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BACHELOR OF BUSINESS ADMINISTRATION (B.B.A.)
SECOND YEAR
PAPER – VI : BUSINESS LAW

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BACHELOR OF BUSINESS ADMINISTRATION (B.B.A)

SECOND YEAR

PAPER – VI : BUSINESS LAW

UNIT I **BUSINESS LAWS**

UNIT II **DISCHARGE OF A CONTRACT**

UNIT III **LAW OF SALE OF GOODS ACT, 1930**

UNIT IV **COMPANY - LAW**

UNIT V **PROSPECTUS OF A COMPANY**

UNIT - I

- INTRODUCTION
- MEANING OF CONTRACT
- CLASSIFICATION OF CONTRACTS
- ESSENTIALS OF A VALID CONTRACT
- OFFER AND ACCEPTANCE
- ACCEPTANCE
- LAPSE OF AN OFFER

BACHELOR OF BUSINESS ADMINISTRATION

SECOND YEAR

PAPER – VI : BUSINESS LAW

UNIT - I

Business Law: Meaning, Objective - Sources - Law of Contract - Meaning. Types - Essential elements of a valid contract.

UNIT-II

Discharge of contract - Remedies for breach of Contract - Agreement not declared void - Agreement expressly declared void - Wagering Agreements.

UNIT - III

Law of sale f Goods - Sale agreement to sell - their distinctions - Types of Goods - Conditions and warranties - Caveat Emptor - Transfer of property - Sale by Non owners - Performance -Unpaid seller - Auction sale.

UNIT - IV

Company Law: Joint Stock Companies - Definition, Features, Kinds - Distinction between Private Company and Public Company - Privileges of a Private Company. - Promotion of a Company - Role of Promoters - Incorporation - Memorandum of Association -Contents Alteration - Doctrine of Ultra Vires - Articles of Association - Doctrine of Indoor Management - Constructive notice - Certificate of Incorporation - Certificate a Commencement of Business.

UNIT - V

Prospectus - Contents - Liabilities for Mis - Statement - Statement in lie of prospectus - Shares - types - Debentures - kinds - Allotment of shares - Transfer of shares - Share Certificates and Warrant. Meetings - Resolutions - Winding up of a company.

TEXT BOOK

Kapoor. N.D, Business Laws, Sultan Chand & Sons

REFERENCE BOOKS

1. RSN Pillai, Bagavathi, Business, Law, S.Chand
2. Shukla.M.C, Mercantile law, S.Chand
3. P.C. Tulsian, Business Law, TMH

UNIT - I

BUSINESS LAWS

INTRODUCTION

Law means a 'set of rules'. Broadly speaking, it may be defined as the rules of conduct recognised and enforced by the state to control and regulate the conduct of people, to protect their property and contractual rights with a view to securing justice, peaceful living and social security.

Purpose to know law

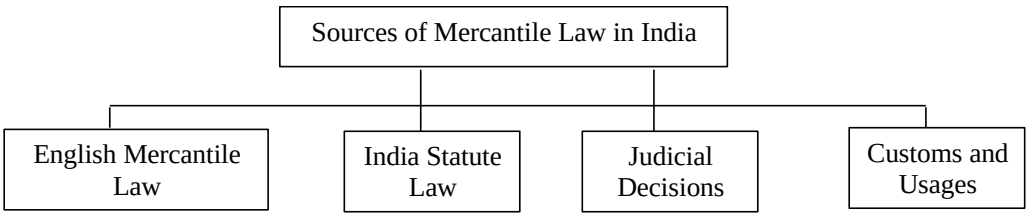
One should know the law to which he is subject because ignorance of law is not excuse. For example, if X is caught travelling in a train without ticket, he cannot plead that he was not aware of the rule regarding the purchase of ticket and therefore, he may be excused.

Meaning of Mercantile Law or Commercial Law

Mercantile law is not a separate branch of law. Basically, it is a part of civil law which deals with the rights and obligations of mercantile persons arising out of mercantile transactions in respect of mercantile property. It includes laws relating to various contracts, partnership, companies, negotiable instruments, insurance, carriage of goods, arbitration etc.

Sources of Mercantile Law

In India, mercantile law is basically an adaptation of the English Law with some modifications and reservations which are necessitated by the peculiar conditions prevailing in India. The main sources of the Indian mercantile law are shown below.



Let us discuss them one by one.

(a) **English Mercantile Law** English laws are the primary sources of Indian Mercantile Law. English laws are based on customs and usages of merchants in England.

(b) **Indian Statute Law** The various Acts passed by the Indian Legislature are the main sources of mercantile law in India, e.g. Indian Contract Act, 1872, The Sale of Goods Acts, 1930, The Indian Partnership Act, 1932, The Negotiable Instruments Act 1881, The Companies Act, 1956.

(c) Judicial Decisions The Past judicial decisions of English courts and Indian courts are also one of the sources of law. Wherever the law is silent on a point, the judge has to decide the case according to the principle of equity, justice and good conscience. The past judicial decisions are followed by the courts while deciding similar cases before them.

(d) Customs and Usages The customs and usages of a trade are also one of the sources of mercantile law in India. These customs and usages govern the merchants of a trade in their dealings with each other.

The law of Contract

The law of contract is contained in the Indian Contract Act, 1872 which -

(a) deals with the general principles of law governing all contracts, and

(b) covers the special provisions relating to special contracts like Bailment, Pledge, Indemnity, Guarantee and Agency.

Meaning of Contract

According to Section 2(h) of the Indian Contract Act, 1872, "An agreement enforceable by law is a contract". In other words, an agreement which can be enforced in a court of law is known as a contract.

Contract = An Agreement + Enforceability of an agreement

What is an Agreement ?

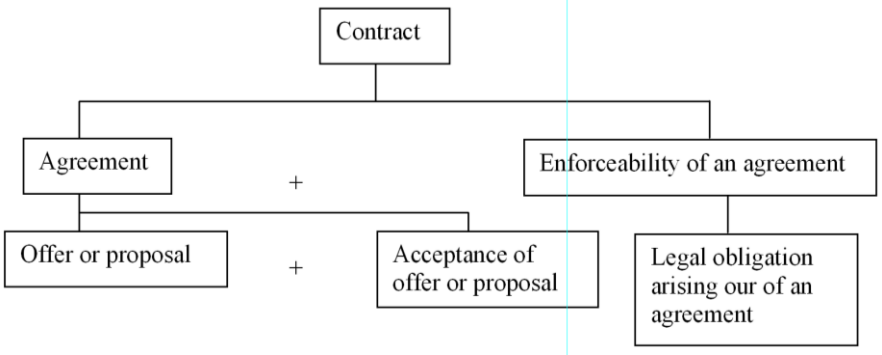
According to Section 2(e) of the Indian Contract Act, 1872, "Every promise and every set of promises forming the consideration for each other is an agreement". Now the question arises, 'what is promise?' According to Section 2(b) of the Indian Contract Act, 1872, "A proposal when accepted, becomes a promise".

Agreement = Offer or Proposal + Acceptance of Offer or Proposal

What is an Enforceability of Agreement?

An agreement is said to be enforceable by law if it create some legal obligation.

In the form of a graphic representation, the contract can be expressed as under:



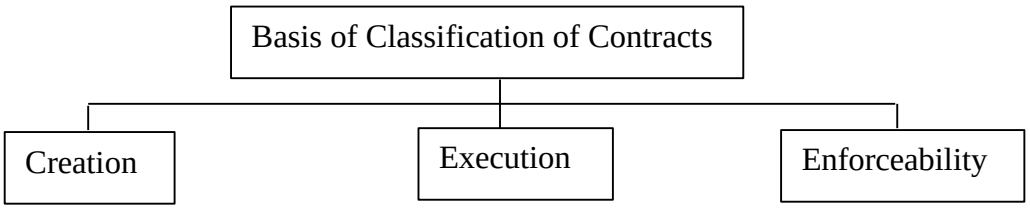
"The law of contracts is not the whole law of agreements". The law of contracts is the law of only those agreements which create legal obligations (i.e. an obligation which is enforceable by law). An obligation is the duty to do or not to do certain act. In other words, the law of contract is concerned with only those agreements where the parties have the intention to create legal obligations (i.e. the parties are bound to do or not to do certain act). In business or commercial agreements, the usual presumption is that the parties intend to create legal obligations.

Distinction between an Agreement and a contract

Basis of distinction	An agreement	A contract
1. What constitute ?	Offer an its acceptance constitute an Agreement	Agreement and its enforceability constitute a contract
2. Creation of legal obligation	An agreement may or may not create a legal obligation	A contract necessarily create a legal obligation.
3. One in other	Every agreement need not necessarily be a contract	All contracts are necessarily agreements
4. Binding	Agreement is not concluded or a binding contract	Contract is concluded and binding in the concerned parties

CLASSIFICATION OF CONTRACTS

The various bases on which the contracts can be classified are shown below.



Contracts on the Basis of Creation

On the basis of creation, the contracts may be classified as under:

(a) Express Contract Express contract is one which is made by words spoken or written.

(b) Implied Contract An implied contract is one which is made otherwise than by words spoken or written. It is inferred from the conduct of a person or the circumstances of the particular case.

Contracts on the Basis of Execution

On the basis of execution, the contracts may be classified as under:

(a) **Executed Contract** It is a contract where both the parties to the contract have fulfilled their respective obligations under the contract.

(b) **Executory Contract** It is a contract where both the parties to the contract have still to perform their respective obligations.

(c) **Partly Executed and Partly Executory Contract** It is a contract where one of the parties to the contract has fulfilled his obligation and the other party has still to perform his obligation.

Contracts on the Basis on Enforceability

On the basis of enforceability, the contracts may be classified as under.

(a) **Valid Contract** A contract which satisfies all the conditions prescribed by law is a valid contract.

(b) **Void Contract** The term 'Void Contract' is a contradiction is terms. But according to section 2 (j)of the Indian Contract Act, 1872, "A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable". In other words, a void contract is a contract which was valid when entered into but which subsequently became void due to impossibility of performance, change of law or some other reason.

(c) **Void Agreement** According to Section 2(g), "An agreement not enforceable by law is said to be void". Such agreements are void-ab-inittio which means that they are unenforceable right from the time they are made.

(d) **Voidable Contract** According so Section 2(i) of the Indian Contract Act, 1872, an agreement which is enforceable by law at the option of one or more of the parties thereon but not at the option of the other or others, is a voidable contract. In other words, "A voidable contract is one which can be set aside or repudiated or avoided at the option of the aggrieved party". Until the contract is set aside or repudiated by the aggrieved party, it remains a valid contract.

SELF EVALUATION QUESTIONS

True or False Questions

State with reasons whether the following statements are True or False:

1. Law is the body of principles enforced by judiciary.
2. Indian mercantile law is primarily an adaptation of the English law.
3. Mercantile law is applicable to business community only.

Distinction Between Void Agreement and Voidable Contract

Basis of Distinction	Void Agreement	Voidable Contract
1. Void – ab-inittio	It is void from the very beginning.	It is valid when made and continues to remain valid till it is repudiated by the aggrieved party.
2. Which essential element of contract is missing	It is void because an essential element of a valid contract (other than free consent) is missing.	It is voidable because the consent of a party is not free.
3. Enforceability	It cannot be enforced by any party	It continues to be enforceable if the aggrieved party does not repudiate the contract.
4. Right of third party	Third party does not acquire any rights.	A third party who purchases goods in good faith any for consideration before the contract is repudiated, acquires good title to those goods.
5. Effect of lapse of reasonable time	Even on the expiry of a reasonable time, it can never become a valid contract.	On the expiry of a reasonable time, it may become a valid contract if the aggrieved party does not repudiate the contract within reasonable time.
6. Damages	The question of damages does not arise.	The aggrieved party can claim damages.

(e) Illegal Agreement An illegal agreement is one the objects of which is unlawful. Such an agreement cannot be enforced by law. Thus, illegal agreements are always void ab-initio (i.e. void from the very beginning).

Distinction between Void Agreement and Illegal Agreement

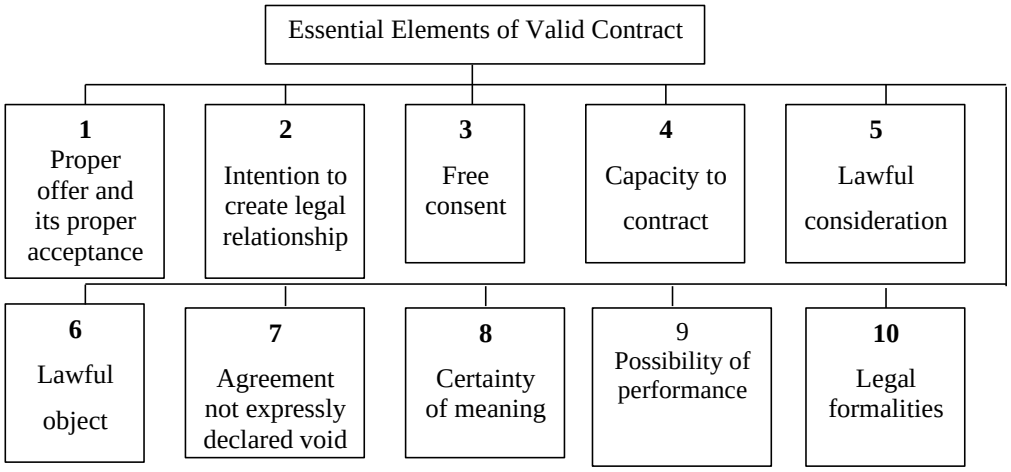
Basis of distinction	Void agreement	Illegal agreement
1. Void/illegal	All void agreements need not necessarily be illegal.	All illegal agreements a always void.
2. Effect on collateral agreements	The collateral agreements do not become void.	The collateral agreemer also become void.
3. Restoration of benefit received	If a contract becomes void subsequently, the benefit received must be restored to the other party.	The money advanced thing given can not claimed back.

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

ESSENTIALS OF A VALID CONTRACT

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

The analysis of the provisions of Section 10 shows that a valid contract must have certain essential elements. These essential elements have been shown below.



Let us discuss these essential elements one by one:

1. **Proper offer and Acceptance** There must be at least two parties - one making the offer and the other accepting it.
2. **Intention of Create Legal Relationship** There must be an intention among the parties to create a legal relationship.
3. **Free Consent** There must be free consent of the parties to the contract. According to Section 14, Consent is said to be free when it is not caused by (i) coercion, (ii) undue influence, (iii) fraud, (iv) misrepresentation, or (v) Mistake. If the consent of the parties is not, free, then no valid contract comes into existence.
4. **Capacity of Parties** The parties to an agreement must be competent to contract. The person must be major, must be of sound mind and must not be declared disqualified from contracting by any law to which he is subject.

5. **Lawful Consideration** An agreement must be supported by lawful consideration. Consideration means something in return.
6. **Lawful Object** The object of an agreement must be lawful. According to Section 23 of the Indian Contract Act, 1872, "the object is considered lawful unless it is forbidden by law or is fraudulent or involves or implies injury to the person or property of another or is immoral or is opposed to public policy".
7. **Agreement not Expressly Declared Void** The agreement must not have been expressly declared void number the provisions of Sections 24 to 30 of the Indian Contract Act, 1872.
8. **Certainty of Meaning** The terms of the agreement must be certain and unambiguous.
9. **Possibility of Performance** The terms of the agreement must be such as are capable of performance. According to Section 56, "an agreement to do an impossible act is void".
10. **Legal Formalities** The agreement must comply with the necessary formalities' as to writing registration, stamping etc. if any required in order to make ti enforce able by law.

SELF EVALUATION QUESTIONS

True or False Questions

State with reasons whether the following statements are True or False:

4. Customs and usages are an important source of mercantile law.
5. Law of contract is the whole law of agreements.
6. Law of contract is the whole law of obligations.

OFFER AND ACCEPTANCE

VALID OFFER

Meaning of Offer [Section 2 (a)

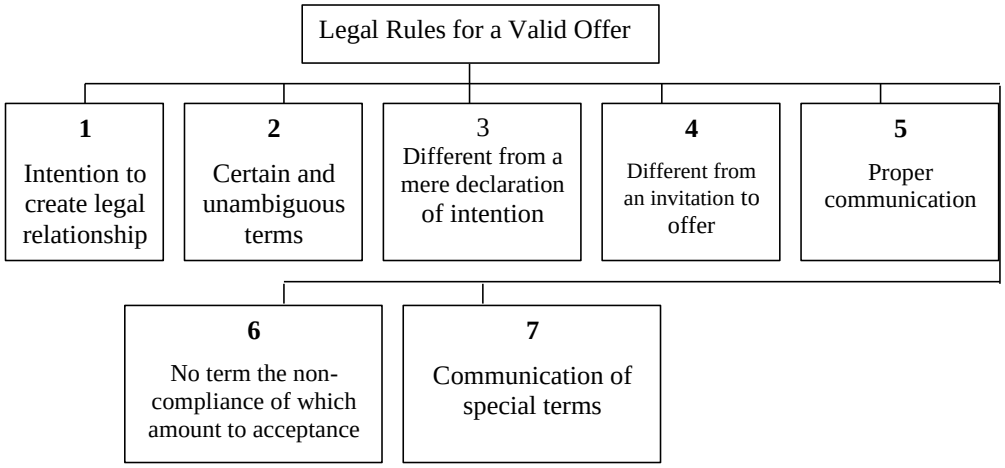
An offer is the starting point in the making of an agreement. An offer is also called 'proposal'. According to Section 2(a) of The Indian Contract Act, 1872, "A person is said to have made the proposal when he signifies to another his willingness to do or to abstain from doing anything with a view to obtaining the assent of that offer to such act or abstinence".

Meaning of "Offerer" (or 'Promisor'), Offerce (or Promisee)

The person making the proposal is called the offer or proposer. The person to whom the proposal is made is called the 'offeree' or 'proposee'.

Legal Rules for a Valid Offer

An offer to be valid must fulfil the conditions shown below.



(a) **Intention of Create Legal Relationship** An offer must intend to create legal relations. An offer must be such that when accepted, it will create legal relationship among the parties.

(b) **Certain and Unambiguous Terms** The terms of the offer must be certain and unambiguous and not vague. If the terms of the offer are vague, not contract can be entered in to because it is not clear as to what exactly the parties intended to do.

(c) **Different from a Mere Declaration of Intention** The offer must be distinguished from a mere declaration of intention. Such statement or declaration merely indicates that an offer will be made or invited in future.

(d) **Different from an Invitation of Offer** An offer must be distinguished from an invitation to offer. In case of an invitation of offer, the person making an invitation invites others to make an offer to him.

(e) **Communication** An offer must be communicated to the person to whom it is made.

(f) **No Term the Non-compliance of which Amounts to Acceptance.** The offer must not contain a term the non-compliance of which would amount to acceptance. It means that while making the offer, the offerer can not say that if offer is not accepted before a certain date, it will be presumed to have been accepted.

(g) **Communication of Special Terms or Standard Form Contracts** The special terms of the offer must also be communicated along with the offer. If the special terms of the offer are not communicated, the offeree will not be bound by those term.

ACCEPTANCE

Meaning of Acceptance

Acceptance means giving consent to the offer. It is an expression by the offeree of his willingness to be bound by the terms of the offer. According to Section 2(b) of the Indian Contract Act, 1872, "A proposal is said to be accepted when the person to whom the proposal is made signifies his assent thereto. A proposal when accepted becomes a promise".

In other words, an acceptance is the consent given to offer.

SELF EVALUATION QUESTIONS

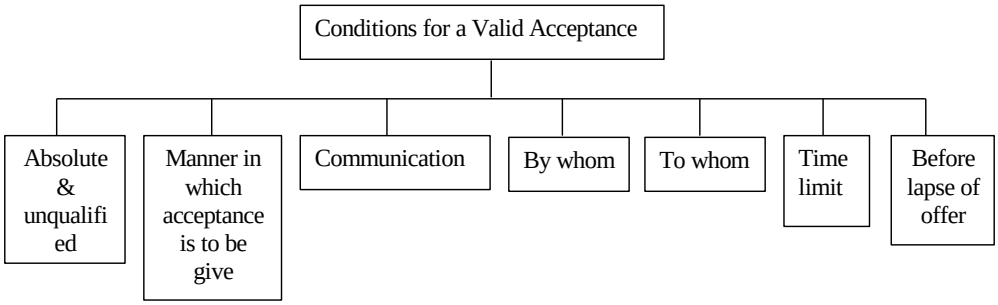
True or False Questions

State with reasons whether the following statements and True or False:

7. An express offer must be in writing.
8. A bid at an auction is an express offer.
9. An advertisement to pay reward to anyone who traces the missing boy of the advertiser is a specific offer.

Legal Rules for a Valid Acceptance

An acceptance to be valid must fulfil certain conditions which are shown below.



Conditions for a Valid Acceptance

(a) Absolute and Unqualified According to Section (7) (1) of the Indian Contract Act, 1872, "In order to convert a proposal into a promise, the acceptance must be absolute and unqualified".

(b) Manner According to Section 7 (2) of the Indian Contract Act, 1872, the acceptance of an offer must be given in the following manner.

(a) If the proposal does not prescribe the manner in which it is to be accepted.	The offer must be accepted in some usual and reasonable manner.
(b) If the proposal prescribes the manner in which it is to be accepted.	The offer must be accepted in the prescribed manner.

(c) **Communication** The acceptance must be signified (i.e. indicated or declared). In other words, the acceptance is complete only when it has been communicated to the offerer. A mere mental determination to accept is no acceptance in the eyes of law unless there is some external manifestation of that determination by words or conduct.

(d) **By Whom** Acceptance must be communicated by the offeree himself or by a person who has the authority to accept.

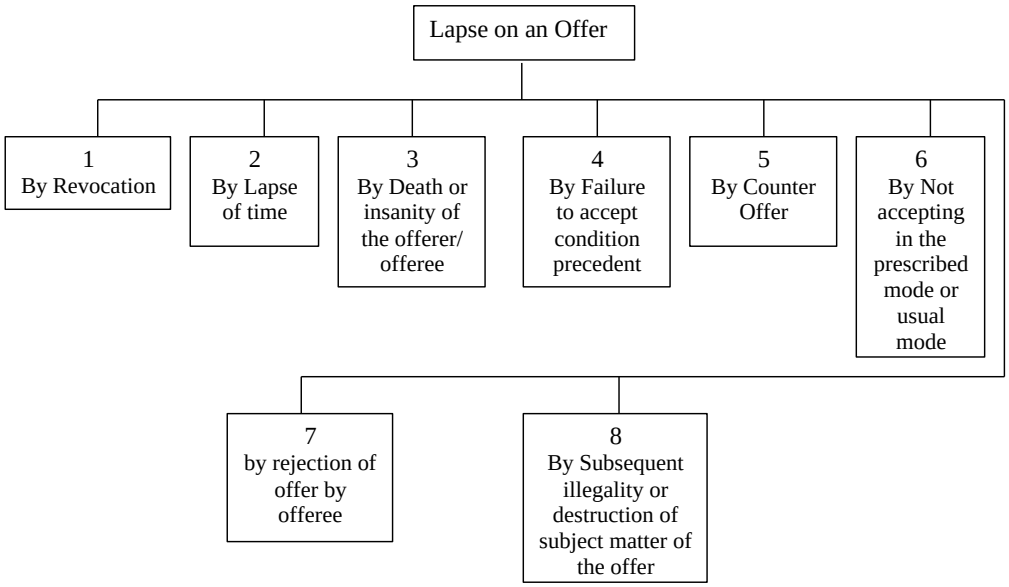
(e) **To Whom** Acceptance must be communicated to the offerer himself. In other words, if acceptance is communicated to an unauthorised person, it will not give rise to legal relations.

(f) **Time Limit** The acceptance must be given within the time prescribed (if any) or within a reasonable time (if on time is prescribed).

(g) **Before Lapse of Offer** The acceptance must be given before the offer lapses or is withrawn.

LAPSE OF AN OFFER

An offer must be accepted before it lapses (i.e. comes to an end). An offer may come to end in any of the ways shown.



(a) **By Revocation** An offer lapses if the offerer revokes the offer before its acceptance by the offeree.

(b) **By Lapse of Time** An offer lapses if it is not accepted within the fixed time (in any prescribed in the offer) or within reasonable time (if no time is prescribed in the offer).

(c) By Death or Insanity of the Offeror or Offeree An offer lapses by the death or insanity of the offerer if the fact of his death or insanity comes to the knowledge of the acceptor before he makes his acceptance.

(d) By Failure to Accept Condition Precedent An offer lapses if it is accepted without fulfilling the conditions of the offer.

(e) By Counter Offer An offer lapses if the counter offer is made because a counter offer amounts to rejection of the original offer. Counter means making a fresh offer instead of accepting the original offer.

(f) By no Accepting in the Prescribed Mode or Usual Mode An offer if it is not accepted in the specific manner (if any, prescribed in the offer) or in some usual and reasonable manner (if no manner ha been prescribed in the offer).

(g) By Rejection of Offer by Offeree An offer lapses if it is rejected by the offeree. An offer is said to be rejected if the offeree expressly rejects it or accepts it subject to certain condition. It may be noted once an offer is rejected, it can not be revived subsequently.

(h) By Subsequent illegality or Destruction of Subject Matter of the Offer An offer lapses if it becomes illegal or the subject matter is destroyed before its acceptance by offeree.

SELF EVALUATION QUESTIONS

True or False Questions

State with reasons whether the following statement are True or False:

10. An advertisement to sell goods by auction is an offer.
11. An advertisement offering reward to anyone who finds the lost dog of the advertiser is not an offer.
12. An acceptance of an invitation for dinner does not create any legal obligations.

