

FOURTH B COM
CO-OPERATION AND FINANCE
CALICUT UNIVERSITY

2019 ADMISSION

BUSINESS REGULATIONS

Prepared by

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BCM3BO3 BUSINESS REGULATIONS

Lecture Hours per week: 4, Credits: 4

Internal: 20, External: 80, Examination 2.5 Hours

Objectives: > To familiarize the students with certain statutes concerning and affecting business organizations in their operations.

Module I

Business Laws : Introduction - Nature of Business Law - Meaning and definition - Indian Contract Act, 1872: Contract - Definition - Essentials of valid contracts - Classification of contracts - Offer and acceptance - Consideration - Capacity to contract - Free consent - Coercion - Undue influence - Misrepresentation - Fraud - Mistake - Void agreements - Discharge of contract - Breach of contract and remedies - Contingent contracts -Quasi contracts. (20 Hours, 30 marks)

Module II

Special Contracts: Contract of Indemnity: Meaning - Nature - Right of indemnity holder and indemnifier - Contract of Guarantee: Meaning - Nature - Rights and liabilities of surety - Discharge of surety from liability - Contract of Bailment and Pledge: Rights and duties of bailor and bailee, pledger and pledgee - Contract of Agency - Creation of agency - Delegation of authority - Duties and liabilities of principal and agent -Termination of agency. (20Hours, 18 marks)

Module III

Sale of Goods Act 1930: Contract for sale of goods -Essentials of a contract of sale - Conditions and Warranties - Caveat emptor - Sale by non-owners - Rules as to delivery of goods - Un paid seller and his rights. (10 Hours, 12 marks)

Module IV

The Consumer Protection Act 1986: Objects and scope - Definition of consumer and consumer dispute - Complaint - Goods - Service - Unfair trade practices - Restrictive trade practices - Rights of consumers - Consumer Protection Council - Consumer Disputes Redressal Agencies. (7 Hours, 10 marks)

Module V

The limited liability partnership Act 2008 – Salient features – Distinction with partnership and company – LLP agreement – partners and designated partners – incorporation document – Extent and limitation of liability of LLP and partners. (7 Hours, 10 marks)

Reference Books:

1. Singh Avtar, The Principles of Mercantile Law , Eastern Book Company, Lucknow.
2. Kuchal M.C, Business Law , Vikas Publishing House, New Delhi
3. Kapoor N.D, Business Law , Sultan Chand & Sons, New Delhi.
4. Chandha P.R , Business Law.
5. S.S. Gulshan, Business Laws.
6. B. Sen and Mitra, Business and Commercial Laws..
7. Chandha P.R, Business Law, Galgotia, New Delhi.
8. Balchandani, Business Laws.
9. Desai T.R., Indian Contract Act, Sale of Goods Act and Partnership Act, S.C. Sarkar & Sons Pvt. Ltd. Kolkata.

MODULE 1

BUSINESS REGULATIONS

Business Law consists of those legal rules, which govern and regulate the business activities, transactions and trade. It also encompasses the law relating to regulation of business associations and other incidental matters

Definition

According to S R Davar, business law “means that branch of law which is applicable to or concerned with trade and commerce in connection with various mercantile or business transactions”.

THE INDIAN CONTRACT ACT, 1872

The Act came into force on the 1st day of September 1872, and it applies to the whole of India except the State of Jammu and Kashmir.

AGREEMENT

An agreement is formed where one party makes the proposal and the other party accepts it.

Agreement: Section 2 (e) defines an agreement as, “every promise and every set of promises forming the consideration for each other”.

ESSENTIALS OF AGREEMENT

1. At least Two Parties
2. Consensus ad ideum
3. Promise

CONTRACT

“A contract is an agreement enforceable at law made between two or more persons, by whom rights are acquired by one or more to acts or forbearances on the part of the other or

ESSENTIAL ELEMENTS OF A VALID CONTRACT

Section 2(h) and Section 10 of the Indian Contract Act

1. Offer and Acceptance: There must be a ‘lawful offer’ and ‘lawful acceptance’ of the offer, thus resulting in an agreement.
2. Consensus ad ideum: For a valid agreement, there must be a complete identity of minds between the contracting parties.
3. Free Consent: The contracting parties must give their consent freely.
4. Capacity of the parties: The parties making the contract must be legally competent in the sense that each must be of the age of majority
5. Lawful Consideration: An agreement to be enforceable by law must be supported by consideration. Without consideration, a contract is regarded as a nudum pactum.
6. Lawful object: The object of the agreement must be lawful.
7. Not expressly declared void: The agreement must not have been declared void by any law in force in India.
8. . Intention to create legal relations: There must be an intention among the parties that the agreement should be attached by legal consequences and create legal obligations.
9. Certainty of meaning: The terms of the agreement must be certain and unambiguous.
10. Legal formalities: The agreement must comply with the necessary formalities as to writing, registration, stamping etc.

CLASSIFICATION OF CONTRACTS

1. On the basis of Enforceability

- a) Valid Contract: A contract which satisfies all the legal requirements laid down in Section 10 of the Act, is a valid contract
- b) Void Agreement: Section 2(g) defines it as, “an agreement not enforceable by law is said to be void”. Such agreements are void ab initio which means that they are unenforceable right from the time they are made.
- c) Void Contract: Section 2(j) provides that "a contract which ceases to be enforceable by law becomes void when it ceases to be enforceable."
- d) Voidable Contract: According to Section 2(i), "An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of other or others, is a voidable contract."
- e) Illegal agreement: An agreement which is either prohibited by law or otherwise against the policy of law is an illegal agreement. Such an agreement is a nullity and is void ab initio.
- f) Unenforceable Contract: An unenforceable contract is that which is valid and enforceable, but for certain technical defects such as want of proof, expiry of the period within which enforceable, absence of writing, registration and attestation, insufficient stamp etc., it becomes unenforceable.

2. On the basis of mode of creation

- a) Express Contract: An express contract is that which is made in writing or by the words of mouth.
- b) Implied Contract: An implied contract is one which arises out of acts or conduct of the parties or out of the dealings between them.
- c) Quasi Contract: Under certain circumstances, law itself creates legal rights and obligations against the parties

3. On the basis of execution

- a) Executed Contract: When a contract has been completely performed, it is termed as executed contract, i.e., it is a contract where, under the terms of a contract, nothing remains to be done by either party.
- b) Executory Contract: Where one or both the parties to the contract have still to perform their obligations in future, the contract is termed as executory contract.
- c) Unilateral Contract: A unilateral contract is one sided contract in which only one party has to perform his promise or obligation to do or forbear.
- d) Bilateral Contract: A bilateral contract is one in which both the parties have to perform their respective promises or obligations to do or forbear.

OFFER AND ACCEPTANCE

OFFER OR PROPOSAL

According to Section 2 (a) of the Indian Contract Act, 1872 defines a proposal as follows:

“When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal”

ESSENTIALS CHARACTERISTICS OF A VALID OFFER

- 1. The offer must be capable of creating legal relation
- 2. The offer must be certain, definite and not vague
- 3. The offer must be communicated to the other party
- 4. The offer must be made with a view to obtaining the consent of the offeree
- 5. Invitation to an offer is not an offer:
- 6. . The offer may be specific or general

7. Invitation to an offer is not an offer:
8. The offer must be distinguished from an answer to a question

DIFFERENT KINDS OF OFFERS

1. Express offer: An express offer is one which is made by words spoken or written.
2. Implied offer: An implied offer is one which is made otherwise than in words
3. Specific offer: A specific offer can be accepted only by that definite person
4. General offer: A general offer is one which is made to the world at large or public in general
5. Standing or Open or Continuing offer: An offer for a continuous supply of certain goods and services in any quantity at a certain price
6. Counter offer: A Counter offer is rejecting the original offer and making a new offer
7. Cross offer: Where identical offers are made by parties in ignorance of each other, the offers are said to be cross offers.

Lapses of offer [When does an offer come to an end]

1. By communication of notice of revocation by the proposer
2. By lapse of prescribed time
3. . By non-fulfillment of a condition by acceptor
4. By the death or insanity of the offeror
5. By counter offer
6. . By subsequent illegality

ACCEPTANCE

According to Section 2 (b) of the Act, “When the person to whom the offer is made signifies his assent thereto, the proposal is said to be accepted. A proposal when accepted becomes a promise”

ESSENTIAL AND LEGAL RULES FOR A VALID ACCEPTANCE

1. The acceptance must be communicated
2. Acceptance must be absolute
3. Acceptance may be express or implied
4. The acceptance must be given in some usual and reasonable manner
5. The acceptance must be given before the lapse of offer
6. The acceptance cannot be implied from silence
7. . Acceptance means acceptance of all the terms of the offer:
8. If acceptance has been given conditional there will be no contract

CONSIDERATION

Definition Section 2 (d) of the Act defines consideration as under: “When at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises or to do or abstain from doing something, such act or abstinence or promise is called a consideration for the promise”;

ESSENTIALS OF CONSIDERATION

1. Consideration must move at the desire of the promisor
2. . Consideration may move from the promisee or any other person
3. Consideration may be past, present or future
4. Consideration need not be adequate
5. . Consideration must be real and not illusory

6. Consideration must be lawful

7. Consideration must not be illegal, immoral

PRIVITY OF CONSIDERATION OR STRANGER TO CONSIDERATION

The term ‘privity of consideration’ means stranger to the consideration, or consideration given by any other person other than the promisee.

