often specifies when property passes. For instance, it might be stipulated that ownership transfers upon delivery or when payment is made. These terms override default legal provisions, provided they are clear and agreed upon by both parties.
4. **Specific Goods:** For specific goods, which are identified and agreed upon at the time of the contract, property generally passes when the contract is made if no further conditions are attached. This is because the goods are already distinct and set aside for the buyer.
5. **Unascertained Goods:** For unascertained or generic goods, property passes only when the goods are ascertained or identified in a way that makes them specific to the contract. This usually occurs when the goods are separated from the bulk and designated for the buyer.
6. **Delivery and Acceptance:** Physical delivery and acceptance of goods can also affect the transfer of property. In many cases, the property in goods passes when the buyer takes possession, unless otherwise agreed upon. Delivery is often a key factor in establishing when ownership transfers.
7. **Risk of Loss:** The passing of property typically includes the transfer of risk. Once property has passed, the buyer bears the risk of loss or damage to the goods. This principle aligns ownership with the responsibility for the goods, although the contract might specify different terms.
8. **Retention of Title:** Sellers may retain title to goods until certain conditions are met, such as full payment of the purchase price. This retention of title clause ensures that the seller retains ownership until the buyer fulfills their contractual obligations, despite the physical possession of the goods.

The general rule is that the property of ascertained goods passes to the buyer when the goods are in a deliverable state and the contract is unconditional. This

means that the buyer does not have to pay for the goods or take possession of them before the property passes to them. However, there are a number of exceptions to this general rule. For example, if the contract of sale contains a condition that the buyer must inspect the goods before accepting them, then the property of the goods will not pass to the buyer until they have inspected the goods and accepted them.

In the case of unascertained goods, the property of the goods does not pass to the buyer until the goods are ascertained and appropriated to the contract. This means that the seller must specifically identify the goods that they are selling to the buyer, and the buyer must agree to accept those goods. The passing of property of goods is an important concept in commercial law, and it is important to understand the rules that apply to it.

### 2.2.4 Rights of an Unpaid Seller

The rights of an unpaid seller may broadly be classified under two heads, namely:

- (i) Rights under the Ss.73-74 of the Indian Contract Act, 1872, i.e., to recover damages for breach of contract.
- (ii) Rights under the Sale of Goods Act, 1930:
  - ✓ Rights against the goods
  - ✓ Rights against the buyer personally

The rights against the goods are as follows:

- (iii) Where the property in the goods has passed to the buyer;
  - ✓ Right of lien;
  - ✓ Right of stoppage of goods in transit; and
  - ✓ Right of resale. Where the property in the goods has not yet passed to the buyer, he has an additional right of withholding delivery [s.46 (2)].

The rights against the buyer personally are:

- ✓ Right to sue for price;
- ✓ Right to sue for damages;
- ✓ Right to sue for interest.

**Example**

Peter buys certain goods from Charles, and agrees to pay for them later. Peter leaves the goods with Charles to be sent to him later. Charles shall have a right of lien if in the meantime he learns of Peter's insolvency.

**Right of Lien:** An unpaid seller has the right to retain possession of the goods until the payment is made. This right is known as a lien. It can be exercised when the seller is in possession of the goods and the buyer has defaulted on payment. The lien ensures that the seller has leverage to recover the owed amount.

**Right of Stoppage in Transit:** If the buyer becomes insolvent after the goods have been dispatched but before they have reached their destination, the unpaid seller has the right to stop the goods in transit. This right allows the seller to regain possession of the goods from the carrier or bailee until payment is made.

**Right to Resell:** The unpaid seller has the right to resell the goods if the buyer defaults on payment. This right is exercised after giving notice to the buyer of the intention to resell. Reselling the goods helps mitigate losses for the seller and recover some of the outstanding payment.

**Right to Sue for the Price:** If the buyer refuses to pay for the goods despite receiving them, the unpaid seller has the right to sue the buyer for the price of the goods. This legal action is typically pursued when the goods have been delivered, and the buyer has not paid as agreed.

**Right to Sue for Damages:** Besides suing for the price, the unpaid seller can also claim damages for any loss suffered due to the buyer's failure to pay. This includes compensation for any additional expenses incurred, such as storage or legal costs, due to the non-payment.

**Right to Withhold Delivery:** The unpaid seller has the right to withhold delivery of the goods if the buyer has not paid or provided security for payment. This right is

exercised when the goods are not yet in the hands of the buyer, and payment is overdue.

**Right to Claim for Specific Performance:** In some cases, the unpaid seller may seek an order for specific performance from the court. This legal remedy compels the buyer to perform their contractual obligation, i.e., pay for the goods, rather than just paying damages.

**Right to Reclaim Goods:** If the goods are still in the seller's possession and the buyer defaults on payment, the seller can reclaim the goods. This right is particularly important when the goods are identifiable and have not yet been delivered to the buyer.

**Right to Demand Payment in Cash:** The unpaid seller may demand payment in cash if the buyer is in default. This right ensures that the seller can secure immediate payment without further delay, especially when the credit terms have been breached.

**Right to Avoid the Contract:** In certain circumstances, the unpaid seller may have the right to terminate the contract due to the buyer's breach. By avoiding the contract, the seller can release themselves from further obligations and seek recovery for any losses incurred.

Unpaid seller's lien - how lost. An unpaid seller loses his lien in the following five cases:

- ✓ when the seller delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer, without reserving a right of disposal of the goods to himself, e.g., takes railway receipt or transport receipt in the name of the buyer or his agent;
- ✓ where the buyer or his agent lawfully obtains possession of the goods;
- ✓ the seller waives his right of lien;
- ✓ where the seller assents to a sub-sale by the buyer;
- ✓ where the seller takes a security from the buyer for the payment of the price in place of his lien.

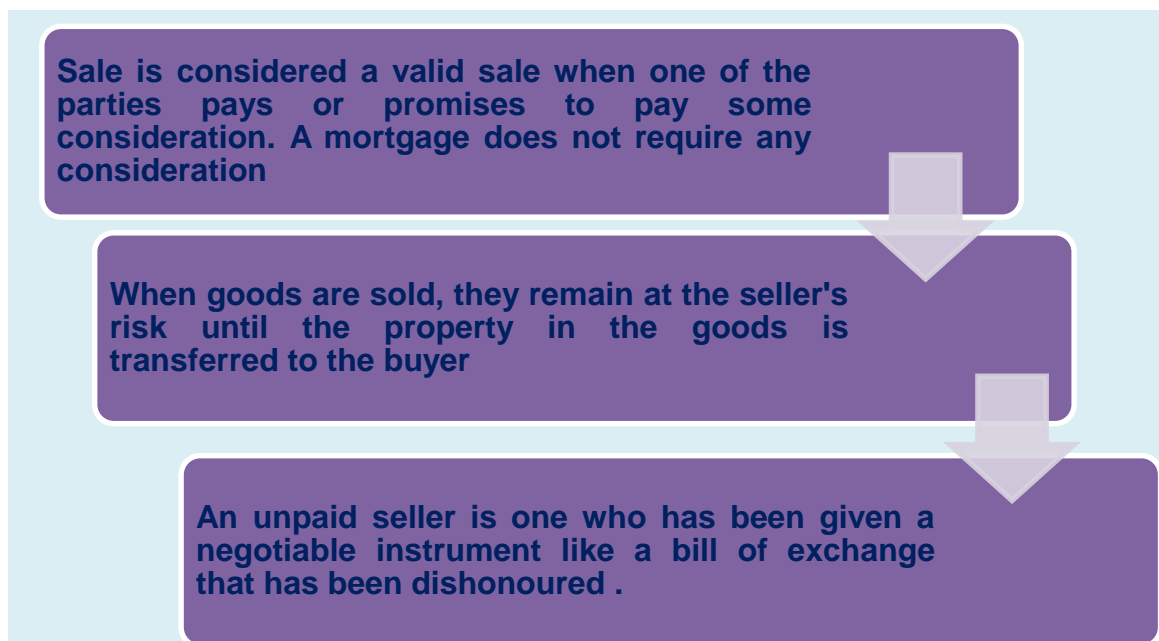
An unpaid seller, however, does not lose his lien by reason only that he has obtained, a decree for the price of the goods. The lien of the unpaid seller is a possessory lien, that is, once the possession is lost, lien is lost.

**Example**

On a sale of certain shares, the relevant share certificates and transfer form duly signed are handed over by the seller to the buyer against payment of price by cheque. Subsequently, the buyer becomes insolvent. The seller has no lien on the share certificate or transfer form, for his lien ceased when he parted with their possession.

**Let's Sum Up**

Dear Learners, in this section, we have seen the meaning and various definitions of the sale and Goods Act and unpaid seller in detail. As we have seen, Some definitions and Legal sections, this is all about the understanding of basic laws in business.

**Check Your Progress 2**



1. What is a key difference between a sale and a time purchase?
  - A) A sale involves immediate payment, while a time purchase allows payment at a future date.
  - B) A sale requires no conditions, while a time purchase involves multiple conditions.
  - C) A sale transfers ownership of goods, while a time purchase does not.
  - D) A sale is a lease arrangement, while a time purchase is a cash transaction.
2. Which condition is implied in every contract of sale regarding the quality of goods?
  - A) The goods will be of merchantable quality.
  - B) The goods will be suitable for a particular purpose.
  - C) The goods will be delivered within a specified time.
  - D) The goods will be new and unused.
3. When does the property in goods generally pass from the seller to the buyer?
  - A) Upon delivery of the goods
  - B) Upon payment of the purchase price
  - C) When the contract is signed
  - D) When the buyer takes possession of the goods
4. Which right allows an unpaid seller to reclaim goods from the buyer?
  - A) Right of lien
  - B) Right of stoppage in transit
  - C) Right of resale
  - D) Right of claim
5. In a contract of sale, what does 'merchantable quality' mean?
  - A) The goods must meet specific design specifications
  - B) The goods are fit for the usual purpose for which they are sold
  - C) The goods must be brand new
  - D) The goods must be of the highest quality available
6. Under what condition does the right of lien arise for an unpaid seller?
  - A) When the buyer defaults on payment after the sale
  - B) When the seller delivers the goods to the buyer
  - C) When the goods are in transit
  - D) When the contract is signed but not executed
7. Which type of warranty is implied by law and cannot be waived or excluded by agreement?

- A) Warranty of title
  - B) Warranty of fitness for a particular purpose
  - C) Warranty of merchantable quality
  - D) Warranty of future performance
8. What happens if the passing of property in goods is not expressly stated in the sale contract?
- A) The property passes when the goods are delivered.
  - B) The property passes when the goods are paid for in full.
  - C) The property passes when the buyer takes physical possession.
  - D) The property remains with the seller until full payment is made.
9. What is the right of lien in the context of an unpaid seller?
- A) The right to stop the goods in transit
  - B) The right to resell the goods
  - C) The right to retain possession of the goods until payment is made
  - D) The right to cancel the contract
10. Which document typically includes conditions and warranties about the sale of goods?
- A) The bill of sale
  - B) The contract of sale
  - C) The receipt
  - D) The invoice

### 2.3.1 Negotiable Instruments Act, 1881

This is an Act to define and amend the law relating to Promissory Notes, Bills of Exchange, and Cheques. The Act applies to the whole of India. The Act was amended several times. The Amendment Act, 2015 modifies the definition of a cheque in electronic form given in section 6, and clarifies the appropriate area of jurisdiction of courts by amendment in cognizance of offences in section 142 and through insertion of a new section 142A dealing with the transfer of pending cases related to the dishonour of cheques.

**Negotiable Instruments:** Negotiable Instrument is an instrument that is transferable (by customs of trade) by delivery, like cash, and is also capable of being sued upon by the person holding it for the time being. The Act does not define the term 'Negotiable Instruments'. However, section 13 of the Act mentions only three kinds of negotiable instruments namely, bills, notes and cheques.

## Characteristics of Negotiable Instruments

### Property

The possessor of the instrument is the holder and owner thereof. A negotiable instrument does not merely give possession of the instrument, but the right to property. Whoever gets possession of the instrument becomes its owner and is entitled to the sum mentioned therein as the holder. The complete right of ownership in a negotiable instrument passes by mere delivery where an instrument is payable to 'bearer'. Where an instrument is payable to 'order', the right of ownership passes by endorsement and delivery.

### Defects in title

The holder in good faith and for value called the 'holder in due course' gets the instrument free from all defects of any previous holder.

### Remedy

The holder can sue upon the negotiable instrument in his own name. All prior parties are liable to him. A holder in due course can recover the full amount on the instrument.

### Rights

The holder in due course is not affected by certain defenses which might be available against the previous holder, for example, fraud, to which he is not a party.

### Payable to order

A promissory note, bill of exchange or cheque is payable to order which is expressed to be so payable to a particular person. An instrument that does not restrict its transferability expressly or impliedly is negotiable whether the word 'order'

is mentioned or not. The word 'Order' or 'Bearer' is no longer necessary to render an instrument negotiable. Where the instrument prohibits transfer or indicates that it shall not be transferrable is nevertheless valid as between the parties thereto, but it is not a negotiable instrument.

It must be noted that where a promissory note, bill of exchange or Cheques, either originally or by endorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option.

### 2.3.2 Cheques

A cheque refers to an instrument in writing which contains an unconditional order, addressed to a banker and is signed by a person who has deposited his money with the banker. This order, requires the banker to pay a certain sum of money on demand only to the bearer of cheque (person holding the cheque) or to any other person who is specifically to be paid as per instructions given. Cheques could be a good way of paying different kinds of bills. Although the usage of cheques is declining over the years due to online banking, individuals still use cheques for paying for loans, college fees, car EMIs, etc. Cheques are also a good way of keeping track of all the transactions on paper. On the other side, cheques are comparatively a slow method of payment and might take some time to be processed.

### 2.3.3 Bill of Exchange

Bills of exchange refer to a legally binding, written document that instructs a party to pay a predetermined sum of money to the second(another) party. Some of the bills might state that money is due on a specified date in the future, or they might state that the payment is due on demand. A bill of exchange primarily acts as a promissory note in international trade; the exporter or seller, in the transaction, addresses a bill of exchange to an importer or buyer. A third party, usually the banks,

is a party to several bills of exchange acting as a guarantee for these payments. It helps in reducing any risk which is part and parcel of any transaction.

### 2.3.4 Promissory Notes

A promissory note refers to a written promise to its holder by an entity or an individual to pay a certain sum of money by a pre-decided date. In other words, Promissory notes show the amount which someone owes to you or you owe to someone together with the interest rate and also the date of payment.

A **promissory note** is a financial instrument widely used in business transactions and lending agreements. It is a written, legally binding document in which one party (the maker or issuer) promises to pay a specific sum of money to another party (the payee) either on demand or at a specified future date. Promissory notes are governed by the Negotiable Instruments Act, 1881, in India and are recognized under various legal frameworks worldwide.

#### 1. Definition and Legal Framework

A promissory note is a negotiable instrument that serves as an unconditional written promise by the issuer to pay a specific amount of money to the payee or bearer. The Negotiable Instruments Act, 1881, in India provides the legal foundation for the creation, endorsement, and enforcement of promissory notes. The Act defines the rights, obligations, and liabilities of parties involved in such instruments, ensuring legal protection for both issuers and holders.

#### 2. Essential Elements

For a promissory note to be valid and enforceable, it must meet certain essential criteria. These include a clear promise to pay, an identifiable payee, a specific amount of money, and a definite payment date or terms. Additionally, the note must be in writing and signed by the issuer. The amount stated must be in legal tender, and the promise to pay should be unconditional and free of contingencies.

#### 3. Types of Promissory Notes

Promissory notes can be categorized based on their terms and usage. Common types include demand promissory notes, which are payable upon the payee's request, and time promissory notes, which are due on a specific date. They

can also be classified as secured or unsecured, depending on whether collateral backs the payment. In business transactions, promissory notes may be used for short-term loans, commercial paper, or as part of a larger financial agreement.

#### **4. Usage in Business Transactions**

In business, promissory notes are often used to formalize loans, trade credit arrangements, or advance payments. They provide a simple and straightforward method for documenting debt obligations between parties. For businesses, issuing or accepting a promissory note can help manage cash flow, facilitate credit, and secure funding without resorting to more complex financial instruments. It also provides a clear record of the transaction and the terms of repayment.

#### **5. Enforcement and Default**

If the issuer of a promissory note fails to pay as promised, the payee has the right to enforce the note through legal means. In case of default, the payee can file a lawsuit for recovery of the amount due. The courts generally uphold the terms of the note, provided it meets all legal requirements. The payee may also seek interest and legal costs incurred during the recovery process. In some jurisdictions, dishonoring a promissory note can lead to criminal proceedings.

#### **6. Advantages and Disadvantages**

Promissory notes offer several advantages, including simplicity, flexibility, and enforceability. They are less formal than a loan agreement but still provide a clear and binding obligation. However, they also come with risks, particularly if the issuer defaults. Unsecured promissory notes, in particular, expose the payee to higher risk, as there is no collateral to recover in case of non-payment. The enforceability of a promissory note also depends on the issuer's solvency and willingness to honor the debt.

#### **7. Transferability**

Promissory notes are generally transferable, meaning the payee can endorse and transfer the note to another party. This feature makes them a versatile tool in financial markets, as they can be traded or used as collateral for other transactions. The transferability of promissory notes is a key factor in their liquidity and appeal, especially in secondary markets where such instruments can be bought and sold at a discount or premium.

#### **8. Importance in Business Law**

In the context of business law, promissory notes play a crucial role in commercial finance. They provide a reliable mechanism for documenting debt and credit arrangements, reducing the potential for disputes. Promissory notes are legally recognized and enforceable, giving them a level of credibility and assurance in business dealings. Understanding the use, creation, and enforcement of promissory notes is essential for businesses and legal professionals alike, as they are a common tool in commercial transactions and financial management.

### Example

Peter purchases from Charles INR 10,000 worth of goods. In case Peter is not able to pay for the purchases in cash, or doesn't want to do so, he could give B a promissory note. It is Peter's promise to pay Charles either on a specified date or on demand. In another possibility, Peter might have a promissory note which is issued by James. He could endorse this note and give it to Charles and clear of his dues this way. However, the seller isn't bound to accept the promissory note. The reputation of a buyer is of great importance to a seller in deciding whether to accept the promissory note or not.

### Did you know!!

Goods	Good-will	What is not treated as goods ?
'Goods' means every kind of movable property other than actionable claims and money includes. stock and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under the	Trademarks	- immovable property
	Copyrights	- money (current money not old rare coins)
	Patents	- actionable claims (loan/debt)
	Water	
	Gas	
	Electricity	
	Shares and Stock	

contract of sale. - Sec. 2(7)		
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### Let's Sum Up

Dear Learners, in this final section, we have seen the meaning and various definitions of Negotiable instruments act and its instruments in detail. As we have seen, Some definitions and Legal sections, this is all about the understanding of basic laws in business.

**Negotiable instruments is a signed document that promises an amount to be paid to a specified person or assignee.**

**Cheque a piece of paper printed by a bank that you sign and use to pay for things.**

**Promissory note is a financial instrument that contains a written promise by one party to pay another party a definite sum of money.**

**Bill of exchange is a written order used primarily in international trade that binds one party to pay a fixed sum of money to another party on demand or at a predetermined date.**

### Check Your Progress 3

1. Which of the following best defines a cheque?
  - A) A written promise to pay a certain amount at a future date
  - B) A written order to pay a specified amount to a named person or bearer
  - C) A document that transfers ownership of goods
  - D) An agreement to lend money
2. In a bill of exchange, who is referred to as the 'drawee'?
  - A) The person who writes the bill
  - B) The person who is to receive the payment



- C) The person who must pay the amount specified in the bill  
D) The person who endorses the bill
3. What is the primary difference between a promissory note and a bill of exchange?  
A) A promissory note requires a third party to pay, while a bill of exchange does not  
B) A promissory note is a promise to pay, while a bill of exchange is an order to pay  
C) A promissory note is always payable on demand, while a bill of exchange can be payable at a future date  
D) A promissory note is used for international transactions, while a bill of exchange is used domestically
4. Which of the following can be a valid endorsement for transferring a cheque?  
A) Endorsement in blank  
B) Endorsement in full  
C) Restrictive endorsement  
D) All of the above
5. What does the term 'dishonor of a cheque' mean?  
A) The cheque is returned because it is not signed  
B) The cheque is returned because it exceeds the account balance  
C) The cheque is not endorsed correctly  
D) The cheque is printed on incorrect paper
6. In the context of a bill of exchange, who is the 'payee'?  
A) The person who writes the bill  
B) The person who must make the payment  
C) The person to whom the payment is to be made  
D) The person who accepts the bill
7. Which document requires a specific endorsement to transfer ownership?  
A) A bearer cheque  
B) A promissory note  
C) A non-negotiable bill of exchange  
D) An order cheque

8. A promissory note must include which of the following elements to be considered valid?

- A) A detailed description of the goods involved
- B) A promise to pay a specified amount of money
- C) The signatures of two witnesses
- D) A payment guarantee from a third party

9. What is the function of an 'endorser' in the context of negotiable instruments?

- A) To sign a document to initiate payment
- B) To transfer rights of the instrument to another person
- C) To accept the payment from the drawee
- D) To issue the negotiable instrument

10. Which type of negotiable instrument is primarily used for short-term financing in international trade?

- A) Promissory note
- B) Bill of exchange
- C) Cheque
- D) Certificate of deposit

## 2.4 Unit Summary

A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. A contract of sale may be absolute or conditional. The essential elements of the contract are (a) contract (b) two parties (c) transfer of property (d) goods and (e) price. Goods are the subject matter of a contract of sale. Goods are of three types namely existing goods, future goods, and contingent goods.

- ✓ These conditions and warranties may be express or implied. Thus, the sale takes place when there is a transfer of ownership of goods from the seller to the buyer.
- ✓ A sale is an executed contract.
- ✓ The term seller includes any person who is in the position of a seller, e.g., an agent of the seller, to whom a bill of lading has been endorsed, or a

consignee or agent who has paid for the goods or is responsible for the price (s.45).

- ✓ The word lien means to retain possession of.
- ✓ No gain or loss shall be recognized on the exchange of property held for productive use in a trade or business or for investment if such property is exchanged solely for property of like kind which is to be held either for productive use in a trade or business or for investment.
- ✓ Unpaid seller” defined as: (1) The seller of goods is deemed to be an "unpaid seller" within the meaning of this Act— (a) when the whole of the price has not been paid or tendered. (b) when a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.
- ✓ Subject to the provisions of this Act and of any law for the time being in force, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such, has by implication of law—
  - a lien on the goods for the price while he is in possession of them. The Sale of Goods Act, 1930 Notes
  - in case of the insolvency of the buyer a right to stop the goods in transit after he has parted with the possession of them.
  - a right of re-sale as limited by this Act.
- ✓ Where 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 like and co-extensive with his rights of lien and stoppage in transit where the property has passed to the buyer.