Very Short Answer Type Questions

1. Define Agreement.
2. Define Contract.
3. What is enforceability of an agreement?
4. What is an 'Express Contract'?
5. What is an 'Implied Contract'?
6. Define 'Executed Contract'?
7. Define 'Executory Contract'.
8. What is meant by 'Partly Executed and Partly Executory Contract'?

9. What is meant by a Valid Contract?
10. Define 'Void Contract'.
11. Define 'Void Agreements'.
12. What is illegal agreement?
13. What is 'Unforceable contract'?

Short Answer Type Questions

1. Enumerate the Essentials of a valid Contract.
2. Distinguish between the followings:
   (a) Implied Contract and Express Contract
   (b) Executory Contract and Executed Contract
   (c) Void Contract and Voidable Contract
   (d) Void Contract and Void Agreement
   (e) Void Agreement and Illegal Agreement

Essay Type Questions

1. (a) Define contract.
   (b) Explain the essentials of a valid contract.

Very Short Answer Type Questions

14. What is an offer?
15. Who is called an offerer?
16. Who is called an offeree?
17. What is meant by an express offer?

Short Answer Type Questions

3. How can an offer be made?
4. To whom an offer can be made?
5. How can an offer be accepted?
6. Who can accept an offer?
7. When is communication of offer complete?

Essay Type Questions

2. (a) What is an offer?
   (b) When does it complete?
   (c) Discuss the legal rules of a valid offer.
3. (a)What is an acceptance?
   (b) How can an offer be accepted?
   (c) Discuss the legal rules of a valid acceptance.

4. Explain briefly the legal provisions relating to the communication of offer.
5. Explain briefly the legal provisions relating to the communication of acceptance.

Answer

[1. True 2. True 3. False]

[4. True 5. False 6. False]

[7. False 8. False 9. False]

[10. False 11. False 12. True]

NOTES

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UNIT – II

- INTRODUCTION
- MEANING OF DISCHARGE OF A CONTRACT
- MEANING OF BREACH OF CONTRACT
- REMEDIES FOR BREACH OF CONTRACT
- UNDUEINFLUENCE
- MISREPRESENTATION
- FRAUD
- MISTAKE
- WAGERING AGREEMENTS (SEC.30)

UNIT - II

DISCHARGE OF A CONTRACT

MEANING OF DISCHARGE OF A CONTRACT

Discharge of a contract means termination of the contractual relations between the parties to a contract. A contract is said to be discharged when the rights and obligations of the parties under the contract come to an end.

MODES OF DISCHARGES OF CONTRACT

A contract may be discharged in various modes shown.

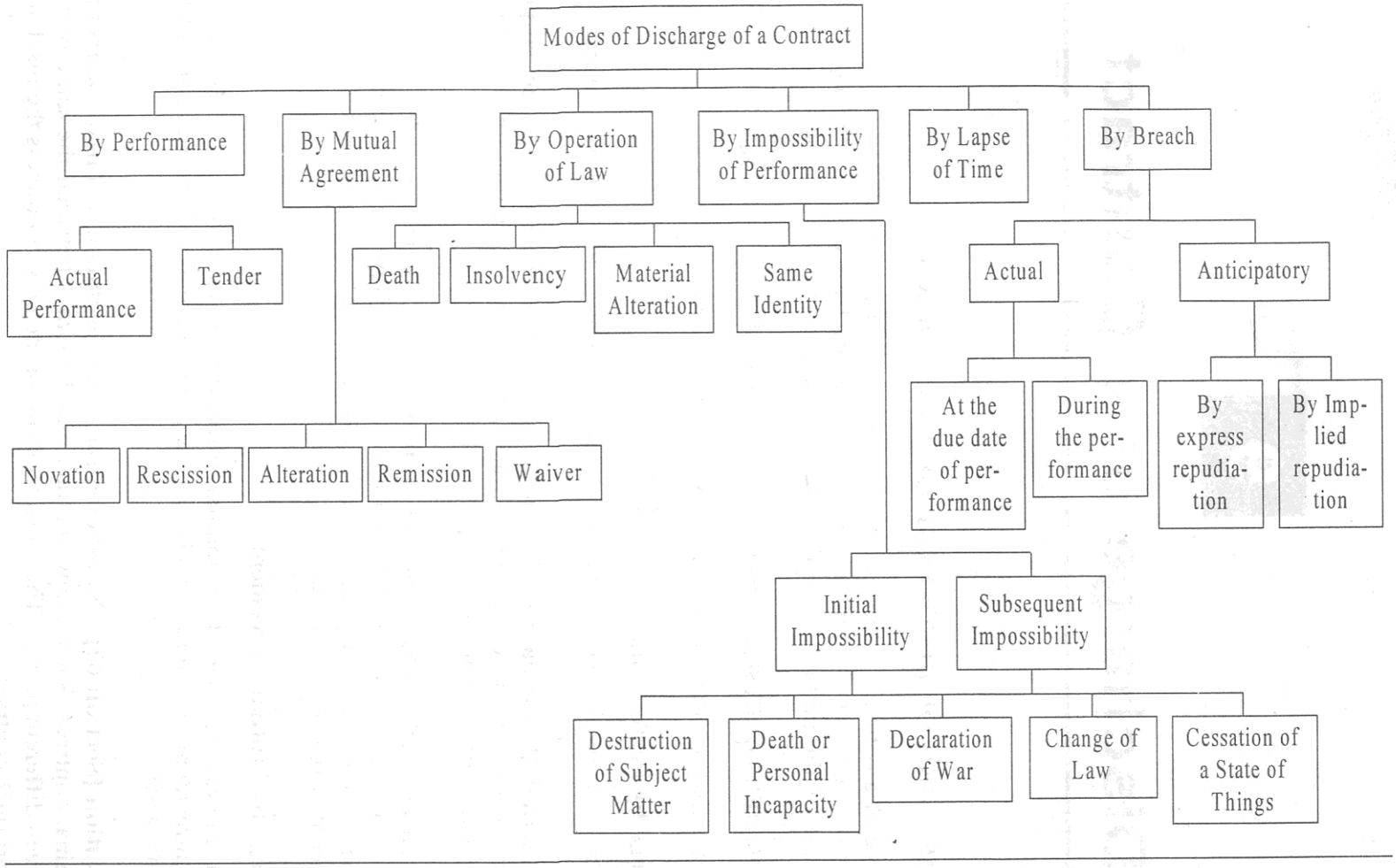
(a) Novation (Sec. 62) Novation means the substitution of a new contract for the original contract. Such a new contract may be either between the same parities or between different parties. The consideration for the new contract is the discharge of the original contract.

(b) Rescision (Sec. 62) Rescission means cancellation of the contract by any party or all the parties to a contract.

(c) Alteration (Sec. 62) Alteration means a change in the terms of a contract with mutual consent of the parties. Alteration discharges the original contract and creates a new contract. However, parties to the new contract must not change.

(d) Remission (Sec. 63) Remission means acceptance by the promises of a leser fulfillment of the promise made. According to section 63.

(e) Waiver Waiver means intentional relinquishment of a right under the contract. Thus, it amounts to releasing a person of certain legal obligation under a contract, e.g. A promises to supply goods to Y. Subsequently, Y exempts X from carrying out the promise. This amounts to waiving the right of performance on the part of Y.


Modes of Discharge of a Contract
By Performance
By Mutual Agreement
By Operation of Law
By Impossibility of Performance
By Lapse of Time
By Breach
Actual Performance
Tender
Death
Insolvency
Material Alteration
Same Identity
Actual
Anticipatory
Novation
Rescission
Alteration
Remission
Waiver
At the due date of performance
During the performance
By express repudiation
By Implied repudiation
Initial Impossibility
Subsequent Impossibility
Destruction of Subject Matter
Death or Personal Incapacity
Declaration of War
Change of Law
Cessation of a State of Things

SELF EVALUATION QUESTIONS

True or False Questions

State with reasons whether the following statements are True or False.

1. Substitution of a new contract in place of an existing contract is called alteration.
2. Cancellation of contract is called remission.
3. In case the goods are sold on credit and a debt is not recovered within three years from the date of grant of credit, the debt becomes time barred and is discharged by lapse of time.

Discharge by operation of law

A contract may be discharged by operation of law in the following cases:

(a) By Death of the Promisor A contract involving the personal skill or ability of the promisor is discharged on the death of the promisor.

(b) By Insolvency When a person is declared insolvent, he is discharged from his liability up to the date of his insolvency.

(c) By Unauthorised Material Alteration If any party makes any material alternation in the terms of the contract without the approval of the other party, the contract comes to an end.

(d) By the Identity of Promisor and Promisee When the promisor becomes the promisee, the other parties are discharged.

SELF EVALUATION QUESTIONS

True or False Questions

State with reasons whether the following statements are True or False.

4. The death of the promisor always discharges the contract.
5. The insolvency of the promisor discharges the contract.
6. An agreement to do an impossible act is voidable at the option of the promisee.

REMEDIES FOR BREACH OF CONTRACT

MEANING OF BREACH OF CONTRACT

A breach of contract occurs if any party refuses or fails to perform his part of the contract or by his act makes it impossible to perform his obligation under the contract. In case of breach, the aggrieved party (i.e. the party not at fault) is relieved from performing his obligation and gets a right to proceed against the party at fault. A breach of contact may arise in two ways, (a) anticipatory breach and (b) actual breach.

ANTICIPATORY BREACH OF CONTRACT

Meaning of Anticipatory Breach of Contract (sec. 39)

Anticipatory breach occur when the party declares his intention of not performing the contract before the performance is due. Thus, when a party refuses to perform a contract even before it is due for performance, it is called anticipatory breach.

Modes of Declaring an Intention not Performing the Contract (Sec. 39)

A party may declare his intention of not performing the contract in the following two ways:

(a) When a party to a contract has refused to perform his promise.

(b) When a party to a contract has disabled himself from performing his promise in its entirety.

Consequences of Treating contract as Operative

In case of anticipatory breach, if the aggrieved party treats the contract as operative and waits till the due date for performance, the consequences will be as follows:

(a) The promisor may perform his promise on or before the due date of performance and the promiseee will be bound to accept the performance.

(b) The promisor may take advantage of the discharge by supervening impossibility arising between the date of breach and the due date of the performance and in such a case, the promisee shall lose his right to sue for damages.

SELF EVALUATION QUESTIONS

True of False Questions

State with reasons whether the following statements are True or False:

7. Anticipatory breach of a contract takes place at the time when the performance is due.
8. Actual breach of a contract may take place during the performance of the contract.
9. In case of anticipatory breach of contract, the aggrieved party must rescind the contract and sue for damages for breach of contract at the time of such breach.

Amount of Damages

The amount of damages in each of the options exercised by an aggrieved party will be calculated as under:

Option exercised	Amount of damages
I. When the aggrieved party rescinds the contract at the date of breach	The amount of damages will be equal to the difference between the price prevailing on the date of breach and the contract price.
II. When the aggrieved party does not rescind the contract at the date of breach	The amount of damages will be equal to the difference between the price prevailing on the due date of performance and the contract price.

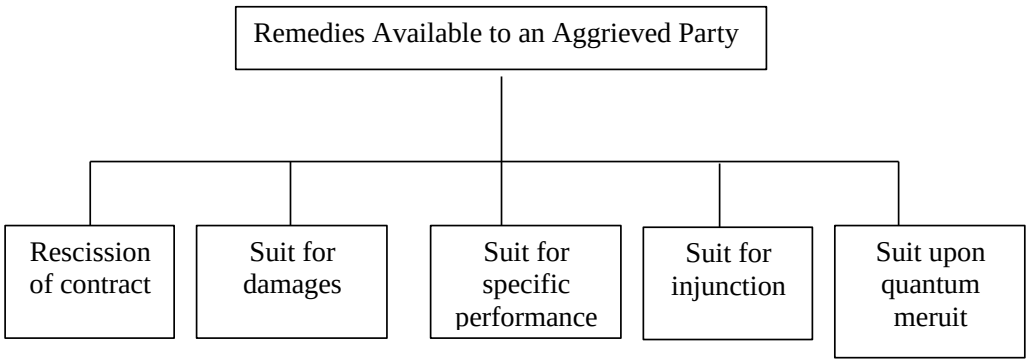
REMEDIES FOR BREACH OF CONTRACT

Meaning of Remedy

A remedy is the course of action available to an aggrieved party (i.e. the party not at default) for the enforcement of a right under a contract.

Remedies for Breach of Contract

The various remedies available to an aggrieved party are shown below.



Remedies Available to an Aggrieved Party

1. **Rescission of Contract (Section 39) Rescission means a right not to perform obligation.**

   In case of breach of a contract, the promisee may put an end to the contract. In such case, the aggrieved party is discharged from all the obligations under the contract and is entitled to claim compensation for the damage which he has sustained because of the non-performance of the contract.

2. **Suit for Damages** Damages are monetary compensation allowed for loss suffered by the aggrieved party due to breach of a contract. The object of awarding damages is not to punish the party at fault but to make good the financial loss suffered by the aggrieved party due to the breach of contract.

3. **Suit for Specific Performance** Suit for specific performance means demanding the court's direction to the defaulting party to carry out the promise according to the terms of the contract.
4. **Suit for Injunction** Suit for injunction means demanding court's stay order. Injunction means an order of the court which prohibits a person to do a particular act. Where a party to a contract does something which he promised not to do, the court may issue an order prohibiting him from doing so.
5. **Suit for Quantum Meruit** Quantum Meruit means as much as is earned. Right to Quantum Meruit means a rights to claim the compensation for the work already done.

SELF EVALUATION QUESTIONS

True of False Questions

State with reasons whether the following statements are True or False:

10. In case of anticipatory breach of contract, if the promisee decides not to rescind the contract, the contract shall remain alive for the benefit of both the parties.
11. In case of actual breach of a contract, the contract becomes void if the time is the essence of the contract.
12. In case of actual breach of a contract, if performance beyond stipulated time is accepted, the promisee can claim the compensation for any loss occasioned by the non-performance of the promise at the stipulated time if he gives notice of his intention to do so.

Meaning of consent and free consent

Consent, it means acquiescence or act of assenting to an offer. two or ore persons are said to consent when they agree upon the same thing in the same sense:

Free consent is said to be free when it is not caused by

1. Coercion as defined in sec. 15 or
2. Undue influence as defined in sec. 16 or
3. Fraud as defined in sec. 17 or
4. Misrepresentation as defined in sec. 18 or
5. Mistake, subject to the provisions of sec's, 20, 21 and 22.

When there is no consent, there is no contract. salmond describes it as error in consensus. If there is no consensus ad idem, there is no contract. One such circumstance which interfers with consensus ad idem is mistake

When a person is compelled to enter into a contract by the use of force by the other party of under a threat, coerction is said to be mployed. Coercion is the committing or threatenning to commit. Any act gorbidden by the indian penal code. 1860 or the unlawful detaining. Or threatening to detain, any property to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement. Is unmaterial wheter the indian penal code. 19\860 is or is not in force in the place where the coerction is employed (sec. 15)

The treat amounting to coercion need not necessarily proceed form a party to the contract. It may proceed even from a stranger to the contract. Likewise, it may be directed against any body not necessarily the other contracting party. The intention of the person using coercion should, however, be to cause any person to enter into an agreement.

UNDUEINFLUENCE

Sometimes a party is compelied to enter into an agreement against his will as a result of unfair persuasion by the other party. This happens when a special kind of relationship exists between the parties such that one party is in a position to exercis undue influence over the other.

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. e.g., the relationship between master and servant, doctor and patient

b) Where he stands in a fiduciary relator, freiation of trust and cofidenc) to the other. it is supposed to exist, for example, between father and son. Solicitor and client, trustee and beneficlary and prooter and company

c) Where he makes a contract with a person whose mental capacity its temporarity or permanently affected by reason of age, illness or mental or bodily distress. Such a relation exists, for example, between a medical attendant and his patient.

Effect of undueinfluence

When consent to an agreement is obtained by undue influence, the agreement is a contract avoidable at the option of the party whose consent was so obtained. Any such contract may be set aside either absolutely or if the party who is entitled to avoid it has received any benefit there under, upon such terms and conditions as to the court may seem just and equitable

MISREPRESENTATION AND FRAUD

A statement of fact which one party makes in the course of negotiations with a view to inducing the other party to enter into a contract is known as a representation. It must relate to some fact which is material to the contract. It

may be expressed by words spoken or written or implied from the acts and conduct of the parties.

A representation, when wrongly made, either incocently or intentionally, is a misrepresentation. Misrepresentation may be

a) an innocent or unittentional misrepresentation or

b) an intentional deliberate or willful misrepresentation with an intent to deceive or defraud the other party.

c) The former is called misrepresentation and the latter fraud.

MISREPRESENTATION

Misrepresentation is a false statement which the person making it honestly believes to be true or which he does not know to be false. It also include non disclosure of material fact or facts without any intent to deceive the other party.

When a person positively asserts that a fact is true when his information does not warrant it to be so, though the believes it to be true.

When there is any breach of duty by a person, which brings an advantage to the person committing it by misleading another to his prejudice

When a party causes, however innocently, the other party to the agreement to make a mistake as to the substance of the thing, which is the subject of the agreement.

FRAUD

Fraud exists when it is shown that

(1) A false representation has been made 9a) knowingly, or (b) without belief in its truth, or (c) recklessly, not caring whether it is true or false, and the maker intended the other party to act upon it, or

(2) There is a concealment of a material fact or that there is a partial statement of a fact in such a manner that the withholding of what is not stated makes that which is stated false

The intention of the party making fraudulent misrepresentation must be to deceive the other party to the contract or to induce him to enter into a contract.

According to Sec. 17. "Fraud" means and includes any of the following acts committed by a party to a contract, or with his connivance (intentional active or passive acquiescence), or by his agent with intent to deceive or to induce a person to enter into a contract:

1. The suggestion that a fact is true when it is not true and the person making the suggestion does not believe it to be true;

2. The active concealment of a fact by a person having knowledge or belief of the fact;
3. A promise made without any intention of performing it;
4. Any other act fitted to deceive;
5. Any such act or omission as the law specially declares to be fraudulent.

MISTAKE

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

Mistake of law

Mistake of law may be-(1) mistake of law of the country, or (2) mistake of law of a foreign country.

(1) Mistake of law of the country. Ignorantia juris non excusat, i.e., ignornace of law is no excuse, is a well settled rule of law. A party cannot be allowed to get any relief on the ground that it had done a particular act in ignorance of law. A mistake of law is, therefore, no excuse, and the contract cannot be avoided (Solle V. Butcher, (1950) 1 K.B. 671).

But if a person enters into a contract by making a mistake of law through the inducement of another, whether innocent or otherwise, the contract may be avoided.

(2) Mistake of law of a foreign country. Such as mistake is treated as mistake of fact and the agreement in such a case is void (Sec. 21).

WAGERING AGREEMENTS (SEC.30)

Meaning of Wagering Agreements

An agreement between two persons under which money or money's worth is payable, by one person to another on the happening or non-happening of a future uncertain event is called a wagering event. Such agreements are chance oriented and therefore, completely uncertain.

Essentials of a Wagering Agreement

The aforesaid definition highlights the following essentials of a wagering agreement:

(b) Promise to Pay Money or Money's Worth The Wagering agreement must contain a promise to pay money or money's worth.

(c) Uncertain Event The performance of the promise must depend upon the determination of an uncertain event. An even is said to be uncertain when it is yet to take place or it might have already happened but the parties are not aware of its result.

(d) Mutual Chances of Gain or Loss Each party must stand to win or lose upon the determination of an uncertain event. If either of the parties may win but cannot lose, or may lose but cannot win, it is not a wagering agreement.

(e) Neither Party to have control over the Event Neither party should have control over the happening of the event one way or the other.

(f) No other Interest in the Event Neither party should have interest in the happening or non-happening of the event other than the sum or stake he will win or lose.

SELF EVALUATION QUESTIONS

True or False Questions

State whether the following statements are True or False.

13. The performance of a contingent contract depends upon the happening of some future event.

14. The performance of a contingent contract depends upon the non-happening of some future event.

15. The event in a contingent contract must be essential to the contract.

Effects of Wagering Agreements (Section 30)

The effects of wagering agreements are given as under:

(a) Agreements by way of wager are void in India.

(b) Agreements by way of wager have been declared illegal in the states of Maharashtra and Gujarat.

(c) No suit can be filed to recover the amount won on any wager.

(d) Transaction which are collateral to wagering agreements are not void in India except in the states of Maharashtra and Gujarat.

Transactions which are collateral to wagering agreements are illegal in the states of Maharashtra and Gujarat.

SELF EVALUATION QUESTIONNAIRE

True or False Questions

State whether the following statements are True or False.

16. The event in a contingent contract may be certain or uncertain.

17. The performance of a contingent contract must not depend upon mere will of the promisor.

18. Contracts contingent upon the happening of an uncertain future event becomes voidable at the option of promisee if that becomes impossible.

Very Short Answer Type Questions

1. What is discharge of contract?
2. What is meant by discharge of a contract by tender?
3. What is meant by 'Novation'?
4. What is meant by 'Rescission'?
5. What is meant by 'Alternation'?
6. What is meant by 'Remission'?
7. When is a contract is said to discharged by lapse of time?
8. What is the period of limitation for exercising the right to recover an immovable property?

Essay Type Questions

1. (a) What is discharge of a contract?

   (b) What are the various ways in which a contract may be discharged?

Very Short Answer Type Questions

9. What is a breach of contract?
10. What is an actual breach of contract?
11. When does an actual breach of contract take place?
12. What is meant by 'remedy'?
13. What is 'rescission of contract'?
14. What are 'ordinary damages'?
15. How are 'ordinary damages measured'?
16. What are 'special damages'?
17. What are 'exemplay damages'?
18. What are 'nominal damages'?
19. What are 'liquidated damages'?
20. What is 'penalty'?
21. Is the distinction between 'liquidated damages' and 'penalty' recognized in India?

Short Answer Type Questions

1. State the options available to a promisee in case of an anticipatory breach of contract.
2. State the consequences of not rescinding a contract at the time of anticipatory breach of contract.
3. State the consequences of actual breach of a contract.

4. State the importance of time in case of actual breach of a contract.

Essay Type Questions

2. (a) What is a breach of contract ?

   (b) What do you understand by an anticipatory breach of contract?

   (c) State the rights of the promisee in case of anticipatory breach.

3. State the principles on which damages are assessed for breach of contract?

4. What remedies are available to an aggrieved party on the breach of contract?

5. State the circumstances under which a party is not entitled to specific performance.

6. State briefly whether all stipulations for payment of interest are in the nature of a penalty. Give examples also.

Very Short Answer Type Questions

22. Define Void Agreements.

23. Define Uncertain Agreements.

24. Define Wagering Agreements.

Short Answer Type Questions

5. Comment on the following statements:

   (a) An agreement is restraint of trade is void.

   (b)Wagering agreements do not cover the insurance contracts.

6. Distinguish between the following:

   (a) Void agreements and Void Contracts

   (b) Void agreements and Illegal Agreements

   (c) Void Contracts and Voidable Contracts

   (d) Wagering Agreements and Insurance Contracts

7. Enumerate the agreements which have been expressly declared void by the Indian Contract Act, 1872.

Answer

[1. False	2. False	3. False]
[4. False	5. True	6. False]
[7. False	8. True	9. False]
[10. True	11. False	12. True]
[13.False	14. False	15. False]
[16. False	17. True	18. False]

NOTES

UNIT - III

- INTRODUCTION
- MEANING OF CONTRACT OF SALE
- ESSENTIAL ELEMENTS OF CONTRACT OF SALE
- DISTINCTION BETWEEN SALE AND AGREEMENT TO SELL
- MEANING OF GOODS
- CONDITIONS AND WARRANTIES
- MEANING OF THE DOCTRINE OF CAVEAT EMPTOR
- PROPERTY, POSSESSION AND RISK
- RIGHTS OF AN UNPAID SELLER
- AUCTION SALES

UNIT - III

LAW OF SALE OF GOODS ACT, 1930

INTRODUCTION

Till 1930, transactions relating to sale and purchase of goods were regulated by the Indian Contract Act, 1872. In 1930, Sections 76 to 123 of the Indian Contract Act, 1872 were repealed and a separate Act called 'The Indian Sale of Goods Act, 1930 was passed. It came into force on 1st July, 1930. With effect from 22nd September, 1963, the word 'Indian' was also removed. Now, the present Act is called 'The Sale of Good Act, 1930'. This Act extends to the whole of India except the State of Jammu and Kashmir.

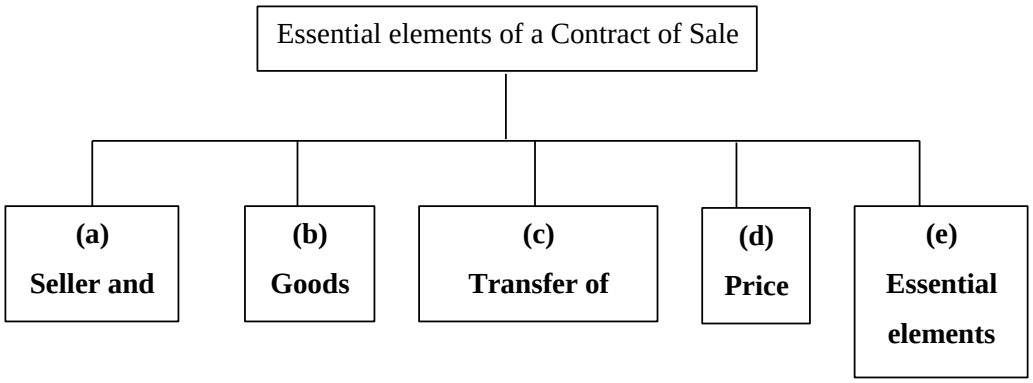
According to Section 3, the provisions of the Indian Contract Act, 1872, still continue to apply to contracts for the sale of goods except where 'The Sale of Goods Act', 1930 provides for the contrary.