PRIVITY OF CONTRACT OR STRANGER TO CONTRACT

The term ‘privity of contract’ means stranger to a contract. As per the doctrine of privity of contract, a person, who is not a party to the contract, cannot sue for carrying out the promise made by the parties to the contract.

EXCEPTIONS TO THE RULE OF STRANGER TO CONTRACT

1. In case of Trusts
2. In case of marriage settlement, partition or other family arrangements.
3. Acknowledgement of payment
4. In case of agency
5. In case of assignment of rights under a contract

Rule of “No Consideration, No Contract”

According to Section 25, an agreement made without consideration is void

Exceptions to the General Rule of “No Consideration, No Contract”

The following circumstances under which the agreement is valid and enforceable even if it is made without consideration:

1. Agreements made on account of natural love and affection [Sec. 25 (1)]
2. Promise to compensate for past voluntary services [Sec. 25 (2)]
3. Promise to pay time-barred debt [Sec. 25 (3)]: When a debtor makes a written and registered promise, under signature of his own or that of his agent, to pay a time- barred debt, no fresh consideration is needed.

4. Completed gift
5. Contracts of agency
6. Remission [Sec. 63]

CAPACITY TO CONTRACT

PERSONS NOT COMPETENT TO CONTRACT

1.MINORS

Rules Regarding Minor's Agreements

1. An agreement with or by a minor is void ab initio:
2. A minor can be a promisee or a beneficiary
3. No ratification:
4. No restitution
5. The liability of Minor's parents or guardian
6. . No Estoppel
7. Minor's property liable for necessities
8. Minor's liability for tort
9. Minor as an agent:
10. Minor as a partner

2.PERSONS OF UNSOUND MIND

1. Idiot: An idiot is a person who has completely lost his mental faculties of thinking for rational judgement.
2. Lunatics: A lunatic is a person who is mentally deranged (disordered) due to some mental strain or other personal experience but who has some lucid intervals of sound mind.
3. Drunken or intoxicated person:

4. PERSONS DISQUALIFIED BY ANY LAW

1. Alien enemy
2. Insolvent
3. Foreign Sovereigns, their Diplomatic Staff and Accredited representatives of Foreign States
4. Joint Stock Company and Corporations incorporated under Special Acts
5. Felons or Convicts:

FREE CONSENT

CONSENT

According to Section 13 of the Act has defined consent as “two or more persons are said to consent when they agree upon the same thing in the same sense”.

FREE CONSENT

“Consent is said to be free when it is not caused by

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

1.COERCION [SEC. 15]

Coercion means compelling or forcing a person to enter into a contract under a pressure or threat

ESSENTIALS CHARACTERISTICS OF COERCION

- (a) The committing of any act forbidden by Indian Penal Code
- (b) The threatening to commit any act forbidden by Indian Penal Code:

- (c) The unlawful detaining of any property
- (d) The threatening to detain any property unlawfully
- (e) The act of coercion

EFFECTS OF COERCION

According to Section 19 states that, 'when the consent of a party to an agreement is obtained by coercion, the contract becomes voidable at the option of the party, i.e., such party can put an end to the contract if he so chooses

2.UNDUE INFLUENCE [SEC. 16]

When a party enters into a contract under any kind of mental pressure, unfair influence or persuasion by the superior party, the undue influence is said to be employed.

Presumption of undue influence

- a) Real or apparent authority: Where he holds a real or apparent authority over the other
- b) Fiduciary relationship: Fiduciary relation means a relation of mutual trust and confidence
- c) Mental distress:

Distinction between Coercion and Undue Influence

| Coercion | Undue Influence |
|---|--|
| <ul style="list-style-type: none"> • physical force. • Parties to a contract may or may not be related to each other. • Consent is obtained by giving a threat of an offence • It can be exercised even by a stranger to the contract. • Coercion has to be proved by the aggrieved party alleging it in | <ul style="list-style-type: none"> • moral pressure. • Parties to a contract are related to each other under some sort of relationship • Consent is obtained by dominating the will. • It can be exercised only by a party to a contract and not by a stranger • There is a presumption of undue influence in the case of certain relationship. |

3.FRAUD [Sec. 17]

The term ‘fraud’ may be defined as an intentional, deliberate or wilful misstatement of facts,

which are material for the formation of a contract

ELEMENTS OF FRAUD

1. The act must have been committed by a party to the contract:
2. Acts committed may be of the following nature:
 - a) Suggestion of an untrue fact:
 - b) Active concealment of a fact
 - c) Active concealment of a fact
 - d) Any other act fitted to deceive

3. The act must have been committed with the intention of inducing the deceived party to act upon it:

4. The act must have in fact deceived the other party

5. Plaintiff must have suffered

Mere silence is not a fraud

According to explanation to Section 17, “mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud”

Exceptions

1. Duty to Speak Mere silence amounts to fraud when the person keeping silent, is under a duty to speak. The duty to speak arises, where one party reposes trust and confidence in the other. The duty to speak arises in the following types of contracts:

a) Contracts uberrimae fidei, i.e., contracts of good faith such as contracts of insurance;

contracts for the sale of immovable properties;

b) Contracts of partnership

c) Contracts of guarantee

2. Where silence is equivalent to speech:

3. Change of circumstances

Effect of Fraud

1. Right to rescind the contract: The party whose consent was caused by fraud can rescind

(cancel) the contract

2. Right to insist upon performance

3. Right to claim damages

MISREPRESENTATION [Sec. 18]

The term 'Misrepresentation' means a false representation of fact made innocently or non-disclosure of a material fact without any intention to deceive the other party

Essentials of Misrepresentation

1. There must be a representation or breach of duty.
2. The representation must be of facts material to the contract.
3. The representation must be untrue.
4. The representation must be made with a view to inducing the other party to enter into contract.
5. The other party must have acted on the faith of the representation

Difference between Fraud and Misrepresentation

| Fraud | Misrepresentation |
|---|---|
| <ol style="list-style-type: none">1. There is misstatement of concealment of fact2. The fraud is intentional or wilful wrong3. In case of active fraud, the aggrieved party has a right to rescind the contract.4. A fraud is a criminal act too5. The aggrieved party in addition to the normal remedies can claim also damages. | <ol style="list-style-type: none">1. The misstatement of fact is made innocently without any bad intention.2. The misrepresentation is an innocent wrong.3. The aggrieved party cannot rescind the contract if it was possible for him with ordinary diligence to discover the truth..4. It is not a criminal act.5. The aggrieved party cannot claim to Damage |
| | |

4.MISTAKE

A mistake is said to have occurred where the parties intending to do one thing by error do something else. Mistake is an erroneous belief concerning something.

Kinds of Mistake

(I) Mistake of Law

a) Mistake of law of the country:

b) Mistake of foreign law

c) (II) Mistake of Fact

1. Bilateral mistake Where both the parties to an agreement are under a mistake as to matter of fact essential to the agreement, the agreement is void.

Types of Bilateral Mistake

a) Mistake as to subject matter

b) Mistake as to the possibility of performance

(2) Unilateral mistake.

The term unilateral mistake means where only one party to the agreement is under a mistake

Types of Unilateral Mistake

1. Mistake about the identity of the parties to an agreement

2. Mistake about the nature of the agreement:

AGREEMENTS OPPOSED TO PUBLIC POLICY

1. Trading with an alien enemy

2. Agreement for sale of public offices and titles

3. Marriage brokerage agreements

4. Agreement to commit a crime

5. Agreement tending to create monopoly

6. Agreement in restraint of personal liberty

VOID AGREEMENTS

According to Section 2 (g) of the Indian Contract Act, 1872, a void agreement is an agreement which is not enforceable by law. A void agreement does not create any legal rights and obligations

1. Agreements by incompetent persons [Section 11].
2. Agreements made under a mutual mistake [Section 20].
3. Agreements, the object or consideration of which is unlawful [Section 23].
4. Agreements, the object or consideration is partly unlawful [Section 24].
5. Agreements made without consideration [Section 25].
6. Agreements in restraint of marriage [Section 26].
7. Agreements in restraint of trade [Section 27].
8. Agreements in restraint of legal proceedings [Section 28].
9. Agreements the meaning of which is uncertain [Section 29].
10. Agreements by way of wager [Section 30].
11. Agreements to do impossible acts [Section 56].