## 2.5 Glossary

<b>Contract of Sale</b>	A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price.
<b>Goods</b>	Goods means every kind of movable property other

	than actionable claims and money and includes stock and shares growing crops, grass and things attached to or forming part of the land which he agreed to be severed before the sale or under the contract of sale.
<b>Sale</b>	Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale.
<b>Agreement to Sell</b>	Where the transfer of the property in the goods is to take a place at a future time or subject to some condition thereafter to be fulfilled the contract is called an agreement to sell.
<b>Negotiable Instrument</b>	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.
<b>Promissory Note</b>	A promissory note is an instrument in writing (not being a bank note or a currency note) containing an unconditional undertaking signed by the maker, to pay a certain sum of money only to, or the order of a certain person or to the bearer of the instrument.
<b>Bill of Exchange</b>	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 the bearer of the instrument.
<b>Cheque</b>	A cheque is an unconditional order in writing drawn by a customer on his bank, requesting the specifying bank

	to pay on demand a certain sum of money to a person named in the cheque or to the bearer or to the order of a stated person.
--	------------------------------------------------------------------------------------------------------------------------------

## 2.6 Self-Assessment Questions

### Short answer question

- 1) Define the term contract. What are the essentials of a valid contract?
- 2) A contract is defined as an agreement enforceable by law. Discuss
- 3) Define bailment.
- 4) Define a contract of sale and discuss the essentials of a valid contract of sale.
- 5) How is a contract of sale different from an agreement to sale?
- 6) Explain the term goods under the Sale of Goods Act 1930.

### Essay type question

- 1) Akash of Delhi orders Binny of Chennai, to deliver certain goods to him at Delhi. While the goods are lying at Delhi Railway Station, the station master informs Akash that the goods are held at the station at Akash's risk. But Akash has become insolvent. Has Binny any right over the goods as an unpaid seller? Justify.
- 2) Elaborate the Negotiable Instrument Act and its instruments.

## 2.7 Task

### Associated hotels of India Vs Excise and Taxation officer

A hotel company provided residence and food making a consolidated charge for both the services. No rebate was allowed if food was not taken by the customer.

#### Point of Discussion

Does supply of food considered as good?

### Debate between the parrot and dealer

Parrot goes to the horse dealer and says “I want a horse that can run at a speed of 30 km/hr”. The dealer points out a horse and says “It will suit you”. After the sale, Parrot finds that the horse can run only at a speed of 20 km/hr.

**Point of Discussion**

Will it be treated Condition?

**Negotiable instruments**

When time of payment is linked to the death of person, will it be a negotiable instrument?

(Hint: Yes, as death is certain, though the time thereof is not).

## 2.7 Case study

A seller wants to recover dock dues from the buyer. Thus he wants to exercise the right of lien against the goods, the property of whose the seller has transferred to buyer for such recovery.

**Point of Discussion**

Can seller exercise right of lien for recovering such charges?

[Hint: No, as the right of lien can be exercised for recovering only price.

## Answer Key

### Check Your Progress 1

1. B) Ownership
2. D) Agreement
3. B) Contract
4. B) Payment
5. B) Sale
6. C) Bailment
7. A) Ownership
8. B) Delivery

9. C) Contract
- 10.D) Ownership

### Check Your Progress 2

1. A) A sale involves immediate payment, while a time purchase allows payment at a future date.
2. A) The goods will be of merchantable quality.
3. A) Upon delivery of the goods
4. A) Right of lien
5. B) The goods are fit for the usual purpose for which they are sold
6. A) When the buyer defaults on payment after the sale
7. C) Warranty of merchantable quality
8. A) The property passes when the goods are delivered.
9. C) The right to retain possession of the goods until payment is made
- 10.B) The contract of sale

### Check Your Progress 3

1. B) A written order to pay a specified amount to a named person or bearer
2. C) The person who must pay the amount specified in the bill
3. B) A promissory note is a promise to pay, while a bill of exchange is an order to pay
4. D) All of the above
5. B) The cheque is returned because it exceeds the account balance
6. C) The person to whom the payment is to be made
7. D) An order cheque
8. B) A promise to pay a specified amount of money
9. B) To transfer rights of the instrument to another person
- 10.B) Bill of exchange

## 2.10 Suggested Readings

1. Kenneth W. Clarkson, Roger LeRoy Miller, and Frank B. Cross (2023) "Business Law: Text and Cases".
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3. Richard A. Mann and Barry S. Roberts(2022) "Business Law and the Regulation of Business".
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8. Nancy K. Kubasek, Bartley A. Brennan, and M. Neil Browne (2022) "Understanding the Legal Environment of Business".

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1. K.R. Balchandari, (2020) Business Law for Management, Himalaya Publication House, New Delhi.
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8. P.P.S. Gogna, (2018). A TEXTBOOK OF MERCANTILE LAW (Commercial Law), S.CHAND & Company Ltd.



**Self-Learning Material Development-STAGE 1****LEGAL SYSTEMS IN BUSINESS**

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

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

**Unit Module Structuring**

- ✓ Partnership act and form of organization
- ✓ Evolution Companies
- ✓ Formation of companies
- ✓ Winding up of companies

**UNIT-3 PARTNERSHIP AND COMPANY LAW****Contents of the Unit**

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

**Company Law: Evolution of Company Form of Organisation – Companies Separate Legal Entity – Comparison of Company with Partnership and Joint Hindu Family Business – Kinds of Companies – Comparison of Private and Public Companies – Formation of Companies – General Idea About Memorandum and Articles of Association, Prospectus, Statement in lieu of**

**Prospectus – Management of Companies – General Idea of Management of Companies – Officers, Meetings – Resolutions – Account and Audit – Winding up of Companies – General Idea of the Different Modes of Winding Up.**

**STAGE-2 Modules sections and Sub-sections Structure**

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## UNIT OBJECTIVES

This unit is to provide a comprehensive understanding of the Partnership Act and Company Law, highlighting their key principles and applications. Students will learn how these legal frameworks govern business operations, partnerships, and corporate entities. By the end of the unit, learners will be equipped to navigate and apply these laws in various business contexts.

### 3.1.1 Partnership Act

#### INTRODUCTION

Partnership is a form of business organization, where two or more persons join together for jointly carrying on some business. It is an improvement over the 'Sole –trade business ', where one single individual with his own resources, skill and effort carries on his own

business. Due to the limitation of resources of only a single person being involved in the sole-trade business, a larger business requiring more investments and resources than available to a sole-trader, cannot be thought of in such a form of business organization. In partnership, on the other hand, a number of persons could pool their resources and efforts and could start a much larger business, than could be afforded by any of these partners individually. In case of loss the burden gets divided amongst various partners in a Partnership.

## Evolution

The Indian Partnership Act, 1932 (IPA 1932) is the primary legislation governing partnerships in India. It was enacted to codify the law relating to partnerships and to provide a clear and concise framework for the formation, operation, and dissolution of partnerships. The IPA 1932 is based on the English Partnership Act, 1890, but it also includes a number of provisions that are unique to India. For example, the IPA 1932 contains provisions for the registration of partnerships and for the settlement of disputes between partners.

The IPA 1932 has been amended a number of times since it was enacted. The most recent amendment was made in 2011. This amendment introduced a number of new provisions, including provisions for the incorporation of limited liability partnerships (LLPs). LLPs are a new type of business entity in India. They are similar to partnerships in that they are governed by the IPA 1932. However, LLPs differ from partnerships in that the liability of the partners is limited to the amount of their contribution to the LLP. The introduction of LLPs has been a significant development in the evolution of the IPA 1932. LLPs have made it more attractive for entrepreneurs to form partnerships, as they offer the flexibility of a partnership with the limited liability of a company. In addition to the introduction of LLPs, there are a number of other trends that are shaping the evolution of the IPA 1932. These trends include:

- The increasing use of technology in partnerships: Technology is playing an increasingly important role in partnerships. Partners are using technology to communicate with each other, to manage their businesses, and to market their products and services.
- The globalization of partnerships: Partnerships are becoming increasingly globalized. Partners are now working together across borders and cultures. This trend is being driven by the growth of international trade and investment.
- The emergence of new types of partnerships: New types of partnerships are emerging, such as social enterprises and impact investing partnerships.

These partnerships are driven by a desire to make a positive social or environmental impact.

The evolution of the IPA 1932 is being driven by a number of factors, including the introduction of new types of business entities, the increasing use of technology, the globalization of partnerships, and the emergence of new types of partnerships. The IPA 1932 is a dynamic piece of legislation that is constantly evolving to meet the needs of the Indian business community.

## Definition of Partnership

According to **Section 4** of the Partnership Act,1932

“Partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any one of them acting for all”.

This definition has three essential elements:

1. **Agreement:** There must be an agreement between two or more persons to form a partnership. This agreement can be written or oral, but it is advisable to have a written agreement in place to avoid any disputes in the future.
2. **Business:** The partnership must carry on a business. A business is any activity that is carried on with the intention of making a profit.
3. **Profit sharing:** The partners must agree to share the profits of the business. They can agree to share the profits in any ratio they want.

It is important to note that a partnership is not a separate legal entity from the partners.

Partnerships can be very advantageous for small businesses. They allow businesses to pool their resources and expertise, and to share the risks and rewards of running a business.

Essential requirements of a partnership

- It must be an association of two or more persons.
- There must exist an agreement between the partners.
- There must be a business undertaking or a commercial activity that is lawful.
- The motive must be to earn the profit and share between the partners.
- The agreement must be to carry out the business jointly or by any of them acting on behalf of all.

### Examples of Partnerships

- Two doctors who open a joint clinic.
- Two lawyers who start a law firm.
- A group of friends who open a restaurant.
- A husband and wife who run a family business.

### 3.1.2 Difference between Partnership and Joint Family Business

Partnership Firm	Joint Hindu Family Firm
A partnership firm is controlled by two or more persons called “partners”.	In a joint Hindu family firm the joint Hindu family conducts business according to Hindu laws.
A minimum of two members are needed for starting a business the maximum number is fifty.	Membership of the firm depends upon the birth and death in the family.
Registration is not compulsory in India, but it is compulsory in Maharashtra	Registration is not compulsory.
The liability of partners is unlimited, joint, several.	Karta has unlimited liability and coparceners have limited liability.
Comparatively more as it is contributed by all partners.	The whole capital comes from ancestral property.

Secrets share by all partners	Secrecy can be maintained within the family
All partners take part in the management of the firm according to their skills	Karta looks after the management of the business all co-parceners follow his decision.
The stability of business is affected by death, lunacy, or solvency of a partner	Comparatively, more stables a business is not affected by the death of Karta or c-parceners
Partnerships are governed by the Indian partnership act,1932	Joint Hindu family firm follows the Hindu succession act,1956
A partnership firm is formed by an agreement between two or more persons.	Joint Hindu family firm comes into existence bye the operation of Hindu laws.
Partner has a right to inspect books of accounts of the firm	A co-parcener has no right to inspect books of accounts of the firm.
Every partner has implied authority to act on behalf of the their partners.	Karta has implied authority to act on behalf of the firm.

### 3.1.3 Kinds of Partnerships

#### Active Partner/Managing Partner

An active partner is also known as Ostensible Partner. As the name suggests he takes active participation in the firm and the running of the business. He carries on the daily business on behalf of all the partners. This means he acts as an agent of all the other partners on a day to day basis and with regards to all ordinary business of the firm.

Hence when an active partner wishes to retire from the firm he must give a public notice about the same. This will absolve him of the acts done by other partners after his retirement. Unless he gives a public notice he will be liable for all acts even after his retirement.

### Dormant/Sleeping Partner

This is a partner that does not participate in the daily functioning of the partnership firm, i.e. he does not take an active part in the daily activities of the firm. He is however bound by the action of all the other partners. He will continue to share the profits and losses of the firm and even bring in his share of capital like any other partner. If such a dormant partner retires he need not give a public notice of the same.

### *Nominal Partner*

This is a partner that does not have any real or significant interest in the partnership. So, in essence, he is only lending his name to the partnership. He will not make any capital contributions to the firm, and so he will not have a share in the profits either. But the nominal partner will be liable to outsiders and third parties for acts done by any other partners.

### Partner by Estoppel

If a person holds out to another that he is a partner of the firm, either by his words, actions or conduct then such a partner cannot deny that he is not a partner. This basically means that even though such a person is not a partner he has represented himself as such, and so he becomes partner by estoppel or partner by holding out.

### *Partner in Profits Only*

This partner will only share the profits of the firm, he will not be liable for any liabilities. Even when dealing with third parties he will be liable for all acts of profit only, he will share none of the liabilities.

### *Minor Partner*

A minor cannot be a partner of a firm according to the Contract Act. However, a partner can be admitted to the benefits of a partnership if all partner gives their



consent for the same. He will share profits of the firm but his liability for the losses will be limited to his share in the firm.

### 3.1.4 Registration

#### Registration of firms section 58 and 59

Unlike a company, Which is created by registration i.e., say by a process of law to a partnership is not created by registration. 'It is created by' an agreement. Hence registration is not compulsory for a partnership, However the consequences of non-registration are grave for the unregistered firm and its partners, Stated briefly an unregistered firm or its partners cannot take the assistance of a civil court to enforce a right arising out of a contract or conferred by the partnership 'act.

#### Registration is a condition precedent to file a suit

- By the partners against the firm.
- By the partners against the ether partners and
- By the firm against a third party.

#### If a firm is not registered

(a) The firm cannot file a suit against a third party to recover its dues.

(b) a partner of the unregistered firm cannot file a suit against the firm to recover his dues

(c) a partner cannot file a suit against the other partners.

#### However a partner or an unregistered firm may file a suit for

- Dissolution of the firm
- For accounts when the firm is already dissolved and
- For his share in the assets of the dissolved firm.

An unregistered firm may enforce a right - not arising out of contract -. against a third party. (a suit for injunction against a person restraining the person from using the firm name, for infringement of right, to use a trade mark, patent right or copy-right). A partner of unregistered firm may apply to the court for reference to arbitration. Third parties are not affected whether a firm is registered or not. They can enforce their rights against -an unregistered firm represented by its partners. Even a registered firm is not a legal person (like a company). Suppose, a third party has filed against an unregistered firm. If the unregistered firm has a set-off or a

counter claim against the Third party, the unregistered firm cannot plead a set-off or counter – claim.

**Registration can be affected at any time even before filing a suit.**

An unregistered firm filed a suit against a person. The suit was dismissed on the ground of non-registration. The firm got itself registered and filed the same suit again.

Held, the action was maintainable and not barred **by res judicata**. The first suit was dismissed on technical ground and not on merits.

### **How to Register?**

A statement in the prescribed form and accompanied by the prescribed fee shall be sent to the registrar of firms, either through post or delivered in person. The statement shall give the following particulars

- The firm name,
- The place or principal place of the business of the firm.
- The names of other places where the firm carried on business.
- The date when each partner joined the firm.
- The names in full and permanent addresses of the partners, and
- The duration of the firm.

The statement shall be signed by all the partners or by their agents specially authorised in this behalf. Each person signing the statement shall verify it in the manner prescribed.

### **Minor as a Partner, Section 30**

A minor cannot become a partner in a firm. But, with the consent of all the partners for the time being may be admitted to the benefits of partnership.

## **3.1.5 Rights and Liabilities**

The following mutual rights and liabilities are subject to contract between the partners-

- A partner is not entitled to receive remuneration for taking part in the conduct of the business.

- The partners are entitled to share the profits equally. They shall contribute equally to the losses incurred by the firm.
- A partner who is entitled for interest on the capital subscribed by him shall be paid only out of profits.
- A partner making an advance or payment for the purpose of the business, which is beyond the Capital he has agreed to subscribe is entitled to interest for such amount at 'six percent per Annum.
- The firm shall indemnify a partner in respect of payment made and liabilities by him.
  - in the ordinary and proper conduct of the business and
  - in the case of an emergency, in doing such act for the purpose of protecting the firm from loss.
- A partner shall indemnify the firm for any loss caused to the firm by his wilful neglect in the conduct of the business of the firm.

### 3.1.6 Dissolution

Dissolution of partnership means the termination of the relationship between the partners and the winding up of the business. The Partnership Act, 1932, recognizes the following grounds for dissolution of partnership:

- By agreement: All the partners can agree to dissolve the partnership at any time.
- By notice: Any partner can give notice to the other partners of his intention to dissolve the partnership. In such cases, the partnership is dissolved after the expiry of the notice period.
- By the death of a partner: The death of a partner automatically dissolves the partnership.
- By the insolvency of a partner: The insolvency of a partner also dissolves the partnership.
- By the court: The court may order the dissolution of a partnership on the following grounds:

- Insanity of a partner
- Permanent incapacity of a partner
- Misconduct of a partner
- Breach of trust by a partner
- Impossibility of carrying on the business of the firm
- Just and equitable grounds

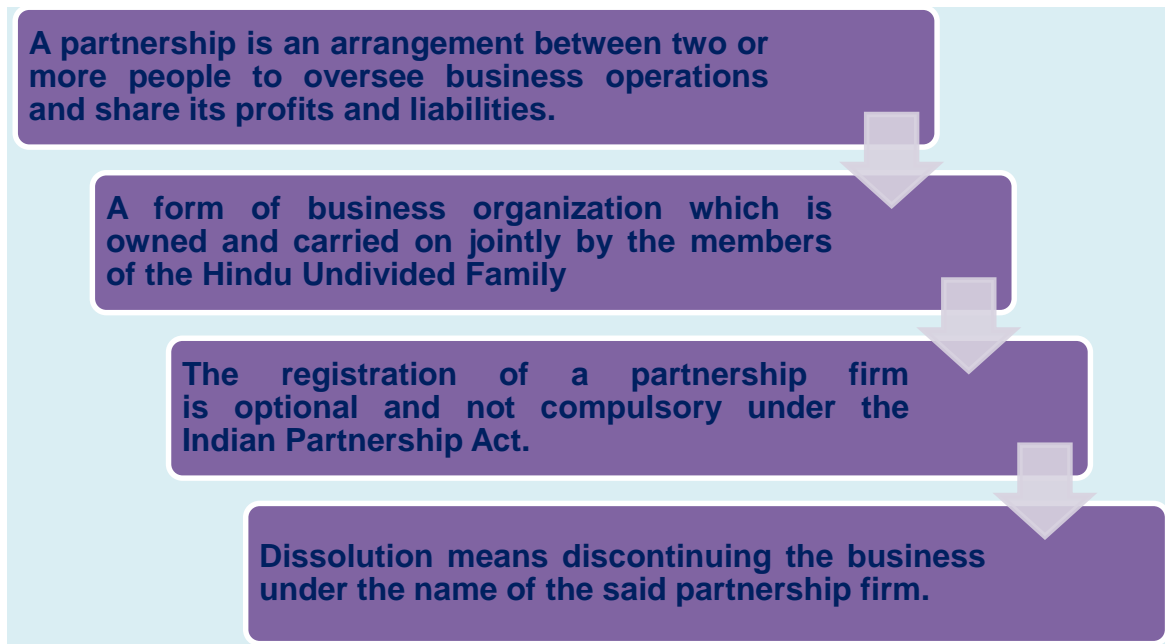
Once a partnership is dissolved, the following steps are taken to wind up the business:

1. All the assets of the firm are realized.
2. All the debts and liabilities of the firm are paid off.
3. The remaining assets are distributed among the partners in the ratio agreed upon by them.

If the partners cannot agree on the distribution of assets, they can approach the court for assistance. It is important to note that the dissolution of a partnership does not affect the rights of the creditors of the firm. The creditors can still sue the partners for the debts of the firm, even after the partnership has been dissolved. If they are considering dissolving the partnership, it is important to consult with a lawyer to ensure that the dissolution process is carried out in accordance with the law.

### **Let's Sum Up**

Dear Learners, in this first section, we have seen the meaning and various definitions of partnership, and kinds of partnerships in detail. As we have seen, Some definitions and Legal sections, this is all about the understanding of basic laws in partnership.



### Check Your Progress 1

1. What term describes a business relationship where two or more individuals share profits and liabilities?
  - A) Company
  - B) Partnership
  - C) Sole Proprietorship
  - D) Corporation
2. Which type of partnership includes partners who manage the business and are personally liable?
  - A) Silent
  - B) Limited
  - C) General
  - D) Dormant
3. What distinguishes a joint family business from a partnership?
  - A) Liability
  - B) Management
  - C) Membership
  - D) Formation
4. Which form of partnership involves liability limited to the amount invested in the business?

- A) General
  - B) Limited
  - C) Joint
  - D) Silent
5. What is required to legally formalize a partnership business?
- A) Contract
  - B) Registration
  - C) License
  - D) Shareholding
6. What document specifies the rights and duties of partners in a partnership?
- A) Partnership Deed
  - B) Memorandum
  - C) Articles
  - D) Prospectus
7. What is the term for the end of a partnership agreement?
- A) Termination
  - B) Liquidation
  - C) Dissolution
  - D) Amendment
8. What term describes a partner who does not participate in daily operations but contributes capital?
- A) General
  - B) Dormant
  - C) Limited
  - D) Active
9. Which type of partnership allows for limited liability and management by general partners?
- A) General
  - B) Limited
  - C) Joint
  - D) Partnership at Will
10. In a partnership, who typically has the authority to bind the firm in contracts?
- A) Silent Partner
  - B) Active Partner

- C) Manager
- D) Shareholder

## 3.2.1 COMPANY LAW

### Evolution of Company form of Organisation

The company form of organisation has evolved significantly over time. The following are some of the key developments in company law that have contributed to this evolution:

- The introduction of limited liability: One of the most important developments in company law was the introduction of limited liability. This means that the shareholders of a company are only liable for their investment in the company, and their personal assets are protected from creditors of the company. This made it much more attractive for people to invest in companies, and it helped to fuel the growth of the Industrial Revolution.
- The development of corporate governance rules: As companies grew larger and more complex, it became necessary to develop rules for corporate governance. These rules are designed to ensure that companies are managed in a fair and transparent manner, and that the interests of shareholders are protected. Some of the key elements of corporate governance include the separation of ownership and control, the role of the board of directors, and the importance of financial disclosure.
- The rise of the multinational corporation: In recent decades, there has been a significant increase in the number of multinational corporations. These corporations operate in multiple countries, and they are subject to the laws of each country in which they operate. This has led to the development of international company law, which is a body of law that is designed to facilitate the cross-border operation of companies.

The evolution of company law has been driven by a number of factors, including the need to protect investors, the need to ensure that companies are managed in a fair

and transparent manner, and the need to facilitate the cross-border operation of companies.

Here are some specific examples of how company law has evolved in recent years:

- The introduction of shareholder activism: Shareholder activism is the practice of shareholders using their voting power and other rights to influence the way that a company is managed. Shareholder activism has become more common in recent years, as shareholders have become more aware of their rights and more willing to use them.
- The rise of environmental, social, and governance (ESG) investing: ESG investing is a type of investing that takes into account the environmental, social, and governance performance of a company, as well as its financial performance. ESG investing has become more popular in recent years, as investors have become more interested in investing in companies that are socially responsible and environmentally sustainable.
- The development of new technologies: New technologies, such as blockchain and artificial intelligence, are having a significant impact on company law. For example, blockchain is being used to develop new ways to register and manage companies. Artificial intelligence is being used to develop new ways to monitor corporate governance and to detect fraud.

The evolution of company law is an ongoing process. As new challenges and opportunities emerge, it is likely that company law will continue to evolve to meet the needs of the business community.

### 3.2.2 Companies Separate Legal Entity

The concept of a company as a separate legal entity is one of the most important principles in company law. It means that a company is a legal person in its own right, separate from its shareholders, directors, and employees. This has a number of important implications:



- A company can own property, enter into contracts, sue and be sued in its own name.
- The shareholders of a company are not personally liable for the debts of the company. This means that if a company goes bankrupt, the creditors of the company cannot pursue the personal assets of the shareholders.
- A company has a perpetual succession, meaning that it can continue to exist even after the death or retirement of its shareholders and directors.

The concept of a separate legal entity is essential for the efficient operation of businesses. It allows businesses to raise capital from investors without exposing those investors to personal liability. It also allows businesses to continue to exist even if there are changes in ownership or management.