Meaning of contract of Sale

According to Section 4(1) of the Sale of Goods Act, 1930, "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.

Essential Elements of Contract of Sale

The aforesaid definition clearly indicates the essential elements shown below .



There must be a seller as well as a buyer. 'Buyer' means a person who buys or agrees to buy goods [Section 2(1)]. 'Seller' means a person who sells or agrees to sell goods [Section 2 (13)].

'Good' means every kind of movable property other than actionable claims and money.

Property means the General property in goods, and not [Section 2 (11)]. General property in goods means ownership of the goods.

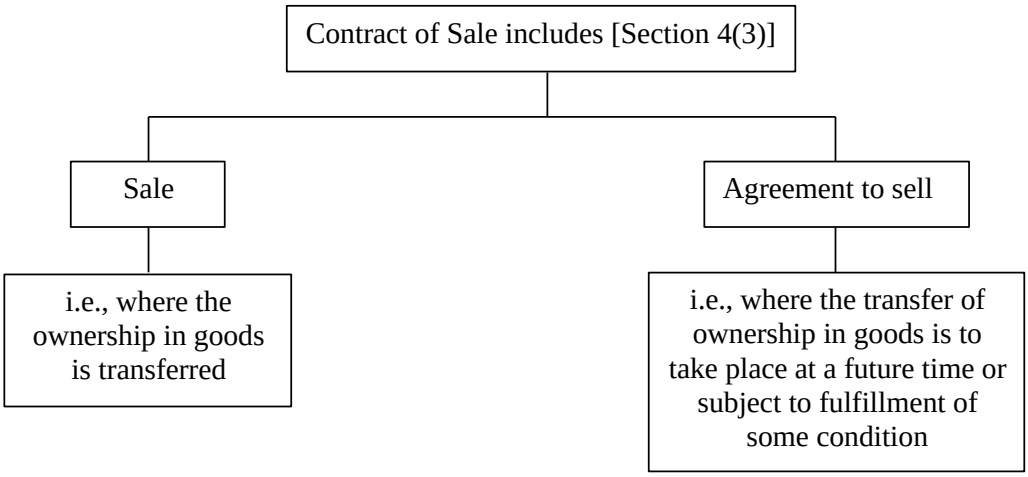
There must be a price. Price here means the money consideration for a sale of goods [Section 2(10)]. When the consideration is only goods, it amount to a 'barter' and not sale.

In addition to the aforesaid specific essential elements, all the essential elements of a valid contract as specified under Section 10 of Indian Contract Act, 1872 must also be present.

DISTINCTION BETWEEN SALE AND AGREEMENT TO SELL

What does 'Contract of Sale' Include

The term 'Contract of Sale' includes both a 'sale' and 'agreement to sell' as shown below.



When does Agreement to Sell become Sale [Section 4(4)].

An Agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the ownership in the goods, is to be transferred.

Distinction between Sale and Agreement to Sell

A 'Sale' and an 'Agreement to Sell' can be distinguished as under:

Basis of distinction	Sale	Agreement to sell
1. Transfer of ownership	Transfer of ownership of goods takes place immediately	Transfer of ownership of goods is to take place at a future time or subject to fulfillment of some condition.
2. Executed contract or Executory contract	It is an executed contract because nothing remains to be done.	It is an executory contract because something remains to be done.
3. Conveyance of property	Buyer gets a right to enjoy the goods against the whole world including seller. There fore, a sale creates jus in rem (Right against property).	Buyer does not get such right to enjoy the goods. It only creates jus in personam (Right against the person).
4. Transfer of risk	Transfer of risk of loss of goods takes place immediately because ownership is transferred. As a result, in case of destruction of goods, the loss shall be borne by the buyer even though the goods are in the possession of the seller.	Transfer of risk of loss of goods does not take place because ownership is not transferred. As a result, in case of destruction of goods, the loss shall be borne by the seller even though the goods are in the possession of the buyer.
5. Rights of seller against the buyer's breach	Seller can sue the buyer for the price even though the goods are in his possession.	Seller can sue the buyer for damages even though the goods are in the possession of the buyer.
6. Rights of buyer against the seller's breach	Buyer can sue the seller for damaged and can sue the third party who bought those goods, for goods.	Buyer can sue the seller for damages only.
7. Effect of insolvency of seller having possession of goods	Buyer can claim the goods from the official receiver or assignee because the ownership of goods has transferred to the buyer.	Buyer cannot claim the goods even when he has paid the price because the ownership has not transferred to the buyer. The buyer who has paid the price can only claim rateable dividend.

8. Effect of insolvency of the buyer before paying the price	Seller must deliver the goods to the official receiver or assignee because the ownership of goods has transferred to the buyer. He can only claim rateable dividend for the unpaid price.	Seller can refuse to deliver the goods unless he is paid full price of the goods because the ownership has not transferred to the buyer.

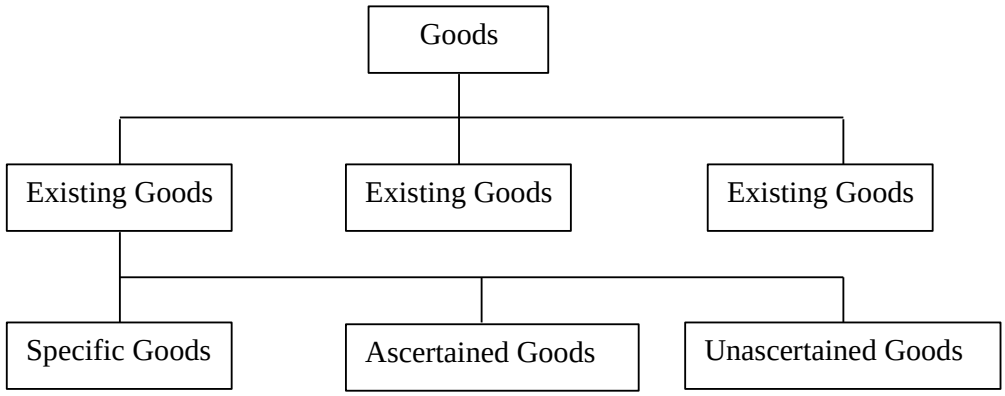
Meaning of Goods [Section 2(7)]

Goods means every kind of movable property other than actionable claims and money, and includes the following:

(a) Stock and shares

(b) Growing crops, grass and thing attached to or forming part of the land which are agreed to be served before sale or under the Contract of Sale.

Type of Goods



Types of Goods

Existing goods mean the goods which are either owned or possessed by the seller at the time of contract of sale.

Future goods [Section 2(6)] Future goods mean goods to be manufactured or produced or acquired by the seller after the making of the contract of sale.

These are the goods the acquisition of which by the seller depends upon a contingency which may or may not happen.

CONDITIONS AND WARRANTIES

It is usual for both seller and buyer to make representations to each other at the time of entering into a contract of sale. Some of these representations are mere opinions which do not form a part of contract of sale. Whereas some of them may become a part of contract of sale. Representations which become a part of contract of sale are termed as stipulations which may rank as condition and warranty e.g. a mere commendation of his goods by the seller doesn't

become a stipulation and gives no right of action of the buyer against the seller as such representations are mere opinion on the part of the seller. But where the seller assumes to assert a fact of which the buyer is ignorant, it will amount to a stipulation forming an essential part of the contract of sale.

Meaning of Stipulation [Section 12(1)]

A stipulation in a contract of sale of goods may be a condition or warranty [Section 12(1)].

Meaning of Condition [Section 12(2)]

A condition is a stipulation

(a) Which is essential to the main purpose of the contract, and

(b) The breach of which gives the aggrieved party a right to terminate the contract.

Meaning of Warranty [Section 12(3)]

A warranty is a stipulation

(a) Which is collateral to the main purpose of the contract, and

(b) The breach of which gives the aggrieved party a right to claim damages but not right to reject goods and to terminate the contract.

When condition to be treated as warranty [Section 13]

In the following three case, a breach of a condition is treated as a breach of a warranty:

(a) Where the buyer waives a condition: once the buyer waives a condition, he cannot insist one its fulfillment e.g. accepting defective goods or beyond the stipulated time amounts to waiving a condition.

(b) Where the buyer elects to treat breach of the condition as a breach of warranty; e.g. where he claims damages instead of repudiating the contract.

(c) Where the contract is not severable and the buyer has accepted the goods or part thereof, the breach of any condition by the seller can only be treated as a breach of warranty. It can not be treated as a ground for rejecting the goods unless otherwise specified in the contract. Thus, where the buyer after purchasing the goods finds that some condition is not fulfilled, he cannot reject the goods. He has to retain the goods entitling him to claim damages.

SELF EVALUATION QUESTIONS

True or False Questions

State giving reasons whether each of the following statements is 'True' or 'False'

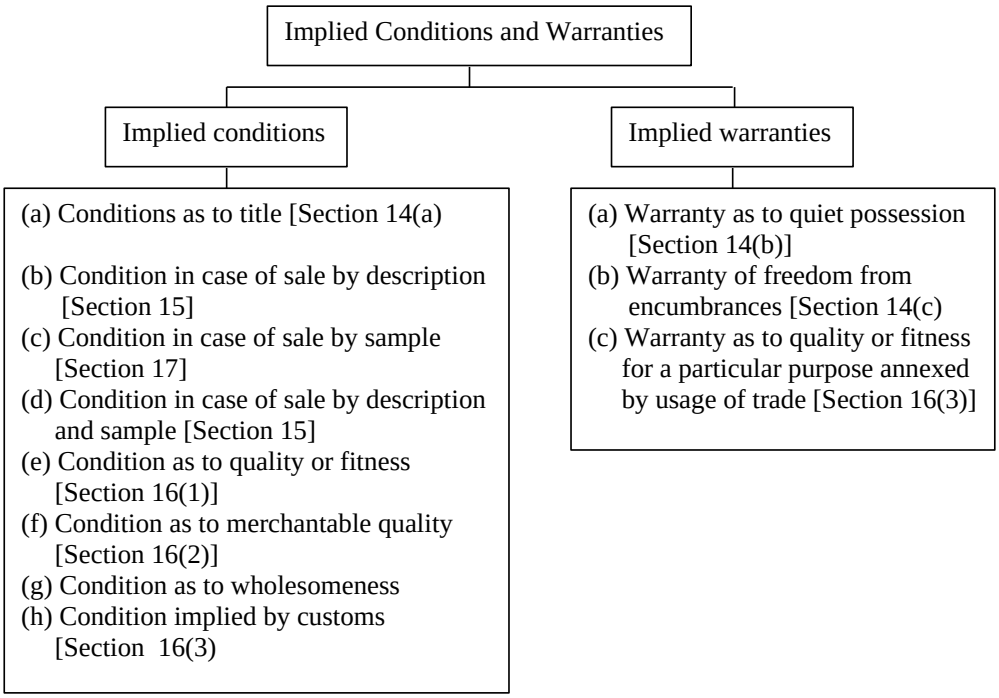
1. A contract of sale of goods includes the sale of goods and not an agreement to sell goods.
2. The consideration for the contract of sale can be partly in money and partly in goods.
3. The subject matter of the contract of sale can be all movable goods.

Express and implied conditions and warranties

In a contract of sale of goods, conditions and warranties may be express or implied.

(a) Express Conditions and Warranties These are expressly provided in the contract. For example, a buyer desires to buy a SONY TV Model No. 2062. Here, model no. is an express condition. In an advertisement for Khaitan fans, guarantee for 5 years is an express warranty.

(b) Implied Conditions and Warranties These are implied by law in every contract of sale of goods unless a contrary intention appears from the terms of the contract. The various implied conditions and warranties have been shown below.



Implied conditions [Sections 14(A), 15(1), 16(1), 16(2), 16(3), 17]

(a) Condition as to Title [Section 14(a)] There is an implied condition on the part of the seller that (i) in the case of a sale, he has a right to sell the goods, and (ii) in the case of an agreement to sell, he will have a right to sell the goods at the time when the property is to pass.

(b) **Sale by Description [Section 15]** Where there is a contract of sale of goods by description, there is an implied condition that the goods shall correspond with description. The main idea is that the goods supplied must be same as were described by the seller. Sale of goods by description include many situations as under:

(c) **Sale by Sample [Section 17]** A contract of sale is contract for sale by sample when there is a term in the contract, express or implied, to that effect. Such sale by sample is subject to the following three conditions.

(i) The goods must correspond with the sample in quality.

(ii) The buyer must have a reasonable opportunity of comparing the bulk with the sample.

(iii) The goods must be free from any defect which renders them unmerchantable and which would not be apparent on reasonable examination of the sample. Such defects are called latent defects and are discovered when the goods are put to use. It may be noted that the seller cannot be held liable for apparent or visible defects which could be easily discovered by an ordinary prudent person.

(d) **Sale by sample as well as by Description [Section 15]** If the sale is by sample as well as by description, the goods must correspond with the sample as well as the description.

(e) **Condition as to Quality or Fitness [Section 16(1)]** There is no implied condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale. In other words, the buyer must satisfy himself about the quality as well as the suitability of the goods. This is expressed by the maxim caveat emptor (let the buyer beware).

(f) **Condition as a Merchantable Quality [Section 16(2)]** Where the goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality. The expression 'merchantable quality' means that the quality and condition of the goods must be such that a man of ordinary prudence would accept them as the goods of that description. Goods must be free any latent or hidden defects.

(g) **Conditions as to Wholesomeness** In case of eatables or provisions or foodstuffs, there is an implied condition as to wholesomeness. Condition as to wholesomeness means that the goods shall be fit for human consumption.

Implied Warranties [Section 14(b), 14(c), and 16(3)]

(a) Warranty as to Quiet Possession [Section 14(b)] There is an implied warranty that the buyer shall have and enjoy quiet possession of the goods. The reach of this warranty gives buyer a right to claim damages from the seller.

(b) Warranty of Freedom from Encumbrances [Section 14(c)] There is an implied warranty that the goods are free from any charge or encumbrance in favour of any third person if the buyer is not aware of such charge or encumbrance. The breach of this warranty gives buyer a right to claim damages from the seller.

(c) Warranty as to Quality or Fitness for Particular Purpose which may be Annexed by the Usage of Trade [Section 16(3)]

(d) Warranty to Disclose Dangerous Nature of Goods In case of goods of dangerous nature the seller must disclose or warn the buyer of the probably danger. If the seller fails to do so, the buyer may make him liable for breach of implied warranty.

Meaning of the Doctrine of Caveat Emptor [Section 16]

The expression 'Caveat Emptor' means 'let the buyer beware'. The doctrine of caveat emptor has been given in the first para of Section 16 which reads as under:

"Subject to the provisions of this Act and any other la for the time being in force, there is no implied warranty or condition as to the quality or fitness for ny particular purpose of good supplied under a contract of sale".

In other words, it is not part of the seller's duty to point out defects of the goods which he offers for sale, rather it is the duty of the buyer to satisfy himself about the quality as well as the suitability of the goods.

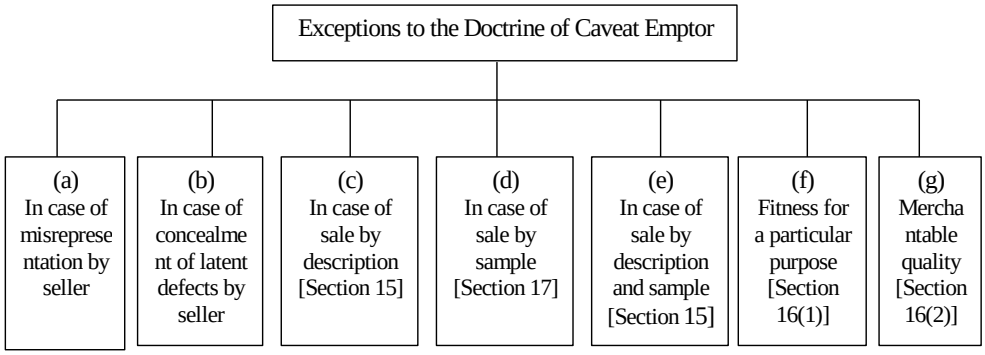
Exceptions to the Doctrine of Caveat Emptor

The doctrine of caveat emptor is subject to the following exceptions shown.

(a) In Case of Misrepresentation by the Seller Where the seller makes a misrepresentation and the buyer relies on that representation.

(b) In Case of Concealment of Latent Defect Where the seller knowingly conceals a defect which would not be discovered on a reasonable examination.

(c) In Case of Sale by Description [Section 15] Where the goods are sold by description and the goods supplied by the seller do not correspond to the description.



Exceptions to the Doctrine of Caveat Emptor

(d) In Case of Sale by Sample [Section 17] Where the goods are sold by sample and the goods supplied by the seller do not correspond with the sample.

(e) In Case of Sale by Sample as well as Description [Section 15] Where the goods are sold by sample as well as description and the goods supplied do not correspond with sample as well as description.

(f) Fitness for a Particular Purpose [Section 16(1)] Where the seller or a manufacturer is a dealer of the type of goods sole by him and the buyer has disclosed the purpose for which goods are required and relied upon the seller's skill or judgement.

(g) Merchantable Quality [Section 16(2)] Where the goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not), there is an implied condition that goods shall be of merchantable quality.

SALE BY NON-OWNERS

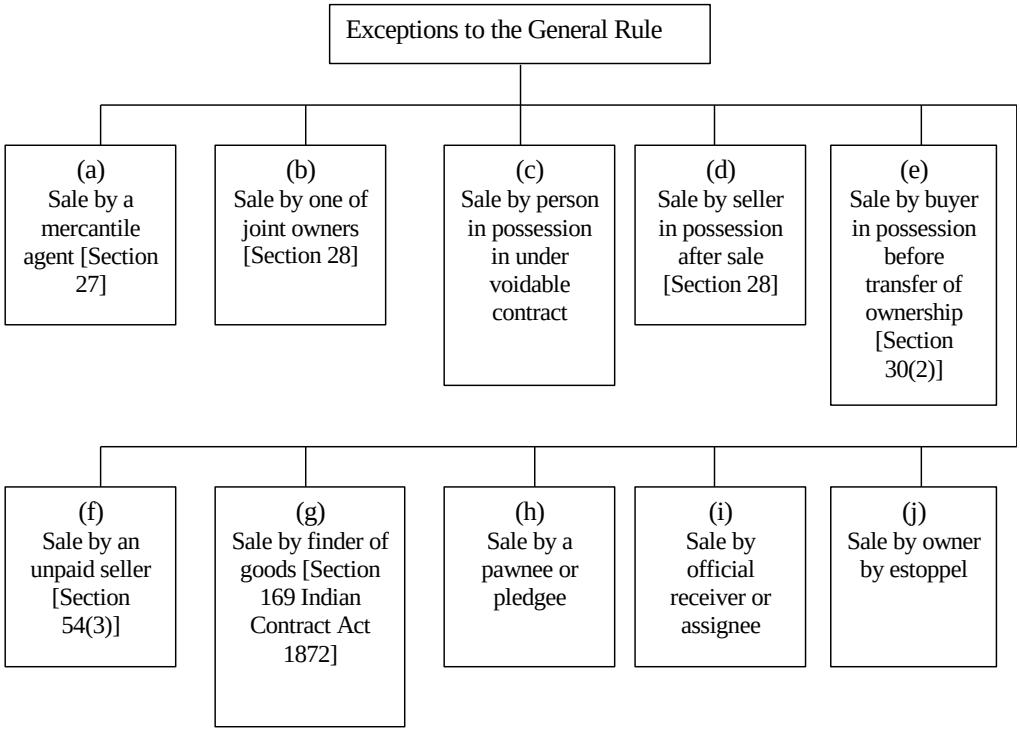
Meaning of General Rule

The general rule is expressed by the latin maxim "Namo dat quod non habet", which means that "no one can give what he does not himself possess". If the seller's title to the goods is defective, the buyer's title will also be defective because the buyer acquires his title to the goods from the seller. Hence, the seller cannot give a better title to the buyer than he himself has.

Exceptions to the General Rule

The circumstances under which a seller can give a better title than what he himself has, have been shown.

Lest us discuss these exceptions one by one.



Exceptions to the General Rule

The various exceptions of the general rule and the conditions for their application are summarised below:

Exception to the general rule	Conditions to be fulfilled before a buyer gets a good title to the goods
(a) Sale by a mercantile agent [Section 27]	(i) The agent must be in possession of goods of a document title (e.g., Railway receipt, Bill of Lading) to the goods with the consent of the owner. (ii) The agent must have sold the goods in the ordinary course of business as a mercantile agent. (iii) The buyer must have acted in good faith. (iv) The buyer must have no knowledge that the seller had no authority to sell.
(b) Sale by one of the joint owners [Section 280]	(i) The joint owner must be in the sole possession (ii) The buyer must have bought the goods in good faith. (iii) The buyer must have no knowledge that the seller had no authority to sell.
(c) Sale by a person in possession under voidable contract	(i) The seller must be in possession of goods under a contract voidable u/s 19 or 19A of Indian Contract. Act, 1872 on ground of coercion, undue influence, misrepresentation of fraud. (ii) The goods must have been sold before the contract is rescinded. (iii) The buyer must have bought the goods in goods faith. (iv) The buyer must have no knowledge that the seller's title is defective.
(d) Sale by seller in possession after sale [Section 30(1)]	(i) The seller must be in possession of goods or of a document of title to the goods, in the capacity of a seller and not in any other capacity such as bailee. (ii) The buyer must have bought the goods in good faith. (iii) The buyer must have no knowledge about the previous sale.
(e) Sale by a buyer in possession before the transfer of ownership [Section 30(2)]	(i) The buyer must be in possession of the goods or a document of title to the goods, with the consent of the original seller and must have bought or agreed to buy the goods. (ii) The new buyer must have bought the goods in good faith. (iii) The new buyer must have no knowledge about any lien or other right of the original seller in respect of good.
(f) An unpaid seller [Section 54(3)]	An unpaid seller must have exercised his right of lien or stoppage in transit.

(g) Sale by a Finder of Goods [Section 169 of Indian Contract Act 1872]	(i) The owner cannot be found with reasonable diligence; or (ii) The owner, if found refuse to pay the lawful charges of finder; or (iii) If the goods are in danger of perishing or of losing the greater part of its value; or (iv) If the lawful charges of the finder in respect of the thing found amounts to two third of its value.
(h) Sale by a pawnee or pledgee	(i) The pawnor or pledger must have made a default in the payment of the debt or the performance of the promise at the stipulated time. (ii) The pawnee or pledgee must have given a reasonable notice to the pawnor or pledger.
(i) Sale by Official Receiver or Assignee or Liquidator	The involvement person must be the owner of goods.
(j) Sale by owner by estoppel	The owner of the goods b his statement or conduct must have lead the buyer to believe that the seller has the autority to sell.

SELF EVALUATION QUESTIONNAIRE

True or False Questions

State giving reasons whether each of the following statements is 'True' or 'False'

4. In a sale the property I goods in transferred when the buyer pays the price.
5. A sale by a partner of a firm to his firm is void.
6. Future goods cannot be the subject matter of sale.

PROPERTY, POSSESSION AND RISK

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

(1) The transfer of property in the goods:

(2) The transfer of possession of the goods (i.e., delivery) and

(3) The passing of the risk.

1. Risk follows ownership. Unless otherwise agreed, risk follows ownership whether delivery has been made or not and whether price has been paid or not. Thus the risk of loss as a rule lies on the owner.

2. **Action against third parties.** when the goods are in any way damaged or destroyed by the action of third parties, it is only the owner of the goods who can take action against them.

3. **Insolvency of the seller or the buyer.** In the event of insolvency of either the seller or the buyer, the question whether the official Receiver or Assignee can take over the goods or not depends on whether the property in the goods has passed from the seller to the buyer.

4. **Suit for price.** The seller can sue for the price, unless otherwise agreed, only if the goods have become the property of the buyer.

PASSING OF PROPERTY

The primary rules for ascertaining when the property in goods passes to the buyer are as follows:

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

2. Intention of the parties. Where there is a contract for the sale of specific or ascertained goods, the property in them passes to the buyer at the time when the parties intend it to pass.

1. Specific goods (Secs. 20 to 22)

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

Passing of property at the time of contract. Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made. The fact that the time of payment of the price or the time of delivery of goods, or both, is postponed does not prevent the property in goods passing at once.

2. Unascertained goods (Sec. 23)

Where there is a contract for the sale of unascertained goods, the property in the goods does not pass to the buyer until the good are ascertained (Sec. 23 (1) further provides that where is a contract for the sale of unascertained or future goods by description and goods of that description and in a deliverable state are unconditionally appropriated to the contract, the property in the goods thereupon passes to the buyer.