AGREEMENTS IN RESTRAINT OF MARRIAGE [SECTION 26]

The law regards the marriage as the right of every person. Restriction on the freedom of people shall be against public policy

AGREEMENTS IN RESTRAINT OF TRADE [SECTION 27]

This is because Article 19 (g) of the Constitution of India regards the freedom of trade and commerce as a right of every individual.

AGREEMENTS IN RESTRAINT OF LEGAL PROCEEDINGS [SECTION 28]

An agreement by which any party is restricted absolutely from enforcing his legal rights under or in respect of any contract is void to that extent

AGREEMENTS THE MEANING OF WHICH IS UNCERTAIN [SECTION 29]

An uncertain agreement is one, the terms of which are uncertain or not capable of being made certain without further agreement between the parties are void

AGREEMENTS BY WAY OF WAGER [SECTION 30]

The term 'wagering agreement' or 'wager' may be defined as an agreement in which one person agrees to pay certain amount of money to the other person on the happening or non- happening of a specified uncertain event.

Essential Features of a Wager Agreement

1. Promise to pay money or money's worth: There must be a promise to pay money or money's worth by one party to the other
2. Event: The promise must be conditional on the happening or not happening of an event.
3. Uncertainty of the event: The agreement must be conditional upon the determination of an uncertain event. An event may be uncertain not only because it relates to future but because it is not yet ascertained to the knowledge of the parties.
4. Mutual chances of gain or loss: Each party must stand an equal chance to win or lose on the determination of the contemplated events.
5. No control over the event: Neither party should have control over the happening or non- happening of the event.
6. Stake as the only interest: Neither party should have any interest other than the sum or stake that he stands to win or lose.

Effects of Wagering Agreement

- 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) Transactions which are collateral to wagering agreements are not void in India except the states of Maharashtra and Gujarat

Exceptions to Wager

1. Horse race
2. Crossword competitions
3. Games of skill
4. Share market transactions
5. Contracts of insurance
6. Chit Fund

Commercial Transaction and Wager

An agreement for the actual sale and purchase of goods is not a wagering agreement. But sometimes it becomes difficult to determine whether a particular transaction is by way of wager or a genuine business transaction.

LOTTERIES

A lottery is a game of chance, therefore, an agreement to buy a lottery ticket, is a wagering agreement. If the lottery is authorized by Government, it does not cease to be a wagering transaction, the only effect of such sanction is that the persons conducting the lottery will not be prosecuted under the penal law

CONTINGENT CONTRACT

The performance of a contingent contract becomes due only upon the happening or non- happening of some future uncertain event. In simple words, it is a conditional contract. Contracts of insurance, indemnity and guarantee etc. are some of the important examples of contingent contracts.

Essentials of a Contingent Contract

1. There must be a valid contract:

2. The performance of the contract must be conditional
3. The event must be uncertain
4. The event must be collateral to the contract
5. The event should not be the discretion of the promisor:

RULES REGARDING CONTINGENT CONTRACTS

1. Contingent contracts dependent on the happening of future uncertain event
2. Contingent contracts dependent on the non-happening of future uncertain event
3. Contingent contracts dependent on the future conduct of a living person
4. Contingent contracts dependent on the happening of specified uncertain event within a fixed time
5. Contingent contracts dependent on the non-happening of specified uncertain event within a fixed time
6. Contingent contracts dependent on the happening of an impossible event

QUASI CONTRACTS

FEATURES OF QUASI-CONTRACTS

The salient features of a quasi-contract are as under:

- a) It is imposed by law and does not arise from any agreement.
- b) The duty of a party and not the promise of any party is the basis of such contract
- d) The right under it is always a right to money and generally, though not always, to a liquidated sum of money.
- e) d) The right under it is available against specific person(s) and not against the world.
- f) e) A suit for its breach may be filed in the same way as in case of a complete contract.

KINDS OF QUASI CONTRACTS

1. Supply of necessities to persons incompetent to contract [Section 68]
2. Payment by an interested person [Section 69]:
3. Liability to pay non-gratuitous acts [Section 70]
4. Responsibility of a finder of goods [Section 71]:
5. Payment by mistake or under coercion:

DISCHARGE OF CONTRACT

Discharge of contract means termination of the contractual relations between the parties to a contract.

1. By performance of contract.
2. By agreement
3. By lapse of time.
4. By operation of law.
5. By impossibility of performance
6. By committing breach of contract

(1) DISCHARGE BY PERFORMANCE OF CONTRACT

a) Actual Performance: A contract is said to be discharged by actual performance when the parties to the contract perform their promise in accordance with the terms of the contract.

b) Attempted Performance or Tender: A contract is said to be discharged by attempted performance when the promisor has made an offer of performance (i.e., a valid tender) to the promisee but it has not been accepted by the promisee

(2) DISCHARGE BY AGREEMENT

A contract can be discharged by mutual agreement in any of the following ways:

a) By novation (Substitution of a new contract) it means substituting a new contract for the existing one, either between the same parties or between different parties, the consideration mutually being the discharge of the old contract

b) By alteration

Alteration means change in one or more of the terms of a contract with the consent of all the parties.

c) By rescission

A contract may be rescinded by agreement between the parties at any time before it is discharged by performance

d) By remission

The term 'remission' may be defined as the acceptance of lesser fulfillment of the terms of the promise

e) By waiver

When both the parties, by mutual consent, agree to abandon their respective rights, the contract need not be performed and the same is discharged.

F) By merger: It takes place when an inferior right accruing to a party under a contract merges into a superior right accruing to the same party under the same or some other contract

(3) DISCHARGE BY LAPSE OF TIME

The Limitations Act, 1963 provides that a contract must be performed within the period of limitation. If the contract is not performed and the promisee fails to take any action within the period of limitation, then the contract is terminated or discharged by lapse of time.

(4) DISCHARGE BY OPERATION OF LAW

a) Death: A contract involving the personal skill or ability of the promisor is discharged automatically on the death of the promisor.

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

c) Unauthorized Material Alteration: If any party makes any material alteration in the terms of the contract without the approval of the other party, the contract comes to an end.

d) Merger: Where an inferior right accruing to a party in a contract merges into the superior rights accruing to the same party, the earlier contract is discharged.

(5) DISCHARGE BY IMPOSSIBILITY OF PERFORMANCE

a) Initial impossibility: It is the impossibility which exists at the time of formation of contract

b) Subsequent or supervening impossibility: Supervening impossibility means impossibility which does not exist at the time of making the contract but which arises subsequently after the formation of the contract

(6) DISCHARGE BY BREACH OF CONTRACT

a) Anticipatory breach of contract: When a party to a contract refuses to perform his part of the contract, before the due date of performance, it is known as anticipatory or constructive breach of contract.

b) Actual breach of contract: Actual breach of contract occurs in the following two ways:

(i) On due date of performance: If a party to a contract fails to perform his obligation at the specified time, he is liable for its breach..

(ii) During the course of performance: If during performance of a contract, a party to it either fails or refuses to perform his obligation, there is said to be actual breach during performance of the contract.

REMEDIES FOR BREACH OF CONTRACT

- Suit for injunction

- Suit for specific performance

- Suit for damages.
- Suit for rescission of the contract.
- Restitution.
- Suit upon quantum meruit

I. RESCISSION OF THE CONTRACT

Rescission of a contract means annulment of it. When all or some of the terms of the contract are cancelled, rescission of a contract takes place. When there is a breach of contract by one party, the aggrieved party may rescind the contract and need not perform his part of the contract.

II. SUIT FOR DAMAGES

“Damages” are monetary compensation allowed for loss suffered by the aggrieved party due to breach of contract

Types of Damages

- a) General or ordinary damages:
- b) Special damages
- c) Exemplary or punitive or vindictive damages: These are the damages which are in the nature of punishment
- d) Nominal damages
- e) Liquidated damages and penalty

III. SUIT FOR SPECIFIC PERFORMANCE

This means demanding the court’s direction to the defaulting party to carry out the promise according to the terms of the contract.

- (i) Where actual damages arising from breach are not measurable.
- (ii) Where monetary compensation is not an adequate remedy.

IV. SUIT FOR INJUNCTION

An injunction is an order of the court requiring a person to refrain from doing some act which has been the subject matter of contract. The power to grant injunction is discretionary and it may be granted temporarily or for an indefinite period

V. SUIT UPON QUANTUM MERUIT

The word 'quantum meruit' literally means "as much as is earned" or "according to the quantity of work done".

VI. RESTITUTION

Restitution means 'an act of restoration'. If a person has been unjustly enriched at the expense of the other party, he should restore the benefit received or compensate the other party

MODULE – II

SPECIAL CONTRACTS

CONTRACT OF INDEMNITY AND GUARANTEE

The special legal provisions relating to these contracts are contained in Sections 124 to 147 of the Indian Contract Act, 1872.