The following are some of the key benefits of having a company as a separate legal entity:

- **Limited liability:** Shareholders of a company have limited liability, which means that their personal assets are protected from the debts of the company. This is a major advantage over other forms of business organization, such as sole proprietorships and partnerships, where the owners are personally liable for the debts of the business.
- **Perpetual succession:** A company has perpetual succession, which means that it can continue to exist even after the death or retirement of its shareholders and directors. This makes it easier to transfer ownership of the company and to attract investors.
- **Separate legal personality:** A company is a separate legal person from its shareholders and directors. This means that the company can own property, enter into contracts, and sue and be sued in its own name. This makes it easier for the company to conduct business and to protect its assets.

The concept of a separate legal entity is fundamental to company law and it is essential for the efficient operation of businesses.

### 3.2.3 Comparison of Company with Partnership and Joint Hindu Family Business

Basic of comparison	Partnership	Joint Hindu family business
Formation	Easy formation with an agreement between partners	Easy formation with less legal formalities than partnership.
Registration requirement	Registration is optional	Exemption from registration
Members	Minimum members should be 2 and maximum 10 for banking and 20 for others	Atleast two persons for division of family property with no maximum limit of members
Capital	Limited but more than that can be raised in case of sole	The capital contribution comes from ancestral property
Liability	Liability is unlimited for all partners is limited for other joint members.	The Karta has unlimited liability
Control and management	Partners take decision jointly and constant of all partner is needed	Karta takes decision which are binding on other members
Continuity	Stable but affected by status of partners.	Stable business continues even in Karta dies through succession in family.

### 3.2.4 KINDS OF COMPANIES

Companies can be classified on the basis of

- A. Incorporation
- B. Liability of members

C. Number of members

D. Ownership

### **A. Incorporation**

1. Chartered company
2. Statutory company
3. Registered **company**

#### **1. Chartered company**

The company which have formed and incorporated under a special charter granted by the king or queen.

Example: East India company. Bank of England.

#### **2. Statutory company**

These are companies which are created by means of a special Act of Parliament or any state legislature.

Example: Reserve Bank of India , Life Insurance Corporation, Unit Trust of India

#### **3. Registered company**

Company formed and registered under companies Act 1956 is called Registered companies.

Example: Hindustan Unilever Ltd., Google India Pvt. Ltd.

### **B. Liability of members**

1. Limited company
2. Company limited by guarantee
3. Unlimited company

#### **1. Limited company or company limited by share**

Majority of registered companies will be company limited by shares. In case of limited

companies liability of members will be limited to the amount unpaid on the shares.

#### **2. Company limited by guarantee**

Here liability of each member is limited by the memorandum to such amount as he may guarantee by the memorandum to contribute to the assets of the company in the event of its winding up. Such companies are formed for the promotion of art science, culture, sports etc.

Example: Companies limited by guarantee, Companies limited by shares

### 3. Unlimited company

A company not having any limit on the liability of its members is termed as unlimited

company. The members are liable for the debts of the company at the time of winding up.

## C. Number of members

- Private Company
- Public Company

### 1. Private company

A private company is a company

- -which restricts the right to transfer its shares.
- -limits the number of its members to 50.
- -prohibits any invitation to public to subscribe its shares.

### 2. Public company

A public company means a company which is not a private company

## E. Ownership

- Government Company
- Foreign company
- Holding and subsidiary company

### 1. Government company

A company is said to be Government Company when 51% of the paid up capital is held by the central government or by any state government or partly by central govt or partly by one or more state government.

### 2. Foreign company

A foreign company is a company incorporated outside India and having a place of business in India.

### 3. Holding and subsidiary company

A Company which controls another company is known as the holding company and the so controlled company is known as subsidiary company.

### One Man Company

This is a company in which one man holds practically the whole of the share capital of the company, and in order to meet the statutory requirement of minimum number of members some dummy members like his wife and son holds one or two shares each.

### Let's Sum Up

Dear Learners, in this section, we have seen the meaning and various definitions of Company law and kinds of companies in detail. As we have seen, Some definitions and Legal sections, this is all about the understanding of basic laws in business.

**Company Law is the collection of various legal aspects that govern the formation, running and winding up of a Company.**

**An SLE to legally separate it from the individual or owner, such as a limited liability company or a corporation**

***A company is a legal entity established by a group of individuals to employ in and regulate a business firm.***

### Check Your Progress 2

1. What legal status allows a company to own property and enter contracts independently of its owners?
  - A. Sole Proprietorship
  - B. Partnership
  - C. Separate
  - D. Joint Venture
- 2.

3. Which form of business organization is characterized by limited liability for its owners?
  - A. Partnership
  - B. Sole Proprietorship
  - C. Company
  - D. Cooperative
4. Which entity is typically characterized by perpetual succession?
  - A. Partnership
  - B. Sole Proprietorship
  - C. Company
  - D. Joint Venture
5. What is a primary difference between a company and a partnership?
  - E. Management
  - F. Liability
  - G. Ownership
  - H. Taxation
6. Which type of business organization involves members who have unlimited liability and is governed by a family-based structure?
  - I. Partnership
  - J. Joint Hindu Family
  - K. Corporation
  - L. Cooperative
7. What distinguishes a company from a joint Hindu family business?
  - M. Perpetual Succession
  - N. Membership
  - O. Limited Liability
  - P. Governance
8. Which kind of company is formed by a group of individuals with shared interests and objectives?
  - Q. Private
  - R. Public
  - S. Cooperative
  - T. Limited

9. What term describes a company with shareholders who have limited liability and its shares are not publicly traded?

- U. Public
- V. Private
- W. Unlimited
- X. Non-Profit

10. What kind of company can issue shares to the public and is listed on a stock exchange?

- Y. Private
- Z. Public

Cooperative

Unlimited

11. Which type of company has its shares sold privately and is not listed on a stock exchange?

- AA. Public
- BB. Private
- CC. Limited
- DD. Cooperative

### 3.3.1 Comparison of Private and Public Companies

<b>Public Company</b>	<b>Private company</b>
The minimum number of its members is 7. But there is no upper limit on its membership.	The minimum number of members is 2 and the maximum number is 50. It excludes past and present employees of the company.
It must have at least three directors.	The minimum number of directors is two.
Its quorum for meetings is 5 members unless articles provide a larger quorum.	Its quorum for general meetings is 2 members.
It invites general public to subscribe to	

<p>its shares or debentures.</p> <p>Its shares are fully and freely transferable.</p> <p>It must issue the prospectus or statement in lieu of prospectus.</p> <p>It can issue the share warrant.</p> <p>It can not commence business before obtaining a certificate to commence business.</p> <p>It can not allot its shares unless the minimum subscription is received.</p> <p>The word 'limited' is added at the end of its name.</p> <p>It must not hold a statutory meeting either before one month or after six months of getting the certificate to commence business. It has also to file a statutory report with the Registrar.</p> <p>The total managerial remuneration in it can not exceed 11 per cent of the net profit in a year.</p>	<p>It can not invite the general public to subscribe to its shares or debentures.</p> <p>Its shares are not transferable.</p> <p>It can not issue prospectus or statement in lieu of prospectus.</p> <p>It can not issue the share warrant.</p> <p>It can commence business immediately after obtaining the certificate of incorporation.</p> <p>It can allot shares at any time after its registration. The condition of minimum subscription does not apply to it.</p> <p>The words 'private limited' must be added at the end of its name.</p> <p>It need not hold any statutory meeting nor file any statutory report.</p> <p>There is no restriction on the managerial remuneration.</p>
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### 3.3.2 Formation of Company



Section 3 of the Companies Act, 2013 deals with the basic requirement with respect to the constitution of the company. In the case of a public company, any 7 or more persons can form a company for any lawful purpose by subscribing their names to memorandum and complying with the requirements of this Act in respect of registration. In exactly the same way, 2 or more persons can form a private company and one person where company to be formed is one person company.

The process of formation of a company can be divided and discussed under the following four stages :

Promotion

- Incorporation
- Capital subscription
- Commencement of business

### 3.3.3 Memorandum of Association (MOA)

The Memorandum of Association (MOA) is a public document that defines the constitution of a company. It contains the fundamental conditions upon which the company is incorporated. The MOA is mandatory for all companies registered under the Companies Act, 2013.

The MOA contains the following information:

- The name of the company
- The registered office of the company
- The objects of the company
- The liability of the members
- The capital structure of the company
- The association clause

The MOA is a public document and can be inspected by anyone. It is also required to be filed with the Registrar of Companies (ROC) at the time of incorporation of the company.

## Articles of Association (AOA)



The Articles of Association (AOA) is a document that contains the internal rules and regulations of a company. It governs the relationship between the company and its members, and between the members themselves. The AOA is also mandatory for all companies registered under the Companies Act, 2013.

The AOA contains the following information:

- The rights and duties of the members
- The powers of the directors
- The procedure for conducting meetings
- The procedure for passing resolutions
- The procedure for winding up the company

The AOA is a private document and is not required to be filed with the ROC. However, it must be kept at the registered office of the company and can be inspected by any member of the company.

## Prospectus

A prospectus is a document that contains information about a company and its proposed issue of securities. It is required to be issued by a public company or a private company that is offering its securities to the public. The prospectus must contain all the information that is necessary for investors to make an informed decision about whether or not to invest in the company.

The prospectus contains the following information:

- The history of the company
- The business of the company
- The financial position of the company
- The proposed issue of securities
- The risks associated with investing in the company

The prospectus must be filed with the ROC before it is issued to the public.

### **Statement in Lieu of Prospectus (SILP)**

A statement in lieu of prospectus (SILP) is a document that contains information about a company and its proposed issue of securities. It is required to be issued by a listed company that is offering its securities to the public through a rights issue or a bonus issue. The SILP must contain all the information that is necessary for investors to make an informed decision about whether or not to invest in the company.

The SILP contains the following information:

- The history of the company
- The business of the company
- The financial position of the company
- The proposed issue of securities

- The risks associated with investing in the company

The SILP must be filed with the ROC before it is issued to the public.

The Memorandum of Association, Articles of Association, Prospectus, and Statement in Lieu of Prospectus are important documents in company law. They contain information about the company, its constitution, its proposed issue of securities, and the risks associated with investing in the company. These documents are designed to protect the interests of investors and to ensure that they have all the information they need to make an informed decision about whether or not to invest in a company.

### 3.3.4 Management of companies

The management of companies is governed by a number of laws and regulations, including the Companies Act, 2013. The Companies Act, 2013 lays down the framework for the management of companies, including the powers and duties of the directors, the role of the board of directors, and the procedure for conducting meetings. The management of a company is vested in its board of directors. The board of directors is responsible for the day-to-day management of the company and for making strategic decisions. The board of directors is also responsible for ensuring that the company complies with all applicable laws and regulations.

The directors of a company have a number of duties, including the duty to act in the best interests of the company, the duty to exercise due care and diligence, and the duty to avoid conflicts of interest. The directors are also responsible for ensuring that the company is managed in a transparent and accountable manner. The Companies Act, 2013 also lays down a number of provisions for the protection of the interests of shareholders. For example, shareholders have the right to vote on certain matters, such as the election of directors and the approval of the company's annual accounts. Shareholders also have the right to inspect the company's books and records.

The following are some of the key principles of company management:

- **Accountability:** The directors of a company are accountable to the shareholders for their management of the company. The shareholders can hold the directors accountable by voting on their election and removal, and by approving or rejecting the company's annual accounts.
- **Transparency:** The company must be transparent in its dealings with shareholders and other stakeholders. The company must disclose all relevant information to its shareholders in its annual report and other financial statements.
- **Fairness:** The company must be managed in a fair and equitable manner. All shareholders must be treated equally, and the company must not favor one group of shareholders over another.
- **Good faith:** The directors of a company must act in good faith in the best interests of the company. They must avoid conflicts of interest and must not put their own interests ahead of the interests of the company.

The management of companies is a complex and challenging task. The directors of a company must have the skills and experience to manage the company effectively and to comply with all applicable laws and regulations.

Here are some of the key functions of company management:

- **Strategic planning:** Company management must develop and implement a strategic plan for the company. This plan should set out the company's vision, mission, and goals. It should also identify the company's strengths, weaknesses, opportunities, and threats.
- **Financial management:** Company management must manage the company's finances effectively. This includes budgeting, forecasting, and reporting. Company management must also ensure that the company has enough cash flow to meet its obligations.

- **Operations management:** Company management must manage the company's day-to-day operations. This includes production, marketing, sales, and customer service.
- **Human resource management:** Company management must manage the company's human resources effectively. This includes hiring, training, and motivating employees.
- **Risk management:** Company management must identify and manage the risks that the company faces. This includes both financial and non-financial risks.

Company management is a complex and challenging task, but it is essential for the success of any company.

### Let's Sum Up

Dear Learners, in this final section, we have seen the meaning and various definitions of formation of companies and management of companies in detail. As we have seen, Some definitions and Legal sections, this is all about the understanding of basic laws in business.

**Formation of a company is a complex activity involving completion of legal formalities and procedures**

**Seven or more persons in case of Public Company  
Two or more persons in case of Private Company  
One person Company in case of One person Company**

**Company Management means a board of directors of the Company in which the majority of the board**

### Check Your Progress 3

1. Which type of company typically has shares that are not available to the general public?

- A) Private
- B) Public
- C) Non-Profit
- D) Cooperative

2. What is a key feature of a public company?

- A) Limited shareholders
- B) Shares traded on a stock exchange
- C) Private ownership
- D) Small scale operations

3. Which document outlines the company's objectives and powers?

- A) Memorandum
- B) Articles
- C) Prospectus
- D) Balance Sheet

4. What is required for the formation of a company?

- A) Memorandum
- B) Registration
- C) Bank Account
- D) Auditing

5. Which document governs the internal management of a company?

- A) Memorandum
- B) Articles
- C) Prospectus
- D) Resolution

6. What document must be issued to provide information about a company to potential investors?

- A) Memorandum
- B) Articles
- C) Prospectus
- D) Resolution

7. Which document can be filed as an alternative to a prospectus for a private company?

- A) Memorandum
- B) Statement
- C) Report
- D) Balance Sheet

8. Who is responsible for the day-to-day management of a company?

- A) Shareholders
- B) Directors
- C) Auditors
- D) Managers

9. What is the primary function of a company's Memorandum of Association?

- A) Management rules
- B) Objectives and powers
- C) Financial performance
- D) Share issuance

10. Which document typically includes details about a company's capital and structure?

- A) Memorandum
- B) Prospectus
- C) Articles
- D) Statement

### 3.4.1 Officers and Meetings

Officers in company law are the individuals who are responsible for the day-to-day management of a company. They are appointed by the board of directors and are subject to the board's direction and control.

The specific officers of a company will vary depending on the size and structure of the company, but some common officers include:

- Chief executive officer (CEO): The CEO is the highest-ranking officer in a company and is responsible for the overall management of the company.



- **President:** The president is typically the CEO's second-in-command and is responsible for the day-to-day operations of the company.
- **Vice president:** Vice presidents are responsible for specific areas of the company's operations, such as sales, marketing, or finance.
- **Treasurer:** The treasurer is responsible for the company's finances, including budgeting, accounting, and reporting.
- **Secretary:** The secretary is responsible for the company's administrative functions, such as maintaining the company's records and ensuring that the company complies with all applicable laws and regulations.

Officers of a company have a number of duties and responsibilities, including:

- **Acting in the best interests of the company:** Officers must act in the best interests of the company and its shareholders. This means that they must make decisions that are in the long-term interests of the company, even if those decisions are not immediately beneficial to the officers themselves.
- **Exercising due care and diligence:** Officers must exercise due care and diligence in their management of the company. This means that they must use their skills and knowledge to make decisions that are in the best interests of the company.
- **Avoiding conflicts of interest:** Officers must avoid conflicts of interest. This means that they must not put their personal interests ahead of the interests of the company.
- **Complying with all applicable laws and regulations:** Officers must ensure that the company complies with all applicable laws and regulations.

Officers of a company play a vital role in the management and success of the company. By understanding their duties and responsibilities, officers can help to ensure that the company is managed in a legal and ethical manner.

## Meetings

The term general meeting is used to describe a meeting of members of shareholders, as per the provisions of the Act; whereas there exist other types of meetings as well, viz.

- Board Meetings,
- Meetings of the board of directors and class meetings,
- Meetings of special class of persons, like, creditors, preference shareholders, etc.

“Any gathering, assembly or coming together of two or more persons for the transaction of some lawful business of common concern is called ‘meeting’.” – P.K. Ghosh.

### 3.4.2 Resolution in Meetings

Most matters come before a meeting by way of a motion recommending that the meeting may express approval or disapproval or take certain action or order something to be done. A motion is a proposal, and a resolution is the adoption of a motion duly made and seconded. But every motion need not be followed by a resolution, as where a motion is made for the adjournment of the meeting. As per the Companies Act, 2013, resolutions are of two types:

- **Ordinary Resolutions** – which are passed by simple majority; and
- **Special Resolutions** – which are passed by 75% majority.

In simple words, a resolution shall be a special resolution, when it is duly specified in the notice, calling the general meeting and votes cast in favour is 3 times the votes cast against the resolution.

### 3.4.3 Accounts and Audit

Accounts refer to the financial records of a company. These records include the company's income and expenditure, assets and liabilities, and equity. Companies are required to maintain accurate and up-to-date accounts under the Companies Act, 2013.

Audit is an independent examination of a company's accounts. The auditor is responsible for ensuring that the company's accounts are accurate and fair. The auditor also checks to see if the company is complying with all applicable accounting standards and regulations.

The Companies Act, 2013 requires all companies to have their accounts audited by a chartered accountant. The chartered accountant must be a member of the Institute of Chartered Accountants of India (ICAI).

The audit process typically involves the following steps:

1. Planning: The auditor meets with the company's management to understand the company's business activities and to identify any potential risks.
2. Risk assessment: The auditor assesses the risks of material misstatement in the company's financial statements.
3. Performance of audit procedures: The auditor performs audit procedures to test the company's accounting records and controls.
4. Reporting: The auditor issues an audit report to the company's board of directors.

The audit report states the auditor's opinion on whether the company's financial statements are fairly presented in accordance with applicable accounting standards. The auditor may also make recommendations to the company's board of directors on how to improve its accounting and internal controls. Accounts and audit are important for a number of reasons. First, they help to ensure that the company's financial statements are accurate and reliable. This is important for investors, creditors, and other stakeholders who need to make informed decisions about the company.

Accounts and audit help to prevent fraud and other financial irregularities. By regularly reviewing the company's accounts, the auditor can identify any potential problems early on.

Finally, accounts and audit help to ensure that the company is complying with all applicable laws and regulations. This is important to avoid penalties and fines from the government. Overall, accounts and audit are essential for the good corporate governance of companies.

### 3.4.4 Winding Up and modes of Winding Up

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

- Compulsory winding up by the Court;
- Voluntary winding up: (i) Members voluntary winding up; (ii) Creditors' voluntary winding up;
- Voluntary winding up subject to the supervision of the Court [Sec. 425].

#### Let's Sum Up

Dear Learners, in this final section, we have seen the meaning and various definitions of Meetings, resolution and winding up of a company in detail. As we have seen, Some definitions and Legal sections, this is all about the understanding of basic laws in business.

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

A resolution is an agreement made by the members of the company in a meeting.

Winding up (or liquidation) is the process by which a company's assets are collected and sold to pay off its debts.

## Check Your Progress 4

1. Who is responsible for the day-to-day management of a company?
  - A) Director
  - B) Shareholder
  - C) Auditor
  - D) Secretary
2. What is the primary purpose of a company's annual general meeting (AGM)?
  - A) Filing taxes
  - B) Electing directors
  - C) Reviewing budgets
  - D) Winding up
3. What type of resolution is required for major decisions like amending the company's articles of association?
  - A) Ordinary
  - B) Special
  - C) Interim
  - D) General
4. Which document provides a company's financial statements and compliance with accounting standards?
  - A) Audit Report
  - B) Meeting Minutes
  - C) Annual Return
  - D) Resolution
5. What is the purpose of an audit?
  - A) Verification
  - B) Investment
  - C) Recruitment
  - D) Liquidation
6. What is the process called when a company is closed and its assets are distributed?
  - A) Audit
  - B) Merging
  - C) Winding up

- D) Incorporation
7. Who ensures compliance with corporate governance and legal requirements in a company?
- A) Director
  - B) Shareholder
  - C) Auditor
  - D) Secretary
8. What type of meeting is held to approve the annual accounts and financial statements?
- A) Board Meeting
  - B) Extraordinary Meeting
  - C) Annual General Meeting
  - D) Special Meeting
9. What must be done for a resolution to be valid in a general meeting?
- A) Approval
  - B) Documentation
  - C) Filing
  - D) Voting
10. Which document details the financial performance and position of a company for a specific period?
- A) Minutes
  - B) Balance Sheet
  - C) Resolution
  - D) Contract

### 3.5 Unit Summary

The maximum number of directors that a company can have is fifteen. A company may appoint more than fifteen directors after passing a special resolution. Each company shall have at least one woman director. Every company shall have at least one director who stays in India for a total period of not less than one hundred and eighty-two days during the financial year. Every listed public company shall have at least one-third of the total number of directors as independent directors. An independent director means a director other than a managing director, a whole time

director, or a nominee director who does not have any material or pecuniary relationship with the company or its directors. A Company Meeting is defined as "A Gathering of two or more persons to transact the lawful business of the company. "Ordinarily, a single member cannot constitute a meeting. A company's general meeting may be called by giving not less than a clear twenty-one days' notice either in writing or through electronic mode. Articles of Association are basic internal rules of operation for a business that govern what tasks need to be done, what positions are required to perform and how the processes in place are to be performed. Memorandum of Association is the document that governs the relationship between the company and the outside and one of the documents required to incorporate a company. A company, in its ordinary, non-technical sense, means a body of individuals associated together for a common objective, which may be business for profit or for some charitable purposes. A registered company is one which is formed and registered under the Indian Companies Act, 1956 or under any earlier Companies Act in force in India. A public company means a company which is not a private company. Any seven or more persons can join hands to form a public company. A company shall be deemed to be the holding company to another if that other is its subsidiary. A one-man company is one of which almost the whole share capital is held by a single man who takes a few dummy members simply to meet the statute's requirement regarding the minimum number of members – may be giving only one share to each of the dummy members. "Buyer" means a person who buys or agrees to buy goods. Goods mean every kind of movable property other than actionable claims and money. Lien means to retain possession.

### 3.6 Glossary

<b>Meeting</b>	A gathering of two or more persons to transact the lawful business of the company.
<b>Minutes</b>	Meeting minutes are notes that are recorded during a meeting. They highlight the key issues discussed, motions proposed or voted on, and activities to be undertaken.
<b>Proxy</b>	A proxy is an agent legally authorized to act on behalf of another party. The proxy may also allow an investor to vote without being physically present at the annual shareholder's meeting.

<b>Notice</b>	A notice of meeting is a written document that informs a board of directors and other company members that a shareholders meeting, or corporate action, will take place.
<b>Winding-up</b>	It means a proceeding by which a company is dissolved.