3. Goods sent on approval or on sale or return

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

(1) when he signifies his approval or acceptance to the seller;

(2) when he does any other act adopting the transaction;

Rules as to delivery of goods

1. **Mode of delivery (Sec. 33).** Delivery should have the effect of putting the goods in the possession of the buyer or his duly authorised agent. Delivery of goods may be (1) actual, (2) constructive, or (3) symbolic.
2. **Delivery and payment - concurrent conditions.** Delivery of the goods and payment of the price must be according to the terms of the contract. Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say, the seller shall be ready and willing to give possession of the goods to the buyer in exchange for the price and the buyer shall be ready and willing to pay the price in exchange for possession of the goods (Sec. 32).
3. **Effect of part delivery.** A delivery of part of the goods in progress of the delivery of the whole, has the same effect, for the purpose of passing the property in such goods, as a delivery of the whole. But a delivery of the goods, with an intention of severing it from the whole, does not operate as delivery of the remainder (Sec. 34).
4. **Buyer to apply for delivery.** Apart from any express contract, the seller of goods is not bound to deliver them until the buyer applies for delivery (Sec. 35). Where the goods are subsequently acquired by the seller, he should intimate this the buyer and the buyer should then apply for delivery. Unless otherwise agreed, the buyer has not cause of action against the seller if he does not apply for delivery.
5. **Place of delivery.** Where the place at which delivery of the goods is to take place is specified in the contract, the goods must be delivered at that place during business hours on a working day. Where there is no specific agreement as to place, the goods sold are to be delivered at the place at which they are at the time of sale. As regards the goods agreed to be sold, they are to be delivered at the place at which they are at the time of agreement to sell, or if not then in existence, at the place at which they are manufactured or produced (Sec. 36(1).
6. **Time of delivery.** Where under the contract of sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time (Sec. 36 (2). But where the contract uses words like "directly", "without loss of time", or "forthwith", quick and immediate delivery is contemplated. Demand or tender of delivery should be made at a reasonable hour. What is a reasonable hour is a question of fact (Sec. 36 (4).
7. **Goods in possession of a third party.** When at the time of the sale the goods re with a third party, there is no delivery by the seller to the buyer

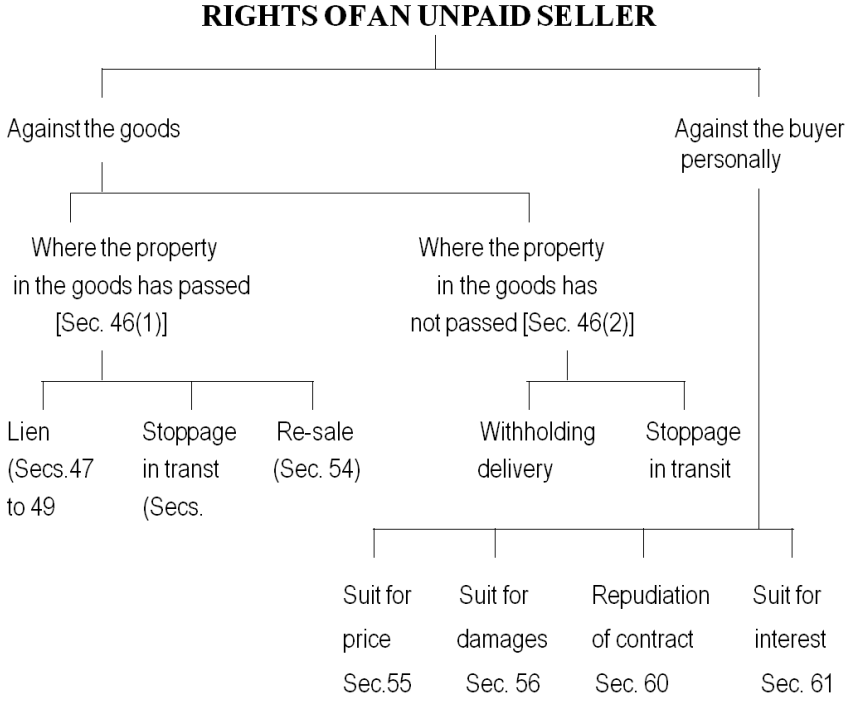
until such third party acknowledges to the buyer that he holds them on his behalf. But where the goods have been sold by the issue or transfer of any document of title to goods. E.g.. a receipt or a bill of lading, such third party's consent is not required (Sec. 36 (3).

8. **Cost of delivery.** Unless otherwise agreed. All expenses of and incidental to making of delivery are borne by the seller, but all expenses of and incidental to obtaining of delivery are borne by the buyer (Sec. 36 (5).

9. **Delivery of wrong quantity (Sec. 37).** The delivery of the quantity of goods contracted for should be strictly according to the terms of the contract. A defective delivery entitles the buyer to reject the goods. The three different contingencies which may arise in case of a defective delivery. I.e., delivery of a wrong quantity.

RIGHTS OF AN UNPAID SELLER

'Seller' here means not only the actual seller, but also 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 himself paid for the goods or is directly responsible for the price [Sec. 45(2)].



I. Rights of an unpaid seller against the goods

Where the property in the goods has passed to the buyer, an unpaid seller has the following rights against the goods [Sec. 46(1)]:

1. Right of lien 9Secs. 46(1) (a) and 47 to 49]

A lien is a right to retain possession of goods until payment of the price [Sec. 46(1) (a)]. It is available to the unpaid seller of the goods who is in possession of them where.

(a) The goods have been sold without any stipulation as to credit:

(b) The goods have been sold on credit, but the term of credit has expired;

(c) The buyer becomes insolvent [Sec. 47(1)].

Rules regarding lien. (1) The seller may exercise his right of lien not with standing that he is in possession of the goods as agent or bailee for the buyer [Sec. 47(2)]. If he loses the possession of he goods, he losses the right of lien also.

2. Right of stoppage in trnsit [Secs. 46(1) (b) and 50 to 52]

The right of stoppage in transit is a right of stopping the goods in transit after the unpaid seller has parted with the possession of the goods. He has the further right of resuming possession of the goods as long as they are in the course of transit, and retaining possession until payment or tender of the price. It is available to the unpaid seller-.

i. When the buyer becomes insolvent; and

ii. When the goods are in transit (Sec. 50).

Distinction between right of lien and right of stoppage in transit

i. The unpaid seller's right to stop the goods in transit arises only when the buyer is insolvent but the right of lien can be exercised even when the buyer is able to pay but does not pay.

ii. The right of lien can be exercised on goods which are in actual or constructive possession of the seller.

iii. The right of lien comes to an end when the possession of the goods is surrendered by the seller, but the right of stoppage in transit commences when the goods have left the possession of the seller and continues until the buyer or his agent has acquired their possession.

iv. The right of lien is to retain possession, while the right of stoppage in transit is to regain or resume possession.

3.Right of resale [Secs. 46(1) (c) and 54]

The unpaid seller can re-sell the goods -

(1) Where the goods are of a perishable nature: or

(2) Where he gives notice to the buyer of his intention to re-sell the goods and the buyer does not within a reasonable time pay or tender the price.

AUCTION SALES

A sale by auction is a public sale where different intending buyer try to outbid each other. The goods are ultimately sold to the highest bidder. The auctionneer who sells the goods by auction is an agent of the seller, i.e., the owner. His relationship with the owner of the goods is governed by the general principles of the law relating to agency.

Procedure in auction sales. The usual procedure in case of auction sales is as follows: The proposed auction is duly advertised and a printed catalogue of the goods together with the terms of sale is circulated. On the appointed day and time, the intending buyers assemble and the auctioneer puts the different lots to auction and invites bids from the intending buyers.

Rules of auction sales. The law on auction sales is contained in Sec. 64 of the Sale of Goods Act. According to it, in the case of a sale by auction the following rules apply:

1. **Goods put up for sale in lots.** Where goods are put up for sale in lots, each lot is prima facie deemed to be subject of a separate contract of sale [Sec. 64(1)].
2. **Completion of sale.** The sale is complete when the auctioneer announces its completion by the fall of the hammer or in some other customary manner.
3. **Right of seller to bid.** A right to bid may be reserved expressly by or on behalf of the seller. Where such right is expressly reserved (but not otherwise), the seller or any one person on his behalf may bid at the auction 'Section 64 (3)].
4. **Sale not notified subject to a right to bid.** Where a sale is not notified to be subject to a right to bid no behalf of the seller, it is not lawful.
5. **Reserve price.** The sale may be notified to be subject to a reserve or upset price [Sec. 64(5)]. It is a price below which the auctioneer will not sell.
6. **Use of pretended bidding.** If the seller make use of pretended bidding to raise the price, the sale is voidable at the option of the buyer [Sec. 64(6)].

7. **Knock out or agreement not to bid against each other.** Where a group of persons form a combination to prevent competition between themselves at an auction and arrange that only one of them will bid.

Very Short Answer Type Questions

1. Define a 'contract of sale'.
2. Does the term 'contract of sale' include an agreement to sell?
3. When does an agreement to sell become sale?
4. Can a contract of sale be implied from the conduct of parties?
5. Can a contract of sale be partly in writing and partly by words of mouth?
6. Can an offer to sell by words of month be accepted in writing?
7. Can an offer in writing be accepted by words of mouth?
8. What is the true test of hire-purchase agreement?
9. What is a contract for work and labour?
10. Is a contract for work and labour covered under the Sale of Goods Act, 1930?
11. Define the term 'goods'.
12. Do old rare coins constitute goods?
13. Do actionable claims constitute goods?

Short Answer Type Questions

1. Enumerate the implied conditions and implied warranties.
2. What is meant by 'sale by decription'?
3. What is meant by 'sale by sample'?
4. What is meant by 'sale by sample as well as by description?
5. What is meant by 'condition as to quality or fitness'?
6. State the conditions to be satisfied to avail of the condition as to fitness.
7. State tow cases where the condition as to fitness may not be applicable.
8. What is meant by 'condition as to merchantable quality'?
9. When can a breach of condition be treated as a breach of warranty?
10. What is doctrine of 'caveat emptor'?
11. Enumerate the exceptions to the doctrine of caveat emptor.
12. State the reason of knowing the exact moment when property in goods passes to the buyer.
13. State the rules relating to transfer of property of specific goods from seller to buyer.

14. State the rules relating to transfer of property of unascertained goods from seller to buyer.

Essay Type Questions

1. (a) Define a contract of sale.

   (b) Explain the essentials of a valid contract of sale.

   (c) How is a contract of sale different from an agreement to sell?

2. (a) How is a contract of sale made? State briefly with illustrations the necessary formation formalities of such a contract.

3. (a) Explain the term 'goods as defined in, the Sale of Goods Act 1930.

   (b) What are the various types of goods?

4. What is the effect of destruction of specific goods?

5. (a) Distinguish between condition and warranty.

   (b) Briefly discuss the implied conditions and warranties in a contract of sale.

   (c) Under that circumstances does a condition descend to the level of a warranty?

6. (a) What is the doctrine 'caveat emptor'?

   (b) What are the exceptions to this rule?

Answer

[1. False 2. True 3. False]

[4. False 5. False 6. True]

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UNIT - IV

- INTRODUCTION
- DEFINITION
- OBJECTIVES OF COMPANY LAW
- CHARACTERISTICS OF A COMPANY
- KINDS OF COMPANIES
- PRIVILEGES AND EXEMPTIONS AVAILABLE TO ALL PRIVATE COMPANIES
- FORMATION OF A COMPANY
- STAGES IN FORMATION OF COMPANIES
- MEMORANDUM OF ASSOCIATION
- CLAUSES (CONTENTS) OF MEMORANDUM OF ASSOCIATION
- ALTERATION OF MEMORANDUM OF ASSOCIATION
- DOCTRINE OF ULTRA-VIRES
- ARTICLES OF ASSOCIATION
- COMPARISON BETWEEN MEMORANDUM AND ARTICLES OF ASSOCIATION

UNIT - IV

COMPANY - LAW

DEFINITION

The expression company law may be defined as a branch of law governing the companies. It deals with all aspects relating to companies, such as incorporation of companies, allotment of shares and share capital, membership in companies, borrowings by companies, management and administration of companies, winding up of companies. Thus, the company law is that branch of law which exclusively deals with all matters relating to companies. The company law, in India, is codified, and contained in the companies act 1956. This act extends to the whole of India, and came into force on 1st April, 1956.

OBJECTIVES OF COMPANY LAW

We have already discussed that the company law in India is codified and contained in the companies. Act, 1956 as amended from time to time. The objects of company law are those with which the company Act, 1956 was passed, and may be summaries as under

1. To ensure that the activities of the companies are carried on not only in the interest of those directly concerned with them but also in furtherance of the ultimate ends of our economic and social policy which the country has accepted.
2. To fix up minimum standards of business integrity and conduct in the promotion and management of companies affair.
3. To protect the legitimate interest of the shareholders by ensuring effective participation and control by them
4. To prevent misconduct and malpractices, on the part of company management and abuse of power vested in them by the general body of shareholders
5. To enforce proper performance of duties by persons responsible for the management of companies.
6. To require full and fair disclosure of all reasonable information relating to the affairs of the companies
7. To adjust the rights of the management Viz a Viz the shareholders and other concerned persons
8. To empower the government to intervene and investigate into the affairs of the company where the business of the company is being carried on in a manner prejudicial to the interest of the shareholders, the company or the general public.

DEFINITION OF A COMPANY

The term company may be defined as a group of persons associated together to achieve some common objective. This, however, is not the legal definition. In legal sense, a company means an association of persons incorporated under the existing law of country. The legal definition of company is given in section 3(1)(i) of the companies Act, which reads as under

"Company means a company formed and registered under this Act or an existing company".

A company is voluntary association of persons formed to achieve some common objectives, having a separate legal entity, independent and separate from its members, with a perpetual succession and a common seal, and with capital divisible into transferable shares.

CHARACTERISTICS OF A COMPANY

1. **It has a separate legal entity.** It is a important characteristics of a company that it have a separate legal entity. It means that the existence of a company is independent and separate from its members. In law, the company is regarded as artificial legal person, which deals in its own name.
2. **It has a perpetual successtion.** The term perpetual succession may be defined as the continuous existence. A company has a perpetual succession. Ie., company never dies. The membership of a company may change from time to time. But it does not affect the company's continuity. In other words the members may come and go, but the company can go no forever.
3. **It has a separate property:** we know that company is a legal person in the eyes of law. It can, therefore, hold the property in its own mane. All the property in the name of the company is its separate property, which is controlled, managed and disposed of by the company in its own name.
4. **It has capacity to sue and being sued.** We know that a company is a legal person and has independent existence. Being a legal person, the company can file suits against others in its own name. Similarly, the suits against the company can also be filed in company's name.
5. **It has a common seal.** We know that a company is a legal person, but it is not, physically, in existence. Thus it cannot sign its name. It has a common seal which is used as a substitute for its signature. The common seal is the official signature of a company.
6. **Its members have limited liability.** As a matter of fact, it is the principal advantages of carrying the business under limited companies. A company

may be limited by shares or by guarantee. In a company limited by shares, the liability of a member is limited to the extent of nominal value of the shares held by him, If the shares are partly paid. The liability of a member is limited to the extent of unpaid value of shares held by him. And if the shares are fully paid, the liability of the member is nil.

7. **Its shares are freely transferable:** The capital of a company is divided into parts, and each part is called the share. The shares of a company are freely transfereable and can be purchased and sold in share market.

8. **It has Several other advantages:** A part form the above advantages available to a company, it enjoys several other advantages also, such as

a) A company has an autonomy and independence to form its own policies and implement them in accordance with the provisions contained in its memorandum, articles of association and the companies Act

b) A company attracts professional management and thus helps in promotion of professional management and efficiency.

c) A company has the privilege of collecting interest free money form the public, for its business, by making a public issue or through private placement of shares and other securities.

d) The restrictions, with certain exception, on the purchase of its own shares by the company, provide permanence of capital collected and stability to the company and protection to some extent to the creditor5s of the company.

DISADVANTAGES OF INCORPORATION

We have discussed in the last article, the chief advantages (characteristics) of the company from of organisation. However, there are also certain disadvantages of incorporation (i.e,, formation) of a company, which may be summed up as under

1. **Company's formation requires many formalities and is expensive:** The formation of a company requires a number of formalities to be complied with, and is also an expensive affair.

2. **Company is not a citizen, and cannot have the benefit of fundamental rights.** We know that a company is a legal person and has the rights and obligations like a natural person. However, a company is not a citizen either under the constitution of India or the citizenship Act. Thus, a company cannot have the fundamental rights, which have been expressly given to the citizen only under the constitution of India. The supreme court has also emphasized that only the natural persons can be recognizes as citizens. Moreover, the right of citizenship can be conferred on the

natural persons alone. Even if all the members of a company are the citizens of India, the company does not become a citizen of India. The company, being an independent and different identity from its members, has nothing to do with the status of its members.

3. **Company's social responsibility is greater.** We know that the companies have enormous powers and enjoy various advantages. Moreover, they also have their own impact on the society.
4. **Company's members cannot have effective control:** The membership of companies is generally large and the members are scattered at distant places. Consequently, the members of a company cannot have effective control over its working and day to day affairs.
5. **Company's tax burden is heavy.** The structure of tax legislation is such that in certain circumstances the tax burden on a company is more as compared to other forms of organisations. E.g., the company has to pay income tax on the whole of its income at a flat rate, whereas others are taxed on a slab system
6. **Company's separate entity can be ignored under the doctrine of lifting of corporate veil.** We know that the chief advantage of a company is its separate legal entity, and various other advantages, which are available to a company are linked with this chief advantage.
7. **Company's winding up procedure is expensive and time consuming.** The company can be wound up (i.e., put to an end) only by following the procedure prescribed in the companies act.

KINDS OF COMPANIES

Though there are many kinds of companies. Yet the following are important form the subject point of view

1 Chartered companies.2 statutory companies 3 registered companies 4 private companies 5 public companies 6 holding and subsidiary companies 7 government companies 8 foreign companies

CHARTERED COMPANIES

A chartered company is one which is incorporated (formed) under a special charter granted by the king or queen of England in the exercise of prerogative powers e.g, east India company, bank of England, Standard Chartered Bank. The chartered companies are governed by the provisions of the special charter, under which they are formed. The charter defines the nature and power of such companies.

STATUTORY COMPANIES OR CORPORATIONS

A statutory company is one which is incorporated by a special Act of the legislature (i.e., by the Act of parliament or State legislature). It may be noted that an act is specially passed to create a statutory company e.g. the life insurance corporation of India was created by the Life Insurance Corporation Act. The Food Corporation of India was created by the Food Corporation of India. Act. The statutory companies are also known as 'Corporations'. Such companies are, generally, created for the public utility services, and their main object is not to earn profits, but to serve the general public.

REGISTERED COMPANIES

A registered company is one which is formed and registered under the companies Act, 1956, it also includes an existing company, which was formed and registered under the earlier companies Acts.

LIMITED COMPANIES

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

1. **Companies limited by share.** A company limited by shares is one in which the liability of the members is limited to the extent of nominal value of shares held by them. If the shares are fully paid i.e, all the amount of share has already been paid, then the liability of the members is nil. And if the shares are partly paid, then the liability of the members is limited to the extent the amount which remains unpaid.
2. **Companies limited by guarantee.** A company limited by Guarantee is one in which the liability of the members is limited to such amount as he undertakes to contribute to the assets of the company in the event, of its being wound up. The amount of guar5antee is fixed in the memorandum of association. Of the company. The guaranteed amount may differ from member to member. It may be noted that the liability of the member can be enforced only at the time of winding up of the company.

UNLIMITED COMPANIES

An unlimited company is one in which the liability of the members is unlimited the members are also personally liable for the payment of companies liabilities. Thus if in the event of winding up of a company, the assets of the company are not sufficient to pay its liabilities, then the private property of the members can also be utilised for the payment of company's liabilities.

PRIVATE COMPANIES

A private company is one which has a minimum paid up capital of rupees one lakhs or such higher paid up capital as may be prescribed. And by its articles of association, puts the following restrictions on itself (section 3(1)(iii)

1. Restricts the right to transfer its shares, if any
2. Limits the maximum number of its members to fifty (excluding the present or past employees of the company) prohibits any invitation to the public to subscribe for any shares or debentures of the company
3. Prohibits any invitation or acceptance of deposits form person other than its members, directors or their relatives

PUBLIC COMPANIES

A public company may, therefore, be defined as an association of persons consisting of not less than sever members, which is registered under the companies. Act with a minimum paid up capital of rupees five lakhs and which is not a private company within the meaning of this act.

HOLDING AND SUBSIDIARY COMPANIES

We know that a holding company is one, which has control over another company. And the company, over which the control is exercised, is called the subsidiary company. It may be noted that the holding and subsidiary companies are relative terms. A company is a holding company of another if the other is its subsidiary.

GOVERNMENT COMPANIES

A Government company is one in which 51% or more of the paid up share capital is held by the central Government, or by any one or more state Governments, or partly by central Government r partly by one or more state governments.

FOREIGN COMPANIES

A foreign company is one which is incorporated (i.e,, formed) outside India. However, of the purpose of the companies Act, 1956. it means a company incorporated outside India and having a place of business in India

PRIVILEGES AND EXEMPTIONS AVAILABLE TO ALL PRIVATE COMPANIES

Following are the special privileges and exemption which are available to all private companies, including a private company which is the subsidiary of a public company.

1. **Its formation is easy.** A private company can be easily formed as it requires only two minimum members. This also helps in smooth functioning of the company Section 12(1).
2. **It can immediately start its business.** A private company can start its business immediately after its incorporation (formation). It is not required to obtain a certificate for commencement of business as is required in case of a public company (Section 149(7)
3. **It is exempted from the issue of prospectors.** We know that a private company is prohibited from inviting offers from general public for the purchase of its shares or debentures. Thus, it is not required to issue a prospectus, which is meant for this very purpose. A private company is, therefore, 3exempted from all the legal requirements relating to the preparation and issue of prospectus. Moreover, it is also not required to file with the registrar of companies, a statement in lieu of prospectus (Section 70 (3))
4. It is exempted from the requirement of minimum subscription for allotment of share. The minimum subscription is the amount, which must have been collected by a company before any allotment of shares is made. But a private company can proceed to allot shares without waiting for the minimum subscription. The reason for the same is that a private company is not required to offer shares to the public, and thus no question of minimum subscription for the public arises (section 69)
5. It can issue further shares to outsiders. In certain cases of new allotment, the shares must be offered to the existing equity shareholders. Bu a private company is free to allot shares to any persons i.e., to outsiders also Section 81(3). The cases in which the shares should be offered to the existing shareholders will be discussed in Act. 8.5
6. It is exempted from holding statutory meeting. A private company is not required to hold a statutory meeting. Moreover, it is also not required to file a statutory report with the registrar of companies (Section 165)10)).
7. It is exempted from keeping an index of members. A private company is not required to keep an index of members. As a matter of fact, a company is required to keep an index of its members if the number of members exceeds 50. in case of a private company, the maximum number of members is fifty. Thus, there is not question of keeping an index of members [Section-151(1)]
8. It need not have more than two directors. A private company is not required to have more than two directors. However, this is also the minimum requirement for a private company. This is to say, a private

company must have at least two directors [section 252(2)]. Whereas, a public company must have at last three directors.

SELF EVALUATION QUESTIONS

1. Which of the following statements is not true?

(a) A company is an artificial person created by law.

(b) A company can do every act like a natural person except the acts which are purely of personal nature.

(c) A company can be held liable for violation of the statutory provisions of the Companies Act.

(d) A company can be imprisoned for violation of such provisions which attract penalty by way of imprisonment only.

2. What of the following is not the characteristic of a public company?

(a) It has a separate legal entity (b) It has a perpetual succession.

(c) It has a common seal and separate (d) Its shares are non-transferable.

3. A company being a legal person is also a citizen under the Constitution of India.

(a) True, as there is a clear provision in the Companies Act.

(b) False, as there is neither any provision nor any judicial authority on this point.

Comparison between Private Company & Public Company

S.No	Private Company	Public company
1	It is formed and registered under the companies act, and is a separated legal entity	It is also formed and registered under the companies Act, and is also a separate legal entity
2	In this case, the minimum number of persons required to form a company is two	In this case, the minimum number of persons required to form a company is sever.
3	In this case, the maximum member of members must not exceed fifty	It this case, there is no such restriction on the maximum number of members.
4	It this case, the right of members to transfer their shares is restricted. i.e., the shares are not freely transferable	In this case, the right of members to transfer their shares is not restricted i.e, the shares are freely transferable.
5	It is prohibited from issuing a prospectus i.e., it cannot invite offers from the general public to subscribe for it shares or debentures.	It is not prohibited from issuing a prospectus i.e., it can invite offers from the general public to subscribe for its shares or debentures.
6	It must have minimum of two directors.	It must have minimum of three directors.
7	It can start its business as soon as it is incorporated. It is not required to obtain a certificate to commence business.	It cannot start its business as soon as it is incorporated. It is required to obtain a certificate to commence business from the Registrar of Companies.

8	It is not required to hold a statutory meeting, and need not to file statutory report with the Registrar of Companies.	It must hold a statutory meeting, and file a statutory report with the Registrar of Companies.
9	In this case, the director is not required to file, with the Registrar of Companies, a written consent to act a director. Moreover, he is also not required to sign the memorandum and enter into a contract for is qualification shares.	In this case, the director must file, with the Registrar of Companies, a written consent to act as a director. Moreover, he must also sign the memorandum and enter into a contract for his qualification shares.
10	In this case, the directors may be appointed by a single resolution.	In this case, the directors cannot be appointed by a single resolution.
11	In this case, the directors are not required to retire by rotation. They may be appointed as permanent life directors.	In this case, two-third of the directors of the company must retire by rotation.
12	In this case, the number of directors may be increased to any extent without the permission of the Central Government.	In this case, the number of directors cannot be increased without the permission of the Central Government.
13	In this case, a director may participate in the company meeting and cast his vote even if he is interested in the subject-matter.	In this case, a director cannot participate in the company meeting and cast his vote if he is interested in the subject-matter.
14	In this case, the quorum required for holding a meeting is of two members i.e., there must be at least two members personally present for holding the company meetings.	In this case, the quorum required for holding a meeting is of five members i.e., there must be at least five members personally present for holding the company meetings.
15	In this case, one member having the voting right can demand poll if the total number of members present is not more than seven. But if the number of members exceeds seven, the poll can be demanded by two members.	In this case, the poll can be demanded by any members or members having 10% of voting powers, or having shares worth Rs.50,000.
16	In this case, there are no restrictions on managerial remunerations (i.e., remuneration payable to directors, or managers).	In this case, there are certain restrictions on managerial remunerations e.g., the total managerial remuneration payable in

		one financial year should not exceed 11% of he net profits of that year, and in case of inadequacy of profits, the company shall not pay any managerial remuneration except with the previous approval of Central Government.
17	In case a private company proposes to increase its capital by issue of shares, it may issue the shares either to the existing members or to outsiders.	In case a public company proposes to increase its capital by issue of shares, it must in certain circumstances, first offer the shares to existing members.