CONTRACT OF INDEMNITY

Definition

"A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself or by the conduct of any other person".

Eg contract of insurance

Indemnifier

Indemnity-holder

Characteristics Of A Contract Of Indemnity

1. Essentials of a valid contract
2. Compensation of loss: One party must promise to save the other party from any loss which he may suffer.
3. Express or Implied

Rights Of Indemnity-Holder(sect 125)

1. All damages which he is compelled to pay in any suit in respect of any matter to which the promise to indemnify applies
2. All costs which he is compelled to pay, in bringing or defending such suit
3. All sums which he has paid under the terms of any compromise of any such suit
4. Suit for specific performance: An indemnity holder is entitled to sue the indemnifier even before he has suffered any damage provided an absolute liability has been incurred by him.

Rights Of Indemnifier

There is no provision in the Indian Contract Act about indemnifier's rights. The Act is silent on this point. It may, however, be said that indemnifier's rights are the same as those of a surety, which are the essential part of law.

CONTRACT OF GUARANTEE

It is a contract to pay the amount due from another person, in case the latter fails to pay, is known as contract of guarantee

Definition(Section 126)

“A contract of guarantee is a contract to perform the promise, or discharge the liability, of a third person in case of his default.”

Surety: The person who gives the guarantee is called the surety.

Principal Debtor: The person in respect of whose default the guarantee is given is called the principal debtor.

Creditor: The person to whom the guarantee is given is called creditor

CHARACTERISTICS OF A CONTRACT OF GUARANTEE

1. Three parties
2. Consent or Identity of mind
3. Existence of a Liability: There must be an existing liability or a promise whose performance is guaranteed.
4. Primary and secondary liability A contract of guarantee presupposes existence of some liability of the principal debtor to the creditor
5. Essentials of a valid contract
6. No misrepresentation
7. No concealment
8. Surety's liability must be conditional

KINDS OF GUARANTEE

1. Specific guarantee: Where a guarantee is given for a single and particular transaction or debt, it is called specific or simple guarantee.
2. Continuing guarantee: A guarantee which extends to a series of transactions called a continuing guarantee.
3. Retrospective guarantee: Where a guarantee is given for an existing debt, is called a retrospective guarantee.
4. Prospective guarantee: It means guarantee is given for a future debt
5. Absolute guarantee: It means a guarantee where the surety unconditionally promises to pay in case of default of the principal debtor.
6. Conditional guarantee: It means a guarantee where the surety promises to pay in case of some events
7. Fidelity guarantee: A guarantee given for the good conduct or honesty of a person employed in a particular office is called a fidelity guarantee.

8. Limited or unlimited guarantee: A limited guarantee is one, restricted to a single transaction. An unlimited guarantee is one which is unlimited either as to time or amount.

Revocation of Continuing Guarantee

1. By notice of revocation by the surety [Section 130]
2. By the death of the surety [Section 131]
3. By modes of discharging the surety
 - a) By novation [Section 62];
 - b) By variance in terms of contract [Section 133];
 - c) By release or discharge of principal debtor [Section 134];
 - d) By creditors act of omission [Section 139];
 - e) By loss of security [Section 141].

RIGHTS OF SURETY [Section 128]

1. Right against the principal debtor
2. Right against the creditor
3. Right against the co-sureties.

1. Rights of the Surety against the Principal Debtor

a) Right of subrogation [Section 140]: On the default of the principal debtor, the surety can, after paying off the creditor, claim all those rights which the creditor had against the principal debtor.

b) Right to claim indemnity [Section 145]: In every contract of guarantee, there is an implied promise by the principal debtor to indemnify the surety, and the surety is to recover from the principal.

2. Rights of the Surety against the Creditor

- a) Rights to claim securities: A surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship
- b) Right to claim set-off: The surety is also entitled to the benefit of the principal debtor's set off against the creditor if it arises out of the same transaction.
- c) Right to share reduction: The surety is entitled to claim the proportionate reduction of his liability by the amount of dividend claimed by the creditor

3. Rights of the Surety against the Co-Sureties

Where a debt is guaranteed by more than one surety, they are called co-sureties.

- a) Right to contribution [Section 146]: Each surety would be liable to contribute equally towards the debt or that part of the debt which unpaid.
- b) Right to share benefits of securities
- c) Liability of co-sureties bound in different sums [Section 147]: Where the co-sureties have agreed to guarantee different sums, they have to contribute equally subject to the maximum of the amount guaranteed by each one.
- d) Effect of release of a surety [Sec. 138]: Where there are co-sureties, release by the creditor of one of them does not discharge the others nor does it free the surety so released from his liability to other sureties.

NATURE AND EXTENT OF SURETY'S LIABILITY

1. Surety's liability is coextensive The surety may limit his liability at the time of entering into the contract.
2. Secondary liability: The surety's liability arises only when the principal debtor makes a default
3. Surety's liability arises immediately on default of the principal debtor
4. Surety's liability where the original contract between creditor and principal debtor is void or voidable

DISCHARGE OF SURETY FROM LIABILITY

1. Discharge of Surety by Revocation

- a) Revocation by giving notice [Section 130]
- b) Revocation by death [Section 131]
- c) Revocation by novation: A surety is discharged when a new contract of guarantee is substituted for an old one.

2. Discharge of Surety by the conduct of the creditor

- a. By variance in terms of contract
- b. By release or discharge of the principal debtor
- c. By compounding with or giving time to the principal debtor
- d. By loss of securities

3. Discharge of Surety by invalidation of contract

- a. Guarantee obtained by misrepresentation
- b. Guarantee obtained by concealment
- c. Failure of a person to join as Co-surety
- d. Failure of consideration
- d. Lack of essential element of a valid contract

CONTRACT OF BAILMENT AND PLEDGE

CONTRACT OF BAILMENT

It means delivery of property or goods in trust to another for a special purpose and for a limited period.

Bailor: The person delivering the goods is called 'bailor'.

Bailee: The person to whom they are delivered is called "the bailee"

CHARACTERISTICS OF BAILMENT

1. Delivery of possession goods
 - a) Actual Delivery
 - b) Constructive Delivery
2. Delivery of goods must be for some purpose and upon a contract
3. Return of goods
4. Movable goods
5. Movable goods

CLASSIFICATION OF BAILMENT

1. Bailment on the basis of Charges or Reward
 - a) Gratuitous bailment
 - b) Non-gratuitous bailment
2. Bailment on the basis of benefits
 - a) Bailment for the exclusive benefit of bailor
 - b) Bailment for the exclusive benefit of bailee:
 - c) Bailment for the mutual benefit of both Bailor and Bailee:

DUTIES OF BAILOR

1. To disclose known defects in the goods

Under Section 150, the duty of bailor to disclose faults in the goods bailed

- a) Duty of gratuitous bailor: The bailor is bound to disclose to bailee the faults in the goods bailed of which the bailor is aware and which materially interfere with the use of them
- b) Duty of a non-gratuitous bailor: He must ensure that the goods delivered are reasonably safe

2. To bear ordinary expenses

The bailor shall repay to the bailee the necessary expenses incurred by him for the purpose of bailment

3. To bear extraordinary expenses

If there are some extraordinary expenses incurred, then it becomes the duty of the bailor to pay them

4. To indemnify bailee

5. To receive back the goods

It is the duty of the bailor to take back the goods when the bailee returns them after the expiry of period of bailment

DUTIES OF BAILEE

1. To take reasonable care of the goods bailed

2. Not to make any authorized use of goods bailed

3. Not to mix goods bailed with his own goods

a) Mixing of goods of bailor with that of bailee with bailor's consent

a) Mixing of goods of bailor with that of bailee with bailor's consent

c) Mixing of goods without bailor's consent, where goods cannot be separated

4. To return the goods 5. To return any accretions to the goods bailed

RIGHTS OF BAILOR

1. Right to terminate the bailment

2. Right to claim damages in case of negligence

3. Right to demand return of goods

4. Right to file a suit against wrong-doer

5. Right to file a suit for the enforcement of the duties imposed upon a bailee
6. Right to claim any increase in value or profits

RIGHTS OF BAILEE

1. Right to enforce bailor duties
2. Right to claim compensation in case of faulty goods
3. Right to claim reimbursement of expenses
4. Right to return the goods to anyone of the joint bailors
5. Right to recover agreed charges
6. Right to recover loss in case of Bailor's defective title
7. Right of action against third parties

BAILEE'S LIEN

Lien means the right of a person, who has possession of the goods belonging to another person, to retain such possession of the goods until some debt due to him or claim is satisfied. This right is sometimes called "Possessory Lien".

a) Particular or Special Lien [Section 170]

A particular lien is a right to retain only those goods in respect of which some charges are due. **b) General Lien [Section 171]:**

A general lien is a right to retain all the goods as a security for the general balance of account until the full satisfaction of the claims due whether in respect of those goods or other goods

FINDER OF LOST GOODS

Duties and Liabilities of the Finder of Lost Goods

1. The finder of goods must take reasonable care of the goods found.
2. The finder of goods must return the goods to the real owner
3. The finder of goods must not use the goods for his own purpose.