### 3.7 Self-Assessment Questions

#### Short answer question

1. What is meant by the partnership act
2. How to register the partnership?
3. Explain the rights of the dissolution
4. Explain company law
5. What is a memorandum of association

#### Essay type question

1. Elaborate the purpose of a Partnership
2. Explain the management of the company in detail

### ANSWER KEY

#### Check Your Progress 1

1. B) Partnership
2. C) General
3. C) Membership
4. B) Limited
5. A) Contract
6. A) Partnership Deed
7. C) Dissolution
8. B) Dormant
9. B) Limited
10. B) Active Partner

#### Check Your Progress 2



1. C) Separate
2. C) Company
3. C) Company
4. A) Liability
5. B) Joint Hindu Family
6. A) Private
7. D) Public
8. B) Private

### Check Your Progress 3

1. A) Private
2. B) Shares traded on a stock exchange
3. A) Memorandum
4. B) Registration
5. B) Articles
6. C) Prospectus
7. B) Statement
8. D) Managers
9. B) Objectives and powers
10. C) Articles

### Check Your Progress 4

1. A) Director
2. B) Electing directors
3. B) Special
4. A) Audit Report
5. A) Verification
6. C) Winding up
7. D) Secretary
8. C) Annual General Meeting
9. D) Voting
10. B) Balance Sheet

## 3.9 Suggested Reading

1. "Business Law Today: The Essentials" by Roger LeRoy Miller and Gaylord A. Jentz
2. "Partnership Law" by Geoffrey Morse
3. "Understanding Partnership and LLC Taxation" by Jerold A. Friedland
4. "Business Organizations: Cases, Problems, and Case Studies" by D. Gordon Smith and Cynthia A. Williams
5. "The Uniform Partnership Act: A Critical Overview" by J. William Callison
6. "Partnerships and the Law" (PDF) by Mark Blackett-Ord and Sarah Haren
7. "Understanding the Partnership Act" (PDF) by Elizabeth Pugh

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**Self-Learning Material Development – STAGE 1****LEGAL SYSTEMS IN BUSINESS**

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

**Unit Module Structuring**

- ✓ Factories Act,
- ✓ Maternity Benefits Act, Child labour Abolition & Regulation Act,1986
- ✓ Inter-state Migrant Workmen Act 1979, Bonded Labour system (Abolition)Act 1976
- ✓ Sexual Harassment of Women at Workplace Act 2013

**UNIT- 4 Labour Law****Contents of the Unit**

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

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## Unit Objectives

The objective of this unit is to familiarize students with various labor laws essential for the effective administration of Human Resources within an organization. Students will explore key regulations affecting employment, workplace rights, and employer obligations. By understanding these laws, learners will be better equipped to manage HR functions and ensure legal compliance in the workplace.

### 4.1.1 Factories Act

The Factories Act of 1948 was enacted to protect the welfare of workers in a factory by regulating employment conditions, working conditions, the working environment, and other welfare requirements of specific industries. The Factories Act lays out guidelines and safety measures for using machinery, and with its strict compliance, it also provides owners with instructions. When factory workers were taken advantage of and exploited by paying them low wages, the Factories Act was passed.

“A factory is a building or group of buildings where people work with machinery to make goods. The primary goal of the Factories Act is to safeguard employees in a factory from industrial and occupational risks. “

#### Salient features of Factories Act, 1948

The important features of the 1948 Act are as follows:

- The word “factory” has been expanded by the Factories (Amendment) Act of 1976 to include contract labour when determining whether a factory has a maximum of 10 or 20 employees.

- The Act increased the minimum age for children to work in workplaces from 12 to 14 and reduced their daily working hours from 5 to 4 and a half.
- The Act forbids women and children from working in factories from 7 p.m. to 6 a.m.
- The Act has abolished the difference between a seasonal and non-seasonal factory.
- The Act, which has provisions for factory registration and licencing.
- The state government is required to make sure that all factories are registered and also have valid licences that are renewed from time to time.
- The Act gives state governments the authority to enact rules and regulations that ask for management and employee association for the benefit of employees.
- The state government has the authority to apply the Act's requirements to any establishment, regardless of the number of employees inside and regardless of whether the establishment engages in manufacturing operations.
- In *Rabindra Agarwal v. State of Jharkhand* (2010), the Jharkhand High Court held that the Factories Act, special legislation would prevail over the Indian Penal Code.

### **Application of the Factories Act,1948**

The important applications of the 1948 Act are as follows:

- The Act also applies to the whole country of India, including Jammu and Kashmir. It covers all manufacturing processes and premises that fall under the definition of a factory as defined in Section 2(m) of the Act. It also applies to factories owned by the central or state governments, as defined in Section 116 of the Act.
- The Act is applied and limited to factories that use power and employ 10 or more people on any working day in the preceding 12 months.
- The Act is applied and limited to factories that do not use power and employ 20 or more people on any working day in the preceding 12 months.
- The Act is also covered under Section 85 of the Factories Act by the state governments or Union Territories.

## Definitions under the Factories Act, 1948

The important definitions under the 1948 Act are as follows:

**Adult and child:** An adult is defined as someone who has attained the age of eighteen, as defined in Section 2(a) of the Act. A child is someone who has not attained the age of fifteen, as defined in Section 2(c) of the Act.

**Adolescent:** Adolescent is defined in Section 2(b) of the Act. An adolescent is defined as someone who has attained the age of fifteen but has not yet attained the age of eighteen.

**Calendar year:** The calendar year is defined in Section 2 (bb) of the Act. A calendar year is a period of twelve months commencing on January 1st of any year.

**Competent person:** A competent person is defined in Section 2 (ca) of the Act. A competent person is someone or a group of individuals who have been approved by the Chief Inspector to conduct tests, examinations, and inspections that must be conducted in a plant. He/she is someone who has the necessary knowledge and experience to handle the complexity of the issue.

**Hazardous process:** Hazardous process is defined in Section 2 (cb) of the Act. A hazardous process is defined as any process or activity related to the industry that requires special care of raw materials that are used in it, intermediate or finished products, by-products, wastes, or effluents that would cause material impairment to the health of those engaged in or connected with it or that result in polluting the environment.

**Machinery:** Machinery is defined in Section 2 (j) of the Act. The term covers prime movers, transmission machinery, and any other equipment and appliances that produce, transform, transmit, or apply power.

**Power:** Power is defined in Section 2(g) of the Act. Power is defined as any type of mechanically transmitted energy that is not created by a human or animal agency.

**Week:** Week is defined in Section 2(f) of the Act. A week is defined as a seven-day period beginning at midnight on Saturday night or other nights that have been approved in writing for a specific area by the Chief Inspector of Factories.

**Day:** Day is defined in Section 2(e) of the Act. A day is defined as a 24-hour period beginning at midnight.

**Young person:** Young person is defined in Section 2(d) of the Act. A young person is defined as a child or an adolescent.

**Factory:** The definition of a factory is specified in Section 2(m) of the Factories Act 1948. A factory is any premises, where it has certain limits and boundaries-

- If a manufacturing process is regularly carried out in any portion of the premises with the use of power and with ten or more workers now engaged in such activity or were engaged in such work on any day during the previous twelve months; or
- If any element of a manufacturing process is performed inside the premises without the use of power and is regularly performed with twenty or more employees working or having worked there on any given day within the previous twelve months.

**Manufacturing process:** The manufacturing process definition is specified under Section 2 (k). The term “manufacturing process” refers to any process for:

- Generating, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, demolishing, or otherwise treating or adapting any article or;
- A substance in preparation for use, sale, transportation, delivery, or disposal or;
- Producing, transforming, or transmitting energy or;
- Creating type for printing, letterpress printing, lithography, bookbinding, or any other similar process or;
- Constructing, reconstructing, repairing, refitting, finishing, or breaking up ships or vessels, etc. (as defined by the 1976 Amendment Act);
- Preserving or storing any item in cold storage.

**Worker:** The worker definition is specified under Section 2(l). A worker is someone who performs any job associated with a manufacturing process, whether they are employed directly or indirectly through an agency, a contractor, or any other means. This helps to maintain any equipment or facilities utilised in the manufacturing



process. The worker may be hired with or without the principal employer's knowledge and with or without compensation.

### 4.1.2 Minimum Wages Act

Labour laws in India consist of significant legislations such as the Industrial Dispute Act, of 1947, the Payment of Bonus Act, of 1965, the Workmen Compensation Act, of 1923, the Minimum Wages Act, of 1948, etc. In the Indian Constitution, labour laws fall under the Concurrent List, which gives power to both Central and state governments to legislate and make rules on the matter. These legislations play significant roles in protecting the rights and interests of the workers, providing employment opportunities to the workers, protecting employees from exploitation, creating a healthy work environment, etc.

#### Objectives of the Minimum Wages Act

The significance of the Minimum Wages Act, of 1948 is mentioned below:

1. To fix the minimum rates of wages that are to be provided to the employees and revise such rates of wages every five years.
2. To secure an adequate living wage for all the labourers in the interest of the public.
3. To fix the daily working hours of the employees.
4. To prevent exploitation of the workers by the employers.
5. To ensure that the labourers can maintain a decent standard of living.
6. To provide basic physical needs, good health and a level of comfort to the employees.
7. To penalise the employers when they fail to provide minimum wages to the workers.
8. To establish advisory boards to regulate and administer the provisions of the Act.
9. To lay down the powers and duties of the inspectors for the purposes of this Act.
10. To prevent any employer from wrongfully infringing the right of any employees.

11. To establish appropriate authorities where the employees can seek redressal when the employer has failed to pay the daily wage.
12. To authorise the Central and state governments to make rules and regulations for the purposes of this Act.

### **Application of Minimum Wages Act**

The Minimum Wages Act, 1948 is applicable to the whole of India as laid down in Section 1 of the Act. It applies to any employment if it employs 1000 employees in the respective state. However, it does not apply to any employees in any undertaking owned by the Central Government or of the federal railway, except with the consent of the Central Government.

### **Essential provisions under Minimum Wages Act**

The significant provisions of the Minimum Wages Act, 1948 are mentioned below.

**Minimum rates of wages:** Under Section 3 of the Act, the minimum wages payable to the employees are to be fixed by the appropriate government. However, this Section also mentions that the rate of wages shall be revised every five years. The appropriate government may fix:

1. The minimum rate of wages for time work,
2. the minimum rate of wage for piece work,
3. a minimum rate of remuneration to apply in the case of employees employed on piece work for the purpose of securing to such employees a minimum rate of wages on a time work basis,
4. a minimum rate of wage to substitute the for the minimum rate which would otherwise be applicable, in respect of overtime work done by employees.

In fixing or revising minimum wages under Section 3 of the Act:

Different minimum rates of wages may be fixed for; different classes of work, different scheduled employment, different localities, different age groups, etc.

Section 4 of the Minimum Wages Act, 1948 states that the minimum wages fixed by the appropriate government must consist of:

A basic rate of wages and a special allowance must be adjusted at necessary intervals by the appropriate government to match the cost of living of the employees.

Section 5 states that in order to fix or revise the minimum wage of the employees the appropriate government may establish as many committees and subcommittees necessary to hold enquiries in matters regarding fixing and revision of minimum wage.

### Types of wages

In 1948 a tripartite committee, known as the 'Committee on Fair Wages' was established. The committee's report was the benchmark for the formulation of wage policy in India. The committee not only set guidelines for wage rates in the country but also laid down three kinds of wages namely:

1. **Minimum wage:** This is the type of wage provided for bare subsistence so that the workers can maintain a decent standard of living such as providing for education, medical requirements and an adequate level of comfort.
2. **Fair wage:** Any wage paid to the employees that are more than the minimum wage is known as a fair wage. It is the wage that seeks to maintain a level of employment in the industry and also looks after the industry's capacity to pay sufficient remuneration to the employees.
3. **Living wage:** A living wage not only meets the minimum requirement of the employees provided by the employers but also allows individuals or families to afford adequate shelter, food, and other necessities. It also includes health, sanity, education, dignity, comfort, and provide for any contingency.

### 4.1.3 Industrial Dispute Act

The Industrial Disputes Act, 1947 regulates the Indian labour law so far as that concerns trade unions as well as individual workmen employed in any industry in the Indian mainland. It was one of the last legislative act before the passing of the Indian Independence Act of 1947.

## Objectives of the Industrial Disputes Act, 1947

The act was drafted to make provision for the investigation and settlement of industrial disputes and to secure industrial peace and harmony by providing mechanism and procedure for the investigation and settlement of industrial disputes by conciliation, arbitration and adjudication which is provided under the statute.

This Act was passed with a key objective of “Maintenance of Peaceful work culture in the Industry in India” which are mentioned under the Statement of Objects & Reasons of the statute. The Act also lays down:

1. The provision for payment of compensation to the workman on account of closure or lay off or retrenchment.
2. The procedure for prior permission of appropriate Government for laying off or retrenching the workers or closing down industrial establishments
3. The actions to be taken against unfair labour practices on part of an employer or a trade union or workers.

Authorities under the Act

Section 3: Works board of trustees

Section 4: Conciliation Officer

Section 5: Boards of Section

6: Courts of Inquiry Conciliation

Section 7: Labor Court Section 7-A: Tribunals

Section 7-B: National councils

Section 7-C: Disqualifications for the managing workplaces of work courts, tribunals and national tribunals

Constitutional legitimacy of Section 10

### 4.1.4 The Employees Compensation Act

The Employees Compensation Act, of 1923 is the first social security measure undertaken in India to provide workmen and their dependents relief for injury by accident resulting in either death or disability.

#### Applicability of Act

The Act applies to factories, mines, plantations, transport, establishment, construction works, railways, other hazardous occupations and employment as specified in Schedule II. Establishments which are covered under ESI Act, 1948, are kept outside the purview of this Act because the same benefit is provided under ESI Act, 1948 for disablement and death to the workmen and their dependents.

### **Eligibility**

Every worker (including those employed through a contractor) who suffers any injury due to an accident arising out of and in the course of his employment, shall be entitled to compensation under this Act. There is no wage limit for a worker for becoming eligible for compensation under the Act. However where the monthly wage of a worker is more than Rs.4, 000 is taken to be only Rs.4, 000 for calculating compensation either in case of death or permanent total disablement.

**Section 2 (1) (m)** of the workman Compensation Act defines wages as any privilege or benefit which is capable of being estimated in money, other than a travelling allowance or the value of any travelling concession or a contribution paid by the employer of an employee towards any pension or provident fund or a sum paid to an employee to cover any special expenses entailed on him by the nature of his employment.

### **Benefits included in the wages are –**

1. Free accommodation;
2. Cleanliness allowance;
3. Overtime pay;
4. Benefits in the form of food and clothing;
5. Bonus;
6. Dearness allowance;
7. Value of any other concessions, benefits or privileges capable of being estimated in money.

**Section 3 Employer's Liability for Compensation –** A workman is entitled to receive compensation from the employer in the following circumstances:-

- In case of an accident;
- In case of occupational disease;

- The said accident or disablement has arisen out of and in the course of employment

### **Rights of workmen under this Act**

1. Section 3 – To receive compensation for disablement and death resulting from personal injury caused by accident or occupational disease arising out of and in the course of employment.
2. Section 6 – To apply to the commissioner for review half – monthly payment if his condition deteriorates.
3. Section 10 – To apply to the commissioner for determining the claim and the amount of the commissioner if the employer denies the claim, or determines an inadequate amount of compensation.
4. Section 30 – Can appeal to the High Court against the Commissioner's order, if he feels aggrieved by any of the orders.

## **4.1.5 Payment of Bonus Act**

**P**ayment of Bonus Act, 1965 is a statutory liability on the part of the employers of the establishment to pay to the labour, in accordance with the capital available for the peaceful functioning of the establishment. The purpose of the Act was to enable the employees to have a say in the profits of the company and to earn a little more than the minimum wage according to their performance in the organisation. This Act is applicable throughout India on the factory workers and the persons employed in railways or is in contract with railways. It also includes skilled or unskilled workers, whether under the express or implied terms of the contract.

### **Computation of Gross profit**

Gross profit is calculated for an accounting year

- (i) **Banking Company**– in accordance with the first schedule.
- (ii) **In other cases**– according to the manner prescribed in the second schedule.

### **Eligibility for bonus**

Under the present enactment, every employee is entitled to get a bonus only if he has worked for a minimum period of 30 days. The minimum bonus which the employee would get in an accounting year would be 8.33% of the salary or wages of the employee or ₹ 100 whichever is more. In cases where the age of the employee is less than 15 years at the beginning of the accounting year, this provision would have the same effect except in the place of ₹ 100 it would be ₹ 60. The maximum bonus which an employee could get in an accounting year is equal to 20% of the salary or wages of the employee in the given accounting year. The employer is bound to pay the maximum bonus when the allocable bonus has exceeded the minimum bonus of that accounting year. The employee would be disqualified for a bonus if he has been terminated from employment on account of fraud or theft, misappropriation or sabotage of the establishment's property or has displayed violent or unruly behaviour in the premises of the establishment.

### **Computation of the number of working days**

The computation of the working day is an important criterion for the calculation of the bonus. The employee would be considered working even on the days when he is on leave but is paid salary or wages or he is on a maternity leave with salary or wages, or he met with an accident while in undertaking the employment or he has been laid off under an agreement or as permitted under the Industrial Employment Act, 1946 or Industrial Disputes Act, 1947 or any legal provision which is applicable on the establishment at the given time.

## **4.1.6 Payment of Gratuity Act, 1972**

### **Scope and objective of the Payment of Gratuity Act, 1972**

The Act lay out its objective to guarantee a standard pattern for gratuity payments to employees across the nation in order to prevent treating employees of organisations with branches in multiple states differently when they may be required to transfer from one state to another due to service requirements.

On August 21, the Act was approved by Parliament, and it became operative on September 16 of that same year. All divisions of the central, state, and local governments, as well as the military and local governing bodies, are subject to the provisions of this Act. If certain requirements are met, private organisations may fall under its jurisdiction. It is a monetary reward given to an employee in appreciation of his work and devotion to the company.

### **Key provisions of the Payment of Gratuity Act, 1972**

#### **Applicability of the Act**

Section 1 of the Act states that the Act extends to the whole of India except in cases of plantations and ports, where the state of Jammu and Kashmir was exempted before 2019, where it was amended to extend to the whole of India.

Further, the Act shall be applicable to the following:

1. Every manufacturing unit, mine, oil field, plantation, port, and railway firm;
2. Every business, as defined by any law currently in effect with regard to businesses and premises in a State, where ten or more people are employed or were employed on any day during the previous 12 months;
3. Any other businesses or groups of businesses where ten or more people are employed or were employed on any day during the previous year, as the Central Government may designate in a notification.

To whom the gratuity can be paid

1. In the first case, the gratuity shall be paid to the employee himself.
2. If an employee passes away, any gratuity due to him must be paid to his nominee or, if no nominee has been made, to his heirs.
3. If either of the above-mentioned parties is a minor, the share of the minor must be deposited with the controlling authority, who will invest it for the minor's benefit in the bank or other financial institution specified until the minor reaches majority, or, if no nominee has been made, to the employee's heirs.

## **4.1.7 The Employees' State Insurance Act**



The Employees' State Insurance Act incorporates a number of sections, these sections provide for medical benefits and insurance for any employees working under factories registered under the ESI Corporation. This is an exciting prospect from both an employee's and a legal perspective as the beginning of a formal social security program in India.

### **Application and scope of the Act**

The Employees' State Insurance Act, 1948 (ESI), enables financial backing and support to the working class in times of medical distress such as:

- Sickness.
- Maternity Leave.
- Disorders (mental or physical).
- Disability.
- Death.

It is a self-financed initiative, which serves as a type of social security scheme, to prevent the working class from any financial problems arising out of the above medical issues.

### **Constitutionality of the Act**

The ESI Act serves as a constitutional instrument because of its practice of providing insurance and medical insurance. While the ESI Act is mostly executed through the ESI Corporation, the Central Government takes control of most of the proceedings.

This control by the Central Government largely contributes to the constitutionality of the Act, because Insurance, be it public or private, is listed in the Seventh Schedule of the Indian Constitution as a Union List subject i.e. it can only be legislated by the Central Government.

### **Constitution of Corporation**

The composition of the ESIC is defined in **Section 4**, and it is as follows:

- The Director-General.
- Chairman, appointed by the Central Government.
- Vice-Chairman appointed by the Central Government.
- Not more than 5 persons nominated by the Central Government.
- 1 person to represent each state.
- 1 person representing the Union Territories.
- 10 persons representing employers.
- 10 persons representing employees.
- 2 persons representing the medical profession.
- 3 members of parliament (2: Lok Sabha and 1: Rajya Sabha).

### **Expenses of the fund**

The ESI Fund is responsible for maintaining the expenses of ESIC, which are as follows:

- Payment of benefits and provision of medical treatment and attendance to insured persons and their families, if required.
- Payment of fees and allowances to members of the Corporation, the Standing Committee and the Medical Benefit Council, the Regional Boards, Local Committees and Regional and Local Medical Benefit Councils.
- Payment of salaries, leave and joining time allowances, travelling and compensatory allowances, gratuities and compassionate allowances, pensions, etc.
- Establishment and maintenance of hospitals, dispensaries, and other institutions and the provision of medical and other ancillary services for the benefit of insured persons and their families, if required.
- Payment of contributions to any State Government, local authority or any private body or individual, towards the cost of medical treatment and attendance provided to insured persons and their families, if required.

## **4.1.8 The Employee Provident Funds and Miscellaneous Act, 1952**

The Employee Provident Funds, 1952 is a beneficial legislation enacted for the betterment of the future of industrial worker:

1. On his retirement.
2. For his dependents in case of death of employment.

This Act is enacted as a social security measure which falls under the ground of “retirement benefit”, the object of this Act is to inculcate, non withdrawable financial benefit, the sum is payable normally on retirement or on the death of the employee. Administration of the scheme given under this act is done by the central board, state board, and regional committee, a chief executive committee appointed and constituted by the central government.

- Central board \_ Section 5A
- Executive committee – Section 5AA
- State board – Section 5B
- Regional committee

### **EPF Features**

The employer is under a statutory obligation to deduct a specified percentage of the contribution from the employee’s salary for provident fund. The employer should also contribute such percentage for provident fund. An employee who gets more than 15,000 is eligible for getting the provident fund.

This Act contains nearly 20 sections and four schedules. Section 7E, F, G, H, M, N is omitted, section 20 is repealed. Applicability of the Act – section 1 of this Act deals with the application of the Act. This is applicable to “every factory engaged in any industry specified in schedule I”.

1. Every establishment in which 20 or more are employed.
2. Any establishment notified by the central government.

The Factories Act, 1948, is a key piece of legislation in India that regulates labor welfare, safety, and health standards in factories. The "Miscellaneous" chapter of this Act contains provisions that do not fall under the specific categories of health,

safety, welfare, working hours, etc., but are nevertheless important for the overall functioning of the law.

Miscellaneous Provisions Under the Factories Act, 1948

1. Power to Make Rules (Section 112):
  - The state government is empowered to make rules for carrying out the purposes of the Act. These rules may cover various aspects, such as health, safety, welfare, working hours, and employment conditions. They ensure the effective implementation of the Act's provisions.
2. No Charge for Facilities and Conveniences (Section 114):
  - Employers cannot charge workers for the facilities provided under the Act, such as drinking water, sanitation, and first aid. This provision ensures that basic amenities are provided free of cost to workers.
3. Publication of Rules (Section 116):
  - Any rule made under the Act must be published in the Official Gazette. This ensures transparency and provides an opportunity for those affected to be informed about the rules.
4. Application of Act to Government Factories (Section 118):
  - The Act applies to factories owned by the government, with some modifications. This provision ensures that government-run factories adhere to the same standards as private ones, maintaining uniformity in labor laws.
5. Power to Exempt During Public Emergency (Section 119):
  - The state government can exempt any factory or class of factories from all or any provisions of the Act during a public emergency. This allows flexibility in times of crisis, ensuring that critical manufacturing can continue without legal hindrances.
6. Repeal and Savings (Section 120):
  - The Act repeals previous laws relating to factories and makes provisions for the preservation of rights, privileges, obligations, and liabilities acquired under the repealed Acts. This ensures a smooth transition from the old legal framework to the new one.
7. Protection to Persons Acting Under this Act (Section 121):
  - Any person acting in good faith under the Act, or under any rule made thereunder, is protected from legal proceedings. This encourages

officials and others to enforce the law without fear of legal repercussions.