ONE MAN COMPANY OR FAMILY COMPANY

The term one man company may be defined as a company in which one person holds the substantial number of shares, and has the controlling power over the company. It may be noted that this does not mean that there is only one member in the company, because there must be at least two members for a private company, and seven for a public company.

SELF EVALUATION QUESTIONS

4. A statutory company or corporation is one which is incorporated.

(a) by an Act of Parliament (b) by an Act of State Legislature

(c) under the Companies Act, 1956 (d) by either (a) or (b)

5. In case of a company limited by guarantee, the liability of the members can be enforced.

(a) at any time when the company so decides.

(b) only at the time of winding up of the company.

(c) only by an order of court

(d) only by an order of Registrar of Companies.

6. The minimum number of members required for the formation of a company is 2 for a private company and 7 for a public company, but the maximum number of members is 50 in both the cases.

(a) True, as the Companies (Amendment) Act, 1999 amended the provisions in this regard.

(b) False, as there is not prescribed maximum limit for members in case of a public company.

FORMATION OF A COMPANY

Stages in formation of companies

Following are the three stages in the formation of a company.

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

Promotion of a company

The promotion of a company refers to all those steps which are taken from the time of having an idea of starting a company to the time of the actual starting of the company business. Thus, formation of a company , means originating the idea of forming a company, and taking necessary steps in this regard. The persons who thing of forming a company and take necessary steps in its formation are known as promoters or company promoters.

Registration and incorporation of a company

It is the second stage in the formation of a company. We know that a company comes into existence when it is registered under the companies Act. If the company is to be formed as a public company, any sever or more persons associated for any lawful purpose may form the same by getting it registered with the registrar of companies. And if the company is to be formed as a private company, any two or more but not more than 50 persons may get the same registered. The company so formed, whether public or private, may be of the following two types, namely (section (12)

1. Limited company (Limited by shares or limited by guarantee)
2. Unlimited company

A company is got registered by filing an application with the registrar of companies of the area in which registered office of the company is to be situated.

After getting the approval of name, the application for registration of the company should be filed with the registrar along with the following documents and particulars (section 33).

1. **The memorandum of association** It is the document which describes the scope of company activities. It must be signed by the required number of persons, which are necessary for the formation of company. And who come forward to form it (it seven in case of public, and two in case of private company)
2. **The articles of association:** It is the document which contains the rules and regulations of the company. It must also be signed by the persons

who sign the memorandum of association. It may be noted that the filling of the articles of association. Is compulsory for three types of companies, namely, a unlimited companies, b. private companies, c companies limited by guarantee.

3. **The agreement which the company proposes to enter into with any individual for appointment as company's managing director, or whole time directors or manger.** In case the company has entered into any such agreement, the same must also be filed with the registrar at the time of registration of the company. This clause has been added by the companies (amendment Act 1988)
4. **The declaration that all the requirements of the companies Act relating to the registration of the company have been complied with.** Such a declaration must be signed by any one of the following person (section 33 (2))
   a. An advocate of the supreme court or of a high court
   b. An attorney or pleader entitled to appear before high court
   c. A secretary in whole time practice in India, who is engaged in the formation of a company.
   d. A person named in the articles of association as a director, a manger or secretary of the company.
5. **A written consent of such director to act as director of the company:** It should be signed by the director himself or by his agent authorized in writing.
6. **A written undertaking by such directors to take and pay for their qualification shares, if any:** It should be signed by each such director.
7. **A list of persons who have agreed to become the first director of the company:** Such a list becomes necessary in view of the aforesaid written consent and undertaking to be given by such persons.

The registrar of companies may himself ask for the above three documents in case of a public company having a share capital.

CERTIFICATE OF INCORPORATION

A certificate of incorporation is one which certifies that the company is incorporated. The registrar of companies issues it and it contains the name of the company, the date of its issue, and the signature of the registrar with his seal. This certificate brings the company into existence. The legal effects of the certificate of incorporation may be stated as under (section 34)

1. Company comes into existence and it becomes a legal entity independent from its members.

2. The company's life starts from the date of the certificate of incorporation
3. The company acquires a perpetual succession i.e it remains in existence for ever unless wound up according to the provisions of the companies Act. In toehr words, the death, retirement, admission etc., of the members of the company does not affect its existence.
4. The memorandum and articles of association become binding upon the company and all its members.
5. The liability of the members of the limited company becomes limited.

Thus, on the issue of certificate of incorporation, the company comes into existence with all the characteristics.

CONCLUSIVENESS OF CERTIFICATE OF INCORPORATION

The certificate of incorporation is the conclusive evidence of registration of the company. In other words. It is considered to be decisive and final as regards the registration of the company. The validity of this certificate cannot be disputed on any ground whatever (section 35)

SELF EVALUATION QUESTIONS

7. A company comes into existence, when -

(a) The 'memorandum of association' is signed by the required number of members.

(b) The 'memorandum of association' is submitted for registration to the Registrar of Companies.

(c) It is registered under the Companies Act, 1956.

(d) It establishes its registered office and starts functioning there from.

8. At the time of registration, the filling of articles of association with the Registrar of Companies is compulsory for.

(a) Private companies, unlimited companies and companies limited by guarantee.

(b) Unlimited companies only.

(c) Companies limited by shares only.

(d)) All types of companies.

9. If at the time of registration, a company limited by shares does not file articles of association with the Registrar, then

(a) The company cannot be registered without this document.

(b) The company is deemed to have adopted 'Table A'

(c) The company is deemed to have become a company with unlimited liability.

(d) The directors become liable to be punished with fine at the rate of Rs. 50 for each day during which the default continues.

10. A company comes into existence from the date of certificate of incorporation

    (a) True (b) False

COMMENCEMENT OF BUSINESS

A private company can start its business immediately after obtaining the certificate of incorporation. But a public company will have to obtain a further certificate known as the certificate to commence business. Before it can start its business.

Roles of promoters

Following are the main functions of promoters

1. To originate an idea of starting a business and forming a company.
2. To investigate the idea and known whether the formation of the company is possible and profitable
3. To collect the requisite number of persons necessary for the formation of the company, and to find out the first directors
4. To settle the name of the company
5. To settle the details of the memorandum and articles of association of the company. and to get these documents drafted and printed, and to arrange for the registration of the company.
6. To arrange for the preparation of the prospectors and its issue
7. To enter into preliminary contracts
8. To pay preliminary expenses
9. To arrange for the load etc., from various financial institutions
10. To perform such other functions as are necessary for the formation of the company.
11. To conduct the negotiations for the purchase of business where it is intended to purchase an existing business.

Duties and obligations of promoters

1. The promoters must not make, directly or indirectly, any secret profits at the expense of the company which they are promoting. If they do so, the company may recover the same.
2. The promoters must disclose fully all the material facts regarding the formation of the company

3. The promoters must faithfully disclose all the facts relating to the property which they want to sell to the company.

4. The promoters must not make an unfair use of their position, and they must disclose to the company their rue position.

SELF EVALUATION QUESTIONS

11. A public company having a share capital can start its business on obtaining -.

(a) Certificate of incorporation and approval of Company Law Board.

(b) 'Certificate to commence business', and approval of Company Law Board.

(c) 'Certificate to commence business'.

(d) Approval of High Court.

12. Which of the following statements is correct?

(a) A public company having share capital can start its business after obtaining a certificate to commence business.

(b) A public company having no share capital can start its business without obtaining certificate to commence business.

(c) Both (a) and (b)

(d) None of these.

13. A company must commence business within one year of its incorporation.

(a) True, as it is the law on this point.

(b) False, as there is no such provision in the Companies Act.

14. Which of the following statements is cored?

(a) Only an individual can be the promoter of a company.

(b) Besides individual, a firm, an association, or a company may also act as a promoter of a company.

MEMORANDUM OF ASSOCIATION

INTRODUCTION

The first important document to be filed with the registrar is the memorandum of association, briefly called the memorandum. It may rightly be called a charter or the construction of the company as it regulates the relationship of the company with the outside world

The memorandum is as it were the area beyond which the actions of the company cannot go inside that area the shareholders may make such regulations for their own governance as they think fit

Clauses (Contents) of Memorandum of Association

The memorandum of association of every company must have the following clauses: 1. Name Clause. 2. Registered Office Clause. 3. Objects Clause. 4. Liability Clause. 5. Capital Clause. 6. Association or Subscription Clause.

NAME CLAUSE

This clauses of memorandum of association contains the name of the proposed company. The company being a legal person, must have a name to establish its identity. As a matter of fact, the name is the symbol of personal existence of the company. a company may choose any suitable name it likes, however, the following rules must be observed while selecting a name of the company.

1. **The name should not be undesirable:** The name of the company should not be undesirable in the opinion of the central government. If it is so, the company cannot be registered with such a name (Section 20 (1)). This provision enables the central government to reject a name without giving any reason.
2. The name should not be identical with another company's name: The name of the company should not be identical with the name of an already existing company. it should also not too closely resemble the name of another existing company.
3. The name should not be a prohibited one: The name of the company should not be prohibited by the emblems and names (Prevention of improper use(Act, 1950).
4. The name should end with words limited or private limited: The public company with limited liability must add the word limited at the end of its name, and the private company the word private limited.

REGISTERED OFFICE CLAUSE

This clause of memorandum of association contains the name of the state in which the registered office of the company is to be situated

OBJECTS CLAUSE

This clause of memorandum of association contains the objects for which the proposed company is to be formed. It is the most important clause of the memorandum, and should be drafted very carefully. The objects of the company must be stated in clear and definite terms. The objects clause must be divided into two sub clause namely (section 13 (d)).

1. **Main objectives clause.** This clause will state the main objects of the company which are to be pursued by it on its incorporation. The objects

which are incidental or ancillary to the attainment of main objects will also be stated in this clause.

2. **Other objects clause:** This clause will state those objects of the company which have not been mentioned in the above clause.

LIABILITY CLAUSE

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

1. In case of companies limited by shares, the liability clause must state that the liability of the members shall be limited by shares (section 13 (2). This means that the liability of member is limited to the nominal value of shares held by him.
2. In case of companies limited by guarantee, the liability clause must state that the liability of the members shall be limited by guarantee section 13 (2).

CAPITAL CLAUSE

This clause of memorandum of association contains the amount of share capital with which the company is to be registered. This clause should also state the number and value of shares into which the capital of the company id divided. Section 13 -4, a. the capital with which the company is registered is called the registered nominal or authorized capital.

ASSOCIATION OR SUBSCRIPTION CLAUSE

This clause of memorandum of association contains the names of the persons who sign the memorandum and states that they are willing to form themselves into a company. These persons are called subscribers.

ALTERATION OF MEMORANDUM OF ASSOCIATION

The memorandum of association is a very important document of a company. it cannot be altered by the sweet will of the members of the company. it can be altered only by following the procedure as prescribed in the companies.\ Act. It may be noted that the right of the company to alter its memorandum is strictly limited to the provisions of the companies Act. The procedure of alteration of various clauses of the memorandum may be discussed under the following heads.

ALTERATION OF NAME CLAUSE

A company may alter (i.e., changing) its name at any time. The only requirement is that the change must be made by following the prescribed procedure. The procedure for the change of name of the company is contained in sections 21 to 23 of the companies Act and may be summed up as under.

A company can change its name at any time by adopting the following procedure Section 21.

By passing a speci8al resolution and

By obtaining the approval of central Government in writing.

However, the approval of central Government is not required when the change involves the addition or deletion of the word private on the conversion of a public company in a private company or vice versa.

Some times, a company has been registered with a name which is identical with the name of an existing company or which, in the opinion of central government, is undesirable, in such cases, the company, may change its name by adopting the following procedure (Section, 22 (1) (a)]

ALTERATION OF REGISTERED OFFICE CLAUSE

The procedure for the alteration (i.e., change) of registered office of the company is contained in section 17, 18 and 146 of the companies Act., and may be summed up as under

1. **Change of registered office from one place to another within the same city:** Such a change in the registered office of the company may be made by a board resolution to the effect.
2. **Change of registered office from one city to another within the same state:** Such a change in the registered office of the company may be made by passing a special resolution to that effect. When the registered office is shifted to the new loction, then the notice of the same must be given to the registrar of companies within 30 dyas of the shifting of the office section 146 (2).
3. **Change of registered office from one state to another:** Such a change in the registered office of the company involves the alteration of memorandum of association and may be made by adopting the following procedure (section 17)

   By passing a special resolution, and

   By obtaining the confirmation of the company law board.

Thus, the first step for such a change is to pass a special resolution and the second step is to apply to the company law board for its sanction.

SELF EVALUATION QUESTIONS

15. A company formed for the promotion of commerce, art, science, charity etc. may not use the word 'Limited' at the end of its name, even if it is a limited company.

(a) True, as it may do so by getting a licence from the Central Government to that effect.

(b) False, as the use of word 'Limited' at the end of all limited companies' name is obligatory under the amended Companies Act.

16. The Registered office Clause of memorandum of association contains -

(a) The name of the Sate in which the registered office of the company is to situate.

(b) The name of the city/town only and not that of the state.

(c) The name of Registrar of Companies.

(d) The complete postal address.

17. The Registered office of the company must be in existence from the day when the.

(a) Company starts its business or from 30th day of incorporation of the company whichever is earlier.

(b) Documents are filed with the Registrar for registration or from 30th day of registration thereof whichever is earlier.

(c) Company gets the notice of its registration.

(d) Company proposes to hold its first annual general meeting.

18. Which of the following statements is correct?

(a) In limited companies, the liability of members holding fully paid-up shares is nil.

(b) In companies limited by guarantee, the liability of members limited to the amount which they have agreed to pay.

(c) Both (a) and (b) are correct.

(d) None of these is correct.

19. The capital with which the company is registered is called the.

(a) Subscribed capital (b) Nominal or authorized capital

(c) Working Capital (d) None of these

20. The procedure for changing the name of a company is by passing.

(a) Special resolution and obtaining the approval of Central Government in writing.

(b) Special resolution and obtaining the approval of Company Law Board in writing.

21. The procedure for changing the name of a company when it is identical with the name of an existing company is by passing.

(a) Ordinary resolution and obtaining approval of Central Government.

(b) Special resolution and obtaining approval of Company Law Board.

ALTERATION OF OBJECTIVES CLAUSE

We know that objects clause of memorandum is the most important clause. Certain limits are imposed on company's powers of alteration. The procedure for the change of objects of the company is contained is sections 17 and 18 of the companies act. The company may change its objects by adopting the following procedure.

1. By passing a special resolution (Section 17 (1).
2. By filing the special resolution with the registrar of companies within one month from the date of such resolution (section 18(1)(a)].

REGISTRATION OF ALTERATION

The alteration of memorandum involving the shifting or registered office from one state to another and the alteration of the objects clause must be registered with the registrar of companies. If these alterations are not so registered, then these will have no effect at all [Section 19(1)].

ALTERATION OF LIABILITY CLAUSE

Generally, the company cannot alter the liability clause of its memorandum so as to increase the liability of the members. The liability of members can be increased only if the concerned member agrees in writing. Thus, an alteration which imposes additional liability on a member or with compels the members to buy additional shares of the company can be made only if the concerned member gives his consent in writing (Section 38)

ALTERATION OF CAPITAL CLAUSE

The company may alter the capital clause of its memorandum by adopting the procedure prescribed in the companies Act. It may, however, be noted that the company can alter (Change) its capital only if it is so authorized by its articles of association. Certain alterations in the capital clause may be made by passing an ordinary resolution, and certain by a special resolution, following types of alterations can be made simply by passing an ordinary resolution

1. Increase of share capital by issue of new shares

2. Consolidation or sub division of existing shares of larger or smaller amount.
3. Conversation of fully paid shares into stock, and conversion of stock into fully paid shares.
4. Cancellation of unissued shares.

DOCTRINE OF ULTRA-VIRES

The term ultra means beyond, and the term vires means powers. Thus term ultra vires means doing an ac beyond the powers. The ultra vires acts may be categorized as under:

1. An act ultra-vires the directors. It is an act which is beyond the powers of the directors.
2. An act ultra-vires the articles of association: It is an act which is beyond the powers given by the articles of association.
3. An act ultra-vires the memorandum of association: It is an act which is beyond the powers given by the memorandum of association. As a matter of fact, such act is beyond the legal powers of the company, and is also known as 'ultra-vires the company'.

If the company does any act which is ultra-vires the directors, the act is not altogether void and inoperative. It can be ratified by the general body of shareholders. When the act is so ratified, the company becomes bound by the same. Similarly, an act which is ultra-vires the articles of association, is also not altogether void and inoperative.

EFFECTS OF ULTRA-VIRES ACT

The effects of ultra-vires acts may be discussed under the following heads

1. **Injunction against the company:** In case any ultra Vs act has been done or is about to be done, any member of the company can obtain an injunction from the court. It., he may obtain a court order restraining the company from proceeding with the ultra Vs Act.
2. **Personal liability of directors to the company:** The directors of the company are personally liable to the company for the ultra Vs Acts. It is the duty of the directors to see that company's capital is used for the legitimate objects of the company.
3. **Persons liability of directors to third party:** The directors of the company are also personally liable to the third part as they exceed their authority by doing ultra Vs acts. It is the duty of an agent to act within the scope of his authority. If he exceeds his authority he will be personally liable to the third party.

4. **Ultra Vs contracts are void:** A contract which is ultra Vs the company i.e., beyond company's powers, is void and without any legal effect.

SELF EVALUATION QUESTIONS

22. The procedure for change of registered office from one city to another within the same state is by passing.

    (a) Ordinary resolution and approval of Company Law Board.

    (b) Special resolution and approval of Central Government.

    (c) Ordinary resolution only.

    (d) Special resolution only.

23. Fill in the blanks.

    The change of registered office of a company from one state to another requires (i)……, and (ii)…….

24. The procedure for alteration of the object clause of memorandum is by passing.

    (a) Special resolution and confirmation of the Company Law Board.

    (b) Special resolution and confirmation of the Court.

    (c) Special resolution only.

    (d) Ordinary resolution only.

25. The procedure for alteration of the capital clause of memorandum which has the effect of reduction of share capital is by passing a

    (a) Special resolution and confirmation of the Company Law Board.

    (b) Special resolution and confirmation of the court.

26. Which of the following statements is correct?

    (a) An act ultra-vires the company is wholly void an cannot e ratified in any case.

    (b) An act ultra-vires the company is not wholly void as it can be ratified by the whole body of shareholders.

27. Can an act ultra-vires the directors, and ultra-vires the articles of association be ratified?

    (a) No, as all ultra-vires acts are void ab initio

    (b) Yes, if it is intra-vires the company.

ARTICLES OF ASSOCIATION

INTRODUCTION

The articles of association briefly called articles is the second important document which has to be filed with the registrar at the time of registration of the company this document contains t(e rules, regulations an$ bye laws for the internal management of the company.

The articles of association lays down the modes in which the objects of the company are to be carried out by the members.

The articles define the duties, the rights, and the powers of the governing body as between themselves and the company at large, and the mode and the form in which the business of the company is to be carr)ed on, and the mode and form in which changes in the internal regulations of the company may, from time to time, be made.

Thus, the articles of association contain the rules and regulations which are framed for the internal management of the company.

Contents of articles of association

1. Definition of important terms and phrases 2. Adoption or execution of pre incorporation contracts. 3. Share capital and the rights of the shareholders. 4. Allotment of shares. 5. Procedure as to making of calls on shares. 6. Procedure as to forfeiture of shares. 7. Transfer of shares. 8. Lien on sháres. 9. Share certificate and share warrants. 10. Alteration of share capital. 11.Conversion of shares into stocks. 12. dividend, reserves and capitalization of profits.13. appointment of managerial personnel e.g, directors etc., 14. meetings. 15 borrowing powers 16. accounts and audit. 17. common seal of the company. 18 voting rights and proxies. 19 winding up of the company 20. the exclusion, total or partial of table A of schedule I of the companies Act

ALTERATION OF ARTICLES OF ASSOCIATION

The procedure for alteration of articles is contained in Section 31 of the Companaes Act which states that a company may alter its articles of association by passing a special resolution. However, the following alterations shall not have any effect unless the same have been approved by the central Government:

1. The alteration which has the effect of converting a public company into a private company (Secti/n 31 (1)2.
2. The alteration which has the effect of increasing the remuneration of any director, including a managing or whole time director [Section 310]3.

It may be noted that a company can alter its articles of association as a matter or right. Section 31 gives a clear and statutory power to the company to alter its articles of association.

SELF EVALUATION QUESTIONS

28. Which of the following statements is correct?

(a) The articles of association is subordinate to memorandum of association as the 'memorandum' is considered to be the charter of the company, where as the 'articles' is merely regulatory.

(b) The memorandum of association is subordinate to articles of association as the 'articles' formulates the rules and regulations where as the 'memorandum' states objects only.

29. For which of the following companies it is not obligatory to have articles of association?

(a) Public companies limited by shares.

(b) Public companies limited by guarantee.

(c) Private limited companies. (d) Unlimited companies.

30. The general procedure for alteration of articles of association is by passing.

(a) Special resolution. (b) Ordinary resolution.

(c) Special resolution and approval of CLB

(d) Ordinary resolution approval of court.

31. The procedure for alteration of articles of association which has the effect of converting a public company into a private company is by passing.

(a) Special resolution and approval of CLB

(b) Special resolution and approval of Central Government

(c) Ordinary resolution and approval of CLB

(d) Ordinary resolution and approval of Central Government

COMPARISON BETWEEN MEMORANDUM AND ARTICLES OF ASSOCIATION

Following table gives the comparison between the memorandum and articles of association:

S.No	Memorandum of Association	Articles of Association
1.	It defines the objects and powers of the company.	It contains the rules and regulations of the company which are formed for the purpose of carrying out the objects as laid down in the memorandum of association.
2.	It is the supreme document as it defines the constitution of the company. As a mater of fact, it is the charter of the company.	It is subordinate to the memorandum of association. In case of any conflict between the two, the memorandum shall prevail.
3.	It regulates the relationship of the company with the outsiders, as the objects and powers of the company are made known to the outsiders through this document.	It regulates the internal management of the company, as the rules and regulations contained in it describe the internal procedure to be followed by the company.
4.	It cannot be easily altered. The company has to follow strict procedure for the alteration of its registered office clause for shifting the registered office from one state to another.	It can be easily altered as compared to memorandum of association.
5.	It is an important document, and every company must have its own memorandum of association'.	It is not necessary for every company. Because a public company limited by shares may not have any articles of association of its own, it may adopt 'Table A' of Schedule I of the Companies Act.
6.	Any act which is ultra vires (i.e., beyond powers) the	

	memorandum, is wholly void and cannot be ratified even by the whole body of shareholders. As a matter of fact, the company cannot go beyond the scope of its memorandum of association.	Any act which is ultra vires the articles of association may be ratified by the shareholders. Acts ultra vires the articles of association are merely irregular and not void. However, such act can be ratified only if it is within the scope of memorandum of association.

SELF EVALUATION QUESTIONS

32. Can company's power to alter its articles be taken away from the company so as to make the articles final once for all?

(a) Yes, by incorporating a clause to that effect in the articles itself, and approval of court.

(b) No, as the power of alteration of articles is the statutory power given to the company.

33. Which of the following statements is correct?

(a) The 'memorandum' and 'articles' are binding on the members in their relation to the company.

(b) The 'memorandum' and 'articles' are binding on the company in their relation to the members.

(c) None of these is true.

(d) Both of these are true.

34. Company's 'memorandum' and 'articles' are public documents.

(a) True.

(b) False, as these are private documents only governing a particular company and not public in general.

35. Which of the following statements is corrects?

(a) Articles of association regulates the relation of the company with the outsides, as objects of the company are made known to them by this document.

(b) Memorandum of association regulates the internal management of the company as it states the rules and regulations for carrying out the objects of the company.

(c) None of these is true.

(d) Both of these are true.

TEST QUESTIONS

1. Define the term company. Explain and illustrate the characteristics of a company.
2. "A company is an artificial person created by law with a perpetual succession and common seal" - Explain.
3. Define a private company. What are the privileges and exemptions enjoyed by a private company? Under what circumstances would a private company be deemed to have become a public company?
4. State the comparison between the following:

   (a) Private company and public company. (b) Private company and partnership.
5. What do you understand by formation of a company? Discuss in brief, the procedure (i.e., different stages) for the formation of a company.
6. How a company is incorporated? What documents are required to be filed with the Registrar of Companies for this purpose?
7. "A certificate of incorporation is conclusive evidence that all the requirements of the Companies Act have been complied with" - explain and state from what date the company is incorporated.
8. What can a company, which has issued a prospectus inviting the public to subscribe for its shares, commence business?
9. Define the term 'promoters'. State the functions, duties and obligations of the promoters.
10. What is the legal position of a promoter? State the liabilities of a promoter with special reference to his liability for pre-incorporation contracts. How a promoter is remunerated?
11. What is memorandum of association? What are its important clauses?
12. Explain briefly how can the memorandum of association of a company be altered?
13. What is the procedure for alteration of the 'objects clause' in memorandum of association? When does the alteration take effect? What is the effect of failure to register the alteration with the Registrar of Companies? Discuss citing relevant provisions of the Companies Act 1956?
14. Enumerate the steps to be taken by a company desiring to alter its memorandum of association (including change of its name), and also articles of association.