4. The finder of goods must not mix up the goods with his own goods.
5. The finder of goods must also return the increase in the goods.
6. The finder of goods must make efforts to find the true owner.

Rights of the finder of lost goods

1. Right of Lien [Section 168]
2. Right to sue for reward [Section 168]
3. Right to sell [Section 169]

TERMINATION OF BAILMENT

1. On the achievement of the object
2. On the expiry of the period
3. Inconsistent use of goods
4. Destruction of the subject matter of bailment
5. Gratuitous bailment
6. Death of the bailor or bailee

PLEDGE OR PAWN

According to Sec. 172 of the Indian Contract Act defines pledge as, “the bailment of goods as security for payment of a debt or performance of a promise”. The bailor is in this case called the “pawnor” and the bailee is called the “pawnee”.

RIGHTS OF PAWNEE OR PLEDGEE

1. Right of retainer: The pawnee may retain the goods pledged not only for payment of the debt or the performance of the promise, but for the interest of the debt, and all necessary expenses
2. Right of retainer for subsequent advance: When the pawnee lends money to the same pawnor after the date of the pledge, it is presumed that the right of retainer over the pledged goods extends to subsequent advances also.

3. Right to extraordinary expenses: The pawnee is entitled to recover from the pawnor extraordinary expenses incurred by him for preserving the goods pledged

4. Right in case of default of the pawnor:

(a) To bring a suit on the debt and to retain the goods pledged as a collateral security.

(b) To sell the goods pledged after giving reasonable notice to the pawnor

DUTIES OF PAWNEE

1. To take reasonable care of the goods pledged;

2. Not to make any unauthorized use of goods;

3. Not to mix goods pledged with his own goods;

4. To return goods and to return accretions to the goods.

RIGHTS OF PAWNOR

1. Defaulting pawnor's right to redeem

2. Preservation and maintenance of the goods

3. Protection as an ordinary debtor 4. Right to receive the increase

DUTIES OF PAWNOR

1 .Duty to repay the loan

2. Duty to pay the expenses in case of default

PLEDGE BY NON-OWNERS

Under the following cases, even a non-owner can make a valid pledge

1. Pledge by a mercantile agent

2. Pledge by a person in possession under a voidable contract

3. Pledge by a pawnor having only a limited interest (Section 179)

4. Pledge by co-owner in possession
5. Pledge by a seller in possession after sale

CONTRACT OF AGENCY

AGENT

According to Section 182 of the Contract Act defines an 'agent' as "a person employed to do any act for another or to represent another in dealings with third parties".

PRINCIPAL

The person for whom such act is done, or who is so represented, is called the principal.

AGENCY

The relationship between an agent and the principal is called agency, which may be created by an express or implied agreement.

ESSENTIALS OF A CONTRACT OF AGENCY

1. Existence of agreement 2. Competency of the Principal 3. Any person may become an agent 4. No consideration is required to create agency

CREATION OF AGENCY

1. Agency by express agreement
2. Agency by implied agreement
3. Agency by estoppel
4. Agency by holding out
5. Agency by necessity
7. Agency by operation of law
8. Agency by ratification

SUB-AGENT [SECTION 191]

A sub-agent is a person who is employed by the original agent and who acts under the control of the original agent in the business of agency.

SUBSTITUTED AGENT [SECTION 194]

A substituted agent is a person who, named by the original agent on the basis of an express or implied authority from the principal.

DIFFERENT KINDS OF AGENTS

1. General Agent
2. Special Agent
3. Universal Agent
4. Commercial or Mercantile Agent
5. Non-mercantile Agent

DUTIES OF AN AGENT

1. To conduct business as per directions or custom of trade
2. To act with reasonable care, skill and diligence [Section 212]
3. Duty to render proper records [Section 213]
4. To communicate with principal [Section 214]
5. Duty not to deal on his own account [Section 215 & 216]
6. Duty to pay sum received [Section 218]
7. To protect and preserve the interest [Section 209]
8. Not to delegate authority [Section 190]

RIGHTS OF AN AGENT

1. Right of Retainer [Section 217]

2. Right to receive remuneration [Section 219 & 220]
3. Right of lien [Section 221]
4. Right to indemnification [Section 222]
5. Right to compensation [Section 22]

DUTIES OF PRINCIPAL

1. To remunerate the agent for his services
2. To indemnify the agent against the consequences of all lawful acts
3. To indemnify the agent against the consequences of an act done in good faith, even though the act causes an injury to the rights of third persons
4. To make compensation to the agent in respect of injury caused to such agent by his negligence

RIGHTS OF PRINCIPAL

1. To get proper accounts on demand from his agent.
2. To see that the agency business is conducted according to his instructions
3. To be entitled to compensation in respect of the direct consequences of the agent's negligence, want of skill, or misconduct.
4. To give instructions in cases of difficulty, when contracted by the agent.
5. To be entitled to compensation for loss, or any profit accruing, owing to departure from instructions.
6. To claim the benefit, if any, arising from a transaction entered into by the agent on his own account
7. To repudiate the transaction, if a material fact is concealed or the dealing by the agent on his own account is disadvantageous to him.
8. To receive all moneys due to him, subject to such deductions by the agent as are permissible

LIABILITY OF AGENT TO THIRD PARTIES [Agent Personally Liable]

1. Where the agent acts for a foreign principle
2. Where the agent acting for a principal who cannot be sued
3. Where the agent acts for a principal who cannot be sued
4. Where an agent acts for a non- existent principal
5. Where the agent acts for an undisclosed principal
6. Where the agent exceeds his authority
7. Where an agent receives money by mistake or fraud

LIABILITIES OF PRINCIPAL TO THIRD PARTIES

1. Where the agent acts within the scope of his authority
2. Where the act within agent's authority is separable from that which is beyond his authority
3. Liability of principal for misrepresentation or fraud of the agent
4. Where the Agent Acts for an Unnamed Principal

MODULE – III

THE SALE OF GOODS ACT 1930

The law relating to the sale of goods or movables in India is contained in the Sale of Goods Act, 1930 which came into force on 1st July, 1930

Contract of sale

“A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price.”

A contract of sale may provide for:

Sale

A contract of sale may be absolute or conditional. Where the right of ownership in the

goods is transferred from the seller to the buyer, the contract is sale.

Agreement to sell

Where under a contract of sale the transfer of property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.

Essentials of a Valid Contract of Sale

- 1.Contract
- 2.Goods
3. Transfer of property
4. Price
5. Two parties

Distinction between Sale and Agreement to Sell

| | | |
|-------------------------------|---|--|
| Transfer of property | The property or ownership in the goods immediately passes from seller to buyer. | The property in goods transfers on some future date |
| Kinds of goods | Sale is always of existing, specific or ascertained goods | An agreement to sell may relate to existing goods, unascertained goods and mostly to future or contingent goods. |
| Type of contract | Sale is an executed contract. | It is an executor or future contract. |
| Risk | The goods belong to the buyer even if they remain in the possession of seller. In case of loss or damage, the buyer will suffer the loss. | The goods belong to the seller and he will suffer the loss if goods are destroyed, even if these are in the possession of the buyer |
| Remedy for breach of contract | If the buyer fails to pay the price, the seller can sue him for price, but cannot resell the goods. | The seller can recover the goods, can sue for damages and can resell the goods, but cannot sue the intended buyer for recovery of price. |
| Insolvency of buyer | If buyer gets insolvent before he pays the price, the seller cannot retain the goods | The seller can recover the goods, can sue for damages and can resell the goods, but cannot sue the intended buyer for recovery of price |
| Insolvency of seller | If seller gets insolvent, the buyer can recover goods from seller's Official receiver | If the buyer has already paid the price, buyer cannot recover the goods. |

CONDITIONS AND WARRANTIES

Stipulation

‘Stipulation’ means a requirement or a specified item in an agreement”. In a contract of sale of goods, stipulation refers to representations made by the buyer and the seller reciprocally as a part of negotiation between them before they enter into a contract

Meaning of Conditions and Warranties

Condition: According to Section 12(2), a condition is a stipulation essential to the main purpose of the contract, the breach of which gives a right to repudiate the contract.