8. Power to Remove Difficulties (Section 122):

- If any difficulty arises in giving effect to the provisions of the Act, the central government may, by order, make provisions necessary to remove such difficulty. This ensures that the Act can be implemented effectively, even if unforeseen challenges arise.

These miscellaneous provisions ensure that the Factories Act remains comprehensive and flexible, capable of addressing various scenarios and challenges that may arise in the operation of factories in India.

### Let's Sum Up

Dear Learners, in this first section, we have seen the meaning and various definitions of Factories act and various types of labour law in detail. As we have seen, Some definitions and Legal sections, this is all about the understanding of basic laws in business.

**The Factories Act, 1948, regulates the hours of work and minimum wage**

**To regulate the amount of bonus to be paid to the persons employed in establishments based on its profit and productivity**

**An Act to provide for the institution of provident funds 2[,3[pension fund] and deposit-linked insurance fund] for employees in factories and other establishments.**

### Check Your Progress 1

1. Which act regulates safety and health standards in factories?
  - A) Labor
  - B) Factories

- C) Industrial
  - D) Minimum
2. What is the minimum age for working in a factory according to the Factories Act?
- A) 14
  - B) 16
  - C) 18
  - D) 21
3. What document must a factory have to operate legally?
- A) License
  - B) Permit
  - C) Certificate
  - D) Registration
4. Which act ensures that workers are paid a fair wage?
- A) Payment
  - B) Minimum
  - C) Bonus
  - D) Compensation
5. Under the Minimum Wages Act, who is responsible for fixing the minimum wages?
- A) Employer
  - B) Worker
  - C) Government
  - D) Union
6. What is the primary goal of the Minimum Wages Act?
- A) Health
  - B) Safety
  - C) Wages
  - D) Gratuity
7. Which act addresses disputes between employers and employees?
- A) Payment
  - B) Factories
  - C) Industrial

- D) Provident
8. What is the primary method for resolving disputes under the Industrial Disputes Act?
- A) Mediation
  - B) Arbitration
  - C) Litigation
  - D) Negotiation
9. Which body is commonly involved in resolving disputes according to the Industrial Disputes Act?
- A) Court
  - B) Tribunal
  - C) Committee
  - D) Board
10. Which act provides compensation for workplace injuries?
- A) Bonus
  - B) Gratuity
  - C) Compensation
  - D) Provident
11. What is the primary focus of the Employees Compensation Act?
- A) Retirement
  - B) Injury
  - C) Wages
  - D) Bonus
12. Which organization enforces the Employees Compensation Act?
- A) Government
  - B) Tribunal
  - C) Employer
  - D) Court
13. Which act regulates the payment of bonuses in India?
- A) Bonus
  - B) Gratuity
  - C) Provident
  - D) Compensation

14. Which type of company is required to pay bonuses under the Payment of Bonus Act?
- A) Private
  - B) Public
  - C) Both
  - D) None
15. What is the basis for calculating the bonus under the Payment of Bonus Act?
- A) Profit
  - B) Salary
  - C) Age
  - D) Attendance
16. Which act governs the payment of gratuity to employees?
- A) Gratuity
  - B) Bonus
  - C) Provident
  - D) Compensation
17. What is the minimum period of continuous service required for gratuity eligibility?
- A) 1 year
  - B) 2 years
  - C) 5 years
  - D) 10 years
18. What is the maximum amount of gratuity payable under the Payment of Gratuity Act?
- A) Rs. 1,00,000
  - B) Rs. 5,00,000
  - C) Rs. 10,00,000
  - D) No limit
19. Which act provides medical benefits and cash benefits for employees?
- A) Compensation
  - B) Provident
  - C) ESI
  - D) Bonus
20. What is the full form of ESI in the context of employee welfare?



- A) Employees Social Insurance
- B) Employees Safety Insurance
- C) Employees State Insurance
- D) Employees Service Insurance

### 4.2.1 The Maternity Benefit Act

The Maternity Benefit Act, 1961 is a legislation that protects the employment of women at the time of her maternity. It entitles women employees of 'maternity benefit' which is fully paid wages during the absence from work and to take care of her child. The Act is applicable to the establishments employing 10 or more employees. The Maternity Benefit Act, 1961 has been amended through the Maternity (Amendment) Bill 2017 which was passed in the Lok Sabha on March 09, 2017.

The Act covers all maternity benefits in the following sections:

- **Section 4:** Employment of, or work of, women prohibited during certain periods.
- **Section 5:** Right to payment of maternity benefits.
- **Section 7:** Payment of Maternity Benefits in case of death of a woman.
- **Section 8:** Payment of Medical Bonus.
- **Section 9:** Leave for miscarriage, etc.
- **Section 10:** Leave for illness arising out of pregnancy, delivery, premature birth of a child, miscarriage, medical termination of pregnancy or tubectomy operation.

- **Section 11:** Nursing Breaks.
- **Section 12:** Dismissal during absence of pregnancy.
- **Section 13:** No deduction of wages in certain cases.
- **Section 18:** Forfeiture of maternity benefits.

The Act was revised by the Indian Government in 2017 to give women more inclusive maternity benefits. Among other amendments, a new clause, Section 5(5), was added to the Act, under which women who requested maternity leave might benefit from working from home. According to Section 5(5) of the Act, an employer may authorise nursing mothers to work from home if the nature of the work that is given to them permits it, under mutually agreed-upon terms.

#### **Features of the Maternity Benefit Act, 1961**

- **Duration of leave:** A woman is entitled to twelve weeks of maternity leave under the terms of the Act, not more than six weeks of which may come before the due date. The ILO guideline at the time took this into account.
- **Job protection:** According to the guidelines of the 1961 Act, it has been ruled unlawful for an employer to fire or let go of a woman at any time during or because of her absence. However, the employer may notify the employee in writing if the dismissal or discharge is the result of serious wrongdoing.
- **Remuneration during leave:** Women who meet the requirements for maternity leave outlined in the legislation are entitled to maternity benefits at the rate of the average daily salary for the time that they are really absent from work.
- **Financial benefits:** According to this law, every woman is entitled to maternity benefits and the option of receiving a medical bonus from her employer in the event that neither prenatal nor postpartum care is provided

by the latter at no cost to the employee. The employer is responsible for paying all debts, including maternity benefits, to the woman's nominee or legal representative in the event of her death.

### **Benefits covered under the Maternity Benefit Act of 1961**

The Act requires the employer to refrain from hiring any known women in any place for the six weeks immediately following the day of the employee's delivery, miscarriage, or medical termination of pregnancy. During the six weeks immediately following the day of delivery or miscarriage, no woman shall work in any company. The employer shall not require such women to perform any work unless requested to do so by the employed lady.

1. Which negatively affects her pregnancy or the foetus's development normally,
2. Any work that could result in her miscarrying or otherwise have a negative impact on her health.

Every woman has the right to maternity benefits, and her employer is responsible for paying them at the amount of the average daily income for the time she was actually away from work, i.e.,:

1. The time leading up to the day of her delivery.
2. On the day she gave birth and for the period immediately afterwards.

### **4.2.2 Child labour Abolition & Regulation Act,1986**

According to the International Labour Organisation, founded in 1919, there are more than 152 million children working in the world as child labourers. Out of this, around 10 million child workers are found in India. Despite strict legislative rules and efforts, the engagement of children in various occupations hasn't stopped.

#### **Child labour**

Child labour can be defined or explained as a practice where children are forced to engage or employed in any sort of economically beneficial activity on a

part-time or a full-time basis. Children engaged in this are generally deprived of basic childhood experiences such as schooling and are physically and mentally scarred. The primary reasons leading to Child Labour can be traced to poverty, lack of decent schooling and education and growth of the informal economy.

### Child Labour and India

Child labour practice is a hindrance to the mental as well as physical development of children as it deprives them of the most important phase of their life – their childhood. Children of or below the age of 14 years are strictly prohibited from being employed in hazardous occupations, as per the **Child Labour (Prohibition and Regulation) Act of 1986**. The list of hazardous occupations is curated under the act itself.

S.No	Year	Government initiatives
1	1979	The Gurupadswamy Committee was established to study and tackle the child labour issue.
2	1986	Child Labour (Prohibition and Regulation) Act was enacted.
3	2016	Child Labour (Prohibition and Regulation) Amendment Act prohibits employment of children below the age of 14 years.
4	2017	Child Labour (Prohibition and Regulation) Amendment Rules – broad framework against child labour.

There are several operations that happen in India like Operation Smile, and Operation Muskaan wherein there are a lot of raids that happen in the unorganised sector, manufacturing units and other factories. India has a very strong system of dealing with rescued children in terms of rehabilitating and repatriating them with the family with certain support to the family as well, to come out of the poverty trap.

#### 4.2.2 Child Labour (Prohibition and Regulation) Act, 1986

**T**he Child Labour (Prohibition and Regulation) Act of 1986 designates a child as a person who has not completed their 14<sup>th</sup> year of age. It aims to regulate the

hours and the working conditions of child workers and to prohibit child workers from being employed in hazardous industries.

S.No	Before the amendment	After the amendment	Impact
1	Children below the age of 14 years will be allowed to work in occupations except for 18 occupations and 65 processes.	Complete prohibition of employment of children below the age of 14	Complete ban that ensures all children under 14 years are in school as per the Right To Education Act.
2	No help was provided to children working after school hours who were below the age of 14 yrs.	Children allowed to work only after school hours or during vacations under the condition that the occupations were hazardous.	This allows the working kids to learn their traditional skills and also helps them build life values such as a sense of discipline, decision making, responsibility, and so on.
3	Children below the age of 14 years will be permitted to work in Family Business/occupation both hazardous and non-hazardous.	Children below the age of 14 years will be allowed to work in Family Business/Enterprises only if they are non-hazardous.	This protects the health and ensures children's well being. Children could work in their family businesses only if it is safe for them.
4	Children will be able to work in family businesses even if it didn't belong to the child's family.	Children will be able to work in family businesses even if it didn't belong to the child's family only if the occupation is non-hazardous.	This allows the working children to learn their traditional skills and values of life.
5	Children above the age of 14 years didn't	Children between 14-18 years are categorised as	Protection of adolescent's health.

	have any prohibitions on employment.	Adolescents and are not allowed to work in hazardous occupations.	
6	Adolescents were not provided with any working regulations regarding working hours and conditions.	Regulated working conditions for adolescents working in non-hazardous occupations are in place.	Adolescent working in non-hazardous occupations cannot be exploited.
7	Schedule of 18 occupations and 65 processes ( called certain occupations & processes) applicable for a child; tells where a child cannot work.	A child can't work in any occupation, so the list of prohibited occupations has been made infinite as there is a complete ban on employment.	There is a complete ban on work and not just on the 18 occupations and 65 processes.
8	No schedule of hazardous occupations and processes where an adolescent cannot work.	Schedule of hazardous processes and occupations provided where an adolescent cannot work.	Protection of adolescents health.
9	No provision of providing a positive list of occupations where an adolescent can work.	The government can provide a positive list of non-hazardous occupations where an adolescent can work and a child can assist.	Enabling provision to allow the Government to restrict the employment of adolescents in occupations that are classified as non-hazardous.
10	Contravention of provisions non-cognizable offence.	It is a cognizable offence.	There is no need of an approval of the DM to take action on the FIR on violation of the child labour law.

### Let's Sum Up

Dear Learners, in this first section, we have seen the meaning and various definitions of the Maternity act and Child Labour Act in detail. As we have seen, Some definitions and Legal sections, this is all about the understanding of basic laws in business.

The amendment in the maternity rules increased the maternity leave days in India from 12 weeks earlier, to 26 weeks or 6 months for the first two deliveries.

An Act to prohibit the engagement of children in certain employments and to regulate the conditions of work of children in certain other employments

### Check Your Progress 2

1. Which act provides benefits to female employees during maternity?
  - A) Gratuity
  - B) Bonus
  - C) Maternity
  - D) Provident
2. What is the minimum number of weeks of maternity leave required by the Maternity Benefits Act?
  - A) 6
  - B) 12
  - C) 26
  - D) 52
3. What financial benefit is provided under the Maternity Benefits Act during maternity leave?

- A) Bonus
  - B) Full Salary
  - C) Partial Salary
  - D) Gratuity
4. Which type of establishments must comply with the Maternity Benefits Act?
- A) Government
  - B) Private
  - C) All
  - D) Small
5. Which act regulates and aims to abolish child labour in India?
- A) Labour
  - B) Child
  - C) Employment
  - D) Minimum Wages
6. Under the Child Labour Abolition & Regulation Act, what is the minimum age for employment?
- A) 12
  - B) 14
  - C) 16
  - D) 18
7. Which sector is primarily targeted for the abolition of child labour under this act?
- A) Industrial
  - B) Agricultural
  - C) Educational
  - D) Domestic
8. What type of work is prohibited for children under the Child Labour Abolition & Regulation Act?
- A) Light
  - B) Hazardous
  - C) Educational
  - D) Domestic
9. What does the act require for employers who are found employing children illegally?



- A) Penalty
- B) Bonus
- C) Compensation
- D) Gratuity

10. Which governmental body is responsible for enforcing the Child Labour Abolition & Regulation Act?

- A) Local Police
- B) Labour Department
- C) Social Welfare
- D) Education Board

### 4.3.1 Inter-state Migrant Workmen (Regulation of Employment & Conditions of Services) Act 1979

#### Role of inter-state migrant workmen act 1979

The act stipulates that every migrant worker must be registered with the concerned district magistrate before he or she can be employed in any establishment. The act also requires that every employer must obtain a licence from the concerned authority before employing any migrant worker.

#### Advantages of inter-state migrant workmen act 1979

The Interstate Migrant Workmen Act 1979 has both advantages and disadvantages. On the one hand, the Act protects the rights and interests of migrant workmen and ensures that they are treated fairly and equitably in the workplace. This is a very important safeguard against exploitation and abuse by employers. On the other hand, the Act can be seen as discriminatory, as it only applies to migrant workers and does not cover local workers in the same way. Additionally, the Act is sometimes too rigid in its regulation of working conditions, which can make it difficult for employers to adapt work practices and processes appropriately to meet changing business needs.

#### Key features of ISMW Act

The Interstate Migrant Workmen Act, 1979 is a legislation in India that regulates the employment and working conditions of migrant workmen:

- The act was passed to provide a framework for the regulation of the employment of migrant workmen in India and to protect their rights and interests.
- Every migrant worker must be registered with the concerned district magistrate before he or she can be employed in any establishment.
- The employer must obtain a licence from the concerned authority before employing any migrant worker.
- The act prescribes the minimum wage that must be paid to migrant workers and lays down the conditions under which they can be employed.
- It also provides for the establishment of tribunals to resolve any disputes or disagreements arising between migrant workers and their employers.

#### **Scope of Improvement in Inter-State Migrant Workmen Act, 1979**

- Migrant workers should be given the same benefits as other local people so that they may avoid spending more money on food grains and kerosene.
- For general public information and verification, every state government should operate an internet portal that lists the registered principal employers, contractors, businesses, and interstate workmen. The details of interstate workers must be supplied promptly by the main employers and contractors. Non-compliance by the primary employers or contractors is treated as a violation of the Act, and they are liable for punishment.

### **4.3.2 Bonded Labour System (Abolition) Act 1976**

Bonded Labour is a system in which borrowers are forced to repay their loans through labour. Here, the employers give loans at very high interest rates. As the loan amounts to be repaid are unreasonably high, the time required to pay off is very large, thereby creating a vicious cycle of generational inequality.

- Bonded Labour is also known as **Bandhua Mazdoori** or **Debt Bondage** in India. At a global level, India was ranked in 4th position in the 2016 Global Slavery Index.

- To abolish bonded labour in India, the Parliament of India enacted the **Bonded Labour System (Abolition) Act, 1976**.
- The District Magistrates were given the authority to enforce the Bonded Labour System Abolition Act of 1976.
- As per this act, trials for labour offences could be set up at local and national levels by the Indian Judicial powers.
- However, due to poor implementation of the law, there were almost 3,00,000 bonded labourers in India as per the figures put out in 2009 by the Ministry of Labour and Employment.

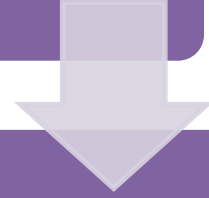
### **Bonded Labour in India – A Brief History**

- Bonded labour was widely practised in rural areas of India as the agricultural industry relies on contracted, often migrant labourers.
- As per the Indian constitutional definition of forced labour, the persistent forms of modern slavery are bonded migrant labour, agricultural debt bondage, and child labour.
- There is a direct link between the agrarian structure and agricultural productivity.
- In areas where there was adequate rainfall and a very good network of irrigation facilities, especially in rice-growing regions in river deltas, there was a higher demand for intensive cultivation.
- In such areas, unequal agrarian structures were developed.
- The agrarian structure of these regions was characterised by a large proportion of landless labourers, who were often 'bonded' workers belonging to the lowest castes.

### **Let's Sum Up**

Dear Learners, in this first section, we have seen the meaning and various definitions of migrant act and bonded labour act in detail. As we have seen, Some definitions and Legal sections, this is all about the understanding of basic laws in business.

'Bonded labour system' as the system of forced labour under which a debtor enters into an agreement with the creditor that he would render service to him either by himself or through any member of his family or any person dependent on him, for a specified or unspecified.



An Act to regulate the employment of inter-State migrant workmen and to provide for their conditions of service and for matters connected therewith.

### Check your Progress 3

1. Which act regulates the employment and conditions of inter-state migrant workers?
  - A) Labour
  - B) Migrant
  - C) Employment
  - D) Bonded
2. What is required from employers when engaging inter-state migrant workers under this act?
  - A) Registration
  - B) Certification
  - C) Licensing
  - D) Bonding
3. Which document must be provided to migrant workers according to the act?
  - A) Salary Slip

- B) Employment Letter
  - C) Workmen's Compensation
  - D) Identity Card
4. Under this act, what must employers provide to inter-state migrant workers?
- A) Housing
  - B) Medical Benefits
  - C) Transportation
  - D) Education
5. Which government body is responsible for implementing this act?
- A) Labour Department
  - B) Education Board
  - C) Health Department
  - D) Social Welfare
6. Which act aims to abolish the bonded labour system in India?
- A) Labour
  - B) Bonded
  - C) Employment
  - D) Migrant
7. What is prohibited under the Bonded Labour System (Abolition) Act?
- A) Wage Payment
  - B) Child Labour
  - C) Bonded Labour
  - D) Employment
8. What must be provided to individuals who were previously bonded labourers according to the act?
- A) Compensation
  - B) Training
  - C) Employment

- D) Housing
9. Which authority is tasked with enforcing the Bonded Labour System (Abolition) Act?
- A) Labour Department
  - B) Police
  - C) Courts
  - D) Health Department
10. What kind of labour system is abolished by this act?
- A) Contract
  - B) Casual
  - C) Bonded
  - D) Skilled

#### **4.4.1 Sexual Harassment of women at Workplace (Prevention, Prohibition & Redressal) Act 2013**

The POSH Act is a legislation enacted by the Government of India in 2013 to address the issue of sexual harassment faced by women in the workplace. The Act aims to create a safe and conducive work environment for women and provide protection against sexual harassment. The PoSH Act defines sexual harassment to include unwelcome acts such as physical contact and sexual advances, a demand or request for sexual favours, making sexually coloured remarks, showing pornography, and any other unwelcome physical, verbal, or non-verbal conduct of a sexual nature. These guidelines formed the basis for the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. The SC also drew its strength from several provisions of the Constitution including Article 15 (against discrimination on grounds only of religion, race, caste, sex, and place of birth), also drawing from relevant International Conventions and norms such as the General Recommendations of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which India ratified in 1993.

#### **Key Provisions:**

- **Prevention and Prohibition:** The Act places a legal obligation on employers to prevent and prohibit sexual harassment in the workplace.
- **Internal Complaints Committee (ICC):** Employers are required to constitute an ICC at each workplace with 10 or more employees to receive and address complaints of sexual harassment.  
The Complaints Committees have the powers of civil courts for gathering evidence.
- **Duties of Employers:** Employers must undertake awareness programs, provide a safe working environment, and display information about the POSH Act at the workplace.
- **Complaint Mechanism:** The Act lays down a procedure for filing complaints, conducting inquiries, and providing a fair opportunity to the parties involved.
- **Penalties:** Non-compliance with the Act's provisions can result in penalties, including fines and cancellation of business licenses.

#### 4.4.2 The Contract Labour (Regulation and Abolition) Act, 1970

The Contract Labour (Regulation and Abolition) Act, 1970 (CLRA Act) is an Act of the Parliament of India that regulates the employment of contract labour in certain establishments and provides for its abolition in certain circumstances. The Act was enacted to protect the interests of contract workers and to ensure that they are not exploited by employers.

The CLRA Act applies to all establishments employing 20 or more contract workers. However, the Act does not apply to certain establishments, such as those engaged in agriculture, horticulture, or mining. The CLRA Act imposes a number of obligations on employers who employ contract labour. For example, employers are required to:

- Register their establishment with the Central Government or the State Government, as the case may be.
- Issue a license to every contractor who employs contract workers on their behalf.
- Ensure that contract workers are paid wages and other benefits at the same rates as regular workers performing similar jobs.
- Provide contract workers with safe and healthy working conditions.
- Allow contract workers to form unions and to participate in collective bargaining.

The CLRA Act also empowers the Central Government or the State Government to abolish contract labour in certain establishments where the employment of contract labour is found to be harmful or hazardous to the safety or health of workers, or where it is found to be against the public interest. The CLRA Act has played an important role in protecting the interests of contract workers in India. However, there are still some challenges that need to be addressed. For example, many employers continue to violate the provisions of the Act with impunity. Additionally, the Act does not cover all contract workers, such as those employed in the agricultural sector.

### 4.4.3 The Four Labour Codes and Rules

The Four Labour Codes and Rules are a set of four codes that have been enacted by the Indian government to consolidate and simplify the country's labor laws. The four codes are:

- Code on Wages, 2019
- Industrial Relations Code, 2020
- Social Security Code, 2020
- Occupational Safety, Health and Working Conditions Code, 2020

The codes were enacted to replace 29 existing labour laws, and they aim to provide a more comprehensive and streamlined framework for regulating labour relations in India. The Code on Wages, 2019 sets out the minimum wages and other benefits that must be paid to workers. The Industrial Relations Code, 2020 regulates



trade unions, collective bargaining, and industrial disputes. The Social Security Code, 2020 provides for social security benefits such as provident fund, pension, and accident insurance to workers. The Occupational Safety, Health and Working Conditions Code, 2020 regulates working conditions and ensures the safety and health of workers.

The rules under the four labour codes are still being finalized, but they are expected to come into force in the near future. The codes are a significant development in Indian labour law, and they are expected to have a major impact on the lives of millions of workers.