15. What is articles of association. What are its contents?

16. How can articles of association be altered?

ANSWERS

1. (d)	2. (d)	3. (b)	4. (d)	5. (b)	6. (b)
7. (c)	8. (a)	9. (b)	10. (a)	11. (c)	12. (c)
13. (a)	14. (b)	15. (a)	16. (a)	17. (a)	18. (c)
19. (b)	20. (a)	21. (a)	22. (d)		

23. (i) Special Resolution (ii) Confirmation of CLB

24. (c)	25. (b)	26. (a)	27. (b)	28. (a)	29. (a)
30. (a)	31. (b)	32. (b)	33. (d)	34. (a)	35. (c)

UNIT – V

- PROSPECTUS OF A COMPANY
- LIABILITY FOR MIS-STATEMENTS AND OMISSION OF FACTS IN THE PROSPECTUS
- STATEMENT IN LIEU OF PROSPECTUS
- TYPES OF SHARES
- COMPARISON BETWEEN TRANSFER OF SHARES AND COMPARISON BETWEEN SHARES AND STOCK
- TYPES OF SHARE CAPITAL
- DEBENTURES OF A COMPANY
- CHARACTERISTICS OF DEBENTURES
- MEETINGS AND RESOLUTIONS
- KINDS OF MEETINGS
- WINDING UP OF A COMPANY
- MODES OF WINDING UP
- DUTIES OF THE LIQUIDATOR

UNIT - V

PROSPECTUS OF A COMPANY

INTRODUCTION

After formation, the company needs the necessary amount of money to finance is business activities. The necessary money for this purpose may either be raised (or collected) from the general public, or be obtained through private contracts. However, the required money is generally raised from the public, as the private money may not be sufficient for the needs of the company. As a matter of fact, it is the great advantage of forming a public 1 company. The money from the general public is raised by inviting deposits from the public, or by inviting offers to purchase the shares or debentures of the company. such deposits or offers may be invited from the public by issuing a document known as 'prospects'. In this chapter we shall discuss the definition of prospectus and other legal provisions relating to prospectus.

DEFINITION OF PROSPECTUS

The term prospectus is defined in section 2 (36) of the Companies Act, which reads as under:

"A prospectus means any document described or issued as prospectus and includes any notice circular, advertisement or other document inviting deposits from the public or inviting offers from the public of the subscription or purchase of any shres in, or debentures of, a body corporate".

In other words, a prospectus means any invitation issued to the public inviting it to deposit money with the company or to take shares or debentures of the company. such invitation my be in the form of a document or a notice, circular, advertisement etc. The only requirement is that the invitation must be made (or issued) to the public.

MATTERS CONTAINED IN PART I OF SCHEDULE - II

The following matters are contained in Part I of Schedule II of the Companies Act which are to be specified in the prospectus.

1. General information: This clause should specify the following matters:

(a) The name and address of registered office of the company.

(b) The consent of the Central Government for the present issue.

(c) The names of regional stock exchange and other stock exchanges where an application has been made for the listing of present issue.

(d) The provisions of section 68A (a) of the Companies Act. As per this section any person who makes a fictitious application for the purchase of

company's shares shall be punishable with imprisonment for a term which may extend to 5 years.

(e) The declaration that if minimum subsciption3 of 90% is not received within 90 days from the closure of the issue, the money received from the applicants shall be refunded.

(f) The declaration about the issue of allotment letters or refunds within a period of ten weeks. In case of delay of any refund, the declaration about the payment of interest at the prescribed rate.

LIABILITY FOR MIS-STATEMENTS AND OMISSION OF FACTS IN THE PROSPECTUS

Prospectus should disclose the whole picture of the company. It should neither contain any mis-statement, i.e. untrue or misleading statement) nor omit to disclose any material fact. If there is any mis-statement or omission of material facts, then the directors, promoters, the persons responsible for the issue of the prospectus, and the company incur a liability for the same, which may be discussed under the following heads:

1. Civil liability of the persons who have authorized the issue of the prospectus.
2. Criminal liability of the persons who have authorised the issue of the prospectus.
3. Liability of the company.

CIVIL LIABILITY OF THE PERSONS WHO HAVE AUTHORIZED THE ISSUE OF THE PROSPECTUS

The civil liability means the liability to pay damages or compensation. When a false prospectus is issued by the company, then the following persons are liable to pay damages to any person who suffers any loss by subscribing for the shares or debentures in the company relaying upon the faith of the prospectus (Sec. 62).

(a) Every person who is a director at the time of the issue of the prospectus. (b)Every promoter who was a party to the preparation of the prospectus. (c) Every person who has authorized himself to be named as a director in the prospectus (d) Every person who has authorized the issue of the prospectus e.g., the experts.

The liability of these persons may be discussed under the following heads:

1. Liability for damages for mis-statement.
2. Liability for damages for omission of facts.

3. Liability for damages under the general law.

However, in the following circumstances on person (i.e, director, promoter etc.) shall be liable for any mis-statement in the prospectus:

1. When he proves the before the issue of the prospectus, he had withdrawn his consent to act as a director.
2. When he proves that the prospectus was issued without his knowledge or consent, and on becoming aware of the issue of prospectus, he immediately gave a public notice to the effect that the prospectus was issued without his knowledge or consent.
3. When he proves that he was ignorant to the untrue statement in the prospectus, and on becoming aware of the same, he withdrew his consent and gave a public notice that he had withdrawn his consent. However, all this must be done before the allotment of shares.
4. When he proves that he had reasonable ground to believe that the statement was true, and he believed it to be true upto the time of allotment.
5. When he proves that the statement was based on an expert's report who was competent to make it, and that the expert had also given his consent to the issue of the prospectus. The espert may escape his liability by proving that he had withdrawn his consent before the registration of the prospectus, or that he was competent to msake the statement and believed the statement to be true.
6. When he proves that the statement was correct and fair representation of a public official document, or a true and fair extract or copy of such document, and he believed the same to be true.

LIABILITY FOR DAMAGES FOR OMISSION OF FACTS

It may, however, be noted that in the following circumstances, a person (i.e., director etc.) responsible for the issue of prospectus shall not be liable for any omission of facts in the prospectus:

1. When he proves that he had no knowledge of the particulars not disclosed in the prospectus.
2. When he proves that the omission to disclose the particulars arose from an honest mistake of fact on his part.
3. When the court considers that the particulars no disclosed were immaterial, or that the omission should otherwise be excused.

Thus, the directors, promoters etc. can put up the above mentioned three defenced to escape liability for omission of facts in the prospectus.

SELF EVALUATION QUESTIONS

1. Which of the following statement is correct?

(a) A public company cannot issue shares or debentures at all unless it issues a prospectus to the public.

(b) A public company can issue shares or debentures without issuing the prospectus if it files with the Registrar a statement in lieu of prospectus within the prescribed time.

2. It is obligatory to file with the Registrar, a copy of prospectus before it is being issued to the public.

(a) True (b) False.

3. A prospectus is required to be issued to the public, within

(a) 30 days after the copy of prospectus is filed with the Registrar.

(b) 60 days after the copy of prospectus is filed with the Registrar.

(c) 90 days after the copy of prospectus is filed with the Registrar.

(d) 90 days the copy of prospectus is filed with the CLB.

4. Can a director escape his liability for mis-statement in a prospectus?

(a) Yest, by proving that before the issue of prospectus he had withdraw his consent to act as director

(b) No, as directors' liability for mis-statement in a prospectus is absolute as provided in section 62.

LIABILITY FOR DAMAGES UNDER THE GENERAL LAW

The persons responsible for the issue of false prospectus may also be held liable for the payment of damages under the general law. Thus, a person who has been induced to invest money in a company by fraudulent statement in a prospectus can recover damages for fraud (or deceit) under the 'Indian Contract Act', or the 'Law of Torts'.

CRIMINAL LIABILITY OF PERSONS WHO HAVE AUTHORIZED THE ISSUE OF THE PROSPECTUS

The criminal liability means the liability which impose punishment of imprisonment of fine or both. These persons are also criminally liable, under the Companies Act, for the issue of false prospectus. According to Section 63 of the Companies Act, if a prospectus is issued containing an untrue statement then every person who authorised the issue of the prospectus, is punishable with imprisonment which may extend to two years, or with fine which may extend to two years, or with fine which may extend to five thousand rupees, or with both. However, such person will not be liable if he proves that:

1. The untrue statement was immaterial; or

2. He had reasonable grounds to believe that the statement was true, and upto the issue of the prospectus he actually believed the statement to be true.

Liability of the company

We have already discussed in Arts 6.11 to 6.14 that the persons who have authorized the issue of false prospectus are liable to the persons who invest money in the company on the belief of such prospects. It will be interesting to know that the company is also liable to pay damages for misstatement in the prospectus. Thus, any person who has been induced to invest money in the company by fraudulent statement in the prospectus, may recover damages for fraud either from the directors etc. or from the company. However, the company by fraudulent statement in the prospectus, may recover can be made fraud either from the directors etc. or from the company. However, the company can be made liable if it is proved that the false prospectus was issued by the directors within the scope of their authority. It may, however, be noted that the liability of the company is only for those mis-statements which amount to 'fraud'. Thus, the damages can be recovered from the company only if following conditions are satisfied and proved by the investor:

1. The mis-statement in the prospectus must be fraudulent i.e., it must be made with the intention to deceive.
2. The fraudulent misstatement must relate to some existing materials facts.
3. The fraudulent misstatement must have induced the investor to purchase the shares or debentures in the company, and he actually acted upon the misstatement and suffered damages.

STATEMENT IN LIEU OF PROSPECTUS

We know that, a public company having a share capital must issue a prospectus if it wants to raise public money by issue (i.e., allotment) of shares or debentures. The company can also allot shares or debentures without issuing the prospectus. However, in such a case, a statement known as 'statement in lieu of prospectus' is required to be prepared and filed with the Registrar of Companies.

The legal provisions relating to the 'statement in lieu of prospectus' are contained in section 70 of the companies Act, which may be summed up as under:

1. It must be singed by every person who is named as director or proposed director of the company, or by his authorised agent.
2. It must be filed with the Registrar at least three days before the first allotment of shares or debentures is made.

3. If it is not filed with the Register as stated above, then company and the guilty directors are punishable with fine which may extend Rs. 10,000*.
4. If it contains any misstatement then the civil and criminal liability is the same as in case of prospectus.

Minimum Subscription

The minimum subscription is the minimum amount states in the prospectus which is required for certain specified purposes, namely:

1. For the payment of purchase price of the property.
2. For the payment of preliminary expenses including any commission payable for the sale of company's share (e.g., underwriting commission).
3. For the repayment of any money borrowed by the company for the above, two purposes.
4. For working capital.
5. For any other necessary expenditure.

Underwriting Commission

The expression underwriting literally means the giving literally means the giving of a guarantee. It is a well-known business term and is commonly used in company matters. In this connection, it may be defined as the entering into a contract with a company by which a person (known as 'underwriters*) agrees that if the shares f debentures offered by the company to the public for subscription are not taken up by the public, he will himself take up the shares and pay for them. As a matter of fact, an underwriter guarantees the purchase of company's shares or debentures by the public. The amount payable to the underwriters for giving such undertaking (i.e., guarantee) is known as the 'underwriting commission'.

SELF EVALUATION QUESTIONS

5. The prospectus should disclose the matters contained in Part I, and Part Ii of Schedule II.

(a) True, as this schedule is applicable to a prospectus.

(b) False, as Schedule III is applicable to a prospectus.

6. Is there any criminal liability for untrue statement in a prospectus?

(a) Yes, punishment upto who years or fine up Rs. 5,000 or both

(b) No, as such an untrue statement does not amount to an offence under any law

7. Is there any liability of company for false prospectus?

(a) Yes, if the false statement in a prospectus amounts to fraud.

(b) No, the company being an artificial person cannot be held liable for any such fraud. Only the human beings (i.e., directors, promoters etc.) are liable for such things.

8. What is the remedy available to a person who has been induced to purchase the shares or debentures of a company by misrepresentation of material facts in prospectus?

(a) He can recover damages from the company.

(b) He can rescind the contract to purchase the shares or debentures.

(c) Both of these

(d) None of these

9. Fill in the blanks

(a) If a public company having share capital wishes to issue shares without issuing a prospectus to the public then a statement in lieu prospectus must be filed with the -at least -days before the - allotment of shares.

SHARES OF A COMPANY

INTRODUCTION

We know that the money required by the company for its business activities is raised (collected) by it fro the public. The money so raised is called the capital of the company which is usually divided into different units of a fixed amount. These units are called the 'shares'. The persons who hold the shares of a company are called the members or shareholders of the company.

"A share is the interest of a shareholder in the company, measured by a sum of money for the purpose of liability and dividends in the just place, and of interest in the second, and also consisting of a contracts as contained in the articles of association".

Types of shares

The shares which can be issued by a company, are of two types, namely:

1. Preference shares.
2. Equity of ordinary shares.

It may be noted that company can issue only the above two types of shares (Section 86). However, a private company which is not a subsidiary of a public company may issue shares of such other kind as it may think fir e.g., deferred or founder shares [Section 90 (2)].

The Companies (Amendment) Act, 1999 has inserted a new Section 79A which provides that a company may also issue sweat equity shares. The expression 'sweat equity shares' means the equity shares issued by the company

to employees or directiors at a discount. This point will be discussed in detail in Art. 7.44.

PREFERENCE SHARES

The preference shares are those which have some preferential rights over the other types of shares i.e., which enjoy some priority over the equity shares. A share to be preference share, must have both the following preferential rights [Section 85]:

1. **A preferential right as to the payment of dividend:** During the continuance of the company, the preference shareholders must get some dividend. The preference dividend may consist of fixed amount to be distributed among the preference shareholders, or it may be paid at a fixed rate e.g., 5% of nominal value of shares.
2. **A preferential right as to the repayment of capital:** In the event of winding up of the company, the amount paid on preference shares must be paid back before anything is paid to the equity shareholders. The sum-total of the preference shares is the 'preference share capital' of the company.

KINDS OF PREFERENCE SHARES

The preference shares may be of the following kinds:

1. Cumulative and non-cumulative preference shares.
2. Participating and non-participating preference shares.
3. Convertible and non-convertible preference shares.
4. Redeemable preference shares.

CUMULATIVE AND NON-CUMULATIVE PREFERENCE SHARES

The 'cumulative preference shares' are those which are assured of the dividends every year even if there are no profits in a particular year. If in a particular year there are no profits to pay the dividends, the unpaid dividend of such preference shares is treated as arrear and is carried forward to the subsequent years. Thus, the unpaid dividend goes on accumulating and is paid when there are sufficient profits in the subsequent years. It may be noted that when there are profits in a year then the arrears of dividend are paid to the preference shareholders before paying anything to the other (i.e., equity) shareholders. It will be interesting to know that the preference shares are always presumed to be 'cumulative'. They become non-cumulative only if there is a clear provision stating that they are 'non-cumulative'.

The 'non-cumulative preference shares' are those which do not get any dividend if in a particular year there are no profits to pay their preferential dividends. Their dividends do not accumulate and they cannot claim the unpaid

dividends in the subsequent years when there are sufficient profits i.e., the unpaid dividend of 'non-cumulative preference shares' is not carried forward. Thus, when there are no profits, in a particular year these shares go without any dividend. It may be noted that there must be clear provision to make the preference shares as non-cumulative.

PARTICIPATING AND NON-PARTICIPATING PREFERENCE SHARES

The 'participating preference shares' are those which, in addition to their preferential dividend, are also entitled to participate in the surplus profita or surplus assets. The term 'surplus profits' means the balance of profits which is left after paying the fixed amount of dividend to the preference shareholders and some dividend to the equity shareholders. And the term 'surplus assets' means the balance of assets which is left after paying back both the preference and equity shareholders. The 'participating preference shareholders' participate in such surplus along with the equity shareholders. It will be interesting to know that the preference shares are always presumed to be 'non-participating'. They become participating only if there is a clear provision in the 'memorandum' or 'articles of association' or the 'terms of issue'.

Sometimes, the 'articles of association' provides that the preference shares are entitled to participate in the 'surplus profits'. In such cases, they do not become entitled to participate in the 'surplus assets'. There must be clear provision to that effect.

The 'non-participating preference shares' are those which are not entitled to participate in the 'surplus profits' or 'surplus assets'. They are entitled only to a fixed rate of dividend. Generally, the preference shares are presumed to be 'non-participating'.

CONVERTIBLE AND NON-CONVERTIBLE PREFERENCE SHARES

The 'convertible preference shares' .are those which can be converted into equity shares within a certain period i.e., the holders of such shares have right to convert these shares into equity shares. The 'non-convertible preference shares' are those which cannot be converted into equity shares.

REDEEMABLE PREFERENCE SHARES

The 'redeemable preference shares' are those the amount of which can be paid back to the holders of such shares. In other words, the capital raised through the issue of redeemable preference shares can be paid back by the company to such shareholders. The paying back of capital is called the redemption.

EQUITY OR ORDINARY SHARES

The equity shares are those which are not preference shares i.e., these shares do not enjoy any preferential rights [Section 85(2)]. Thus, for the purpose of dividend and repayment of capital, the equity shares rank after the preference shares.

ALLOTMENT OF SHARES

We know that the prospectus issued by a company is the invitation to the public to apply for the shares of the company. One the basic of this invitation, the persons apply to the company for its shares. An application for shares is an offer from the applicant to purchase the shares. And when an application is accepted by the company, it is called an allotment. Thus, an 'allotment' is the acceptance by the company of the offer to purchase shares.

ESSENTIALS AND LEGAL RULES FOR A VALID ALLOTMENT

We have discussed, in the last article, that a valid allotment creates a binding contract between the company and shareholders. It must, therefore, satisfy the requirements of the Law of Contract relating to offer and acceptance. In addition to this, a valid allotment must also comply with the legal provisions as contained in the Companies Act. Thus, the essentials and legal rules for a valid allotment may be discussed under the two heads, namely:

1. Legal rules relating to offer and acceptance.
2. Legal rules under the companies act.

LEGAL RULES RELATING TO OFFER AND ACCEPTANCE

We know that an allotment is the acceptance of an offer to purchase the shares. Therefore, the general principles relating to valid acceptance of an offer must be followed. These may briefly be summed up as under:

1. **The allotment must be made by proper authority:** The proper authority for allotment is the 'Board of Directors'. Thus, the allotment must be made by a resolution passed by the Board of Directors. However, this authority of allotment may be delegated by the Board of Directors as per the provisions contained in the articles of association. The allotment made by the person properly authorized by the Board of Directors shall also be valid. However, if the person signing the allotment letter is not authorized by the company, the allotment will be invalid and without any legal effect.
2. **The allotment must be communicated:** The allotment must be communicated to the applicant. It may be noted that no binding contract arises until the allotment is properly communicated. Generally, the allotment is communicated through post. It may be noted that in case of

postal communication, the allotment is complete (i.e., considered to be communicated) as soon as the properly addressed and stamped letter of acceptance is posted by the company. It will be interesting to know that even if the letter of acceptance is lost or delayed in postal transit, the applicant would be bound by the contract to purchase shares. The reason for the some is that, the applicant becomes bound by the allotment as soon as the letter of acceptance is properly posed by the company.

3. **The allotment must be made within a reasonable time:** The allotment of shares must be made within the reasonable time of the application for shares. if the application for shares is not accepted within reasonable time, then the applicant may refuse to take shares. The expression 'reasonable time' is a question of fact in each particular case.
4. **The allotment must be absolute and unconditional:** The allotment of shares must be absolute, and in accordance with the terms and conditions of the application. Where the allotment is not according to the terms and conditions, the applicant may reject the allotment.

SHARE WARRANT

A 'share warrant' is a document specifying certain shares, and stating that the bearer of the document is entitled to the shares specified in it. It is issued by the company under its common seal. It may be noted that a share warrant is the substitute for a share certificate. It is a bearer document and is transferable by mere delivery i.e., the share mentioned in it may be transferred by simply delivering the share warrant to the transferee. Thus, the holder of the share warrant is entitled to the shares specified therein. It will be interesting to know that a share warrant is a negotiable instrument. Following are the legal provisions as to the validity of a share warrant [Section 114]:

1. It must have the common seal of the company affixed on it.
2. It must be issued only in respect of fully paid shares.
3. It must specify the number of shares.
4. It must state that its bearer is entitled to the shares specified in it.
5. It can be issued only by a public company limited by shares.
6. The articles of association of the company must have authorised the issue of share warrant.
7. The prior approval of the Central Government must have been obtained for the issue of share warrant.

COMPARISON BETWEEN A SHARE CERTIFICATE AND A SHARE WARRANT

The following table gives the comparison between a share certificate and a share warrant:

S.No	Share Certificate	Share Warrant
1.	It can be issued whether the shares are fully or partly paid.	It can be issued only when the shares are fully paid.
2.	It can be transferred by executing a proper transfer deep.	It can be transferred by mere delivery.
3.	It entitles the person named in it to the shares specified in the share certificate.	It entitles its bearer to the shares specified in the share warrant.
4.	It can be issued by both a public and private company.	It can be issued only by a public company limited by shares.
5.	It is not a negotiable instrument.	It is considered to be a negotiable instrument.
6.	Its holder is a member of the company.	Its holder is not a member of the company.
7.	Its holder is qualified as a director of the company where the qualification shares are prescribed.	He can be considered a member for specific purpose only if company's articles so provide.
8.	Its holders is entitled to present a petition for winding up of the company.	Its holder is not entitled to present a petition for winding up of the company.
9.	It is issued without any approval of Central Government. Moreover, there need not be any authority in company's articles for its issue.	It can be issued only with the prior approval of the Central Government. Moreover, the company's articles must authorise the company for its issue.
10.	Its transfer attracts stamp duty i.e., the stamp duty is payable on the transfer of share certificate.	Its transfer does not attract any stamp duty i.e., no stamp duty is payable no the transfer of share warrant. a heavy stamp duty is payable on the issue of a share warrant.
11.	A nominal stamp duty is payable on the issue of a share certificate.	A heavy stamp duty is payable on the issue of a share warrant.
12.	The dividend to its holder is paid, usually by cheque.	The dividend to its holder is paid on the production of a coupon attached with it.

TRANSFER OF SHARES

We have already discussed that the shares of a company are movable property and can be transferred in a manner prescribed by the 'articles of association' of a company. The transferability of shares is one of the main advantages of the company form of organisations.

PROCEDURE OF TRANSFER OF SHARES

A member can transfer his shares by executing an instrument of transfer of shares (i.e., a transfer deed). This instrument of transfer must be in the prescribed form i.e., as per form No. 7 B of the Companies Central Government (General Rules & Forms), 1956. Before the instrument of transfer (i.e., prescribed form) is signed by the transferor and before any entry is made in it, must be presented to the prescribed authority 10 for stamping.

The requirements of a valid transfer of shares may be summed up as under:

1. The instrument of transfer must be in the prescribed form and must be presented to the prescribed authority for stamping (dating) before it is signed by the transferor and before any entry is made therein.
2. The instrument of transfer must be in writing and executed (i.e. signed) by both the transferor and the transferee.
3. the instrument of transfer must specify the name, address and occupation, if any, of the transferee.
4. the instrument of transfer must be duly stamped.
5. the instrument of transfer must be delivered to the company, for registration within the time along with the share certificate relating to the shares transferred by the instrument. If no share certificate is in existence, then the letter of allotment should be sent.
6. The instrument of transfer must be registered. Without registration, the transferee does not become a member of the company though the transfer of shares is complete as between the transferor and the transferee.

CERTIFICATION OF TRANSFER

The term 'certification' may be defined as an act of endorsement on the 'instrument of transfer', by an authorized officer of the company, that the share certificate relating to the shares under transfer has been lodged with the company.

FORGED TRANSFER

The term 'forged transfer' may be defined as the transfer of shares made on the basis of a 'forged instrument of transfer' (i.e., a forged transfer deed).

The instrument of transfer is said to be forged when transferor's signatures on it are forged. Following are the consequences of 'forged transfer'.

BLANK TRANSFER

The term 'blank transfer' may be defined as the transfer of shares by blank instrument of transfer (i.e., a blank transfer deed). A blank instrument of transfer is one in which only the name and signature of the transferor are filled in.

SELF EVALUATION QUESTIONS

10. The shares in a company are the movable property of the shareholder.

(a) True, as the Companies Act so provides.

(b) False, as only goods can be the movable property and shares are not goods.

11. A share certificate is a negotiable instrument as the shares of companies are freely transferable.

(a) True (b) False

TRANSMISSION OF SHARES

The term 'transmission of shares' may be defined as transfer of shares by the operation of law. The transmission of shares takes place on the death or insolvency of the shareholder. The 'articles of association' of the company usually contains provision relating to transmission of shares.