Warranty

According to Section 12(3), a warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives a right to a claim for damages but not a right to reject goods and to treat the contract as repudiated

Express and Implied Conditions and Warranties

The conditions and warranties may be express or implied. ‘Express’ conditions and warranties are those, which have been expressly agreed upon by the parties at the time of the contract of sale. ‘Implied conditions and warranties are those, which the law incorporates into the contract unless the parties stipulate to the contrary

Implied Conditions

1. Condition as to title [Sec. 14 (a)]: In every contract of sale, unless there is an agreement to the contrary, the first implied condition on the part of the seller is that:

- a) In case of sale, the seller has a right to sell the goods, and
- b) In case of an agreement to sell, the seller will have the right to sell at the time when the ownership is to pass from the seller to the buyer

2. Sale by description [Sec. 15]: Where there is a contract of sale of goods by description, there is an implied condition that the goods shall correspond with the description

3. Sale by sample [Sec. 17]: In the case of contract for the sale of goods by sample, there is an implied condition:

- a) that the goods must correspond with the sample in quality;
- b) that the buyer must have reasonable opportunity of comparing the bulk with the sample.

c) that the goods must be free from any defect which renders them un-merchantable and which would not be apparent on reasonable examination of the sample

4) Sale by sample as well as description (Section 15): Where the goods are sold by sample as well as by description, the implied condition is that the bulk of the goods supplied must correspond with the sample and the description.

5. Condition as to quality or fitness [Sec. 16 (1)]

It is the duty of the buyer to see and satisfy himself whether the article will be suitable for the purpose for which he requires them (Caveat Emptor)

6. Condition as to merchantability [Sec. 16 (2)]:

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

7. Condition as to Wholesomeness: This condition applies in the case of provisions and foodstuffs which must not only be merchantable but also be wholesome and suitable for consumption

Implied Warranties

1. Warranty of quiet possession [Sec. 14 (b)]: Under the circumstances are such as to show a different intention there is an implied warranty that the buyer shall have and enjoy quiet possession of the goods

2. Warranty of freedom from encumbrances [Sec. 14 (c)]: There is an implied warranty that the goods shall be free from any charge or encumbrance in favour of a third party not declared or known to the buyer before or at the time when the contract is made.

3. Warranty implied by usage of trade [Sec. 16 (3)]: An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.

4. Warranty to disclose dangerous nature of goods: Where the goods are dangerous to the knowledge of the seller and the buyer is ignorant of the same, there is an implied warranty that the seller should warn the buyer about the probable danger.

Doctrine of Caveat Emptor

The term 'caveat emptor' is a Latin word which means 'let the buyer beware' i.e., a buyer purchases the goods at his own risk

Exceptions to the Doctrine of Caveat Emptor

- 1) Fitness for buyer's purpose [Section 16(1)]
- 2) Goods purchased under patent or brand name:
- 3) Condition as to merchantability [Section 16(2)]
- 4) Good sold by sample as well as description [Section 15(1)]
- 5) Goods sold by sample [Section 17]
- 6) Condition implied by usage or custom of trade
- 7) Goods sold by Misrepresentation

TRANSFER OF OWNERSHIP (PROPERTY) IN GOODS

In a contract of sale of goods, there are three stages in the performance of contract by a seller:

- Transfer of property in the goods
- Transfer of possession of the goods
- Passing of the risk.

The time at which property passes from seller to buyer is important due to the following reasons:

- 1) Risk prima facie passes with property
- 2) Action against third parties
- 3) Right of resale
- 4) Suit for the price
- 5) Insolvency of the seller or the buyer

Rules regarding Transfer of property

These rules determine the time at which the ownership of the goods is transferred from the seller to the buyer

- 1) Transfer of property in case of Specific or Ascertained Goods
 - (a) When goods are in deliverable state (Sec. 20)
 - (b) When goods are not in a deliverable state
 - (c) When price of goods is to be ascertained (Sec. 22)
- 2) Transfer of property in case of Unascertained Goods
 - a) Goods must be ascertained (Sec. 18)
 - b) Appropriation of goods to the contract (Sec. 23)
- 3) When goods are sold on approval (Sec. 24)
 - a) When he accepts the goods
 - b) When he adopt the transaction
 - c) When he fails to return the goods.

Sale by Non-owners

This is based on the following important Latin maxim, “**Nemo dat quod non habet**,” which means that ‘no one can give what he has not got’. Section 27 of the Sale of Goods Act also provided that “where goods are sold by a person who is not the owner thereof and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had. . .”

Exceptions to the Rule ‘Nemo dat quod non habet’

- 1) Title by estoppels [Sec. 27]: When the owner of goods, by his conduct or by statement, wilfully leads the buyer to believe that the seller has the authority to sell,
- 2) Sale by merchantable agent [Sec. 27 (2)]: This exception will apply if the following conditions are satisfied
 - a) The goods must have been sold by a mercantile agent;

b) He must be in possession of the goods or any document of title to the goods with the consent of the real owner

c) The sale should be in the ordinary course of business;

d) The buyer must act in good faith

3) Sale by a joint owner (co-owner) [Sec. 28]

a) The co-owner must be in the sole possession of goods with the consent of other co-owners.

b) The buyer should purchase the goods for consideration and in good faith

4) Sale by person in possession under voidable contract [Sec. 29]

5) Sale by seller in possession after sale [Sec. 30 (1)]

6) Sale by buyer in possession after sale [Sec. 30 (2)]

7) Sale by unpaid seller [Sec. 54 (3)]:

8) Exceptions under the provisions of other Acts

PERFORMANCE OF THE SALE OF CONTRACT

A contract of sale consists of two reciprocal promises: (i) The seller's duty to deliver the goods; and (ii) The buyer's duty to accept the goods and pay the price

A contract of sale consists of two reciprocal promises:

(i) The seller's duty to deliver the goods; and

(ii) The buyer's duty to accept the goods and pay the price

Delivery of Goods

Section 2 (2) of the Act defines, delivery to mean "voluntary transfer of possession from one person to another."

Modes of Delivery

a) Actual delivery

b) Symbolic delivery

c) Constructive or Delivery by attornment

Rules Regarding Effective Delivery of Goods

- 1) Delivery and payment are concurrent conditions [Sec. 32]
- 2) Delivery may be either actual, symbolic or constructive [Sec. 33]
- 3) Effect of part delivery [Sec. 34]
- 4) Buyer should apply for delivery [Sec. 35]
- 5) Place of delivery [Sec. 36 (I)]
- 6) Time for delivery of goods [Sec. 36(2)]
- 7) Effect of goods in possession of a third party [Sec. 36(3)]
- 8) Expenses of delivery [Sec, 36(5)]
- 9) Delivery of wrong quantity [Sec. 37]
- 10) Installment deliveries [Sec. 38(1)]

UNPAID SELLER

According to Sec. 45 of the Sale of Goods Act, the seller of goods is deemed to be an unpaid seller

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

Rights of an Unpaid Seller

- I. Right of an Unpaid Seller against the goods; and**
- II. Rights of an Unpaid Seller against the buyer personally**

I. Right of an Unpaid Seller against the goods

An unpaid seller has the following rights against the goods notwithstanding the fact that the property in the goods has passed to the buyer:

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

1) Right of Lien [Sec. 47 to 49]

The unpaid seller can exercise lien only in the following cases

- a) Where the goods have been sold without stipulation as to credit
- b) Where the goods have been sold on credit but the term of credit has expired
- c) Where the buyer becomes insolvent even though the period of credit may not have yet expired
- d) Where the unpaid seller has delivered a part of the goods, he may exercise his lien on the remaining part of the goods

Termination of Lien or Loss of Lien

An unpaid seller of goods loses his right of lien on the goods in the following cases

- (i) By delivery to the carrier: When he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods.
- (ii) By delivery to the buyer: When the buyer or his agent lawfully obtains possession of goods, unpaid seller loses his right of lien
- (iii) By waiver: When the seller expressly or impliedly waives his right of lien, the right of lien is terminated.
- (iv) By tender of price: Where the buyer tenders price for the goods purchased by him, seller's lien is lost.

2) Right of stoppage of goods in transit [Sec. 50 to 52]

The right of stoppage can be exercised only when the following conditions are satisfied:

- a) The seller should be an unpaid seller;
- b) The buyer must have become insolvent;
- c) The seller must have parted with the possession of the goods
- d) The goods must be in the course of transit

Duration of transit

The goods are deemed to be in transit from the time when they are delivered to a carrier or other bailee for the purpose of transmission to the buyer or his agent takes delivery of them.

Termination of transit and Right of Stoppage

1. Delivery to the buyer
2. Interception by the buyer
3. Acknowledgement to the buyer
4. Goods delivered to buyer's carrier
5. Wrongful refusal to deliver
6. Part delivery of goods

3) Right of Resale [Sec. 54]

The unpaid seller has the right to resell the goods in the following circumstances:

- a) Where the goods are of a perishable nature
- b) Where the unpaid seller has exercised his right of lien or of stoppage in transit and gives notice to the buyer of his intention to resell the goods
- c) Where the seller expressly reserves his right of resale.

II Rights of an Unpaid Seller against the Buyer Personally

On breach of the contract of sale due to seller's default, the buyer has the following remedies (i.e., rights) against the seller.