Here are some of the key features of the Four Labour Codes and Rules:

- **Universal coverage:** The codes apply to all workers, irrespective of the sector in which they are employed or the size of the establishment in which they work.
- **Simplified and streamlined procedures:** The codes simplify and streamline many of the procedures that employers and workers must follow, such as the process for filing grievances and resolving disputes.
- **Improved employee protection:** The codes provide for improved employee protection in a number of areas, such as minimum wages, social security benefits, and working conditions.
- **Increased flexibility for employers:** The codes also provide for increased flexibility for employers in some areas, such as the ability to hire and fire employees more easily.

The Four Labour Codes and Rules are a major reform of Indian labour law. They are expected to have a significant impact on the lives of millions of workers and employers, and they are likely to play an important role in shaping the future of work in India.

#### 4.4.4 The Right to Information Act, 2005

The Right to Information Act, 2005 (RTI Act) is a landmark legislation that gives citizens the right to access information held by public authorities. The RTI Act

is not a labour law in the traditional sense, but it has important implications for labour law. The RTI Act can be used by workers and trade unions to access information about a wide range of labour-related issues, such as:

- Wages and benefits
- Working conditions
- Discrimination
- Health and safety
- Industrial disputes
- Trade unions
- Collective bargaining

The RTI Act can be a powerful tool for workers and trade unions to hold employers and the government accountable. For example, workers can use the RTI Act to find out whether their employer is complying with labour laws and regulations. They can also use the RTI Act to find out about government policies and programs that may affect their rights. Trade unions can use the RTI Act to gather information about the working conditions of their members. They can also use the RTI Act to find out about government policies and programs that may affect their members' rights.

The RTI Act is a valuable tool for workers and trade unions to promote transparency and accountability in the labour market. It can be used to ensure that workers' rights are respected and that labour laws are enforced. Here are some examples of how the RTI Act has been used to promote labour rights in India:

- In 2010, the National Campaign for Dalit Human Rights used the RTI Act to expose the widespread practice of child labour in brick kilns in India.
- In 2011, the All India Trade Union Congress (AITUC) used the RTI Act to find out about the safety record of a factory that had recently been involved in a fatal accident.
- In 2012, the National Domestic Workers Movement used the RTI Act to find out about the implementation of a government scheme for domestic workers.

The RTI Act is a powerful tool for workers and trade unions to promote transparency and accountability in the labour market. It can be used to ensure that workers' rights are respected and that labour laws are enforced.

### Let's Sum Up

Dear Learners, in this first section, we have seen the meaning and various definitions of POSH act and RTI act in detail. As we have seen, Some definitions and Legal sections, this is all about the understanding of basic laws in business.

**The POSH Act is a legislation enacted by the Government of India in 2013 to address the issue of sexual harassment faced by women in the workplace.**

**Right to Information Act is to empower the citizens, promote transparency and accountability in the working of the Government, contain corruption, and make our democracy work for the people in real sense**

**An Act to regulate the employment of contract labour in certain establishments and to provide for its abolition in certain circumstances and for matters connected therewith**

### Check Your Progress 4

1. Which act addresses sexual harassment of women at the workplace?
  - A) Labour
  - B) RTI
  - C) Sexual Harassment
  - D) Contract
2. What is the primary purpose of the Sexual Harassment Act?
  - A) Safety
  - B) Equality
  - C) Redressal
  - D) Regulation

3. Under the Sexual Harassment Act, who must form an Internal Complaints Committee?
  - A) Government
  - B) Employer
  - C) Employee
  - D) Union
4. What type of workplace is covered under the Sexual Harassment Act?
  - A) Public
  - B) Private
  - C) Both
  - D) Informal
5. What should be provided to the complainant during the investigation under the Sexual Harassment Act?
  - A) Legal Aid
  - B) Counseling
  - C) Protection
  - D) Compensation
6. Which act regulates the employment of contract labour?
  - A) Contract
  - B) Labour
  - C) Employment
  - D) Gratuity
7. What must employers provide to contract labourers according to the act?
  - A) Gratuity
  - B) Minimum Wages
  - C) Provident Fund
  - D) Housing
8. What is a key requirement for employers of contract labour under this act?
  - A) Licensing
  - B) Registration
  - C) Certification
  - D) Bonding
9. Which body is responsible for regulating contract labour under this act?
  - A) Labour Department

- B) Social Welfare
  - C) Education Board
  - D) Health Department
10. What type of work is generally regulated by the Contract Labour Act?
- A) Permanent
  - B) Casual
  - C) Temporary
  - D) Professional
11. Which set of laws consolidate various labour laws into a unified framework?
- A) Labour Codes
  - B) Industrial Acts
  - C) Employment Laws
  - D) Safety Regulations
12. Which code deals with the payment of wages?
- A) Code on Wages
  - B) Code on Industrial Relations
  - C) Code on Occupational Safety
  - D) Code on Social Security
13. What is the focus of the Code on Occupational Safety, Health, and Working Conditions?
- A) Wages
  - B) Safety
  - C) Employment
  - D) Benefits
14. Which code addresses social security benefits for workers?
- A) Code on Wages
  - B) Code on Social Security
  - C) Code on Industrial Relations
  - D) Code on Health
15. What does the Code on Industrial Relations primarily regulate?
- A) Safety
  - B) Wages
  - C) Employment Relations
  - D) Social Security

16. Which act empowers citizens to request information from public authorities?
- A) Labour
  - B) RTI
  - C) Gratuity
  - D) Social Security
17. What is the primary objective of the RTI Act?
- A) Regulation
  - B) Transparency
  - C) Safety
  - D) Employment
18. What is the maximum time frame for a public authority to respond to an RTI request?
- A) 15 days
  - B) 30 days
  - C) 60 days
  - D) 90 days
19. Who can file an RTI request?
- A) Citizen
  - B) Foreign National
  - C) Employee
  - D) Government Official
20. Which authority is established to address grievances related to RTI applications?
- A) Ombudsman
  - B) Information Commission
  - C) Labour Court
  - D) Tribunal

## 4.5 Unit Summary

Labour law, also known as employment law, is the body of laws, administrative rulings, and precedents that address the legal rights of, and restrictions on, working

people and their organizations. It is a complex and ever-evolving area of law, covering a wide range of topics, including:

- Individual employment relationships: This includes laws governing the formation and termination of employment contracts, as well as the rights and obligations of employers and employees during the course of employment.
- Wages and remuneration: This includes laws governing minimum wages, overtime pay, bonuses, and other forms of compensation.
- Conditions of work: This includes laws governing hours of work, rest periods, vacations, child labor, equality in the workplace, and health and safety.
- Trade unions and industrial relations: This includes laws governing the formation and operation of trade unions, collective bargaining, and the settlement of labor disputes.
- Social security: This includes laws governing social insurance programs, such as unemployment insurance, workers' compensation, and pension plans.

**Labour laws can be divided into two broad categories:**

- Individual labour law: This category of law concerns the rights and obligations of individual employees at work and through the contract for work. Examples of individual labour laws include laws governing minimum wages, overtime pay, discrimination, and wrongful dismissal.
- Collective labour law: This category of law concerns the relationship between employers, employees, and trade unions. Examples of collective labour laws include laws governing the formation and operation of trade unions, collective bargaining, and the settlement of labor disputes.

Labour laws are important because they protect the rights of workers and help to ensure that workplaces are safe and fair. They also promote economic stability and growth by providing a framework for productive labor relations.

**some of the key types of labour laws:**

- **Minimum wage laws:** These laws set a minimum hourly wage that employers must pay their workers. Minimum wage laws are designed to protect workers from being exploited and to ensure that they can earn a living wage.
- **Overtime pay laws:** These laws require employers to pay their workers extra for working more than a certain number of hours per day or week. Overtime pay laws are designed to discourage employers from overworking their workers and to ensure that workers are compensated fairly for their time.
- **Discrimination laws:** These laws prohibit employers from discriminating against workers on the basis of race, religion, sex, national origin, age, disability, or other protected characteristics. Discrimination laws are designed to create a fair and equitable workplace for all workers.
- **Occupational health and safety laws:** These laws establish standards for safe working conditions and require employers to take steps to protect their workers from hazards. Occupational health and safety laws are designed to prevent workplace injuries and illnesses.

## 4.6 Glossary

<b>Bargaining agent</b>	A trade union or other organization that is authorized to represent workers in collective bargaining with their employer.
<b>Collective Bargaining</b>	The process of negotiation between employers and employees, often through their representatives, to reach an agreement on wages, hours, and other working conditions
<b>Trade union</b>	An organization of workers that represents them in their dealings with their employer.
<b>Severance pay</b>	Pay that is provided to an employee when their employment is terminated.
<b>Labor dispute</b>	A disagreement between employers and employees, often over wages, hours, or other working conditions.



<b>Discrimination</b>	The unfair treatment of a person or group of people based on their race, religion, sex, national origin, age, disability, or other protected characteristic.
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## 4.7 Self-Assessment Questions

### Short answer questions

- 1) What is labour law?
- 2) What is the minimum wage for labour in the current industry field?
- 3) Write a short note on
  - a) Compensation
  - b) Bonus
  - c) Gratuity
  - d) Provident fund
- 4) Explain the scope of the maternity benefits act
- 5) List out the steps to prevent sexual harassment

### Essay type questions

- 1) What are the rights and obligations of inter-state migrant workmen under the Act and duties and responsibilities of contractors
- 2) What are some strategies for preventing child labour?
- 3) What are the different ways in which people become bonded labourers and the rights of bonded labourers under the Act?
- 4) What are the challenges to implementing the RTI Act effectively?
- 5) What are the different types of contract labour that are prohibited under the Act?

## 4.8 Case study

Anita is a garment worker in a factory in Delhi. She has been working in the garment industry for over 10 years. Before the Factories Act was enacted, Anita was forced to

work 12 hours a day, 7 days a week. She was often required to work overtime without pay. The factory was poorly ventilated and lit, and the sanitation facilities were inadequate.

After the Factories Act was enacted, Anita's working conditions improved significantly. Her working hours were reduced to 8 hours a day, 6 days a week. She was also given adequate rest breaks and holidays. The factory was improved, and the sanitation facilities were upgraded.

Anita says that the Factories Act has made a big difference in her life. She is now able to spend more time with her family and friends. She is also healthier and less stressed. She is grateful for the Factories Act and the protection that it provides to garment workers in India.

The case of Anita shows how the Factories Act can have a positive impact on the lives of garment workers in India. The Act helps to ensure that garment workers are treated fairly and that they have a safe and healthy work environment.

## ANSWER KEY

### Check Your Progress 1

1. B) Factories
2. A) 14
3. D) Registration
4. B) Minimum
5. C) Government
6. C) Wages
7. C) Industrial
8. B) Arbitration
9. B) Tribunal
10. C) Compensation
11. B) Injury

12. D) Court
13. A) Bonus
14. C) Both
15. A) Profit
16. A) Gratuity
17. C) 5 years
18. C) Rs. 10,00,000
19. C) ESI
20. C) Employees State Insurance

### **Check Your Progress 2**

1. C) Maternity
2. C) 26
3. B) Full Salary
4. C) All
5. B) Child
6. B) 14
7. B) Agricultural
8. B) Hazardous
9. A) Penalty
10. B) Labour Department

### **Check Your Progress 3**

1. B) Migrant
2. A) Registration
3. D) Identity Card
4. C) Transportation
5. A) Labour Department
6. B) Bonded
7. C) Bonded Labour
8. A) Compensation
9. A) Labour Department
10. C) Bonded

### **Check Your Progress 4**

1. C) Sexual Harassment

2. C) Redressal
3. B) Employer
4. C) Both
5. C) Protection
6. A) Contract
7. B) Minimum Wages
8. B) Registration
9. A) Labour Department
10. C) Temporary
11. A) Labour Codes
12. A) Code on Wages
13. B) Safety
14. B) Code on Social Security
15. C) Employment Relations
16. B) RTI
17. B) Transparency
18. B) 30 days
19. A) Citizen
20. B) Information Commission

## 4.9 Suggested Readings

1. "Industrial Relations and Labour Laws" by S.C. Srivastava
2. "Labour Laws: Everybody Should Know" by H.L. Kumar
3. "Factory Law" by S.N. Misra
4. "Understanding the Factories Act, 1948: A Guide for Managers and HR Professionals" (PDF) by S. R. Samant
5. "The Legal Framework for Health and Safety in Factories" by J.J. Keller & Associates
6. "Factories Act, 1948: Compliance and Challenges" by A.K. Ghosh
7. "Industrial Safety and the Law" (PDF) by R.C. Sahni

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### Self-Learning Material Development – STAGE 1

#### **LEGAL SYSTEMS IN BUSINESS**

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

#### **Unit Module Structuring**

- ✓ Consumer Protection Act
- ✓ Cybercrimes
- ✓ Intellectual property rights

- ✓ Design act
- ✓ United Nations Commission on International Trade Law.

## Unit-5 Various Acts

### Contents of the Unit

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

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## UNIT OBJECTIVES

This unit aims to provide insights into the Consumer Protection Act, cyber-crimes, and Intellectual Property Rights. Students will gain awareness of legal protections for consumers, measures against digital crimes, and the safeguarding of intellectual creations. By the end of the unit, learners will be better prepared to address and navigate these critical areas in today's legal and business environments.

### Section 5.1.1 CONSUMER PROTECTION ACT

#### Introduction

**A** person who buys a good or service for his own personal use and not for further manufacture is called a consumer. Consumers play an important role in the market. The market for a good or service constitutes all the consumers and producers of that good or service. If there is no consumer, producers will have no one to provide the goods.

The level of dissatisfaction with sellers and manufacturers and their practices resulted in consumers raising their voice. Resultantly, the government decided to give recognition to consumer protection by enacting the Consumer Protection Act on 24th December 1986. The Act was aimed at protecting the rights of the consumers and ensuring free trade in the market, competition and accurate information to be available. This day is now observed as National Consumers' Day.

**There are six broad consumer rights defined as per the Consumer Protection Act, 1986. These are:**

- ✓ Right to safety

- ✓ Right to choose
- ✓ Right to seek redressal
- ✓ Right to information
- ✓ Right to be heard
- ✓ Right to consumer education

### **Right to safety**

The Consumer Protection Act defines this right as a protection against goods and services that are 'hazardous to life and property'. This particularly applies to medicines, pharmaceuticals, foodstuffs, and automobiles. The right requires all such products of critical nature to life and property to be carefully tested and validated before being marketed to the consumer.

### **Right to Information**

This right mentions the need for consumers to be informed about the quality and quantity of goods being sold. They must be informed about the price of the product and have access to other information specific to the product that they wish to consume.

### **Right to Choose**

The consumer must have the right to choose between different products at competitive prices. Thus, the concept of a competitive market where many sellers sell similar products must be established to ensure that the consumer can actually choose what to consume and in what quantity. This is to avoid monopoly in the market.

### **Right to Seek Redressal**

When a consumer feels exploited, he/she has the right to approach a consumer court to file a complaint. A consumer court is a forum that hears the complaint and provides justice to the party that has been hurt. Thus, if the consumer feels he/she has been exploited, they can approach the court using this right

### **Right to be heard**



The purpose of this right is to ensure that the consumer gets due recognition in consumer courts or redressal forums. Basically, when a consumer feels exploited, he has the right to approach a consumer court to voice his complaint. This right gives him/her due respect that his/her complaint will be duly heard. The right empowers consumers to fearlessly voice their concerns and seek justice in case they are exploited.

### **Right to Consumer Education**

Consumers must be aware of their rights and must have access to enough information while making consumption decisions. Such information can help them to choose what to purchase, how much to purchase and at what price. Many consumers in India are not even aware that they are protected by the Act. Unless they know, they cannot seek justice when they are actually hurt or exploited.

## **Consumer Disputes Redressal Commission**

- ✓ District Consumer Disputes Redressal Commission
- ✓ State Consumer Disputes Redressal Commission
- ✓ National Consumer Disputes Redressal Commission

### **District Consumer Disputes Redressal Commission**

Establishment of District Consumer Disputes Redressal Commission (Sec. 28) (1) The State Government shall, by notification, establish a District Consumer Disputes Redressal Commission, to be known as the District Commission, in each district of the State: Provided that the State Government may, if it deems fit, establish more than one District Commission in a district. (2) Each District Commission shall consist of-- (a) a President; and (b) not less than two and not more than such number of members as may be prescribed, in consultation with the Central Government.

### **State Consumer Disputes Redressal Commission**

Establishment of State Consumer Disputes Redressal Commission (Sec. 42)

(1) The State Government shall, by notification, establish a State Consumer Disputes Redressal Commission, to be known as the State Commission, in the State.

(2) The State Commission shall ordinarily function at the State capital and perform its functions at such other places as the State Government may in consultation with the State Commission notify in the Official Gazette: Provided that the State Government may, by notification, establish regional benches of the State Commission, at such places, as it deems fit.

(3) Each State Commission shall consist of-- (a) a President; and (b) not less than four or not more than such number of members as may be prescribed in consultation with the Central Government.

### **National Consumer Disputes Redressal Commission**

Establishment of National Consumer Disputes Redressal Commission (Sec. 53)

(1) The Central Government shall, by notification, establish a National Consumer Disputes Redressal Commission, to be known as the National Commission.

(2) The National Commission shall ordinarily function at the National Capital Region and perform its functions at such other places as the Central Government may in consultation with the National Commission notify in the Official Gazette The Central Government may, by notification, establish regional Benches of the National Commission, at such places, as it deems fit.

### **5.1.2 The Competition Act,2002**

The Competition Act, 2002 is a law that governs commercial competition in India. It replaced the erstwhile Monopolies and Restrictive Trade Practices Act, 1969.

The Competition Act aims to prevent activities that have an adverse effect on competition in India.

#### Definitions under the Competition Act

The following are the definitions cited under the Competition Act

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

#### Salient Features

The following are the features of the Competition Act:

- 1. Anti Agreements:** Any individual or enterprises shall not deal in production supply or distribution that may cause a negative impact regarding competition in India. Any existence of such agreements is considered illegal.
- 2. Abuse of dominant position:** In the event, an enterprise or an associated individual, it is found to indulge in practices that are unfair or discriminatory in nature shall be considered an abuse of dominant position. If a party is found to be in abuse of its position, then they will be subjected to an investigation from the concerned authorities.
- 3. Combinations:** As per the act a combination is defined as terms which lead to acquisitions or mergers. But should such combinations cross the limits as put forth

by the Act, then the parties involved would be under the scrutiny of the Competition Commission of India.

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

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

- The Framework of Competition Act 2002 has essentially four compartments:
- Anti- Competitive Agreements [ Section 3]
- Abuse of Dominance [ Section 4]
- Combination Regulation [ Section 5 & 6]
- Competition Advocacy [ Section 49]

The Competition Act, 2002, is a significant piece of legislation in India that was enacted to replace the Monopolies and Restrictive Trade Practices (MRTP) Act of 1969. This Act was introduced to promote fair competition in the market, prevent anti-competitive practices, and protect the interests of consumers. The primary objective of the Competition Act is to create a level playing field for businesses in India, ensuring that no single entity can dominate the market to the detriment of competitors and consumers.

One of the central features of the Competition Act, 2002, is the establishment of the Competition Commission of India (CCI). The CCI is the regulatory body responsible for enforcing the provisions of the Act. It has the authority to investigate and take action against entities engaging in anti-competitive practices, such as abuse of dominant position, anti-competitive agreements, and mergers or

acquisitions that could potentially harm competition in the market. The CCI plays a crucial role in maintaining healthy competition in various sectors of the economy.

The Act specifically addresses anti-competitive agreements, which are categorized into horizontal and vertical agreements. Horizontal agreements are those between competitors operating at the same level of the supply chain, such as price-fixing, bid-rigging, and market-sharing agreements. Vertical agreements occur between entities at different levels of the supply chain, such as manufacturers and distributors, and may include practices like resale price maintenance. The Act prohibits agreements that have an appreciable adverse effect on competition (AAEC) in the market.

Another critical aspect of the Competition Act is its provisions on the abuse of dominant position. A dominant position refers to a situation where a business has the power to operate independently of competitive pressures or to affect competitors, consumers, or the market in its favor. The Act prohibits any conduct by a dominant firm that results in an unfair advantage or the elimination of competition, such as predatory pricing, limiting production, or creating barriers to entry for new competitors. The CCI can investigate and penalize companies found guilty of such practices.

The Act also regulates mergers and acquisitions (M&A) to prevent the creation of monopolies or the reduction of competition in the market. It requires that certain types of M&A transactions be notified to the CCI before they are completed, allowing the Commission to assess whether the proposed transaction would lead to a significant lessening of competition. If the CCI finds that a merger or acquisition would harm competition, it has the power to block the transaction or impose conditions to mitigate the anti-competitive effects.

Consumer protection is another vital component of the Competition Act, 2002. The Act seeks to protect the interests of consumers by ensuring that they have access to a variety of goods and services at competitive prices. It aims to prevent practices that could lead to higher prices, reduced choices, or lower quality of products and services. By promoting competition, the Act encourages businesses to innovate, improve efficiency, and offer better value to consumers.

The Competition Act, 2002, has been instrumental in shaping the competitive landscape of the Indian economy. It has been used to address issues in various sectors, including telecommunications, pharmaceuticals, automobiles, and retail. The CCI has been proactive in investigating and penalizing companies involved in anti-competitive practices, thereby fostering a more competitive and fair market environment. The Act has also contributed to greater awareness among businesses about the importance of complying with competition laws.

However, the implementation of the Competition Act has not been without challenges. One of the main challenges is the complexity and length of investigations, which can sometimes lead to delays in decision-making. Additionally, the rapid pace of technological advancements and the rise of digital markets have created new competition issues that the Act must address. Despite these challenges, the Competition Act, 2002, remains a crucial tool for promoting fair competition and protecting consumer interests in India.

In conclusion, the Competition Act, 2002, plays a vital role in ensuring that the Indian market operates fairly and efficiently. By preventing anti-competitive practices, regulating mergers and acquisitions, and protecting consumer interests, the Act contributes to a healthy competitive environment that benefits businesses and consumers alike. The ongoing efforts of the Competition Commission of India to enforce the Act and adapt to new challenges underscore its importance in the dynamic and evolving Indian economy.

### 5.1.3 Cybercrime

Cybercrime, also called computer crime, the use of a computer as an instrument to further illegal ends, such as committing fraud, trafficking in child pornography and intellectual property, stealing identities, or violating privacy. Cybercrime, especially through the Internet, has grown in importance as the computer has become central to commerce, entertainment, and government.

Because of the early and widespread adoption of computers and the Internet in the United States, most of the earliest victims and villains of cybercrime were Americans. By the 21st century, though, hardly a hamlet remained anywhere in the world that had not been touched by cybercrime of one sort or another.

### Definition

The U.S. Department of Justice (DOJ) divides cybercrime into three categories:

1. crimes in which the computing device is the target -- for example, to gain network access;
2. crimes in which the computer is used as a weapon -- for example, to launch a denial-of-service (DoS) attack; and
3. crimes in which the computer is used as an accessory to a crime -- for example, using a computer to store illegally obtained data.

### Types of Cyber Crimes

**Cyberextortion:** A crime involving an attack or threat of an attack coupled with a demand for money to stop the attack. One form of cyberextortion is the ransomware attack. Here, the attacker gains access to an organization's systems and encrypts its documents and files -- anything of potential value -- making the data inaccessible until a ransom is paid. Usually, this is in some form of cryptocurrency, such as Bitcoin.