COMPARISON BETWEEN TRANSFER OF SHARES AND TRANSMISSION OF SHARES

The following table gives the comparison between the transfer of shares and transmission of shares:

S.No	Transfer of Shares	Transmission of Shares
1	It is a voluntary act of the parties.	It is not a voluntary act of the parties. It takes place by operation of law i.e. on the death or insolvency of the shareholder.
2	In this case, the shares are transferred to another for some consideration.	In this case, the shares pass to another person without any consideration.
3	In this case, the 'transfer deed' is necessary for the purpose of transferring the shares to another person.	In this case, the 'transfer deed' is not required only a letter of request to the company is sufficient.

STOCK

The term 'stock' may be defined as the aggregate of fully paid up shares legally consolidated. In other words, it is a set of shares put together in a bundle. The 'stock' is expressed in terms of money and not as so many shares.

COMPARISON BETWEEN SHARES AND STOCK

The following table gives the comparison between share and stock:

S.No	Share	Stock
1	It has a nominal value.	It has no nominal value.
2	It may not be fully paid up i.e. It may also be partly paid up.	It is always fully paid up.
3	It cannot be transferred in small fraction. It is always transferred as a whole.	It can be transferred in any fraction.
4	It can be issued directly to the public.	It cannot be issued directly to the public. Only the fully paid shares
		(already issued) may be converted into stock.
5	All the shares are of equal denomination (i.e., amounts).	The stock may be of unequal amount.
6	All the shares bear distinct numbers.	The stock discloses the consolidated value of the share capital. Thus, the fractions of stock do not bear any number.

ISSUE OF SHARES AT PREMIUM

The issue of shares at premium mean the issue of shares at a price higher than the face value of the share. Thee is no restriction on the issue of shares at premium. The company is free to issue the shares at premium.

ISSUE OF SHARES AT DISCOUNT

The issue of shares at a discount means the issue of shares at a price less than the face value of the share. Generally speaking, the Company Law has always discouraged the issue of shares at a discount. And the law does not tolerate the issue of shares at a discount even in an indirect way. The Companies Act has imposed strict restrictions on the issue of shares at discount [Section 79]. A company can issue the shares at discount subject to the following conditions:

1. The discount can be allowed only on that class of shares which the company has already once issued earlier at full value. Thus, the shares to be issued at discount must be of a class already issued by the company.
2. One year must have passed since the date at which the company became entitled to commence the business. In other words, the company must have been working for at least one year from the date it became entitled to commence the business.
3. The issue of shares at discount must be authorized by a resolution passed by the company in its general meeting.
4. The resolution must specify the rate of discount which must not exceed 10%. However, a higher rate of discount may be allowed if the Company Law Board is of the opinion that the higher rate may be allowed in special circumstances.
5. The sanction of the Company Law Board must be obtained, and the shares must be issued within two months of the sanction. However, the Board may extend time for the issue of shares at discount.

BONUS SHARES

Sometimes, the larges amount of reserves are accumulated with the company which are undistributed past profits, and the company likes to distribute these accumulated profits. In such cases, the company may issue the shares for this amount to its existing shareholders who are entitled to receive the bonus. The shares so issued are called the 'bonus shares'.

FORFEITURE OF SHARES

The term 'forfeit' may be defined as taking into possession and depriving a shareholder of his right to the shares. Sometimes, the shareholder is called

upon to pay the amount of calls due on his shares, but he fails to pay the amount of calls.

CALLS ON SHARES

The term 'call' may be defined as a demand by a company on its shareholders to pay the whole or part of the balance remaining unpaid on each share. When the shares are issued to the public, generally the full amount of each share is not payable at once. Only a part is payable on application, and another part on allotment. And the balance is payable by instalments as and when called by the company. The amount paid on application and allotment are not calls unless the articles of association expressly recognize them as calls. But the subsequent instalments are calls as and when demanded by the company. The liability of a shareholder to pay the full value of shares held by him is enforced by the company by making 'calls'.

SELF EVALUATION QUESTIONS

12. Which of the following statements is correct?

(a) Only fully paid preference shares can be redeemed.

(b) Only fully paid shares can be issued as irredeemable preference shares.

(c) All the preference shares (fully paid or partly paid) can be redeemed. The only requirement is that the company must have been authorized by its articles to redeem the shares.

(d) The preference shares cannot be redeemed as the Companies (Amendment) Act, 1988 prohibits their redemption.

13. Where the prospectus has not been issued, and the allotment of shares is made without filing with the Registrar a 'statement in lieu of prospectus', the allotment is

(a) Irregular and void ab initio i.e., without any legal effect.

(b) Irregular and voidable at the option of applicant.

(c) Regular and valid. Only the directors are liable to punishment upto 3 months.

(d) Effective after 3 months from the date of allotment.

14. Which of the following statements is not correct?

(a) A share warrant is a negotiable instrument.

(b) A share warrant is not a negotiable instrument

(c) A share warrant can be issued only in respect of fully paid shares.

(d) A share warrant can be issued only by a public company limited by shares.

SHARE CAPITAL

TYPES OF SHARE CAPITAL

The term 'capital' in connection with a company is used in different senses. Keeping this aspect in view, the capital of the company may be categorized as under:

1. **Authorised capital:** It is the capital which is stated in company's memorandum of association with which the company intends to be registered. It is also called the 'nominal' or 'registered' capital. In fact, it is the maximum amount of share capital which a company is authorized to raise by issuing the shares. The authorized capital is divided into shares of fixed amount. The maximum limit of the authorized capital depends upon the business requirements of each company, and there is no legal restriction upon its maximum limit. The authorized capital may be increased or reduced by the company by passing an ordinary resolution.
2. **Issued capital:** It is that part of the authorized (nominal) capital which is actually offered (issued) of the public for subscription. It indicates the amount which is open for public subscription. It is not obligatory for the company to issue whole of its authorized capital. The company may issue whole or any part of it, and keep the balance for future requirements. However, the issued capital cannot exceed the authorized capital. The part of the authorized capital which is not issued to the public, is known as the 'unissued capital'.
3. **Subscribed capital:** It is that part of the issued capital which is actually subscribed (i.e., taken up) by the public. In other words, it is the capital for which the applications are received from the public and the shares have been allotted to the public. The subscribed capital depends upon the response from the investing public which is received on the basic of issued capital.
4. **Called-up capital:** It is that part of the subscribed capital which is actually demanded by the company to be paid. The company may not be in need of the entire amount of the capital subscribed by the public. The company may call such amount from the subscribers as is required by it. The part of the subscribed capital which is not called by the company is known as the 'uncalled capital'. It may be called according to requirements subject to the terms of issue of shares, and the provisions of 'articles of association'.

5. **Paid-up capital:** It is that part of called-up capital which has been actually paid by the members (subscribers). In other words, the total money received on shares is known as the paid-up capital.

6. **Reserve capital:** It is that part of the uncalled capital which cannot be called by the company except in the event of its winding up. The company may, by a special resolution, declare that a portion or whole of the uncalled capital shall not be called except in the event of its winding up [Section 99]. It may be noted that the 'reserve capital' cannot be converted into ordinary uncalled capital without the leave (permission) of the court.

SELF EVALUATION QUESTIONS

15. Which of following statement is not correct?

(a) The authorized capital of company may be increased or reduced by passing an ordinary resolution.

(b) The issued capital of a company cannot exceed its authorized capital.

(c)The reduction of share capital, without the sanction of the court, is unlawful.

(d) All are correct

16. The procedure for reduction of share capital is by passing a special resolution and obtaining confirmation of

(a) Company Law Board. (b) Court

(c) Central Government (d) SEBI

DEBENTURES OF A COMPANY

"Debenture means a document which either creates a debt or acknowledges it, and any document which fulfils either of these conditions is a debenture".

CHARACTERISTICS OF DEBENTURES

We have discussed, in the last article, the legal definition of the term 'debenture'. It reveals the following usual characteristics of debentures:

1. It is an acknowledgement of indebtedness of the company to its holder for the amount stated in the certificate. It is the main feature of a debenture.
2. It is usually in the form of a certificate issued under the seal of the company. However, it may also be signed by the directors without any seal of the company.
3. It usually provides for the payment of a specified principal sum at a specified date. But it is, however, not necessary, because the company

may also issue perpetual or irredeemable debentures which are made payable only on the happening of some contingency or in the event of winding up [Section 120].

4. It Usually provides for the payment of interest until the principal sum is paid back. This again is also not necessary, because the interest may also be made payable on the happening of some contingency i.e., uncertain event.

   [Lemon v. A.F. Investment Trust, (1926) Ch. 1].

5. It is usually issued out of a series of debentures. However, a single debenture may also be issued to one person.

6. It is usually secured by a charge, fixed or floating, on some property of the company. However, a debenture may also be issued without any charge on company's property.

7. A debenture-holder does not have any right to vote at any meeting of a company Section 117].

KINDS OF DEBENTURES

The debentures may be of the following kinds:

1. **Registered debentures:** These are the debentures which are registered in the name of a particular person and are payable to him. The name of registered holder is placed on the debenture certificate and the company's register of debentures. The payment of interest and the repayment of the principal is made to the persons whose names are registered with the company. A registered debenture-holder can transfer his debentures in the same way as shares are transferred [Section 108]. And such transfer must be registered with the company.

Note. The registered debentures are not negotiable instruments.

2. **Bearer debentures:** These are the debentures which are payable to the bearer (i.e., the holder of the debenture). The company keeps no register of such debenture-holders. However, if the debentures are secured they are entered in the register of charges. The bearer debentures are like cheques etc. and are transferable by mere delivery. The person to whom the bearer debentures are transferred becomes its holder and is entitled to receive and recover the principal with interest on due date. The transfer is not required to be registered with the company. Generally, the coupons are attached to such debentures for the payment of interest.

Note. The bearer debentures are regarded as negotiable instruments.

3. **Secured debentures:** These are the debentures which are secured by a charge on the property of the company. In other words, the repayment of

the interest and the principal is secured by way of security. The charge may be fixed or floating. The fixed and floating charges have already been discussed in the last chapter.

4. **Unsecured debentures or naked debentures:** These are the debentures which are not secured by any charge on company's property. The debenture-holders of such debentures are the unsecured creditors of the company.

5. **Redeemable debentures:** These are the debentures which are paid off after the expiry of the fixed term. Thus, in case of redeemable debentures, the company has the right to pay back the loan to the debenture-holders after the expiry of the fixed term, and have its properties released from the charge created in favour of the debenture holders. It will be interesting to know that the redeemed debentures can be re-issued until they are cancelled. And on re-issue, the new debenture-holders will get the same rights and priorities as if the debentures have never been redeemed [Section 121]

Note. The debentures may be redeemable at par, or at premium. But their redemption at discount is not permitted.

6. **Irredeemable or perpetual debentures:** These are the debentures which contain no clause as to repayment, or which contain a clause that it shall not be paid back. Such debentures are payable in the event of winding up of the company, or on some serious default by the company {e.g., when interest is not paid regularly), or on the happening of some uncertain event. However, this does not mean that the company can never pay them off even if it wishes to do so. It only means that the debenture-holders cannot compel the company to redeem them unless some event happens. As a matter 'of fact, these are retained as a part of the permanent capital structure of the company.

Note, All debentures whether redeemable or irredeemable become payable when the company goes into liquidation.

Convertible debentures: These are the debentures which give an option to the debenture-holders to convert their debentures into equity or preference shares at a stated rate of exchange, after a certain period [Section 81 (3)]. On conversion, the debenture-holders become the members of the company.

COMPARISON BETWEEN A SHARE-HOLDER AND A DEBENTURE-HOLDER

The following table gives the comparison between a share-holder and a debenture-holder:

S.No	Share - holder	Debenture - holder
1	He is the member and joint owner of the company.	He is simply a creditor of the company who has given some loan to the company.
2	He has a right to vote at the meetings of the company.	He has no right to vote at any meeting of the company.
3	He is entitled to get dividends only out of profits. The rate of dividends is not fixed. It varies from year to year depending upon the profits of the company.	He is entitled to fixed rate of interest whether there are profits or not.
4	He has full right to control company's affairs. In fact, the ultimate destiny of the company is in the hands of share-holders.	He has not right to interfere with the business of the company. however, in case of company's default in paying their debt, he may enforce their security.
5	He cannot be paid back so long as the company is a going concern.	He can be paid back unless he is a perpetual debenture-holder.
6	He does not have any charge over the assets of the company.	He generally has a charge over the assets of the company.
7	In case of winding up of the company, he is paid after satisfying all other claims.	In case of winding up, a secured debenture holder is paid prior to the share-holder.

SELF EVALUATION QUESTIONS

17. A bearer debenture is regarded as a negotiable instrument.

(a) True (b) False

18. The debentures can also be redeemed at discount.

(a) True (b) False

19. Which of the following statement s is correct?

(a) A debenture - holder does not have any right to vote at any meetings.

(b) The company cannot issue irredeemable debentures.

(c) The debentures can also be redeemed at discount.

(d) The redeemed debentures cannot be issued again by the company

20. Which of the following statement is correct?

(a) The debentures can also be issued giving voting right to debenture-holders.

(b) The convertible debentures give right to debenture-holders to convert their debentures into shares (equity or preference).

MEETINGS AND RESOLUTIONS

INTRODUCTION

The business of the company is carried on by the selected representatives of the members, called the directors. The directors take decisions by calling their meetings.

KINDS OF MEETINGS

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

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

MEETINGS OF MEMBERS (SHAREHOLDERS)

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

1. Statutory meeting. 2. Annual general meeting.

3. Extra-ordinary general meeting. 4. Class meeting.

STATUTORY MEETING

It is the first meeting of the members of the company after its incorporation. It must be held within 6 months from the date at which the company is entitled to start business. [Section 165]. It may be noted that the statutory meeting is held only once in the life time of the company.

The following companies are required to hold the statutory meeting:

(a) Every public company limited by shares.

(b) Every public company limited by guarantee and having a share capital.

The legal provisions relating to the statutory meeting are contained in Section 165 and may be summed up as under:

1. The statutory meeting must be held within a period of not less than one month and not more than six months from the date on which the company is entitled to commence business [Section 165 (1)]. In other words, it must be held within 6 months from the date on which the company is entitled to start the business but it cannot be held within the first one

month from the date, e.g., a company entitled to commence business on 1st July 1999, must held its statutory meeting within the period commencing from 1st August, 1999 to 31st December, 1999.

2. The Board of Directors is required to prepare a report, called the 'statutory report'. This report must be sent to every member of the company at least 21 days before the day on which the meeting is to be held. However, the delay in sending the report may be condoned by all the members who are entitled to attend and vote at the meeting [Section 165 (2)].

3. The statutory report is sent to the members to enable them to know the full information on all the important matters relating to the company. It must contain the following particulars [Section 165 (3)]:

(a) The total number of shares allotted giving their all details.

(b) The total amount of cash received by the company in respect of all the shares allotted.

(c) An abstract of receipts and payments of the company, and the particulars of balance in hand.

(d) An estimate of company's preliminary expenses.

(e) The particulars of directors, managers, secretary and auditors.

(f) The particulars of a contract requiring company's approval.

(g) The arrears of calls due from directors, managers.

(h) The particulars of commission or brokerage paid or payable to the directors or manager.

4. The statutory report must be certified as correct by at least two directors, one of whom must be a managing director if there is any. After the report is certified as above, it should also be certified as correct by the auditors of the company [Section 1-65 (4)].

5. After the copies of the statutory report have been sent to the company, a certified copy of the report should also be sent to the Registrar of Companies for registration [Section 165 (5)].

6. At the commencement of the meeting, the Board of Directors shall produce a list of members showing their names, addresses and occupation along with the number of shares held. by them. Such list shall remain open and accessible to any member of the company during the continuance of the meeting [Section 165 (6)].

7. The members present at the meeting shall be at liberty to discuss any matter relating to the formation of the company. They may also discuss any matter arising out of the statutory report. [Section 165 (7)].

8. The meeting may adjourn from time to time. A resolution may be passed at any such adjourned meeting if due notice has been given in the meantime [Section 165(8)].

ANNUAL GENERAL MEETING

It is the regular meeting of the members of the company. It must be held in each year in addition to any other meeting [Section 166 (1)]. The purpose of. this meeting is to provide an opportunity to the members of the company to express their views on the management of company's affairs.

SELF EVALUATION QUESTIONS

21. Statutory meeting is the first meeting of the company after it incorporation, and must be held within.

(a) 90 days from the date at which the company is entitled to start its business.

(b) 6 months from the date at which the company is entitled to start its business.

(c) 6 months from the date of incorporation.

(d) 18 months from the date of incorporation.

22. Which of the following statements is not correct?

(a) A statutory meeting is held only once in the life time of a company.

(b) It is obligatory for every company (public or private) to hold a statutory meeting.

(c) It is obligatory for public companies (limited by shares, and limited by guarantee and having share capital) to hold a statutory meeting.

(d) A statutory meeting must be held within 6 months from the date on which the company is entitled to commence business, but is cannot be held within one month from that date.

23. The first annual general meeting of the company must be held within

(a) 6 months of incorporation.

(b) 6 months from the date at which the company is entitled to start its business.

(c) 18 months of incorporation

(d) 18 months from the date at which the company is entitled to start its business.

The legal provisions relating to the annual general meeting are contained in Sections 166 to 168, which may be summed up as under:

1. The annual general meeting must be held once in each year in addition to any other meetings. And the gap between one meeting and the next should not be more than 15 months. However, for special reason, the Registrar of Companies may extend the time within which the annual general meeting shall be held, but the extension cannot exceed 3 months [Section 166 (1)].
2. The first annual general meeting must be held within 18 months of the incorporation of the company, and this time cannot be extended even by the Registrar. The subsequent annual general meetings should be held in each year within 15 months from the last meeting [Section 166 (1)].
3. At least 21 days notice of the meeting in writing, must be given to every member of the company. A shorter notice may also be given if agreed to by all the members who are entitled to vote at the meeting. The place, day and hours should be specified in the notice [Sections 171, 172].
4. The meeting must be held during the business hours and on a day which is not a public holiday' [Section 166 (2)]. It is important to note here that, if after the issue of notice convening the meeting, any day is declared by the Central Government to be a public holiday, it shall not be considered to be a public holiday in relation to the meeting and the meeting can be held on that day even if that has been declared as a public holiday. However, if a day has already been declared as a public holiday by the Central Government and the notice convening the meeting has been issued by the company after such declaration, then the meeting cannot be held on that day [Section 2(38)].
5. The meeting must be held either at the registered office of the company, or at some place within the city, town or village in which the registered office is situated.
6. If the company fails to hold the annual meeting, the consequences will be as under:

(a) Any member of the company can apply to he Company Law Board2 for calling the meeting. On such application, the Company Law Board2 may order calling of the meeting, or it may issue directions for calling the meeting. A meeting called by the order of the Company Law Board shall be deemed to be an annual general meeting of the company [Section 167].

(b) The company and every officer in default shall be punishable with fine up to Rs. 50,000*, and if the default continues, with a further fine upto Rs. 2,500* for every day after the first day of default during which the default continues.

EXTRA-ORDINARY GENERAL MEETING

It is the meeting other than the statutory and the annual general meeting of the company [Clause 47 of Table A, Schedule IJ. This meeting is called for dealing with some urgent special business which cannot be postponed till the next annual general meeting.

The legal provisions relating to the extra-ordinary general meeting have been provided in Clause 48 of Table A, Schedule I, and Sections 169 and 186 of the Companies Act which may be studied as under:

1. **Calling of extra-ordinary general meeting by the board of directors [Clause 48, Table A]:** The extra-ordinary general meeting may be called by the Board of Directors on its own motion whenever it thinks fit to call the meeting.
2. **Calling of extra-ordinary general meeting on the requisition of members [Section 169]:** The extra-ordinary general meeting becomes necessary on the requisition of members. The legal provisions relating to the calling of the extra-ordinary general meeting on the requisition of members, may be stated as under:

(a) The requisition for calling this meeting must be signed by such number of members who hold at least 1/10 of the paid up capital of the company, and have the right to vote at the meeting on the matter. And if the company has no share capital it must be signed by such number of members who have at least 1/10 of the total voting power [Section 169 (4)].

(b) The requisition must set out the matters for the consideration of which the meeting is to be called, and it must be signed by the requisitionsts. And it should be deposited at the registered office of the company [Section 169 (2)].

(c) Only such matter can be taken up at the meeting which is specified in the requisition and in respect of which the requisitionists have the voting strength as stated in clause (a) above.

(d) On deposit of a valid requisition at company's registered office, the directors must move to call a meeting within 21 days, and the meeting must actually be held within 45 days from the date of deposit of requisition [Section 169 (6)].

(e) If the Board does not proceed to call the meeting, the requisitionists may themselves proceed to call the meeting. However, the requisitionists must hold the meeting within 3 months from the deposit of the requisition.

3. **Calling of extra -ordinary general meeting by the Company Law Board [Section 186]5:** Sometimes, it is impracticable to call, hold or conduct the meeting of a company, other than an annual general meeting.

CLASS MEETING

It is the meeting of a particular class of shareholders. Generally, the companies have two classes of shareholders, namely (a) equity shareholders and (b) preference shareholders. In order to discuss the matters affecting one class, only a meeting of the particular class of shareholders is held.

OTHER MEETINGS

In addition to these meetings, there are other company meetings also which may be discussed under the following heads:

1. **Meetings of directors:** We know that the directors are responsible for the overall control and supervision of the affairs of the company. The directors generally act collectively i.e., as Board of Directors unless the powers have been delegated to individual directors. It will be interesting to know that their meetings are more frequent than the meetings of shareholders. A company must hold meeting of its Board of Directors at least once in every three calendar months. And there must be at least four meetings of the Board of Directors in every year [Section 285].

2. **Meetings of creditors'.** The meetings of creditors are held by an order of the court. Sometimes, a compromise or arrangement is proposed between a company and its creditors or any class of creditors. In such cases, the court may order a meeting of creditors or a class of creditors to be called, held and conducted in such manner as the court directs. The court orders such a meeting on the application of the company, or of any creditor or member of the company. In case the company is in liquidation, the application may be filed by the liquidator [Section 391].

3. **Meetings of debenture-holders'.** The meetings of the debenture-holders may be held from time to time in accordance with the provisions contained in the debenture trust deed. Their meetings are usually held when the conditions of the issue of debentures are to be altered. Where a scheme of compromise or arrangement is proposed, the meetings of the debenture-holders may also be held through an order of the court.

ESSENTIALS AND LEGAL RULES FOR A VALID MEETING

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

1. **Proper authority:** It is an important requirement of a valid meeting that it should be called proper authority. The proper authority to call a general meeting of the members is the Board of Directors. The Board of Directors should pass a resolution at Board meeting to call the general meeting.
2. **Proper notice:** It is another important requirement of a valid meeting that a proper notice to call the meeting should be given to every member of the company. It may be noted that deliberate omission to give notice to a single member may invalidate the meeting.
3. **Contents of notice:** The notice of meeting must specify the following particulars:

(a) The place, day and hour of the meeting.

(b) The nature of the business to be transacted at the meeting [Section 172(1)]. The business to be transacted at the meeting may be of the following two kinds [Section 173].

(i) Special business, and (ii) General business.

4. **Quorum for meeting:** The term 'quorum' may be defined as the minimum number of members that must be present at the valid meeting so that the business can be validly transacted at the meeting. If the quorum is not present, the meeting shall not be valid and the proceedings of such meeting shall be invalid.
5. **Chairman of the meeting [Section 175]:** A chairman is necessary for conducting a meeting properly. He presides over the meeting, and his main function is to keep order and see that the business is properly conducted. Legally speaking, the chairman is the proper person to put resolution to the meeting, count the votes, declare the result and authenticate the minutes by signature.

The appointment of the chairman is usually regulated by the articles of association of the company. But if there is nothing in the articles, the members personally present at the meeting shall elect one of themselves to be the chairman of the meeting. Sometimes, there are difference among the members, and a peaceful meeting is impossible under the chairmanship of a person

appointed by one group. In such cases, the chairman may be appointed by the court. It may, however, be noted that apart from such extraordinary circumstances, the courts do not interfere in the conduct of meetings by appointing a chairman.

The important duties of a chairman may briefly be stated as under:

(a) He must act honestly and in the interest of the company as a whole.

(b) He must ensure that the meeting is properly called and constituted, and also ensure that the proceedings at the meeting are properly and regularly conducted.

(c) He must give a reasonable chance to members who are present to discuss any proposed resolution.

(d) He must exercise correctly and honestly his powers of adjournment of the meeting and of demanding a poll.

(e) He must preserve order in the meeting.

ONE-MEMBER MEETING

We know that the quorum must be present for a valid meeting, which is five members in case of a public company, and two members in case of private company. Thus, a single member cannot constitute a valid meeting. As a matter of fact, the word 'meeting' means the coming together of more than one person. Moreover, Section 174 also states that the members actually present shall be the quorum. Thus, where only one member attends the meeting,' the meeting cannot be validly held.

However, there are certain exceptional circumstances in which a single member present may constitute a quorum, and meeting can be validly held. These are as under:

1. Where one person holds all the shares of a particular class, he alone can constitute a meeting of that class and can pass a resolution by signing it.
2. Where the general meeting is called by an order of the Company Law Board, this Board may give the direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting [Section 167 Explanation].
3. Where the meeting (other than the annual general meeting) is called by an order of the Company Law Board, this Board may give the direction that one member of the, company present in person or by proxy shall be deemed to constitute a meeting

VOTING AT MEETINGS

The business of the meeting is conducted in the form of resolution passed at the meeting. And the resolutions proposed in the meeting are decided on the votes of the members of the company. The members also have the right to discuss the proposed resolution.

'The voting may take place in either of the following two ways:

1. **Voting by show of hands:** In the first instance, the voting at the general meeting takes place by show of hands, and the resolutions are decided by counting the hands held up in favour of the resolution.
2. **Voting by poll:** Sometimes, there is dissatisfaction about the result of voting by show of hands. In such cases, a poll can be demanded. The poll may also be demanded even before the declaration of the result on a show of hands [Section 179].