- 1) Suit for price [Sec. 55]
- 2) Suit for damages [Sec. 56]
- 3) Suit for repudiation [Sec. 60]
- 4) Suit for interest [Sec. 61(2)]

MODULE-IV

THE CONSUMER PROTECTION ACT, 1986

“An Act to provide for the protection of the interests of consumers and for that purpose to make provision for the establishment of Consumer Councils and other authorities for the settlement of consumer’s disputes and for matters connected therewith.”

Scope and Applicability

The Consumer Protection Act, 1986 extends to the whole of India except the State of Jammu and Kashmir.

Definition of Terms

Complainant [Sec. 2 (l) (b)]

The person who can make a complaint before a Consumer Redressal Forum may be:

- i. a consumer, or
- ii. any voluntary consumer association registered under the Companies Act, 1956 or under any other law for the time being in force, or
- iii. the Central or State Government, or
- iv. one or more consumers, where there are numerous consumers having the same interest, or
- v. in case of death of a consumer, his legal heir or representative.

Complaint [Sec. 2 (1) (c)]

It means a written allegation by a complainant that:

- i. An "unfair trade practice or a "restrictive trade practice" has been provided by any trader or service provider,
- ii. The goods bought by him or agreed to be bought by him, suffer from one or more 'defects
- iii. The services hired or availed or agreed to be hired or availed of by him suffer from "deficiency in any respect;

- iv. A trader or the service provider has charged for the goods or for the service mentioned in the complaint, a "price in excess" of the price
- v. Goods which will be 'hazardous to life and safety' when used, are being offered for sale to the public

Consumer [Sec. 2 (1) (d)]

A consumer means:

- (i) any person who buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment, and includes any person who uses such goods with the approval of the buyer
- (ii) Any person who hires or avails any services for a consideration which has been paid or promised

Consumer Dispute [Sec. 2(1) (e)]

Consumer Dispute means “dispute, where the person against whom a complaint has been made, denies or dispute the allegation contained in the complaint”.

Defect [Sec. 2 (1) (f)]

Defect means "any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being force, or under any contract, express or implied or as is claimed by the trader, in any manner whatsoever in relation to any goods".

Deficiency [Sec. 2 (1) (g)]

Deficiency means "any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force, or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service".

Goods [Sec. 2 (1) (i)]

Goods means “every kinds of movable property other than actionable claim and money and includes stock and shares, growing crops, grass and things attached to

or forming part of the land which are agreed to be severed before sale or under the contract of sale”.

Services [Sec. 2 (1) (o)]

Service means “service of any description which is made available its potential users and includes but not limited to the provision of facilities in-connection with banking.....etc.

Unfair Trade Practices [Sec. 2 (1) (r)]

Unfair Trade Practice means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any services, adopts any unfair method or unfair or deceptive practice.

- (1) False Representation and Misleading Advertisements [Sec. 2 (1) (r) (1)]
- (2) False offer of Bargain Price [Sec. 2 (1)
- (3) Offer of Gifts, prizes, etc., [Sec. 2 (1)
- (4) Withholding any scheme [Sec. 2 (1)
- (5) Sale or supply of goods not complying with prescribed standard [Sec. 2 (1)
- (6) Hoarding destruction or refusal to sell [Sec. 2 (1)
- (7) Hoarding destruction or refusal to sell [Sec. 2 (1)

Restrictive Trade Practices [Sec. 2 (1)

Restrictive Trade Practice means a trade practice which tends to bring about manipulation of price, or its conditions of delivery or to affect flow of supplies in the market relating to goods or in such a manner as to impose on the consumers unjustified costs or restrictions

Rights of Consumers

According to Section 6 of the Consumer Protection Act, the following rights are available to consumers.

- 1) Right to be protected or right to safety
- 2) Right to be informed
- 3) Right to be assured/choose:

- 4) Right to be heard.
- 5) Right to seek redressal
- 6) Right to consumer education
- 7) Right to Basic Needs:
- 8) Right to healthy environment or quality of life

Consumer Protection Councils

The Consumer Protection Councils are established at Central Level, State Level and District Level. These councils work towards the promotion and protection of the rights of the consumers

1. Central Consumer Protection Councils

2. State Consumer Protection Councils

3. District Consumer Protection Council

Consumer Disputes Redressal Agencies

Consumer Protection Act, 1986 has set up a three-tier quasi-judicial redressal machinery for expeditious and inexpensive settlement of consumer disputes. It is an alternative to the ordinary process of instituting actions before a civil court

District Forum

The District Forum shall have jurisdiction to entertain complaints where the value of goods and services complained against and the compensation claimed, if any, is less than Rs. 20 Lakhs.

Composition of District Forum

According to Section 10 (1), each District Forum shall consist of the following:

- a) President: He shall be a person who is, or has been or is qualified to be a District Judge.

b) **Members:** There shall be two other members, one of whom shall be a woman. A member must have the following qualifications:

- (i) be not less than 35 years of age;
- (ii) possess a bachelor's degree from a recognized university;
- (iii) must be a person of ability, integrity and standing and have adequate knowledge and experience of at least 10 years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs, or administration

Jurisdiction

The District Forum shall have jurisdiction to entertain complaints where the value of goods and services and the compensation, if any claimed, does not exceed Rs. 20 Lakhs. A complaint shall be filed in district forum within the local limits of whose jurisdiction the opposition party (or parties) reside or carry on business or the cause of action has arisen.

The complaint may be filed by any of the following persons:

- The consumer concerned;
- Any recognized consumer association;
- One or more consumers for the benefit of all consumers;
- The Central or the State Government.

State Commission

The State Commission shall have jurisdiction for such complaints and claims if the value thereof is exceeding Rs. 20 Lakhs but not exceeding Rs. 1 Core..

Composition of State Commission

According to Section 16 (1), each State Commission shall consist of the following:

a) President: He shall be a person who is or has been a judge of the High Court. His appointment shall not be made except after consultation with the Chief Justice of the High Court.

b) Members: There shall be not less than two or not more than such number of members as may be prescribed, who shall be the person of ability, integrity and standing and have adequate knowledge or experience of at least 10 years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs, or administration, one of whom shall be a women.

Jurisdiction

The State Commission shall have the jurisdiction:

I to entertain:

1. complaints where the value of the goods or services and compensation, if any claimed exceeds rupees 20 Lakhs but does not exceed rupees one crore; and
2. appeals against the orders of any District Forum within the State; and

II to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any District Forum within the State, where it appears to the State Commission that such District Forum has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested or has acted in exercise of its jurisdiction illegally or with material irregularity

National Commission

The National Commission shall have jurisdiction for complaints and claims of the value exceeding Rs. 1 Crore.

Composition of National Commission

Section 20 (1) provides that the National Commission shall consists of:

a) President: He shall be a person who is or has been judge of the Supreme Court, to be appointed by the Central Government (in-consultation with the Chief Justice of India.

b) Members: There shall be not less than four and not more than such number of members as may be prescribed, possessing the qualifications as are prescribed for a member of the State Commission.

Jurisdiction

The National Commission shall have the jurisdiction

(iii)to entertain:

- complaints where the value of the goods or services and compensation, if any claimed exceeds rupees one crore; and
- appeals against the orders of any State Commission; and
- (iv) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised a jurisdiction not vested in it by law

Manner of Making the Complaint who can file a complaint? (Sec. 12]

The following may file a complaint before the District Forum:

- (a) the consumer to whom the goods are sold or delivered, or agreed to be sold or delivered, or the service has been provided, or agreed to be provided
- (b) any recognized consumer association, regardless of whether the consumer is a member of such association or not,
- (c) one or more consumers, where there are numerous consumers having the same interest with the permission of the District Forum on behalf of or for the benefit of all consumers so interested,
- (d) The Central or State Government, either in its individual capacity or as a representative of the interests of consumers in general.