**Cryptojacking:** An attack that uses scripts to mine cryptocurrencies within browsers without the user's consent. Cryptojacking attacks may involve loading cryptocurrency mining software to the victim's system. However, many attacks depend on JavaScript code that does in-browser mining if the user's browser has a tab or window open on the malicious site. No malware needs to be installed as loading the affected page executes the in-browser mining code.

**Identity theft:** An attack that occurs when an individual accesses a computer to glean a user's personal information, which they then use to steal that person's identity or access their valuable accounts, such as banking and credit cards. Cybercriminals buy and sell identity information on darknet markets, offering financial

accounts, as well as other types of accounts, like video streaming services, webmail, video and audio streaming, online auctions and more. Personal health information is another frequent target for identity thieves.

**Credit card fraud:** An attack that occurs when hackers infiltrate retailers' systems to get the credit card and/or banking information of their customers. Stolen payment cards can be bought and sold in bulk on darknet markets, where hacking groups that have stolen mass quantities of credit cards profit by selling to lower-level cybercriminals who profit through credit card fraud against individual accounts.

**Cyberespionage:** A crime involving a cybercriminal who hacks into systems or networks to gain access to confidential information held by a government or other organization. Attacks may be motivated by profit or by ideology. Cyberespionage activities can include every type of cyberattack to gather, modify or destroy data, as well as using network-connected devices, like webcams or closed-circuit TV (CCTV) cameras, to spy on a targeted individual or groups and monitoring communications, including emails, text messages and instant messages.

**Software piracy:** An attack that involves the unlawful copying, distribution and use of software programs with the intention of commercial or personal use. Trademark violations, copyright infringements and patent violations are often associated with this type of cybercrime.

**Exit scam:** The dark web, not surprisingly, has given rise to the digital version of an old crime known as the *exit scam*. In today's form, dark web administrators divert virtual currency held in marketplace escrow accounts to their own accounts -- essentially, criminals stealing from other criminals.

Cybercrime has become a significant issue in the modern world, reflecting the deep integration of digital technology into daily life and the global economy. As more aspects of business, communication, and government operations move online, the risks associated with cybercrime have grown exponentially. Cybercrime encompasses a broad range of illegal activities conducted through digital means, from hacking and identity theft to fraud, cyberstalking, and the distribution of malicious software. The significance of cybercrime lies in its widespread impact on individuals, businesses, governments, and global security.



One of the most critical aspects of cybercrime is its impact on financial systems. Cybercriminals often target financial institutions, businesses, and individuals to steal money, data, or intellectual property. This can result in significant financial losses, not just for the immediate victims but also for the economy at large. For example, large-scale data breaches or cyber-attacks on financial systems can undermine trust in digital transactions, disrupt markets, and lead to costly legal and regulatory consequences for affected organizations.

Cybercrime also poses a significant threat to personal privacy and security. With the increasing amount of personal data stored online, individuals are vulnerable to identity theft, unauthorized data collection, and exploitation. Cybercriminals can use stolen personal information for various illegal activities, including financial fraud, blackmail, and social engineering attacks. The consequences for victims can be severe, leading to long-term financial and emotional distress.

For businesses, cybercrime represents a significant operational risk. A successful cyber-attack can disrupt business operations, damage reputations, and result in substantial financial penalties, particularly in industries where data protection regulations are stringent. Companies must invest heavily in cybersecurity measures to protect their systems and data from cyber threats. However, even with robust defenses, no system is entirely immune, making cybercrime a persistent concern for businesses of all sizes.

In the realm of national security, cybercrime has emerged as a critical threat. State-sponsored cyber-attacks are increasingly being used as tools of espionage, sabotage, and warfare. These attacks can target critical infrastructure, such as power grids, transportation systems, and government databases, potentially leading to widespread disruption and even physical harm. The rise of cyber terrorism adds another layer of complexity, with terrorist groups using cyber tools to plan and execute attacks or spread propaganda.

Cybercrime also has a significant social impact. The anonymity of the internet allows for the proliferation of harmful activities such as cyberbullying, online harassment, and the spread of hate speech. These activities can have devastating effects on individuals and communities, leading to mental health issues, social unrest, and even violence. The global nature of the internet means that these crimes

can cross borders easily, making them difficult to combat using traditional law enforcement methods.

The legal and regulatory challenges posed by cybercrime are also significant. Traditional legal frameworks often struggle to keep pace with the rapid evolution of technology and the methods used by cybercriminals. This has led to a patchwork of laws and regulations across different countries, making international cooperation essential in combating cybercrime. Law enforcement agencies must also continually update their skills and tools to address the sophisticated tactics used by cybercriminals.

The economic impact of cybercrime is staggering. According to various estimates, cybercrime costs the global economy hundreds of billions of dollars each year. These costs include direct financial losses, expenses related to data breaches and security incidents, and the economic impact of disrupted business operations. Additionally, the fear of cybercrime can stifle innovation and growth, as businesses and consumers may be reluctant to fully embrace new technologies due to security concerns.

In conclusion, the significance of cybercrime cannot be overstated. It affects every aspect of modern life, from personal privacy to global security, and poses substantial challenges for individuals, businesses, governments, and law enforcement agencies. Addressing cybercrime requires a comprehensive approach that includes strong cybersecurity measures, effective legal frameworks, international cooperation, and ongoing public awareness and education. As technology continues to evolve, so too will the nature of cybercrime, making it a persistent and evolving threat that must be continually addressed.

#### **5.1.4 Information Technology Amendment Act, 2008**

The Information Technology Amendment Act 2008 (IT Act 2008) is a substantial addition to India's Information Technology Act 2000. The Information Technology Amendment Act was passed by the Indian Parliament in October 2008 and came into force a year later. The act is administered by the Indian Computer Emergency Response Team (CERT-In) and corresponds to the Indian Penal Code.

The Information Technology Amendment Act has been widely hailed as a progressive step forward in protecting India's cyber infrastructure and citizens. It is one of the most comprehensive pieces of legislation addressing IT-related issues and sets a strong precedent for other countries working to update their own laws.

### **Purpose of the Information Technology Amendment Act**

The original version of the act was developed to promote the IT industry, regulate e-commerce, facilitate e-governance and prevent cybercrime. However, it also sought to foster security practices within India that would serve the country in a global context.

In addition, the Information Technology Amendment Act established the office of the Cyber Appellate Tribunal to hear appeals from any person aggrieved by an order made under the act.

### **Multi aspects of the Information Technology Act**

The Information Technology Amendment Act 2008 has nine chapters and 117 sections and covers a wide range of topics related to IT, cybercrime and data protection.

The act includes provisions for the following

- tightening cybersecurity measures
- establishing a legal framework for digital signatures
- recognizing and regulating intermediaries
- regulating interception, monitoring and decryption of electronic records
- cyber forensics
- cyberterrorism

Amendments to the act have been created to address issues that the original bill failed to cover and to accommodate further development of IT and related security concerns since the original law was passed.

The International Copyright Order, 1999 (ICO 1999) is a statutory order issued by the Central Government of India under Section 40 of the Copyright Act, 1957. It extends copyright protection to the works of authors of countries that are members of the Berne Convention for the Protection of Literary and Artistic Works (Berne Convention) or the Universal Copyright Convention (UCC).

The ICO 1999 applies to works first made or published in a country listed in its Schedule. The Schedule is divided into three parts:

- Part I lists countries that are members of the Berne Convention and the UCC.
- Part II lists countries that are members of the Berne Convention but not the UCC.
- Part III lists countries that are members of the UCC but not the Berne Convention.

Copyright protection is extended to works of authors of countries listed in Part I of the Schedule as if they were Indian works. Copyright protection is extended to works of authors of countries listed in Part II or Part III of the Schedule only in respect of the translation of such works into any language specified in the Eighth Schedule to the Constitution of India.

The ICO 1999 plays an important role in protecting the copyrights of foreign authors in India. It ensures that Indian authors receive reciprocal protection in other countries.

Here are some of the benefits of the ICO 1999:

- It provides copyright protection to the works of authors of countries that are members of the Berne Convention or the UCC.
- It ensures that Indian authors receive reciprocal protection in other countries.
- It promotes cultural exchange and cooperation between India and other countries.

The ICO 1999 is an important instrument for protecting the rights of authors and promoting creativity in India. It is also a valuable tool for promoting cultural exchange and cooperation between India and other countries.

The Information Technology Amendment Act, 2008, is a significant piece of legislation in India that was introduced to address the rapidly evolving landscape of cybercrime and digital security. This amendment was made to the original Information Technology Act of 2000, which was India's first legislation aimed at providing a legal framework for electronic commerce and the management of electronic records. With the growing complexity of cyber threats and the increasing reliance on digital platforms for business and communication, the amendment was necessary to address new challenges and vulnerabilities.

One of the key features of the Information Technology Amendment Act, 2008, is the inclusion of provisions related to data protection and privacy. The Act introduced stringent measures to protect sensitive personal data and imposed obligations on companies to ensure the security of the information they handle. This was in response to the growing concerns about data breaches and the unauthorized use of personal information, which had become more prevalent with the rise of digital technologies.

The amendment also expanded the definition of cybercrime, recognizing a broader range of offenses that could be committed using computers and digital networks. This includes activities such as identity theft, cyberstalking, phishing, and the creation and distribution of malicious software. By broadening the scope of cybercrime, the Act aimed to provide law enforcement agencies with the necessary tools to combat the increasing number of cyber-related offenses.

Another significant aspect of the Information Technology Amendment Act, 2008, is the introduction of Section 66A, which made it a punishable offense to send offensive messages through communication services. This provision was aimed at curbing the misuse of electronic communication platforms, particularly social media, to spread harmful content. However, Section 66A was later struck down by the

Supreme Court of India in 2015, as it was deemed to violate the right to freedom of speech and expression under the Indian Constitution.

The amendment also addressed the issue of cyber terrorism, introducing Section 66F, which specifically criminalizes acts of cyber terrorism. This provision was introduced in response to the growing threat of terrorist activities being carried out through digital means, such as hacking into government systems or disrupting critical infrastructure. The inclusion of this section underscored the government's recognition of the serious national security implications posed by cyber threats.

The amendment also sought to streamline the process for the investigation and prosecution of cybercrimes. It provided law enforcement agencies with greater powers to intercept, monitor, and decrypt information transmitted through computer networks. These enhanced investigative powers were intended to improve the effectiveness of law enforcement in tracking and apprehending cybercriminals, although they also raised concerns about potential misuse and the impact on individual privacy.

The Information Technology Amendment Act, 2008, also introduced new regulations for intermediaries, such as internet service providers, web hosting services, and online platforms. The Act imposed obligations on these intermediaries to exercise due diligence in monitoring the content on their platforms and to cooperate with law enforcement agencies in the investigation of cybercrimes. This was seen as an important step in ensuring that intermediaries played a proactive role in maintaining the security and integrity of the digital environment.

Overall, the Information Technology Amendment Act, 2008, represented a significant step forward in India's efforts to create a robust legal framework for addressing the challenges of the digital age. By introducing new provisions to combat cybercrime, protect data, and enhance cybersecurity, the Act aimed to create a safer and more secure digital environment for businesses and individuals alike. However, the implementation of the Act has also raised important questions about the balance between security and privacy, and the need to ensure that legal measures do not infringe on fundamental rights. As the digital landscape continues

to evolve, the Act serves as a foundational piece of legislation that will likely continue to be refined and updated to address new challenges in the future.

### Let's Sum Up

Dear Learners, in this first section, we have seen the meaning and definitions of various Acts like consumer protection act, cyber crime, and IT act in detail. As we have seen, the basic rights of the people.

**The Consumer Protection Act, implemented in 1986, gives easy and fast compensation to consumer grievances.**

**The Competition Act, 2002 is a law that governs commercial competition in India.**

**Cybercrime is any criminal activity that involves a computer, networked device or a network.**

### Check Your Progress 1

1. Which act aims to protect consumers from unfair trade practices?
  - A) Trade
  - B) Consumer
  - C) Competition
  - D) IT
2. What type of body is established under the Consumer Protection Act to address grievances?
  - A) Tribunal
  - B) Commission
  - C) Court
  - D) Committee

3. What is the maximum compensation amount a consumer can claim under the Consumer Protection Act?
  - A) Rs. 1,00,000
  - B) Rs. 10,00,000
  - C) Rs. 1,00,00,000
  - D) No limit
4. Which forum deals with consumer disputes at the district level?
  - A) State Commission
  - B) National Commission
  - C) District Forum
  - D) Local Court
5. Which act regulates anti-competitive practices in India?
  - A) Labour
  - B) Competition
  - C) Consumer
  - D) Trade
6. What authority is established to enforce the Competition Act?
  - A) Tribunal
  - B) Commission
  - C) Court
  - D) Board
7. Which practice is prohibited under the Competition Act?
  - A) Trade
  - B) Mergers
  - C) Monopolies
  - D) Advertising
8. What is the maximum penalty for anti-competitive practices under the Competition Act?
  - A) Rs. 10,00,000
  - B) Rs. 50,00,000
  - C) 10% of revenue
  - D) No penalty
9. What term describes crimes involving computers and networks?
  - A) Fraud



- B) Theft
  - C) Cyber
  - D) Theft
10. Which type of crime involves unauthorized access to computer systems?
- A) Phishing
  - B) Hacking
  - C) Identity Theft
  - D) Scamming
11. Which act provides legal recognition to electronic records and signatures?
- A) IT
  - B) Consumer
  - C) Competition
  - D) Labour
12. What does the IT Act, 2008 specifically address in relation to cyber crimes?
- A) Consumer Protection
  - B) Intellectual Property
  - C) Electronic Transactions
  - D) Employment
13. Which authority is responsible for regulating cyber crimes under the IT Act?
- A) Police
  - B) National Security Agency
  - C) Cyber Cell
  - D) IT Ministry
14. Which section of the IT Act deals with cyber terrorism?
- A) Section 43
  - B) Section 66
  - C) Section 69
  - D) Section 77
15. Which act provides for the establishment of a cyber appellate tribunal?
- A) IT Act
  - B) Consumer Act
  - C) Competition Act
  - D) Labour Act

## Section 5.2.1 Intellectual Property Rights (IPRs)

Intellectual property (IP) refers to the intangible assets (creations of the mind: inventions, literary and artistic works, and symbols, names, images, and designs used in commerce) created by the human mind.

In other words, Intellectual Property is a generic term that defines intangible assets that are owned by individual person or company contributing to the national as well the state economies.

### Types Intellectual property rights

- ✓ Copyrights
- ✓ Patents
- ✓ Trademarks
- ✓ Designs
- ✓ Geographical Indications
- ✓ Trade Secrets
- ✓ Plant Varieties
- ✓ Superconductor Chips and Integrated Circuits
- ✓ Traditional Knowledge
- ✓ Biological Diversity

## 5.2.2 IPR Types as per TRIPS

### 1. Copyright and Related Rights

- a) Rights of artists, painters, musicians, sculptors, photographers;
- b) Rights of computer programmes;
- c) Rights of phonogram performers and producers, as well as broadcasting.

### 2. Right of traders to use their trade marks.

3. Right of manufacturers & producers on geographical indication in relation to such products and produce.

4. Right of designers for their distinctive design striking to the eye.

### 5. Patents:

- a) Right of the inventor for patent is his invention.

- b) Rights of plant breeders and farmers.
  - c) Rights of biological diversity.
6. Right of computer technologist for their layout design of integrated circuits.
7. Right of businessmen for protection of their undisclosed information on technology and management.

### 5.2.3 Trade Mark (The Trade Marks Act, 1999)

As per the definition provided under Section 2 (zb) of the TM Act, “trade mark” means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours.

#### Symbols of a Trade Mark

- ✓ TM for pending/applied marks
- ✓ R for registered marks
- ✓ SM for service marks

#### Trade Mark: Importance

It helps consumers identify and purchase a product or service because its nature and quality, indicated by its unique trade mark, meets their needs.

#### Registration of Trade Mark

- ✓ The registration procedure in India is based on the ‘first to file’ system. It is therefore
- ✓ important that the rights holder applies for the registration of its mark as soon as possible.
- ✓ The registration of a trade mark confers on the registered proprietor of the trade mark the exclusive right to use the trade mark in relation to the goods or services in respect of which the trade mark is registered.
- ✓ While registration of a trade mark is not compulsory, it offers better legal protection for an action for Infringement the renewable. It is pertinent to note that the letter “R” in a circle.
- ✓ i.e. ® with a trademark, can only be used after the registration of the trademark under the TM Act.

## Trade Mark: Forms

- ✓ Word
- ✓ Device/Picture
- ✓ Label
- ✓ Name
- ✓ Signature
- ✓ Logo
- ✓ Letter
- ✓ Numerals
- ✓ Shape of Goods
- ✓ Combination of colors

## Grounds for Accepting a Trade Mark For Registration

- ✓ It should be unique and distinctive.
- ✓ It should not indicate kind, quality, quantity, intended purpose, values of the product.
- ✓ It should not be customary in the current language.
- ✓ It should not deceive or cause confusion to the public.
- ✓ It should not hurt the religious susceptibilities of any class or section of the citizens of
- ✓ India.

## Duration of a Trade Mark

- ✓ A Trade Mark/Service Mark is valid for a period of 10 years.
- ✓ Trade Mark can be renewed every 10 years. Renewal application can be filed 6 months prior to the due date of the next renewal date.
- ✓ Non-user of a registered trademark for a continuous period of 5 years is a ground for cancellation of registration of such trademark at the behest of any aggrieved party.
- ✓ A service mark is not separately defined under the 1999 Act but is included in the definition of a trademark.
- ✓ Using this symbol <sup>TM</sup> with your trademark simply implies that you claim to be the proprietor of the trademark. There is no prohibition on the use of the symbol <sup>TM</sup> in India.

- ✓ Only the proprietor of a trademark whose trademark has been registered in India can use the symbol ® in India. Using the symbol ® unless your mark has been registered in India is unlawful.

### 5.2.4 Copyrights: The (Indian) Copyright Act, 1957

The (Indian) Copyright Act, 1957, pursuant to the amendments in the year 1999, fully reflects the Berne Convention for Protection of Literary and Artistic Works, 1886 and the Universal Copyrights Convention, to which India is a party.

#### Meaning

The term original in the copyright law means that the work originated with the author.

There is no requirement for novelty or uniqueness as there is in patent law.

Copyright law protects the expression of an idea. Not the idea itself.

#### Copyrightable Matter

- ✓ Literary work including software – Books, Essay, Compilations, computer programs.
- ✓ Artistic work – Drawing, painting, logo, map, chart, plan, photographs, work of architecture.
- ✓ Dramatic work – Screenplay, drama.
- ✓ Musical work – musical notations.
- ✓ Sound Recording – Compact Disc.
- ✓ Cinematograph Films – Visual Recording which includes sound recording.

#### Duration/Term of Copyright

b) Lifetime of the author plus sixty years from the beginning of the calendar year next following the year in which the author dies in case of the following copyrights:

- ✓ Literary works
- ✓ Dramatic works
- ✓ Musical works
- ✓ Artistic works

b) Until sixty years from the beginning of the calendar years next following the year in which the works is first publish in case of the following copyrights:

- ✓ Anonymous and pseudonymous works
- ✓ Posthumous works
- ✓ Cinematograph films
- ✓ Sound records
- ✓ Government work
- ✓ Public undertakings
- ✓ International agencies
- ✓ Photographs

### **Process to Obtain Copyright**

The person applying for copyright has to follow the following steps:

- ✓ The person has to file the application along with the fee either in the form of DD/ IPO
- ✓ Then the diary number will be issued.
- ✓ The person has to compulsorily wait for 30 days for objections.
- ✓ If no objection is filled, then the examiner goes ahead to review and scrutinize the application to find any discrepancies.

### **If in case objection is filed:**

- ✓ The letter will be sent to both parties, i.e., the party filing the objections and the party against whom the objection is filed.
- ✓ Reply will be awaited from both the parties.
- ✓ Reply by both the parties will be heard by the registrars.
- ✓ If in case objections are rejected the application will be accepted and if objections will be accepted, then the application will be rejected.
- ✓ This procedure applies in the case of both published and unpublished work.

## **International Copyright Order,1999**

The International Copyright Order of 1999 is a significant piece of legislation designed to harmonize and enhance copyright protection on a

global scale. Enacted by various countries to align with the global standards set by the Berne Convention and the World Intellectual Property Organization (WIPO), it establishes a framework for the protection of intellectual property across borders. This framework ensures that works are safeguarded in all member states, thus promoting international trade in creative content and reducing copyright infringement.

Under the International Copyright Order, countries are required to provide a minimum level of protection for copyrighted works, which includes literature, music, film, and other forms of artistic expression. This protection extends to both the economic and moral rights of authors, ensuring that creators can control and benefit from their works, regardless of where they are used. The order aims to prevent unauthorized copying, distribution, and performance of protected works, thereby fostering a more secure and equitable environment for creators and publishers.

Additionally, the International Copyright Order emphasizes the importance of fair use and limitations on copyright to balance the interests of creators and the public. It outlines exceptions where works can be used without permission, such as for educational purposes or in cases of public interest, while ensuring that these exceptions do not undermine the economic rights of the authors. This balance is crucial for maintaining both innovation and accessibility in the global marketplace.

The order also facilitates international cooperation and enforcement of copyright laws among member states. It includes provisions for resolving disputes and addressing cases of infringement that cross national boundaries. By promoting a standardized approach to copyright enforcement, the International Copyright Order helps member countries work together more effectively to protect intellectual property and uphold the rights of creators worldwide.

## Let's Sum Up

Dear Learners, in this first section, we have seen the meaning and definitions of various Acts like copyright act, trademarks and etc..in detail. As we have seen, the basic rights of the people.

**A patent is an exclusive right granted for an invention**

**The legal right to be the only person who may print, copy, perform, etc. a piece of original work, such as a book, a song or a computer program**

**A trademark is an easily recognizable symbol, phrase, or word that denotes a specific product**

## Check Your Progress 2

1. What term refers to legal rights granted for creations of the mind?
  - A) Property
  - B) Intellectual
  - C) Rights
  - D) Assets
2. Which type of intellectual property protects inventions?
  - A) Trademark
  - B) Patent
  - C) Copyright
  - D) Design
3. What term is used for protection of artistic and literary works?
  - A) Trademark
  - B) Patent
  - C) Copyright



D) Design

4. Which type of intellectual property protects brand names and logos?

- A) Trademark
- B) Patent
- C) Copyright
- D) Trade Secret

5. Which type of intellectual property includes trade secrets?

- A) Trademark
- B) Patent
- C) Copyright
- D) Trade Secret

6. What type of intellectual property protects the appearance of a product?

- A) Design
- B) Trademark
- C) Patent
- D) Copyright

7. Which intellectual property right protects computer software?

- A) Trademark
- B) Patent
- C) Copyright
- D) Design

8. What type of intellectual property is concerned with geographical indications?

- A) Patent
- B) Design
- C) Trademark
- D) GI

9. Which act regulates the registration of trademarks in India?

- A) Patent Act
- B) Copyright Act
- C) Trademarks Act
- D) Design Act

10. What is the maximum duration of trademark protection under the Trademarks Act, 1999?

- A) 10 years
- B) 20 years
- C) 25 years
- D) Indefinite

11. Which authority is responsible for trademark registration in India?

- A) Patent Office
- B) Copyright Office
- C) Trademark Office
- D) Design Office

12. Under the Trademarks Act, what is the term used for a trademark that is similar to an existing one?

- A) Generic
- B) Descriptive
- C) Confusing
- D) Suggestive

13. Which act governs the protection of literary, dramatic, musical, and artistic works in India?

- A) Trademarks Act
- B) Design Act
- C) Copyright Act
- D) Patent Act

14. Under the Copyright Act, what is the duration of copyright protection for literary works?

- A) 50 years
- B) 60 years
- C) 70 years
- D) 80 years

15. What term is used for the right to perform a copyrighted work in public?

- A) Reproduction
- B) Performance
- C) Adaptation

D) Distribution

16. Which order governs the international aspects of copyright in India?

- A) Copyright Act
- B) International Copyright Order
- C) Trademarks Act
- D) Patent Act

17. What is the purpose of the International Copyright Order, 1999?

- A) Trade
- B) Import
- C) Enforcement
- D) Registration

18. Which treaty does the International Copyright Order, 1999 align with?

- A) Paris Convention
- B) Berne Convention
- C) Hague Convention
- D) Geneva Convention

19. Under the International Copyright Order, what is a key provision for foreign works?

- A) Registration
- B) Duration
- C) Enforcement
- D) Fees

20. What type of works does the International Copyright Order, 1999 primarily protect?

- A) Domestic
- B) Foreign
- C) Digital
- D) Printed

### 5.3.1 Design Act 2000

Earlier this Act was governed by the Design Act, 1911. In order to bring the Design Act at par with the International law the enactment of the Design Act, 2000 took place. So, presently the design laws are regulated by the Design Act of 2000. It is an Act to consolidate and amend the law relating to the protection of designs. It was published in the Gazette of India and came into force on 12.05.2000. This Act is a complete code in itself and is statutory in nature. It extends to the whole of India.