PROXIES

The term 'proxy' may be defined as the representative of a member appointed by him to attend and vote at the meeting on his (member's) behalf. Thus, he is a person authorized to attend and vote for another at the meeting. It will be interesting to know that the instrument (i.e., document) appointing a person as proxy is also known as 'proxy'.

RESOLUTIONS

The term 'resolution' may be defined as the proposal which is voted at the meeting and accepted by the members. In other words, it is the decision taken at the meeting. The business of a meeting is conducted in the form of resolutions.

The validity of a resolution passed at a meeting depends on the constitution and conduct of the meeting, which means that

(a) The notice convening the meeting had been given according to law.

(b) The quorum was present.

(c) The proper person was in chair.

(d) The meeting was competent to pass the resolution.

(e) The reasonable discussion was allowed on the resolution.

(f) The resolution was correctly voted upon.

SPECIAL RESOLUTION

It is the resolution which is passed, at a validly called general meeting, by special majority of the members i.e., by the support of 3/4th majority of the members present and entitled to vote at the meeting. The voting may be either by show of hands or by polls. In determining the 3/4th majority, all the votes

cast by the members, whether personally or by proxy, are considered [Section 189(2)].

MINUTES OF PROCEEDINGS OF MEETINGS

The term 'minute' may be defined as the written record of the proceedings of a meeting. Every company must keep a fair and correct record of all proceedings of every general meeting, and of every meeting of its Board of Directors or of every committee of the Board.

SELF EVALUATION QUESTIONS

24. Every company (whether public or private) is required to hold an annual general meeting.

(a) True (b) False

25. Which of the following statements is not correct?

(a) In case the company fails to hold annual general meeting, it can be held at the instance of Company Law Board.

(b) An extra-ordinary meeting can be called only at the instance of Company Law Board.

(c) The proper authority for calling a general meeting is the Board Directors.

(d) There must be one annual general meeting per year and as many meetings as there are years.

26. Which of the following statements is not correct?

(a) Only a member and no other person can be appointed as a proxy at the meeting.

(b) A proxy is appointed by a member only to vote at the meeting on his behalf. The proxy has no right to speak at the meeting.

(c) In case the member, appointing proxy, personally attends and votes at the meeting, then the proxy stands revoked.

(d) A member of a public company may also appoint two proxies i.e., one in respect of certain shares and another in respect of other shares.

27. An ordinary resolution is which is passed by

(a) Simple majority of votes cast either personally or by proxy.

(b) Simple majority of votes cast personally.

(c)1/3 of the total votes.

(d) 2/3 of the total votes.

WINDING UP OF A COMPANY

INTRODUCTION

The term 'winding up' of a company may be defined a the proceedings by which a company is dissolved (i.e., put to an end). According to Prof. Gower1.

"Winding up of company is the process whereby its life is ended and its property is administered for the benefit of its creditors and members. And 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".

Thus, the winding up is the process of putting an end to the life of the company. And during this process, the assets of the company are disposed of, the debts of the company are paid off out of the realized assets or from the contribution of its members.

MODES OF WINDING UP

The modes of winding up may be discussed under the following three heads, namely:

1. Compulsory winding up by the court.
2. Voluntary winding up without the intervention of the court.
3. Voluntary winding up with the intervention of the court i.e., under the supervision of the court.

COMPULSORY WINDING UP BY THE COURT

The winding up of a company by an order of the court is called the compulsory winding up. Section 433 of the Companies Act contains the cases in which the company may be wound up by the court. The court may wound up the company on a petition submitted to it on any of the following grounds:

1. **Special resolution by the company [Section 433(a)]:** Sometimes, the company passes a special resolution to the effect that the company be wound up by the court.
2. **Default in holding statutory meeting [Section 433(b)]:** We know that the company must hold the statutory meeting within 6 months from the date on which the company is entitled to commence its business. And before the holding of the meeting, the statutory report by the directors must also be delivered to the Registrar for registration [Section 165]. If default is made in delivering the statutory report to the Registrar, or in holding the statutory meeting, the court may order the winding up of the company on a petition presented to it by the Registrar or contributory.

3. **Failure to commence business [Section 433 (c)]:** Sometimes, the company fails to commence the business within one year from its incorporation, or suspends its business for the whole year. In such cases, the court m ay order the winding up of the company on a petition presented to it by the Registrar or contributory.

4. **Reduction in membership [Section 433 (d)]:** We know that a public company must have at least seven members, and a private company at least two. If the membership of any company is reduced below this limit, the court may order the winding up of the company.

5. **Inability to pay debt [Section 433 (e)]:** Sometimes, the company is unable to pay its debts.

6. **Just and equitable [Section 433 (f)]:** Sometimes, the court is of the opinion that it is just and equitable that the company should be wound up. In such cases, the court may order the winding up of the company.

Following are some of the circumstances in which the courts have ordered winding up on 'just and equitable' grounds:

(a) Complete deadlock in the management of the company: Sometimes, there is complete deadlock in the management of the company.

(b) Failure of company's main object: Sometimes, the main object of the company fails to materialize. In such cases, the court may order the winding up of the company on just and equitable grounds.

(c) Recurring losses: Sometimes, it is not possible for the company to carry on the business except at losses i.e., there is no reasonable hope of trading at a profit. In such cases, the court may order the winding up of the company on just and equitable grounds.

(d) Aggressive or oppressive policy of majority shareholders: Sometimes, the majority shareholders adopt an aggressive or oppressive policy towards the minority shareholders. In such cases, the court may order the winding up of the company on 'just and equitable' ground.

(e) Incorporation of company for fraudulent or illegal purpose: Sometimes, the company is incorporated for fraudulent or illegal purposes. In such cases, the court may order the winding up of the company on just and equitable ground.

(f) Public interest: Sometimes, it is in the public interest to wind up the company. In such cases, the court may order winding up of the company on just and equitable ground e.g., where a company is wasting the capital resources of the country and befooling the small investors, the court may order the winding up of such a company.

PERSONS ENTITLED TO APPLY FOR WINDING UP

1. **Petition by the company:** The Company may itself present a petition in the court for its winding up. However, the company can do so when the ground for winding up is that the company has passed a special resolution that it be wound up.
2. **Petition by the creditors:** The creditors of a company may present a petition in the court for winding up of the company. the petition may be presented by any creditor (or creditors)[6].

   The creditors may present the petition on the ground that the company is unable to pay its debts.
3. **Petition by the contributories:** The term 'contributory' may be defined as every person who is liable to contribute to the assets of a company in the event of its being wound up.
4. **Petition by the Registrar:** The Registrar of companies may also present a petition in the court for winding up of the company (Section 439 (1) (e)].
5. **Petition by any person authorized by the Central Government:** The Central Government may authorize any person to present a petition in the court for winding up of the company. sometimes, it appears to the Central Government from the report of inspectors appointed to investigate the affairs of the company that the business of the company has been conducted for fraudulent or unlawful purposes.

LEGAL PROVISIONS APPLICABLE TO COMPULSORY WINDING UP

The legal provisions applicable to the compulsory winding up, as contained in the Companies Act, may be discussed under the following heads:

1. **Commencement of winding up:** The winding up of the company shall be deemed to commence from the time of the presentation of the petition, and not from the date of the winding up order by the court.
2. **Powers of the court on the presentation of the petition:** On receipt of the petition for winding up of a company, the court has the following powers:

(a) **Stay of proceedings against the company:** Sometimes, at the time of winding up petition, certain legal proceedings are pending against the company.

(b) **Making order on the petition:** On hearing a winding up petition, the court may exercise any of the following powers [Section 443].

3. **Consequences of winding up order:** The consequences of winding up order are contained in Sections 444 to 447 of the Companies Act, which may be summed up as under: '

(a) On the making of the winding up order, the court must immediately send the intimation of the winding up order to the Official Liquidator and the Registrar [Section 444].

(b) On the making of the winding up order, the certified copy of the order must be filed with the Registrar within 30 days from the date of the making of the order. The duty to file it is of petitioner and of the company [Section 445].

(c) The winding up order shall be deemed to be a notice of discharge to the officers and employees of the company. This is so because the employment being conditional on the continued existence of the company.

4. **Procedure for compulsory winding up:** The winding up procedure are conducted by an official to be known as the Official Liquidator. Thereafter, the procedure involves the appointment of Official Liquidator, and the conduct of proceedings by him.

5. **Appointment of official liquidator:** An Official Liquidator is an officer who helps the court in conducting and completing the winding up proceeding.

6. **Statement of affairs:** On the making of the winding up order by the court, or on the appointment of the Official Liquidator as the provisional liquidator, a statement as to the affairs of the company must be made out and submitted to the Official Liquidator [Section. 454].

7. **Report by Official Liquidator:** After receiving the statement of affairs, as soon as practicable, the Official Liquidator is required to submit a preliminary report to the court showing following informations [Section 455]:

SELF EVALUATION QUESTIONNAIRE

28. On the passing of a winding up order, the company stands dissolved.

(a) True (b) False

29. The expressions 'winding up of a company' and 'dissolution of a company' covey the same meaning and are used interchangeably in the Companies Act, 1956.

(a) True (b)

30. Which of the following statements is not correct?

(a) The compulsory winding up is deemed to commence from the presentation of the winding up petition.

(b) The compulsory winding up is deemed to commence from the passing the resolution for voluntary winding up.

(c) The voluntary winding up is deemed to commence from the time of passing the resolution for voluntary winding up.

(d) The Central Government may authorize any person to present a winding up petition on just and equitable ground.

31. Fill in the blanks:

(a) The certified copy of winding up order must be filed with the ----- within ----days from the date of making the order.

(b) The duty to file the copy of winding up order with Registrar had been cast upon the ------ and --------.

(c) In case of members' voluntary winding up, a 'declaration of solvency' is required to be delivered to the Registrar. This declaration is made by the --.

DUTIES OF THE LIQUIDATOR

We know that after winding up order is made by the court, the Official Liquidator becomes the liquidator of the company for the purpose of conducting the winding up proceedings. Thus, the important duty of the liquidator is to conduct the winding up proceedings. He shall also perform such other duties as the court may impose. The duties of the liquidator may be discussed under the following heads:

1. **To submit the report:** As soon as the liquidator receives the statement of affairs from the directors, he must submit a preliminary report to the court. (This has already been discussed in the last article).
2. **To take custody of company's property:** On the making of the winding up order, it is the duty of the liquidator to take into his custody or under his control all the property to which the company is entitled [Section 456].

It may be noted that where company's property has been delivered by way of security, the liquidator can demand from the security-holder the surplus proceeds of the property.

[Maharashtra SEB v. Official Liquidator, (1982) 3 SCC 358].

3. **To have regard to directions of creditors or contributories:** On taking the custody or control of company's assets, the liquidator should administer them and distribute among the creditors. In the administration

and distribution of the company's assets, it is the duty of the liquidator to have regard to the directions given by the creditors or contributories by a resolution at any general meeting. He shall also have regard to the directions given by the committee of inspection, as discussed in Art 20.8. In case of any conflict, the directions given by creditors or contributories shall override any directions given by the 'committee of inspection [Section 460(1) (2)].

4. **To summon meetings of creditors or contributories:** The liquidator may call the general meetings of creditors or contributories for the purpose of ascertaining their wishes. But where the creditors or contributories give directions by a resolution, the liquidator is bound to call their meeting. Similarly when one-tenth in value of the creditors or the contributories request in writing, the liquidator must call their meeting [Section 460 (3)].
5. **To keep proper books:** It is the duty of the liquidator to keep proper books in the prescribed manner. In such books he should make the entries of the proceedings at meetings [Section 461].
6. **To submit the accounts:** It is the duty of the liquidator to keep the account of all receipts and payments made by him as a liquidator. And he must present this account to the court at least twice in each year during his tenure of office [Section 462].
7. **To appoint a committee of inspection:** Sometimes, the court gives the direction that a committee of inspection should be appointed to act with the liquidator. In such cases, it shall be the duty of the liquidator to call a meeting of the creditors and contributories for the purpose of constituting a committee of inspection [Section 464]. This will be discussed in detail in Art. 20.8.
8. **To submit information as to pending liquidation:** Sometimes, the winding up of a company is not concluded within one year after its commencement.

KINDS OF VOLUNTARY WINDINGS UP

The voluntary winding up of the company is of two kinds, namely:

1. Members' voluntary winding up.
2. Creditors' voluntary winding up.

MEMBERS' VOLUNTARY WINDING UP

It is the winding up in the case of which a 'declaration of solvency' is made and delivered to the Registrar in accordance with the provisions of Companies Act [Section 488 (5)]. The 'declaration of solvency' is the

declaration made by the directors stating that the company has no debts, or that it will be in a position to pay its debts in full. The legal provisions relating to the declaration of solvency are contained in Section 488 and may be summed up as under.

1. The declaration of solvency has to be made by the majority of directors at a meeting of the Board of Directors, and verified by an affidavit.
2. The directors have to declare in it that they have made a full enquiry into the affairs of the company and have formed the opinion about the following:

(a) That the company has not debts, or

(b) That the company will be able to pay its debts in full within such period as specified in the declaration, but not exceeding 3 years from the commencement of the winding up.

3. The declaration must be made within 5 weeks immediately before the passing of the resolution for winding up. And must be delivered to the Registrar for registration before that date.
4. The declaration must be accompanied by a copy of the report of company's auditors on the profit and loss account, and the balance sheet of the company prepared upto the latest practicable date before the making of the declaration.
5. The declaration must also contain a statement of the assets and liabilities of the company as at the latest practicable date before the making of the declaration.

LEGAL PROVISIONS APPLICABLE TO MEMBERS' VOLUNTARY WINDING

After a declaration of solvency, as aforesaid, is made and filed with the Registrar of Companies, and the members pass a resolution for voluntary winding up, the members' voluntary winding up commences from the date of the resolution. The legal provisions applicable to members' voluntary winding up are contained in Sections 490 to 498 of the Companies Act, which may be discussed under the following heads:

1. Appointment of liquidators: The liquidator is appointed to conduct the proceedings of members' voluntary winding up. He is appointed by the company in its general meeting of shareholders for the purpose of winding up the affairs of the company, and for distributing its assets. The company may appoint one or more liquidators as may be necessary [Section 490].

Notes. 1. A body corporate cannot be appointed as a liquidator of a company in a voluntary winding up. Any such appointment is void [Section 513].

2. Within 10 days of liquidator's appointment, the company must give a notice of the same to the Registrar of Companies [Section 493].

2. **Board's powers to cease on appointment of liquidator:** On the appointment of the liquidator, all the powers of the Board of Directors including the powers of managing director, whole time director and manager, shall come to an end. However, the company in general meeting or the liquidator may sanction the continuance of any power [Section 491].

3. **Creditors' meeting in case of insolvency:** Sometimes, the liquidator is of the opinion that the company will not be able to pay its debts in full within the period stated in 'declaration of solvency.' In such cases, the liquidator should immediately summon meeting of the creditors and lay before the meeting a statement of the assets and liabilities of the company. The liquidator should also take such steps where the period specified in the declaration of solvency has expired and the company has not paid its debts in full. In case of default to summon creditors' meeting, the liquidator shall be punishable with fine up to Rs. 5,000 [Section 495].

4. **General meeting at the end of year:** Sometimes, the winding up continues for more than one year. In such cases, the liquidator must call a general meeting of the company at the end of the first year, and at the end of each subsequent year.. He must also lay before the meeting, an account of his acts and dealings, and the progress of the winding up during the year. If the liquidator fails to comply with this provision, he shall be punishable with fine upto Rs. 1,000 for each failure [Section 496].

5. **Final meeting and dissolution:** As soon as the affairs of the company are fully wound up, the liquidator must make an account of winding up, showing how the winding up has been conducted, and how the property of the company has been disposed of. Thereafter, he must Call a general meeting of the company for the purpose of laying before it the above said account of winding up.

CREDITORS' VOLUNTARY WINDING UP

It is the winding up in the case of which a declaration of solvency has not been made and delivered to the Registrar [Section 488 (5)]. Thus, the question of creditors' voluntary winding up shall arise where the company is unable to pay its debts in full. As in such a case, the interest of the creditors is involved, they are given the powers to control and supervise the winding up of the company.

LEGAL PROVISIONS APPLICABLE TO CREDITORS' VOLUNTARY WINDING UP

The legal provisions applicable to creditors' voluntary winding up are contained in Sections 500 to 509 of the Companies Act, which may be discussed under the following heads:

1. **Meeting of Creditors:** We know that in case of creditors' voluntary winding up, the interest of the creditors is involved. Therefore they should be given an opportunity to know how the assets of the company are realized and distributed. This is possible by calling a meeting of creditors. It may be noted that the company must call a meeting of its creditors in case of creditors' voluntary winding up. The meeting of the creditors may be called on the same day on which the meeting of the company is to be held at which a resolution for voluntary winding up is to be proposed. However, the meeting of the creditors may also be held on the next day following the day of company's meeting.

   The meeting of creditors shall be presided over by one of the directors appointed for the purpose by the Board to lay the following before the meeting of creditors:

(a) A full statement of the position of the affairs of the company, and

(b) A list of the creditors of the company and the estimated amount of their claims [Section 500].

2. **Appointment of liquidator:** We know that the liquidator is appointed for the purpose, of winding up the affairs of the company, and for distributing its assets. In case of creditors' voluntary winding up, the liquidator is appointed by nomination made by both the members and creditors at their respective meetings. If the creditors and the members nominate different persons, the person nominated by the creditors shall be the liquidator. However, within 7 days of the nomination made by the creditors, any director, member or creditor of the company may apply to the court for an order that the person nominated by the members should be the liquidator, or that the Official Liquidator or some other person should be appointed as the liquidator [Section 502]. It may further be noted that if no person is nominated by the members, the person nominated by the creditors shall be the liquidator.

3. **Committee of inspection:** Sometimes, the creditors think fit to appoint a committee of inspection to watch and supervise the proceedings of the liquidator. In such cases, they (creditors) may appoint a committee of inspection at their meeting. And the committee shall not consist of more than five members appointed by the creditors. When a committee of

inspection is so appointed by the creditors, the company may also at any general meeting appoint its own members (not exceeding five) to the committee. However, the creditors may not accept all or any of the members appointed by the company. In such cases, the members appointed by the company cannot act as the members of the committee unless the court directs otherwise. If the court thinks fit, it may also appoint other persons to act as the members in place of the person not agreed to by the creditors [Section 503]. The committee of inspection shall have the right to inspect the accounts of the liquidator at all reasonable times.

4. **Board's powers to cease on appointment of liquidator:** On the appointment of the liquidator, all the powers of the Board of Directors shall come to an end. However, the committee of inspection, or if there is no such committee, the creditors in general meeting may sanction the continuance of the Board's powers [Section 505]. It may be noted that under this section, the powers of the managing director, whole-time director and manager do not come to an end.

5. **Meetings of company and of creditors at the end or year:** Sometimes, the winding up continues for more than one year. In such cases, the liquidator must call a general meeting of the company, and a meeting of the creditors at the end of the first year, and at the end of each subsequent years. He must also lay before both the meetings an account of his acts and dealings, and the progress of the winding up during the year. If the liquidator fails to comply with this provision, he shall be punished with fine up Rs. 1,000* for each failure [Section 508].

6. **Final meetings and dissolution:** As soon as the affairs of the company are fully wound up, the liquidator must make an account of winding up, showing how the winding up was conducted and how the property of the company has been disposed of. Thereafter, he must call a meeting of the company, and a meeting of the creditors for the purpose of laying before the meetings the above said account of winding up. These are the final meetings of the company.

COMPARISON BETWEEN MEMBERS' VOLUNTARY WINDINGS UP AND CREDITORS' VOLUNTARY WINDING UP

S.No	Members' Voluntary Winding up	Creditors' Voluntary Winding up
1	In this case, the directors must file a 'declaration of solvency' with the Registrar of Companies.	In this case, the directors are not required to file a 'declaration of solvency'.
2	In this case, the meeting of the creditors is not compulsory except in case of company's insolvency.	In this case, the meeting of the creditors must be called immediately after the meeting of the members.
3	In this case, the liquidator is appointed by the members.	In this case, the liquidator is appointed by nomination made by both the members and the creditors.
4	In this case, there is no committee of inspection.	In this case, the committee of inspection may be appointed to assist the liquidator.

WINDING UP WITH THE INTERVENTION OF THE COURT OR WINDING UP UNDER THE SUPERVISION OF THE COURT

The winding up with the intervention of the court is ordered where the voluntary winding up has already commenced. As a matter of fact, it is the voluntary winding up but under the supervision of the court.

At any time after a company has passed a resolution for voluntary winding up, the court may make an order that the voluntary winding up shall continue but subject to the supervision of the court. The order may be made by the court on such terms and conditions as it thinks fit, and the court may also determine the extent of the supervision. The application for court's supervision may be made by creditors, contributories, or by others as the court may think just [Section 522]. Or5dinarily, such an order is passed by the court in the following circumstances:

1. When the liquidator appointed under the voluntary winding u is partial or negligent in collecting the assets of the company, or
2. When the provisions relating to the winding up are not being observed, or
3. When the resolution for voluntary winding up was obtained by fraud.

SELF EVALUATION QUESTIONS

29. In case of compulsory winding up, the official liquidator is appointed by the

(a) Company Law Board

(b) Central Government

(c) Court

(d) Board of Directors.

30. The company is dissolved when the court passes an order of dissolution, and the court shall pass such order ____

(a) Immediately after the winding up order.

(b) When the affairs of the company have been completely wound up.

(c) At the instance of Central Government.

(d) At the instance of Company Law Board.

31. In case of members' voluntary winding up, the liquidator for conducting the winding up proceedings is appointed by ____

(a) Central Government

(b) Company in its general meeting

(c) Company Law Board

(d) Registrar

32. In a voluntary winding up, a body corporate cannot be appointed as a liquidator.

(a) True (b) False

TEST QUESTIONS

1. What is prospectus? What are its contents? State the legal rules relating to the issue of prospectus.
2. (a) What is a prospectus? Explain the term 'invitation to public'.
   (b) What do you understand by the 'rule of golden legacy?
3. Who are liable for mis-statement in a prospectus? Discuss their civil and criminal liability. Is there any liability for omission of facts in the prospectus? If yes, state.
4. What is a prospectus? Who are liable for mis-statement in a prospectus? Explain remedies available to shareholder, who had applied for shares on the faith of a false prospectus.
5. Discuss the extent of company's liability to shareholders for mis-statement in the prospectus.
6. Write notes on (a) Public issue of prospectus. (b) Statement in lieu of prospectus. (c) Golden rule as to framing of prospectus. (d) Prospectus by implication (e) Cases in which a prospectus in not required to be issued by a public company.

7. Define the term 'share'. What is its nature? What are the different types of shares which a company can issue under the companies Act, 1956?
8. What is preference share capital? When can a company issue redeemable preference shares? What are the restrictions on the power of a company to redeem such shares?
9. Explain what do you understand by allotment of shares. State in brief the provisions of the companies Act, 1956 on prohibition of a allotment of shares, and what is the effect of irregular allotment?
10. What are the different categories of share capital? State the legal provisions relating to the alteration of share capital of a company.
11. What are the different kinds of share capital which a company can issue under the Companies Act., 1956? What are the provisions regarding further issue of share capital?
12. (a) What is a debenture? State the characteristics of a debenture.

    (b) What are the various kinds of debentures?
13. Define the term 'debentures'. Explain the legal provisions relating to debentures.
14. Discuss the different kinds of meetings of a company. What are the essentials and legal rules for a valid meetings?
15. When is a statutory meeting to be held? Which companies, if any, are exempted from holding statutory meetings? What should be the contents of the statutory report?
16. (a) What are the requisites of a valid general meeting?

    (b) When can the general meeting of a company be called at a shorter notice?
17. (a) What is the meaning of quorum? What are the quorum requirements of board meeting and general meeting? Must quorum be present throughout a meeting? State the consequence if quorum is not present.
18. a) What are the different kinds of resolutions which may be passed by a company? Give three instances of the business for which each kind of resolution is required.
19. Discuss special resolutions and ordinary resolutions of a company registered under the Companies Act.

20. Write notes on the following:

(a) Statutory report (b) Extra-ordinary general meeting

(c) Class meeting (d) Proxy

(e) Special resolution (f) Special notice

(g) Resolution by circulation

21 hat is winding up? State the various modes of winding up. What is the duty of liquidator regarding unpaid dividend and undistributed assets lying in his hands during winding up?

22 What is meant by compulsory winding up? Who can order such winding up and in what circumstances? What is the nature and extent of contributory's liability?

23 What is meant by winding up of a company? State the circumstances under which a company may be wound up (a) voluntarily, and (b) by the court.

24 Discuss the statutory provisions relating to the winding up under the supervision of the court.

25 Who is a liquidator? What are his duties and powers in connection with the winding up?

ANSWERS

1. (b) 2. (a) 3. (c) 4. (a) 5. (a)

6. (a) 7. (a) 8. (c) 9. Registrars tree, first

10. (a) 11. (b) 12. (a) 13. (b) 14. (b)

15. (d) 16. (b) 17. (a) 18. (b) 19. (a)

20. (b) 21. (b) 22. (b) 23. (c) 24. (a)

25. (b) 26. (b) 27. (a) 28. (b) 29. (b)

30. (b) 31. (a) Registrar, 30 (b) Petitioner, Company (c) Directors

32. (b) 33. (b) 34. (b) 35. (a)

NOTES