Procedure on Receipt of Complaint [Sec 13]

[A] Complaints where laboratory testing is possible or required [Sec. 13 (1)]

- (i) Referring a copy of complaint to the opposite party
- (ii) Denial of allegations or failure to take action to represent the case by the opposite party

[B] Complaints relating to services, i.e., where laboratory testing is not possible or required [Sec. 13(2)]

- (i) Reference of complaint to opposite party
- (ii) Denial or disputing of allegation or failure of opposite party to take action to represent his case:

Nature and Scope of Remedies under the Act [Sec. 14]

- (1) to remove the defects pointed out by the appropriate laboratory from all the goods in question
- (2) to replace the goods with new goods of similar description which shall be free from any defect
- (3) to return to the complainant the price or the charges paid by him
- (4) to pay such amount, may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party
- (5) to remove the defects in goods or deficiencies in the services in question
- (6) to discontinue the unfair trade practice or the restrictive trade practice or not to repeat them
- (7) not to offer the hazardous goods for sale
- (8) to withdraw the hazardous goods from being offered for sale
- (9) to cease manufacture of hazardous goods and to desist from offering services which are hazardous in nature
- (10) to issue corrective advertisement to neutralize the effect of misleading advertisement at the cost of opposite party responsible for issuing such misleading advertisement; to provide for adequate costs to the parties

MODULE –V

LIMITED LIABILITY PARTNERSHIP ACT 2008

Limited liability partnership

Limited liability partnership is a combination of both partnership and corporation. It has the features of both these forms. This form of business becomes very popular now a days as many entrepreneur are opting this. All limited liability partnership is governed under the limited liability partnership act 2008. However in India LLP was introduced in April 2009

Limited liability partnership Act: as per the Act, LLP means a partnership formed and registered under the act. This act extends to the whole of India

Salient features or nature and characteristics

1. Legal entity
2. Continuous existence
3. Number of partners.
4. Type of partners
5. Rights and duties of partners
6. Partners as agent
7. Limited liability
8. Name of the firm
9. Financial disclosure
10. Winding up

Formation

An LLP is a body corporate formed and incorporated under the LLP Act, 2008. It has legal entity separate from that of its partners and have perpetual succession. Every limited partnership shall have at least two partners and there is no maximum limit

Capital contribution

In case of LLP, there is no concept of any share capital, but every partner is required to contribute towards the LLP in some manner as specified in the LLP agreement. The contribution of the partner may consist of tangible, movable or immovable or intangible property or other benefit to the LLP including money, promissory notes, other agreements to contribute cash or property, and contracts for services performed or to be performed.

LLP agreement

LLP means any written agreement between the partners of the limited liability partnership or between the limited liability partnership and its partners which determines the mutual rights and duties of the partners and their rights and duties in relation to that limited liability partnership.

Partners and designated partners

Partners in relation to a limited liability partnership means any person who becomes a partner in the limited liability partnership in accordance with the limited liability partnership agreement. “designated partners” means a partner who is designated as such in the incorporation documents or who becomes a designated partner by and in accordance with the LLP agreement

Incorporation by Registration

In order to incorporate an LLP, two or more persons associated for carrying on a lawful business with a view to profit shall subscribe their names to an incorporation document. It shall be filed with the prescribed fees, and in the manner prescribed by the Registrar of the state where the registered office of the LLP is situated.

The incorporation document contains the following matters.

- a) the name of the limited liability partnership;
- b) the nature of the proposed business;
- c) the address of the registered office;
- d) the name and address of the partners
- e) the name and address of the designated partners
- f) other matters incidental thereto.

Effect of Registration: On registration, an LLP shall, by its name, be capable of

- a) Suing and being sued
- b) Acquiring ,owing , holding and developing or disposing of property, whether movable or immovable, tangible or intangible
- c) Having a common seal, if it decides to have one: and
- d) Doing and suffering such other acts and things as body corporate may lawful do and suffer

Penalty for improper use of words “limited liability partnership” or “LLP”

If any person or persons carry on business under any name or title of which the words “limited liability partnership” or “LLP” or any contraction or imitation

thereof is or are the last word or words, that person or each of those persons shall, unless duly incorporated as limited liability partnership, be punishable with fine which shall be less than fifty thousand rupees but which may extended to five lakh rupees.

Partners and their relation

On the incorporation of an LLP the person who subscribed their names to the incorporation document shall be its partners and any other person can become a partner according to the LLP agreement

Cessation of partnership interest

A person may cease to be a partners of LLP in accordance with agreement with the other partners or , in the absence of agreement with the other partner as to cessation of being a partner, by giving a notice in writing of not less than thirty days to the other partners of his intention to resign as partner

A person shall cease to e a partner in the following circumstances also

- a. On his death or dissolution of the LLP. Or
- b. If he is declared to be of unsound mind by a competent court, or
- c. If he has applied to be adjudged as an insolvent or declared as an insolvent

The ceased partner is referred as a former partner of LLP

Rights of a former partner

Where a partner of an LLP ceases to be a partner, unless otherwise provided in the LLP agreement, the former partner or a person entitled to his share in consequence of the death or insolvency of the former partner shall be entitled to receive from the LLP.

A. An amount equal to the capital contribution of the former partner actually made to the LLP; and

B. His right to share in the accumulated profits of the LLP, after the deduction of accumulated losses of the LLP, determined as at the date the former partner ceased to be a partner.

Extent and liability of LLP and partners

1. Every partner of an LLP is treated as the agent of the LLP but not of other partners for the purpose of doing the business
2. The LLP is liable if a partner of an LLP is liable to any person as a result of a wrongful act or omission on his part in the course of the business of the LLP or with its authority
3. An obligation of the LLP whether arising in contract or otherwise, shall be solely the obligation of the LLP.
4. The liability of the LLP shall be met out of the property of the LLP
5. A partner of an LLP shall not be personally liable for the wrongful act or omission of any other partner of the LLP.
6. Any person, who by words spoken or written or by conduct, represents himself or knowingly permits himself to be represented to be a partner in an LLP is liable to any person who extends credit to the LLP
7. Where after a partner's death the business is continued in the same LLP's name, the continued use of that name or of the deceased partner's name as a part thereof shall not be of itself make his legal representative

Unlimited liability in case of Fraud

If any act is done or carried out by the LLP or any of its partners with the intent to defraud the creditors of the LLP, the liability of the partners and LLP becomes unlimited for all or any of the debts or other liabilities of the LLP.

Assignment and transfer of partnership rights

The right of a partner to a share of the profits and losses of the LLP and to receive distribution in accordance with the LLP agreement are transferable either wholly or in part, provided such transfer does not cause any disassociation of partners or a dissolution and winding up of the LLP.

Conversion into limited liability partnership

A firm, private company or an unlisted public company is allowed to be converted into LLP in accordance with the provisions of the act. Upon such conversion, on and from the date of certificate of registration issued by the registrar, all tangible and intangible property vested in the firm or the company: all assets, interest, rights

, privileges, liabilities, obligations relating to the firm or the company and the whole of the undertaking of the firm or the company shall be transferred to and shall vest in the LLP without further assurance, act or deed and the firm or the company shall be deemed to be dissolved and removed from the records of the registrar of firms or registrar of companies, as the case may be.

Distinction between LLP and partnership

| Features | LLP | Partnership |
|-------------------------------|--|---|
| 1. Formation | Formed as per LLP act 2008 Registration is compulsory | For as per the partnership act 1932 |
| 2. Registration | with the registrar of companies | Not compulsory but an unregistered partnership won't have the ability to sue. |
| 3. Legal entity | A separate legal entity | Not a separate legal entity |
| 4. Perpetual succession | LLP has a perpetual succession | Comes to an end at the death, retirement or insolvency of the partners |
| 5. Number of partners | Minimum two and there is no maximum limit | Two to twenty partners |
| 6. Name | Name the end word limited liability partnership or the acronym LLP | No rules for the name. |
| 7. Liability | Limited | Unlimited |
| Foreign nationals as partners | Foreign nationals can be partners | Foreign national cannot form partnership firm |

Distinction between LLP and company

| Features | Company | LLP |
|-----------|--|--|
| Formation | Formed as per the companies act 2013 | Formed by the limited liability partnership act 2008 |
| Capital | The minimum and maximum amount of paid | Not specified |

| | | |
|---|---|--|
| | up capital of public and private companies are clearly be specified in the companies act | |
| Minimum number of members | Two in the case of a private company and seven in the case of a public limited company | Minimum two partners |
| Maximum number of members | Maximum 200 in the case of a private company and there is no maximum limit for a public company | No limit to the maximum number of partners |
| Liability | Limited to the extent of the value of shares | Limited to the extent of the contribution to the LLP |
| Memorandum of association and articles of association | Important document | No such document |

Winding up and dissolution

The winding up of an LLP may be either voluntary or by the tribunal and LLP, so wound up maybe dissolved.

Voluntary winding up

Any LLP may be wound up voluntarily if the LLP passes a resolution to wind up the LLP with approval of at least three fourth of the total number of its partners, but if the LLP has creditors, whether secured or unsecured, the approval of such creditors are also be required for its winding up.

The voluntary winding up shall be deemed to commence on the date of the resolution for voluntary winding up.

1. If the LLP decides that the LLP be wound up by the tribunal
2. If for a period of more than six months, the number of partners of the LLP is reduced below two
3. If the LLP is unable to pay its debts

4. If the LLP has acted against the interests of the sovereignty and integrity of india, the security of the state or public order
5. If the LLP has made a default in filing with the registrar the statement of account and solvency or annual return for any five consecutive financial year
6. If the tribunal is of the opinion that, it is just and equitable that the LLP be wound up

Advantages of LLP

1. Easy formation
2. Separate legal entity
3. Limited liability
4. Perpetual succession
5. Combined benefit of partnership and company
6. Flexibility
7. Easy transferability of ownership

8. Lower rate of taxation

Disadvantages

1. Public disclosure
2. Less credibility
3. Retaining profit
4. Unlimited liability
5. Joint liability