### **Design Act 2000 definition**

“Design” means features of shape, pattern, configuration, ornament, or composition of colors or lines which is applied in three-dimensional or two-dimensional or in both forms using any of the processes whether manual, chemical, mechanical, separate, or combined which in the finished article appeal to or judged wholly by the eye.

### **Origin and development of design act in India**

- ✓ The origin of the Design Act in India traces back to the British period.
- ✓ The first Act that gave privileges and protection to designs was the Patent and Designs Act, 1872. This Act supplemented the Act of 1859 which was passed by the Governor-General of India to protect industrial designs and grant privileges to inventors.
- ✓ The Inventions and Designs Act of 1888 repealed this Act of 1872.
- ✓ The Act of 1888 was a reflection of the Designs Act of the United Kingdom.
- ✓ In the year 1911, the British government enacted a new law in the form of the Patent and Designs Act repealing all the prior legislations.
- ✓ In 1930, this Act was amended and the government came up with some changes in the process of registration of designs in which the concept of new and original design changed to the new or original design.
- ✓ This legislation used to govern the matters related to both patents as well as designs.

- ✓ In 1970, the Patent Act was enacted to deal with the matters of patent specifically. All the provisions regarding patents from this Act were repealed and it continued to deal with Industrial designs till 2000.
- ✓ India became a member state of the WTO in the year 1995. Consequently, the Patents and Designs Act of 1911 was repealed and a new act called the Designs Act, 2000 was enacted in compliance with **TRIPS** (Trade-Related aspects of Intellectual Property Rights) to make design laws for the country.
- ✓ This new Act was enforced on 11th May 2001.

### **Salient features of design act 2000**

- ✓ India is a member of the World Trade Organization's Paris Convention. It has signed the Patent Cooperation Treaty which allows all the signatories of the convention to claim priority rights.
- ✓ Under the Act of 2000, Locarno classification has been adopted in which the classification is based only on the subject matter of design. Under the previous provisions, the classification was made on the basis of the material which has been used to make that material.
- ✓ The introduction of "Absolute Novelty" makes it possible to judge a novelty on the basis of prior publication of any article. This is applicable in other countries also.
- ✓ As per the new law, a design can be restored which was absent in the previous enactment. Now, the registration of a design can be restored.
- ✓ The Act allows the district courts to transfer cases to the high courts where the jurisdiction is present. It is possible only in cases where a person is challenging the validity of any registration.
- ✓ Laws regarding the delegation of powers of the controllers to other controllers and the duty of examiner are also mentioned in the new Act.
- ✓ The quantum of punishment is also enhanced under the Act in case of any infringement.
- ✓ The secrecy of two years of a registered design is also revoked.

- ✓ Provisions regarding the avoidance of certain restrictive conditions are also there so as to regulate anti-competitive practices in contractual licenses.
- ✓ Whenever a license is brought within the domain of public records and that too publicly, the registration is likely to be taken into consideration. Anyone can get a certified copy of it in order to inspect the same.
- ✓ The laws regarding the substitution of the application before registering a design are also mentioned in the new enactment.
- ✓ Under new provisions, power has been given to district court to transfer cases to the high court where the court is having jurisdiction. This is only possible if the person is challenging the validity of the design registration.
- ✓ Incorporates the provisions regarding delegation of powers of the controller to other controllers and duty of examiner.
- ✓ Under the new provision, the quantum of punishment is also enhanced in case of infringement.
- ✓ It revokes the secrecy of two years of a registered design.
- ✓ It contains provisions for the avoidance of certain restrictive conditions so as to regulate anti-competitive practices within contractual licenses.
- ✓ The registration is taken into consideration when it is brought within the domain of public records that too physically. Anyone can inspect the records and get a certified copy of it.
- ✓ It contains provisions for substitution of the application before registering the design.

### **Objectives of design act 2000**

- ✓ The primary objective of the Design Act is to protect the designs.
- ✓ The Design Act Of 2000 is an Act to consolidate and amend the law relating to the protection of designs.
- ✓ Its main objective is to protect new or original designs from getting copied which causes loss to the proprietor.

- ✓ The important purpose of design registration is to see that the creator, originator or artisan of any design is not deprived of his reward for creating that design by others copying it to their goods or products.
- ✓ An industrial design helps in drawing a customer's attention and helps in increasing the commercial value of an article. Therefore, helps in expanding its market.
- ✓ There are many competitors who adopt evil ways to reduce the competition in the rival groups by exploiting the designs to their advantage. Thus, it is necessary to have laws to safeguard the interests of the owners of these designs. In order to fulfill this objective, the Design Act of 2002 came into existence.

### 5.3.2 United Nations Commission on International Trade Law (UNCITRAL)

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

The organization operates on the premise that international trade has global benefits for its participants. With increasing economic interdependence globally, UNCITRAL seeks to help expand and facilitate global trade through the progressive harmonization and modernization of the law of international trade.

The United Nations Commission on International Trade Law (UNCITRAL) is a key legal body within the United Nations system, established by the General Assembly in 1966. Its primary mission is to promote the harmonization and modernization of international trade law, recognizing the critical role that a uniform legal framework plays in facilitating global commerce. UNCITRAL's work is aimed at

reducing legal barriers to international trade, creating a more predictable and stable environment for cross-border transactions.

UNCITRAL's efforts are focused on the development of international conventions, model laws, and other legal instruments that member states can adopt into their national legal systems. These instruments cover a wide range of topics, including international sale of goods, dispute resolution, electronic commerce, insolvency law, and secured transactions. By providing standardized legal frameworks, UNCITRAL helps to reduce the complexities and uncertainties that often arise in international trade, fostering a smoother flow of goods, services, and investments across borders.

One of UNCITRAL's most well-known achievements is the United Nations Convention on Contracts for the International Sale of Goods (CISG), which has been adopted by over 90 countries. The CISG provides a uniform set of rules governing the formation of contracts, the rights and obligations of buyers and sellers, and remedies for breach of contract. This convention has significantly contributed to the simplification of international trade by offering a common legal ground for businesses operating in different jurisdictions.

Another significant area of UNCITRAL's work is in international arbitration and mediation. The UNCITRAL Model Law on International Commercial Arbitration, adopted by many countries, provides a framework for resolving disputes arising from international commercial agreements. This model law, along with the UNCITRAL Arbitration Rules, has been instrumental in promoting arbitration as a preferred method for resolving cross-border disputes, offering a neutral and efficient alternative to litigation.

In addition to its work on specific legal instruments, UNCITRAL also engages in technical assistance and capacity-building activities. These efforts are aimed at helping countries implement UNCITRAL's texts into their national laws and improving their legal infrastructure to better support international trade. Through workshops, training sessions, and advisory services, UNCITRAL plays a vital role in strengthening the legal capacity of developing and transition economies.



UNCITRAL operates through a working group system, with each group focusing on specific areas of international trade law. These working groups are composed of legal experts from member states, international organizations, and the private sector, ensuring a broad representation of perspectives and interests. The collaborative nature of UNCITRAL's work allows for the creation of balanced and widely accepted legal standards.

The impact of UNCITRAL's work extends beyond the adoption of its legal texts. By promoting legal harmonization, UNCITRAL helps to build trust and confidence in international trade relations, which is essential for economic growth and development. Its contributions to creating a stable and predictable legal environment are particularly important for businesses, as they navigate the complexities of operating in multiple legal jurisdictions.

UNCITRAL plays a crucial role in shaping the legal landscape of international trade. Through its development of conventions, model laws, and other legal instruments, as well as its capacity-building efforts, UNCITRAL fosters the harmonization and modernization of trade laws globally. This, in turn, supports the smooth functioning of international trade, contributing to global economic development and cooperation.

### **The salient areas of commercial law**

- ✓ Dispute resolution
- ✓ International contract practices
- ✓ Transport
- ✓ Insolvency
- ✓ Electronic commerce
- ✓ International payments
- ✓ Secured transactions
- ✓ Procurement
- ✓ The sale of goods

The organization is also responsible for coordinating the work of other bodies active in international trade, both within and outside of the UN, to enhance cooperation, consistency, and efficiency while avoiding duplication.

**UNCITRAL** aims to formulate modern, fair, and harmonized rules for such commercial transactions. Its work includes conventions, model laws, and rules which are acceptable worldwide; legal and legislative guides, and practical recommendations; updated information on case law and enactments of uniform commercial law; technical assistance in law reform projects; and regional and national seminars on uniform commercial law.

According to the United Nations Commission on International Trade Law (UNCITRAL), electronic authentication and signature methods may be classified into the following categories –

- ✓ Those based on the knowledge of the user or the recipient, i.e., passwords, personal identification numbers (PINs), etc.
- ✓ Those based on the physical features of the user, i.e., biometrics.
- ✓ Those based on the possession of an object by the user, i.e., codes or other information stored on a magnetic card.
- ✓ Types of authentication and signature methods that, without falling under any of the above categories might also be used to indicate the originator of an electronic communication (Such as a facsimile of a handwritten signature, or a name typed at the bottom of an electronic message).

According to the UNCITRAL MODEL LAW on Electronic Signatures, the following technologies are presently in use –

- ✓ Digital Signature within a public key infrastructure (PKI)
- ✓ Biometric Device
- ✓ PINs
- ✓ Passwords
- ✓ Scanned handwritten signature
- ✓ Signature by Digital Pen
- ✓ Clickable “OK” or “I Accept” or “I Agree” click boxes.

### Let's Sum Up

Dear Learners, in this final section, we have seen the meaning and various definitions of design act and UNICITRAL in detail. As we have seen, Some definitions and Legal sections, this is all about the understanding of basic laws in business.

✓The Design Act Of 2000 is an Act to consolidate and amend the law relating to the protection of designs.

The legal rights given to the inventor or creator to protect his invention or creation for a certain period of time

(UNCITRAL) plays a key role in developing that framework in pursuit of its mandate to further the progressive harmonization and modernization of the law of international trade.

### Check Your Answer 3

1. Which act governs the registration of industrial designs in India?
  - A) Copyright Act
  - B) Trademark Act
  - C) Patent Act
  - D) Design Act
2. What is the primary purpose of the Design Act, 2000?
  - A) Patents
  - B) Trademarks
  - C) Designs
  - D) Copyrights
3. What is the maximum duration for which a design can be protected under the Design Act?
  - A) 10 years
  - B) 15 years
  - C) 20 years
  - D) 25 years

4. What must a design be to qualify for protection under the Design Act?
  - A) New
  - B) Complex
  - C) Expensive
  - D) Functional
  
5. Which authority is responsible for the registration of designs under the Design Act?
  - A) Design Office
  - B) Patent Office
  - C) Trademark Office
  - D) Copyright Office
  
6. What does the Design Act, 2000 primarily protect?
  - A) Logos
  - B) Inventions
  - C) Industrial Designs
  - D) Literary Works
  
7. Which of the following can be registered under the Design Act?
  - A) Utility
  - B) Aesthetic
  - C) Functional
  - D) Practical
  
8. What is required for a design to be eligible for protection under the Design Act?
  - A) Original
  - B) Popular
  - C) Trade Secret
  - D) Expensive
  
9. What does UNICITRAL stand for?
  - A) United Nations International Committee on Trade and Law
  - B) United Nations Commission on International Trade Law
  - C) United Nations Institute for Trade and Law
  - D) United Nations International Council on Trade
  
10. What is the primary focus of UNICITRAL?
  - A) Human Rights
  - B) Trade Law
  - C) Environmental Law
  - D) Intellectual Property
  
11. Which body is responsible for creating international trade standards?
  - A) WTO
  - B) IMF

- C) UNICITRAL  
D) WHO
12. Which UN body works on international commercial law?  
A) UNCTAD  
B) UNICITRAL  
C) UNEP  
D) UNDP
13. UNICITRAL was established in which year?  
A) 1966  
B) 1976  
C) 1985  
D) 1995
14. UNICITRAL provides model laws for which field?  
A) Environmental  
B) Trade  
C) Human Rights  
D) Security
15. UNICITRAL's primary aim is to promote harmonization in which area?  
A) Taxation  
B) International Trade  
C) Environmental Protection  
D) Intellectual Property
16. What is one of the key functions of UNICITRAL?  
A) Conflict Resolution  
B) Trade Facilitation  
C) Economic Development  
D) Humanitarian Aid
17. Which of the following is a UNICITRAL initiative?  
A) WTO Agreements  
B) Model Laws  
C) UN Peacekeeping  
D) IP Treaties
18. UNICITRAL aims to improve what aspect of international trade?  
  
A) Security  
B) Efficiency  
C) Politics  
D) Social Rights
19. Which legal area does UNICITRAL's work primarily influence?  
A) Domestic Law  
B) International Trade Law  
C) Environmental Law

D) Criminal Law

20. UNICITRAL helps in drafting model laws for what purpose?

- A) Domestic Use
- B) International Consistency
- C) Regional Agreements
- D) Local Issues

## 5.4 Unit Summary

The Parliament of India repealed the three-decade-old Consumer Protection Act, 1986, and replaced it with the new Consumer Protection Act, 2019. While retaining certain old provisions, the New Act has certain new provisions that tightens the existing rules to further safeguard consumer rights and create exhaustive consumer protection law. The Competition Act, 2002 was enacted by the Parliament of India and governs Indian competition law. It replaced the Monopolies and Restrictive Trade Practices Act, 1969 (MRTP Act). The Competition Act, 2002 was enforced to prohibit the agreement or practices that restrict free trading and also the competition between two business entities, protect the interest of the consumers and ensure freedom of trade in Indian markets. Under this legislation, the Competition Commission of India (CCI) was established to prevent the activities that have an adverse effect on competition in India. No enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition (AAEC) within India. Such agreements will be void. Intellectual property rights (IPRs) are the rights given to persons over the creations of their minds. They usually give the creator an exclusive right over the use of his/her creation for a certain period of time. In India, the law relating to patents is contained in the Patents Act, 1970. Patent is granted for both product and process for limited period i.e. 20 years from the date of filing. Patent gives monopolistic rights to its owner. It has to be renewed every year by paying the renewal fee. A trade mark helps consumers identify and purchase a product or service because its nature and quality, indicated by its unique trade mark, meets their needs. The registration procedure in India is based on the 'first to file' system. It is therefore important that the rights holder

applies for the registration of its mark as soon as possible. A Trade Mark/Service Mark is valid for a period of 10 years. Copyright law protects the expression of an idea. Not the idea itself. The registration of copyright is not compulsory but advisable...Trade Secret relates to business information not known or disclosed to the public. There is no statute or legislation that governs the protection of trade secrets in India. However, rights in respect of trade secrets are enforced through the Contract Law (Indian Contract Act, 1872) principles of Equity or by way of common law for breach of confidence.

## 5.5 GLOSSARY

S.No	Words	Meaning
1.	Enforced	to make people obey a law, or to make a particular situation happen or be accepted
2.	Association	a group of people or organizations who work together for a particular purpose.

## 5.6 SELF ASSESMENT QUESTIONS

### Short answer questions:

1. Write the objectives and features of the Consumer Protection Act
2. Define "Complaint".
3. Discuss the objectives of the Competition Act, 2002. Also give major reasons for passing the Act.
4. What are Intellectual Property Rights (IPRs)? State the types of IPRs as per TRIPS.
5. Define a trade mark. Discuss the procedure for registration of a trade mark.
6. What are Copyrights? Explain the registration procedure of copyrights in India along with the duration of various registered copyrights.

### Essay type questions:

1) Suraj booked a motor vehicle through one of the dealers. He was informed subsequently that the procedure for purchasing the motor vehicle had changed and was called upon to make further payment to continue the booking before delivery. On being aggrieved, Suraj filed a complaint with the State Commission. Would he succeed?

[**Hint:** Suraj would not succeed, as he is not a consumer. The sale transaction has not taken place so far. Therefore there is no question of any defect in the goods. In case it is alleged that the dealer is indulging in any unfair trade practice and that Suraj has suffered some loss or damage as a result thereof, then Suraj has to prove all these before his petition can be entertained.]

2) Write the regulations of combinations under the Competition Act, 2002.

## 5.7 Task

Sant Ram admitted his only infant son in a private nursing home. As a result of strong dose of medicine administered by the nursing attendant, the child became mentally retarded. Sant Ram wants to make a complaint to the district forum seeking relief by way of compensation on the ground that there was deficiency in service by the nursing home. Does his complaint give rise to a consumer dispute? Who is the consumer in the instant case?

[**Hint:** Yes, this complaint gives rise to a consumer dispute. Sant Ram is a consumer who hires the services of the nursing home. Also the infant is a beneficiary and therefore he is also a consumer.]

## Case Study

### Sehgal School of Competition v. Dalbir Singh (2005)

#### Facts of the case

A student was asked to deposit lump sum fees of 18,734 as fees for coaching for medical entrance examinations for the next two years. This was deposited by the student in two complete instalments within the first six months of classes.



However, the student realized later that the quality of the coaching institute was substandard, and therefore sought a refund for the remaining period, which was refused by the coaching institute. The respondent coaching centre argued before the commission that the student had withdrawn voluntarily and, therefore, there exists no deficiency of service. They submitted records that showed good results of the institute and alleged that it was wrong to observe that their coaching was not up to the mark. To justify taking the entire fees of two years lump sum, it was stated that the conditions imposed by the coaching required non-transferability of the seat, and therefore no refund of the fee was possible under any circumstance.

### **Points of Discussion**

1. Can a student seek a refund of fees paid to a coaching class for the remaining period of classes that are yet to be held?
2. In case of a refusal to refund fee, can a claim for mental agony for pressing legal charges to be sought?

### **Judgement**

The State Tribunal following the view of the apex court and the National Commission, held that no educational institution shall collect lump sum fee for the duration of the entire course and if one does, such extra fee should be returned in case the student drops out due to deficiency. The reasoning of the Commission – Upholding (supported) student's right to be refunded for remaining classes are on the following basis:

- **Clauses prohibiting refund of fees are unfair:** Any clause saying that fees once paid shall not be refunded is unconscionable and unfair and therefore not enforceable. This view was maintained by District and State Forums as well as in appeal by the National Commission.
- **Quashing respondent's argument on the reservation of seat:** The court dismissed this argument and further quoted UGC guidelines that mention that even if a student has not attended even a single class, an amount of 1000 may be deducted and proportionate charges for hostel fees, etc, and the balance amount has to be refunded in its entirety. On blocking of the seat, the Commission advised that a reserve list of candidates may be maintained, and waitlisted candidates may be given the opportunity to apply for the seat.

- **Additional compensation:** In the order by State Consumer Forum, it was mentioned that not just the balance amount of fee, but also a higher compensation for legal costs as well as the pain that the student had to undertake, could be availed in such cases.

Source: <https://vakilsearch.com/advice/the-top-ten-consumer-court-cases-and-trials-in-india>

## Answer Key

### Check Your Progress 1

1. B) Consumer
2. B) Commission
3. D) No limit
4. C) District Forum
5. B) Competition
6. B) Commission
7. C) Monopolies
8. C) 10% of revenue
9. C) Cyber
10. B) Hacking
11. A) IT
12. C) Electronic Transactions
13. C) Cyber Cell
14. C) Section 66
15. A) IT Act

### Check Your Progress 2

1. B) Intellectual
2. B) Patent
3. C) Copyright
4. A) Trademark
5. D) Trade Secret
6. A) Design
7. C) Copyright
8. D) GI
9. C) Trademarks Act
10. D) Indefinite
11. C) Trademark Office
12. C) Confusing

13. C) Copyright Act
14. C) 70 years
15. B) Performance
16. B) International Copyright Order
17. C) Enforcement
18. B) Berne Convention
19. C) Enforcement
20. B) Foreign

### Check Your Progress 3

1. D) Design Act
2. C) Designs
3. B) 15 years
4. A) New
5. B) Patent Office
6. C) Industrial Designs
7. B) Aesthetic
8. A) Original
9. B) United Nations Commission on International Trade Law
10. B) Trade Law
11. C) UNICITRAL
12. B) UNICITRAL
13. A) 1966
14. B) Trade
15. B) International Trade
16. B) Trade Facilitation
17. B) Model Laws
18. B) Efficiency
19. B) International Trade Law
20. B) International Consistency

## 1.8 Suggested Reading

1. Kenneth W. Clarkson, Roger LeRoy Miller, and Frank B. Cross (2023) "Business Law: Text and Cases".
2. Jeffrey F. Beatty, Susan S. Samuelson, and Patricia Sanchez Abril (2023). "Essentials of Business Law".
3. Richard A. Mann and Barry S. Roberts(2022) "Business Law and the Regulation of Business".

4. Andrew Johnston and Liza Lovdahl Gormsen (2021) "Corporate Law and Governance".
5. Lucian A. Bebchuk and Assaf Hamdani (2009). "The Role of Law in Corporate Governance".
6. Moshe Y. Milevsky (2006) "Legal Aspects of International Business: A Canadian Perspective"
7. Frederick J. Swaim Jr (2011). "Business Law Basics".
8. Nancy K. Kubasek, Bartley A. Brennan, and M. Neil Browne (2022) "Understanding the Legal Environment of Business".

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2. S.S. Gulshan & G.K. Kapoor, (2022) Business Law, New Age International Publishers, New Delhi.
3. S.C. Kuchhal, (2022) Mercantile Law, Vikas Publishing House, New Delhi.
4. S.S. Gulshan, (2018) Business Law, Excel Books, New Delhi.
5. Akhileshwar Pathak, (2021) Legal Aspects of Business Tata McGraw Hill Publishing Co. Ltd., New Delhi.
6. N.D. Kapoor, (2020) Business Law: Including Companies (Amendment) Act, 2019, Sultan Chand & Sons.
7. L.M. Porwal & Sanjeev Kumar ,( 2015). Legal And Regulatory Framework, Virinda Publications Ltd.
8. P.P.S. Gogna, (2018). A TEXTBOOK OF MERCANTILE LAW (Commercial Law), S.CHAND & Company Ltd.